



PENNSYLVANIA LANDOWNER

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SANTORUM HIGHLIGHTS ANNUAL MEETING



U.S. Senator Rick Santorum

"Don't ever think that elections don't matter, or that one vote doesn't mean anything."

U.S. Senator Rick Santorum served as the keynote speaker for the 8th annual Pennsylvania Landowners' Association meeting on April 19th. Over 200 individuals, traveling from as far away as Allentown, came to Cross Creek Resort in Titusville, Pennsylvania to hear the Senator speak on property rights and what could be expected from the 104th Congress.

Since the Republican victory this past November, "there has been a 180 degree turn-around," Santorum stated. "Don't ever think that elections don't matter, or that one vote doesn't mean anything," he said. Santorum indicated that property rights protection, which has been getting more and more attention over the last few years, is "well supported" by this session's U.S. Senate and that property rights have been addressed in the Contract with America.

Rhonda McAtee, Executive Director, indicated that the U.S. House of Represent-

tatives passed H.R. 925, the Private Property Protection Act of 1995 (see *The Takings Bill*, pg. 2) on March 3rd and that S.605 was introduced in the U.S. Senate on March 23rd (see *Omnibus Property Rights Act of 1995*). Both bills require the federal government to compensate property owners when property value is diminished through government regulation under certain regulatory programs.

Santorum indicated that although there is a great deal of support for ultimate passage of a property rights bill in Congress, President Clinton will likely veto it. "He's an environmentalist," said Santorum, "and this is an issue which is basic to his political base." He went on to state, however, that the president "wants to do whatever it takes to win reelection." He encouraged members to relay their concerns on property rights issues to the White House, as well as their elected representatives.

He also told members that despite the current mood in Congress, the debate has only just begun and it will take a long-term commitment to return balance to environmental regulations.

Santorum also spoke of the Endangered Species Act and indicated that current policy is "out of step" with the fact that we live in an evolving world. "Species come and species go..." he said. "There will always be species that are endangered. There will always be species that will go extinct and new species will come."

He spoke of a proposed highway bypass near Lewisburg, Pennsylvania which would have greatly improved motorist safety. The project was halted when an endangered weed was found. "Because of this, people continue to die. We need to return to common sense. The government is out of control in the ways it regulates society."

The "Takings" Bill HR 925 Passes The House 277-148

by David Howard,
Editor of Land Rights Letter

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THE "Private Property Protection Act" passed overwhelmingly in the U.S. House of Representatives on March 3. The bill, an integral part of the "Contract with America," has broadened considerably the definition of regulatory takings as traditionally defined by the courts. For the first time American landowners will be protected when a "taking" occurs as a result of environmental regulatory actions. The bill requires the federal government to compensate owners if property value (of the targeted area) is diminished by 20%. This legislation however, applies to actions involving the *Endangered Species Act*, *Clean Water Act* (section 404 wetlands), and the *Reclamation Acts*, the *Federal Land Policy Management Act*, and the *Forest*

and *Rangeland Renewable Resources Planning Act* of 1974 (sec. 6). The bill originally covered all federal regulations and had no trigger threshold. This original, stronger version was supported by nearly all property rights organizations.

THRESHOLD TRIGGER

Rep. Tauzin of Louisiana and Rep. Canady of Florida offered an amendment in the nature of a substitute that defined a 10% threshold and narrowed the scope to the aforementioned regulations. Subsequent amendments raised the threshold trigger to 20%.

Many private property supporters are disappointed with the narrow scope of the version that passed the House. The following excerpt from one of the hundreds of alerts issued nationwide sums up that frustration:

"Although 'takings' as a result of endangered species habitat set-asides, wetlands and the Farm Bill are egregious, federal action steals property value via numerous regulations as well. All across the United States, landowners have lost value to: Wild and Scenic River designations, Rails to Trails, Historic Preservation, Heritage Corridors, Greenways and Greenline Parks, etc. Rep. Tauzin's amendment creates two classes of landowners—those whose 'takings' are politically correct and those whose are not. The Tauzin amendment would 'deflate' the property rights movement by eliminating the largest number of takings complaints leaving everyone else with no political support because Washington, DC would consider the 'takings' issue settled.

HERO OF THE DAY

The hero of the day was Rep. Richard Pombo (R-CA) who argued passionately for strict language and coverage despite the attempts of so-called "moderates" to dilute the bill. However, efforts to maintain the original scope of the bill were lost in the Foggy Bottom haze of political expediency.

In all fairness to Mr. Tauzin, it must be noted that he was an ardent supporter of property rights long before property rights were fashionable and was a pioneer in the fight against wetlands regs. We simply think that although he may have read the soft underbelly of Congress correctly, he greatly misjudged the mood of mainline citizens. Private property rights protection is non-negotiable to the majority of Americans.

The fight for passage of HR 925 was a classic grassroots effort. Citizens from all walks of life rallied in support of the legislation. Fax and phone lines were humming from Lubec,

ME to Newberry Springs, CA and from Ft. Meyers, FL to Forks, WA. Unlike the "wanna be grassroots" of the Environmental Industry the property rights network requires only a telephone or fax machine and a heartfelt, honest message for government: "Get out of my backyard, leave my hard earned money alone, and stop minding other people's business."

Urban areas across the nation endured the Environmental Industry's multimillion dollar blitz of TV and radio spots claiming that this legislation was "paying polluters not to pollute" and would "roll back all progress made in the last 20 years."

The rhetoric became more heated as the debate wore on. "Stop all environmental laws... that's what this is really all about," said Rep. Bruce Vento (D-MN). (*Mr. Vento has never seen a land grab he didn't like; he's presently trying to create a "corridor" of federal control stretching the length of the Mississippi River.*)

Rep. Jack Fields of Texas countered that, "there is a Constitutional right to use and enjoy property" and continued that property owners have had it with "bureaucratic, frivolous decisions by regulators." Reports from Washington became increasingly positive...the real environmentalists had spoken again, opposition weakened and the bill passed overwhelmingly. Congress had again heard from the heartland, at even higher levels than the hue and cry that last year forced Big Green to pull off the table almost every piece of legislation that they had championed.

As the discussions on property rights continue, it is important to remember that the people who have paid a personal price for years of Congressional meddling will no longer put up with the theft. It is they, who, in many cases, have lost their livelihoods, their heritage, and their future—all due to government's misguided dream to exert control over all land. Note that the U.S.S.R. experimented with that form of control. It is hoped that Congress can learn from that failed enterprise.

The House vote marks round one of the battle. The spotlight now shifts to the U.S. Senate where it is hoped that the bill will be strengthened. The Senate has the distinct opportunity and indeed the honor, to put America back on the track our founding fathers envisioned... a vision of limited governmental intrusion, individual responsibility, and local control.

However, should "political expediency," "compromise," and "the art of the deal" take priority... they could destroy the final guarantee of individual freedom... the right to own, enjoy and be secure on one's own land.

S.605

The Omnibus Property Rights Act of 1995

Introduced by Senator Dole (R-Kansas), S.605 is the U.S. Senate's version of H.R. 925, the Private Property Protection Act. Unlike H.R. 925, which requires a diminution in property value of 20%, S.605 requires a diminution of 33%. However, while H.R. 925 only applies to certain regulatory programs such as wetlands and endangered species, S.605 is all encompassing, requiring the federal government to provide compensation when any regulation devalues private property by 33% or more.

S.605 currently has 31 cosponsors. Oddly enough, although Senator Santorum has been a supporter of property rights protection in the past through various legislative proposals, he is not a current cosponsor of this bill. Nor is presidential hopeful U.S. Senator Arlen Specter. **WHY NOT?!!** Members should contact both senators urging their support and cosponsorship of S.605 and urge the senators to support a lower threshold on the percentage by which property must be devalued before receiving compensation. As stated in the article on page 2, "Private property rights protection is non-negotiable to the majority of Americans."

Please address correspondence to:

Honorable Arlen Specter
United States Senate
Washington, D.C. 20510
(Tel: 202-224-4245)

Honorable Rick Santorum
United States Senate
Washington, D.C. 20510
(Tel: 202-224-6324)

S.605 – CURRENT SPONSORS

TOTAL SPONSORS: 31

Democrats: 1 Republicans: 30

ABRAHAM (R-MI)	INHOPE (R-OK)
ASHCROFT (R-MO)	KEMPTHORNE (R-ID)
BENNETT (R-UT)	KYL (R-AZ)
BOND (R-MO)	LOTT (R-MS)
BROWN (R-CO)	MACK (R-FL)
BURNS (R-MT)	MCCONNELL (R-KY)
COATS (R-IN)	MURKOWSKI (R-AK)
CRAIG (R-ID)	NICKLES (R-OK)
FRIST (R-TN)	PACKWOOD (R-OR)
GRAMM (R-TX)	PRESSLER (R-SD)
GRAMS (R-MN)	SHELBY (R-AL)
GRASSLEY (R-IA)	STEVENS (R-AK)
HATCH (R-UT)	THOMAS (R-WY)
HATFIELD (R-OR)	THURMOND (R-SC)
HEFLIN (D-AL)	WARNER (R-VA)
HUTCHINSON (R-TX)	

1995

A VINTAGE YEAR?

BY HENRY INGRAM, ESQ.

and Rick Santorum responded in detail but the other candidates failed or refused to provide any meaningful response at all which would enable PLA members to inform themselves about the positions of those candidates. Tom and Rick did not hedge or equivocate and each acknowledged that environmental regulation had gone too far and reiterated their commitment to the institution of private property. Hopefully, it was more than a mere coincidence that PLA's best bets¹ for protecting property rights won in the Fall and took office this year.

1995 was also the year of the inaugural Pennsylvania Land Use Summit. PLA came up with the idea for the Summit and developed the support and active participation of five other prominent and influential state-wide, trade organizations¹ which share PLA's goal of restoring reason and balance in environmental regulation. The conference was a resounding success and led to the formation of a broad alliance of organizations which are committed to achieving regulatory reform and to creating a political climate which is more responsive to individual liberties and property rights.

1995 was also the year that PLA began to attract significant attention from the major media. The Associated Press and the Pittsburgh Post Gazette each ran major "features" which reported on the property rights movement and acknowledged PLA as the voice and spearhead of the movement in Pennsylvania. It really made no difference if the stories were balanced or entirely accurate — the important fact is that PLA is considered to be a force to be reckoned with and that large segments of the general public throughout Pennsylvania are now aware that "Yes, there is a group out there which advocates the interests of ordinary citizens and landowners against excessive environmental regulation." The articles about PLA and Bob Brace's ongoing struggle against the federal government were apparently heartening to many readers, encouraging many to become involved in PLA and to take a stand for their land.

Perhaps the most significant achievement of PLA came in 1995 when the Pennsylvania Environmental Council ("PEC") and the Western Pennsylvania Conservancy ("Conser-

The Government has no monopoly on good ideas, clear thinking or evenhandedness. In fact, just the opposite is the reality. And the people know it.

vancy"), co-initiators of the French Creek Project, came to recognize the depth of concern among ordinary citizens and landowners over "command and control" environmental regulation and oppressive enforcement. These two highly respected and politically influential organizations have initiated a five year project to protect and enhance the water quality of French Creek, not by invasive government mandates emanating from remote and seemingly unaccountable bureaucracies, but by education, friendly persuasion and with recognition of the instinctive concern of ordinary citizens for and about the land on which they live and from which many earn their livelihoods. Too often in the past, the institution of private property has been viewed as an anachronistic impediment to Government imposed "solutions" to perceived environmental problems. One of the best examples is still found in the frenzy over wetlands preservation. Despite the fact there has never been a ballot question or referendum on the issue of whether all wetlands should be preserved, "someone" decided that they should be and also that it was a good idea to extend the federal jurisdiction of the U.S. Army Corps of Engineers all the way to private lands in headwaters areas, based on the counter-intuitive fiction that the land thus being regulated was

Hopefully, it was more than a mere coincidence that PLA's "best bets" for protecting property rights won in the Fall and took office this year.

¹ Pennsylvania Aggregates & Concrete Association, Pennsylvania Association of Realtors, Pennsylvania Builders Association, Pennsylvania Coal Association and Pennsylvania Farm Bureau.

navigable water of the United States. The fact that the power which accompanies this jurisdiction is more often than not exercised in a high-handed, insensitive and chaotic manner by federal enforcement officials did not instill much confidence in landowners about Government "solutions" either.

If the truth were known, one of the mistakes that many preservation advocacy groups have made in the past is to align themselves with our "friends" from the Government. At first blush, it makes sense because the Government has vast resources and almost limitless coercive power which can be focussed on particular targets, usually individuals and small businesses which frequently have inadequate resources to defend themselves. What some of these advocacy groups fail to recognize is that a large segment of the "public" has also come to the realization that just because a person works for the Government doesn't mean that his answer, opinion or solution is any better or smarter than yours. The Government

has no monopoly on good ideas, clear thinking or evenhandedness. In fact, just the opposite is the reality. And the people know it.

You could also make a case for the proposition that much of what Government does is not to protect the people (from others and themselves) or the environment for that matter but rather is to protect the Government's power and the jobs of its employees. All you have to do is look at some of our school districts which are experiencing steadily declining student enrollment. Somehow the education bureaucracy often is able to convince voters that increases in both budget and staff are necessary to maintain "quality" education even as the school population decreases. Again, this is counter-intuitive. Bureaucracies want more money, more people and more authority. The people, if given a clear choice, would probably say that schools can and should get by on less if they have fewer students to serve. And by the way, is our system of public education doing a better job today than it did twenty or thirty years ago? Maybe yes in some places; probably no in many others. I think we all recognize that spending vastly more dollars and employing layers and layers of administrators, coordinators and teachers by and large has done little more for society than provide public sector jobs (assuming we all agree that more public sector jobs is a good idea).

The important point here is that PEC and the Conservancy at least recognize the climate of distrust of command and control government, particularly when some of the Government solutions likely to be imposed don't seem to make any sense at all. In the case of French Creek, the ecologists have concluded that all sixty-six species of fish that were ever there still are there. And the "endangered" mussels which have inhabited the Creek since George Washington's time are alive and well today. What would be the Government's solution? We might think it would be for the Government to find out what's right in the watershed and then try to restore somebody else's watershed so that the habitats in those areas can be enhanced — the ecological equivalent of technology transfer. But we would be wrong. In-

stead the Government solution would be to micro-manage the entire French Creek watershed and most all of its human inhabitants.

PEC and the Conservancy recognize that conventional Government solutions for protecting French Creek would lead to confrontation and might even end up being counter-productive in the long run. The French Creek Project is an experiment with a radically different approach to problem solving. The idea is to develop and implement solutions without resorting to stifling Government coercion and with recognition of and respect for the rights of landowners in the watershed. Although not everyone recognizes or is willing to admit it, this is what PLA has stood for and advocated since its formation. Landowners' voices have been heard and PLA's role in that accomplishment cannot be overstated.

It is too early to tell if 1995 will be a vintage year for PLA. That depends whether the job, which is off to such a good start, is finished. The PLA message no longer falls on powerless ears and changes in direction and reform can be accomplished. It is time to amplify the PLA message and complete the landowners' agenda. As always, the remaining tasks will require hard work, renewed dedication and yes, continued and hopefully increased financial and moral support. The strength of PLA is in its people. If we finish the job, 1995 will have been a vintage year.

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Henry Ingram is Chairman of the Natural Resources & Environmental Law section of Buchanan Ingersoll, P.C. and has practiced environmental and natural resources law for over 25 years. Mr. Ingram also serves 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.

THE RIGHT TO OWN AND

Can the American Dream be Restored?

PLUS ATTENDEES HEAR OF HORRORS AND HOPES

THERE can be nothing more fundamental than the taking back of private property rights," said Steve Finney, president of the Pennsylvania Association of Realtors. Serving as the moderator for the Pennsylvania Land Use Summit (PLUS) held in Harrisburg on March 23rd and 24th, Finney relayed that message to over 200 concerned landowners including farmers, realtors, builders and natural resource producers. "The time has come for all of us to be part of the solution to this travesty," he said.

The PLUS conference was the first of its kind ever to be held in Pennsylvania and was initiated by Pennsylvania Landowners' Association. Preparations for the event were in the works for over a year with several other resource-based organizations signing on as cosponsors. The conference was held to assess and debate the prospects for restoring balance and reason to over-zealous regulatory programs and to instill within the attendees an even stronger commitment to reinstating their fundamental rights to private property ownership.

Some of the culprits of unreasonable and economically unrealistic rules affecting the use and often "taking" of private property include wetland regulations, endangered species act protections, special

protection watersheds, scenic river designations, and historic preservation. Attendees heard from CEO's of large companies, small private landowners and organizational representatives all detailing their experiences with over-zealous bureaucracies and government infringement upon the use of private property.

Included on the speakers' list was Alan Walker, Chairman of the Pennsylvania Coal Association, as well as president and CEO of Bradford Coal Company. Walker relayed his personal example of regulatory abuse by the Department of Environmental Resources. His 8 year battle began in 1986 when the Department promised him he could mine a 2,000 acre site. Shortly after purchasing the property for \$2.3 million, a decision was made by the department not to allow any mining. DER's policy decision not only placed Walker in a severe financial situation for being unable to mine property he was previously informed he could, but also caused the loss of 400 jobs which had to be eliminated because of the Department's decision. "There was no public hearing, no formal notice," Walker explained. "The permit was denied because of a new policy that wasn't even in writing. This is irresponsible policy making. All the properties affected by DER's policy are still taxed as if they were viable coal properties. On the other hand, there has been no condemnation or taking—just a DER policy. Where is the due process? They used policy as a way to circumvent regulation and save money on legal fees. In the process, they have nearly ruined the economy of Clearfield County," he said.

Ted Stefan, Legislative Chairman for the Pennsylvania Association of Realtors and Manager of Brown Stone Real Estate Company, provided details on a client interested in subdividing approximately 66 acres of private property. Stefan indicated the landowner's problems were multi-faceted. First, the township changed its zoning provision from multi-family to single family, reducing the amount

of homes that could be built. Next came wetland delineations which revealed that 18 of the 66 acres were considered to be wetlands, and thus, unusable. Following this came the township's new slope ordinance, eliminating another 23 acres of property. The final straw was the township's initiation of a "green buffer" along the road frontage which took another acre of property. Sadly enough, it was this one acre which provided the last bit of property available to create a roadway to the landowner's remaining 25 "usable" acres. Thus, all 66 acres became unavailable for development due to land use restrictions.

An impressive assortment of speakers went on to provide PLUS attendees with both examples of bureaucratic abuse, and of critical importance, what is being done to correct the abuse of private property rights (see cover

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**Following this came the
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**The final straw was the
"green buffer"...**

USE PRIVATE PROPERTY...

and page 2). Hank Ingram, PLA counsel and head of environmental law for Buchanan Ingersoll Professional Corporation, called upon the audience to also review the Ridge Administration's proposed legislation to reorganize DER, including codification of Ridge's campaign promise that no state regulation be more stringent than federal requirements.

Rep. John Barley (R-Lancaster) also reminded attendees of Pennsylvania's new political climate, but with an added warning: "the pendulum in government has swung back to private property rights and individual rights...if we don't grab it and accelerate its speed in this narrow window of opportunity, it may be lost forever."

In closing remarks, Steve Finney urged support of property rights legislation and that

every participant join the Pennsylvania Landowners' Association as a bond in forming a powerful property rights coalition "with a central theme that cannot be ignored by the legislature." Additionally, he called for a "gut check" by all concerned citizens, asking them to curb calls for government favors as the coalition argues for reform. "It's time for those sacred cows to die," he said. "The short-term pain will be worth the long-term gain, because there can be no higher priority than to get government out of our business and off our backs."

Finney concluded, "The opportunity has never been better than it is now. The game is big — the stakes are high — liberty, freedom, and the right to own and use property."

"The pendulum in government has swung back to private property rights and individual rights ... if we don't grab it and accelerate its speed in this narrow window of opportunity, it may be lost forever."

REP. JOHN BARLEY



A moving luncheon address was provided by Richard Lawson, CEO, National Mining Institute, to PLUS attendees on the myths of environmental protection under our current system. PLUS participants shown in photo include (l-r), Hank Ingram, Buchanan Ingersoll, P.C., Richard Lawson, CEO, National Mining Institute, Rhonda McAtee, Executive Director, PA Landowners' Association, & Anthony Ercole, President, PA Coal Association.

PENNSYLVANIA LAND USE COALITION

American Forest & Paper Association
Dairylea Cooperative, Inc.
Hardwood Lumber Manufacturers Association of Pennsylvania
Associated Builders & Contractors (Keystone Chapter)
National Federation of Independent Business — Pennsylvania
Pennsylvania Aggregates & Concrete Association
Pennsylvania Aquaculture Association
Pennsylvania Builders Association
Pennsylvania Coal Association

Pennsylvania Farm Bureau
Pennsylvania Farmers Union
Pennsylvania Horticultural Trade Alliance
Pennsylvania Independent Oil & Gas Association
Pennsylvania Oil & Gas Association
Pennsylvania Landowners' Association
Pennsylvania Landscape & Nursery Association
Pennsylvania State Grange

- Property Rights Legislation -

A State by State Update

UPDATED
4/14/95

18 states have passed property rights legislation
45 states have introduced over 120 property rights bills in 1995



KEY



LEGISLATION INTRODUCED



LEGISLATION IN EFFECT

S.B. 805

Pennsylvania's "Private Property Protection Act"

On Monday, March 20, 1995, legislation introduced in the Pennsylvania General Assembly would require government agencies to assess the impact of any new regulation on the rights of private property owners. The legislation has been initiated and advanced by a coalition of 18 statewide organizations, including Pennsylvania Landowners' Association.

The proposed legislation would prevent regulations, permit requirements and licensing procedures from unfairly impacting private property owners. S.B. 805 would provide property owners with a recourse when dealing with the state government. If regulatory actions cause

property value reductions greater than 10%, the landowner would have a statutory right to initiate legal action seeking compensation.

With State Senator Roger Madigan (R-23) as the prime sponsor and 25 additional bipartisan sponsors, PLA encourages you to help advance this legislation by taking action to protect your property rights. If your state senator is not included on the list shown below, please call or write his/her office today and urge cosponsorship of S.B. 805. If you are uncertain of your state senator's name, call the PLA office at (814) 796-3578 and a representative will provide you with the name and telephone number.

S.B. 805 SPONSORS

Prime Sponsor: Madigan (R)

Cosponsors:

Stewart (D)
Wanger (R)
Stapleton (D)
Robbins (R)
Stout (D)
Rhoades (R)
O'Pake (D)
Helfrick (R)
Kasunic (D)
Punt (R)
Musto (D)
Hart (R)

Afflerbach (D)
Salvatore (R)
Wagner (D)
Fisher (R)
Peterson (R)
Shaffer (R)
Mowery (R)
Uliana (R)
Shumaker (R)
Armstrong (R)
Delp (R)
Lemmond (R)
Corman (R)

Please address correspondence to:

Honorable _____
Senate Box 2030
Harrisburg, Pennsylvania 17120

United States Supreme Court

BRACE V. UNITED STATES

WATERFORD FARMER FILES PETITION WITH U.S. SUPREME COURT

On April 10, 1995, Erie County farmer Robert Brace filed his petition for a Writ of Certiorari to the United States Supreme Court. Since 1990, when the federal government first sued Brace on behalf of the United States Environmental Protection Agency, *Brace v. United States* has become a well-known case among property rights advocates and members of the agricultural community. It is a case that vividly illustrates our government's abuse of due process and civil rights, as well as its unconstitutional approach to regulating wetlands and land use in general, denying innocent, hard-working citizens use and control of their own land.

A number of farming, ranching and other agricultural groups will be filing amicus briefs supporting Brace's petition particularly as it relates to the "normal farming activities" exemption from regulation and permitting under the

Clean Water Act. The amici include the Pacific Legal Foundation, California Farm Bureau, National Cattlemen's Association, California Cattlemen's Association, the Pennsylvania Farm Bureau and the American Farm Bureau Federation. Defenders of Property Rights, a Washington, D.C. based organization, will also file a brief on behalf of numerous property rights groups and other non-farming organizations such as realtors, contractors, and natural resource developers.

The Brace appeal is essentially an attack on the Environmental Protection Agency (EPA) and the Army Corps of Engineers (COE) wetland regulations promulgated in connection with those agencies' implementation of the "normal farming activities" exemption contained in Section 404 of the Clean Water Act. EPA and COE cited Brace for unpermitted discharge of fill into waters of the United States. The only "discharge" in the case was Brace's removing sediment from his drainage ditches and sidecasting it back onto the adjacent fields from whence it came.

In late 1993, Brace prevailed at his trial in federal district court. On appeal, the U.S. Court of Appeals for the Third Circuit reversed, deferring to COE regulations which strip away the farming exemption specifically intended by Congress to ease the regulatory burden on America's farmers.

If the Supreme Court denies the petition for writ of certiorari, the case will return to the district court for entry of a remediation order and determination of civil penalties (up to \$25,000 per day for each day in violation of the Clean Water Act). EPA is insisting that Bob plug his drainage system with concrete so that the 30 acre site which the government

claims meets the technical definition of "wetland" will revert to its "natural state." However, the drainage system servicing the 30 acre site is integrated with the rest of the farm. Thus, EPA's remediation scheme is likely to ruin the entire farm.

The court is expected to either grant or deny the petition for review by early July.

U.S. SUPREME COURT TO DECIDE FUTURE ESA APPLICATION

The U.S. Supreme Court opinion regarding *Sweet Home Chapter of Communities for a Great Oregon v. Babbitt*, is expected to be issued by June of 1995. The High Court's decision will have a significant impact on the government's ability to regulate land use, as well as the future of the Endangered Species Act (ESA) itself.

Justices will make habitat protection determinations for endangered species by deciding whether, in their desire to protect the species, the regulators have gone too far in curtailing economic activities on private land all across the country. Current implementation of the ESA provides federal bureaucrats with a powerful tool for restricting private land uses.

Through "friend of the court" briefs, property rights groups, trade associations, and other concerned organizations have urged the justices to rein in the regulators. Intensified by the interest in Congress to expand the rights of landowners, including compensation for government over-regulation of their property, landowners optimistically await affirmation from the High Court.

JUNE MARKS THE DATE FOR THE ANNUAL FLY-IN FOR FREEDOM

For the fifth consecutive year, the Fly-In for Freedom, a nationwide lobbying effort on behalf of property rights, is being held June 10-14, 1995 in Washington, DC. In previous years, this event has taken place in September with several hundred participants representing various geographic locations. However, in response to congressional urging and as a follow-up to the Contract with America, the date has been moved forward to maximize the efforts of those concerned with diminishing private property rights and the legitimate interest to reform the present and future direction of environmental laws.

A PLA delegation is anticipating participation and we encourage you to join us and others from around the nation in this legislative lobbying endeavor. Public speaking talents or membership to select resource-based organizations are not necessary criteria for taking part, only a desire to restore common sense and balance to environmental legislation and regulations.

Please call the PLA office for further details and group transportation information.

GOOD NEWS

White House Fires Kostmayer From EPA Position

After serving only one year as appointed administrator for EPA's Region III, an area inclusive of Pennsylvania, Delaware, Maryland, West Virginia, Virginia and Washington, DC, Peter Kostmayer has been fired by the Clinton Administration.

Kostmayer was a member of the House of Representatives for 14 years before being joined by Bucks County constituents in 1992. His extreme environmental initiatives earned him high marks from the League of Conservation Voters and the Sierra Club.

As administrator of Philadelphia's regional office, he adopted a hard line on clean air regulations, threatening to withhold federal funds from Pennsylvania for failure to implement a required auto inspection program. That threat was halted when EPA headquarters decided to give all states an extension on the program.

According to top Kostmayer aides, however, two projects in West Virginia led to his dismissal. He opposed "Appalachian Corridor H," a proposed four-lane highway through one of the largest forests in Region III. In addition, through his radical environmental tactics, he delayed a project that would have provided 600 permanent jobs through the proposed Apple Grove paper mill. These actions report-

edly angered West Virginia's Governor and both U.S. Senators, who in frustration, contacted EPA Administrator Carol Browner.

Although news of his dismissal will be met with shock and dismay by environmental groups, PLA members look forward to his successor implementing reasonable guidelines that will restore environmental balance and common sense to Region III.

Band-Aid Relief For The Wetland Afflicted

The Pennsylvania Department of Environmental Resources (DER) announced the availability of a new general permit for "minor impacts" to wetlands of less than one acre.

The purpose of the Pennsylvania State Programmatic General Permit (PASPGP-1) is to eliminate the need to file paperwork with both DER and the U.S. Army Corps of Engineers. Instead, DER's permit review and approval process, which has been available since March 1st, will satisfy both federal and state requirements for "minor wetland projects." Activities with "major wetland impacts," however, continue to be subject to Corps review.

Questions regarding whether specific wetland activities meet eligibility criteria for the new general permit (PASPGP-1) should be discussed with the DER.

FRENCH CREEK WATERSHED INITIATIVE SET IN MOTION

PLA TO SERVE ON ADVISORY COUNCIL

Rather than traditional heavy-handed government mandates and environmental regulations, a new voluntary program was implemented May 1, 1995 to maintain and enhance the water quality of French Creek. The French Creek Watershed Initiative is being jointly sponsored by the Pennsylvania Environmental Council and the Western Pennsylvania Conservancy with an office located on the Allegheny College campus. Working with an administrative assistant, Brian Hill, former director of the western region office of the Pennsylvania Environmental Council, will manage the 5 year program.

Support for this endeavor is being provided by the Heinz Endowment and grants from the Department of Environmental Resources (DER) and local corporations.

Beginning in Chautauque County New York, French Creek flows for 117 miles and travels through Erie, Crawford, Mercer and Venango Counties in Pennsylvania before emptying into the Allegheny River. French Creek has long been targeted by state and federal agencies, as well as preservationist groups, for special protection classification via government programs aimed at "preserving" streams of extraordinary value and water quality. PLA has voiced its opposition to "special protection" classification because of the land use controls which can prohibit land use and development.

Despite the fact French Creek has never been given "special protection" classification, researchers have stated that all 66 fish species ever recorded in French Creek are still found there. With this achievement being noted, Pennsylvania Landowners' Association has repeatedly pointed to the fact that riparian landowners have employed good stewardship practices which have maintained suitable habitat for these species. Therefore, private stewardship and educational programs which encourage conservation (not preservation) practices can be a successful substitute for heavy-handed government mandates.

PLA legal counsel and board member, Henry Ingram of Buchanan Ingersoll, P.C. of Pittsburgh, PA, and Mark Troyer of Troyer Potato Products, who is a riparian landowner from Erie County and president of Erie County Farmers Association, have been asked and agreed to serve on the watershed advisory council which will be established under this initiative. Taking into account local needs, protection of the stream, private property rights and economic development, the council will help draft a "vision" plan.

BAD NEWS

U.S. Supreme Court Denies New York Farmer's Petition

On April 24, 1995, the U.S. Supreme Court declined to hear the petition for Writ of Certiorari filed by Richard H. Popp, a farmer from Castile, New York. Known as *Southview Farm v. C.A.R.E.*, the petition asked the court to overturn a federal court of appeals decision denying agriculture's exemption from the Clean Water Act, which requires federal permits for discharges.

Since the Second Circuit Court of Appeals reversed a lower court decision, the Popp case has had far-reaching implications for farms across the country by declaring that agricultural fertilizer applications constitute a discharge of pollutants from a point source. Point source is normally recognized where pollutants emit from a specific point or pipe, most often associated with industrial sites. Agricul-

tural practices are regulated under non-point source provisions of the Clean Water Act.

Stipulations under the Clean Water Act allow citizens to sue in instances of point source pollution which provided the foundation for an ad-hoc group, Concerned Area Residents for the Environment (C.A.R.E.), to claim that liquid manure used to fertilize Southview's crops had migrated from the farm and discharged into local waterways. Southview Farm processes manure from its large dairy herd to use as fertilizer for feed crops. However, Popp, as well as several agricultural organizations that filed friend of the court briefs, maintain that neither the farm nor its application of organic nutrients constitute point source pollution and, therefore, should not be subject to a citizen's suit.

A MESSAGE FROM OUR PRESIDENT—KEITH KLINGLER

Dear Member:

Throughout my years of involvement in land use issues and the private property rights movement, I quickly came to realize that self-proclaimed "environmentalists" were, by and large, dedicated to their cause and recognized the importance that their cause be perceived as having broad-based grassroots support in order to achieve their goals.

Writing letters to their elected officials, attending meetings and voicing their opinions and concerns through various avenues such as letters to the editor of local papers helped enormously in promoting their cause and advancing the preservationists' agenda.

Unfortunately for the public, over the last couple of decades, the environmental movement has resorted to using poor science, distorted facts, and outright untruths about natural resource users and the private property rights movement. It is imperative that we, as landowners and natural resource users, dispel these myths and distortions whenever possible. We must be just as aggressive in "setting the record straight" when needed and work with our elected officials to educate them about issues important to us, using good science, competent data and the truth.

Printed below is a letter illustrating the use of distortions and half truths which I have just described and my response to it. I encourage all members truly concerned with restoring the integrity of private property rights to be active in their local communities and to continue supporting PLA, both financially and morally, to ensure that citizens and elected officials know all the facts and to ensure that legislation that PLA has so diligently worked toward for so long becomes a reality.

ENVIRONMENTAL MOVEMENT ALIVE

To the editor:

It was a lot like Christmas for the Pennsylvania Landowners Association (PLA) last week. Sen. Rick Santorum speaking at Cross Creek Resort. He told them exactly what they wanted to hear. I hope the chicken went down smoothly. Sen. Santorum is for reimbursing landowners when environmental laws limit the usage of the land. The major industrial landowners like the idea, too. Why not get paid for land we own without doing any work? No factories, no development, just sit back and make some real bucks. Groups like the PLA can make it sound like we're in for the little guy, but the lawyers and the lobbyists will see that we get more than our fair share when the laws are finally written. The stockholders are going to love it.

One major flaw with this line of thinking is: Where is the government going to get the millions of dollars needed for this great property reimbursement? You guessed it, raise your taxes.

I was particularly amazed to hear that Sen. Santorum thinks the environmental movement is dead. He also feels it is natural for species to perish, and we as humans need not worry too much about it. On behalf of the hundreds of members of the Pennsylvania Environmental Network, I can assure him that the environmental movement is not dead. Might I suggest that Mr. Santorum visit the McKeever Environmental Center in Sandy Lake and learn just how connected all species are. I would be glad to provide the address.

I must admit it was rather brave of him to isolate so many potential voters with one fell swoop. The freshman senator has truly signed onto the Contract for America. While some aspects of the contract are fully debatable, there is one part I might tend to agree with, less government a la Rick Santorum would be a great idea.

George Knox, President
PA. Environmental Network

SANTORUM SUPPORTS LANDOWNERS.

To the editor:

In response to the President of the PA Environmental Network, it appears Christmas came and went for groups like yours and now you are crying about it. With last November's election, voters sent a message that private property will and can be protected without destroying our environment. It's amazing to me that you and other environmental groups always try to tie P.L.A. in with big business.

If you'd like to know who's funded by big business just look at the contributors to the Sierra Club and the Audubon Society and you'll find where the corporate dollars go.

Nowhere has anyone said that landowners should get paid for any environmental restriction. Wetland and endangered species laws are the two areas where society is supposedly benefiting but bearing the societal burden are individual property owners. Landowners are being forced to preserve their land at their own expense. Mr. Knox, you seem to forget that the federal government owns well over 700 plus million acres of land, some of which is prime farmland, timberland and rangeland. This is not to mention the 200 plus million acres owned by state and local governments. Nearly half of this country is owned and controlled by government. Are you saying that government can't afford to pay for the land they are now taking (or stealing), knowing of these assets?

With billions of dollars worth of public land there is no reason that a small portion of this land couldn't be sold back to the private sector and the proceeds go towards wetland or endangered species habitat purchases.

I personally believe our founding fathers would strongly disagree with the massive government land holdings in this country. Land exchanges are another way landowners could be compensated. If the government takes 30 acres, it could offer the same amount of acreage in exchange. This would mean no net loss of private property, no net loss and environmentally enhanced public land, and no cost to the taxpayer. Even if the government lands wouldn't be used for compensation shouldn't taxpayers be willing to pay for all of these wonderful environmental benefits. Could it be that you're afraid that taxpayers would realize how far overboard these regulations have gone, and simply say enough? Mr. Knox, if you don't feel compensation is necessary, maybe if the government took control of half of your house, wouldn't let you use that part, but forced you to continue to pay your mortgage and taxes, you would understand.

Mr. Santorum never said the environmental movement is dead. He simply said that education and stewardship is winning over regulation and control, and that environmental groups like yours that continually lie and mislead the public are quickly losing credibility. Environmental groups try to make the public believe that human beings are the only cause of species decline. Fortunately, most people realize that some species naturally go extinct, as many did before humans existed. The endangered species act is simply another tool to control people and property. If it can be proven that human activity is the reason for a species decline, then and only then should steps be taken to correct the problem.

Mr. Knox, there are rumblings of a true conservation movement emerging in N.W. Pennsylvania which includes environmentalists. I highly suggest that your group get involved because the days of environmental groups automatically getting regulations passed to promote their control and big government agenda are gone. Government is starting to ask groups like yours to show documented facts to back up what they are saying and are finding it can't be done. Please don't try your scare tactics or blatantly false statements on the good citizens of NW. Pennsylvania. We've seen and heard too much to buy your rhetoric. Mr. Santorum took time out of his busy schedule to spend a few hours with his rural constituents and I thank him for that. Please remember, Mr. Knox, as soon as you give up all or part of your home to the government, I'll give up my land. Private property is private property.

Keith Klingler, President
Pennsylvania Landowners' Association

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PLA Membership Categories

Please indicate: New Member Renewal

- INDIVIDUAL I** 25.00
Any individual supportive of private property rights (owning 0 to 15 acres)
- INDIVIDUAL II** 35.00
(owning 16 to 100 acres)
- INDIVIDUAL III** 50.00
(owning 101 to 250 acres)
- INDIVIDUAL IV** 100.00
(owning 251 to 500 acres)
- INDIVIDUAL V** 200.00
(owning over 500 acres)
- ASSOCIATE I** 100.00
Any business entity supporting the free enterprise system and the principle of private ownership (local businesses in communities)
- ASSOCIATE II** 250.00
Trade Associations (state organizations supportive of private property rights)
- ASSOCIATE III** 300.00
Major suppliers to land use entities (resource development, construction, agriculture)
- AFFILIATE** 50.00
Local or regional grass roots, non-profit organizations
- BUSINESS I** 750.00
Corporations or other business entities whose activities involve ownership, use and/or development of acreage in excess of 100 acres but less than 500 acres.
- BUSINESS II** 1,250.00
Same as I but in excess of 500 acres

Any land owning member (excluding individual I) purchasing PLA signs and participating in the "Posting For Support" program is entitled to a 50% reduction in membership fees for the current membership year.

Membership dues and contributions may be deductible as a "Business" expense. Please consult your tax advisor regarding your particular situation.

PLA Educational Materials

POSTING FOR SUPPORT

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
- USA v. Brace & Brace Farms Videotape (VHS)**—
"One farmer's battle with federal wetland provisions." \$15.00 donation.
- Wetlands Videotape (VHS)** Part I Part II
"Our Environment, Whose Property?" \$15.00 Donation each.

Please complete this information:

Name _____

Address _____

County _____

Acreage Owned _____

Phone Number (_____) _____

Township _____

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 \$ _____

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 Landowners' Association, Inc.

P.O. Box 391
Waterford, PA 16441

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