

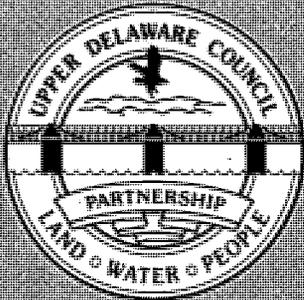
# The Upper Delaware

The quarterly newsletter about the environment and people of the Upper Delaware River

Volume 10 Number 2

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Summer 1997



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Interested in submitting material to *The Upper Delaware*?

Send items for consideration to Newsletter Editor, Laurie Ramie at the Upper Delaware Council, 211 Bridge Street, P.O. Box 192, Narrowsburg, NY 12764.

## Upper Delaware Council Seeks Clarification of Court Case

### Impacts Fishing Rights

Since New York's highest court ruled earlier this year that a private sports fishery on the Salmon River holds exclusive fishing rights on a navigable waterway, the ramifications of the case continue to reverberate.

The Feb. 11, 1997 determination by the New York Court of Appeals upheld the resort owner, former State Senator H. Douglas Barclay, in his legal action charging 10 licensed fishing guides with trespass after they defiantly dropped anchor and fished within a one-mile stretch of the Salmon Run property in Oswego County owned by Douglaston Manor, Inc.

Whether or not *Douglaston Manor, Inc. vs. George Bahrakis et al*, now sets a precedent for all navigable rivers in New York State is the focus of hot debate, perhaps nowhere more so than by the Upper Delaware Council (UDC).

In Pennsylvania, the Delaware River is considered a public resource because the Commonwealth claims ownership of the riverbed. Fishing from a boat or standing in the river are within the public's rights. In New York, however, the policies are less clear.

The UDC has been closely following the fallout of the Salmon River case to ascertain potential implications for the Upper Delaware Scenic & Recreational River, and to disseminate information regarding this issue to the public.

#### Trace the Case

*Douglaston Manor, Inc. vs. Bahrakis et al* effectively began Sept. 22, 1994, when the defendants anchored their driftboats and fished without permission as a direct challenge to owner Barclay's claims of exclusive fishing rights.

Barclay opened Douglaston Salmon Run in 1986 as an exclusively managed private sports fishery limited to 375 fee-paying fishermen per day. As president and sole shareholder of Douglaston Manor, Inc.,

### "Uncle Sam's River" (ballad from early 1900's)

*The river belongs to the Nation,  
The levee, they say, to the State;  
The Government runs navigation,  
The Commonwealth, though,  
pays the freight.*

*Now, here is the problem, that's heavy -  
Please, which is the right or the wrong -  
When the water runs over the levee,  
To whom does the river belong?*

Barclay's holdings include approximately one-mile-long stretches of both Salmon River shorelines and the river bed in between, ten islands and other adjoining lands. His title to the taxable property on both sides of the river dates back to the Macomb Patent granted by New York State on Jan. 10, 1792.

The first court action came in the fall of 1994, when Douglaston Manor filed a trespass complaint against the fishing guides in Oswego County Supreme Court. Subsequently, the defendants sought an injunction to prevent Douglaston Manor from interfering with their business activities on a navigable river.

The Supreme Court held on July 5, 1995 that the defendants had knowingly trespassed upon Douglaston Manor's property. Their cross-motion for an injunction, however, was denied.

The guides appealed and on March 8, 1996, prevailed with a modification of the judgement from the NY Supreme Court, Appellate Division, Fourth Department.

The unanimous decision concluded that "the right of navigation includes the right to fish." While the trespass complaint was dismissed, no junction was granted based on the plaintiff's "good faith belief" that he had exclusive fishing rights.

In the most recent debate of *Douglaston*

Please see "Court Case" on Page 8

## Introducing: UDC Vice-Chair George J. Fluhr

**Teacher, historian, river valley advocate, township supervisor, community activist: all these titles describe George J. Fluhr, the 1997 vice-chair of the Upper Delaware Council.**



George J. Fluhr of Shohola was the first recipient of the UDC's Distinguished Service Award presented on February 4, 1989.

George Fluhr first came to Pike County at the age of four months. His grandfather had purchased an old farm in Shohola at the turn of the century when the round-trip from New York cost only one dollar. George, however, grew up in New York where he earned degrees from Manhattan College and Columbia University. He pursued additional studies at several graduate schools from the University of Scranton to the University of Paris.

In 1969, when there were only about ten thousand people in Pike County, George and his wife Carmen moved to Shohola. Here they sent their six children to the Delaware Valley Schools. George, who had been a teacher and school administrator in New York City, continued his professional career in northeastern Pennsylvania, serving a total of thirty-three years in the field of education.

In 1970 George wrote his first history of Shohola, and in 1972, was appointed official historian for the Township. During the

*"It is important for Towns and Townships to maintain a strong Council . . . for three significant reasons."*

next quarter century, he published literally hundreds of newspaper articles and brochures related to Pike County's history. He presently writes the popular "By George" column in the *News Eagle*. His major works have been Shohola - History of a Township, published in 1992, and Pike in Pennsylvania. History of a County, published in 1993. Much of his research has been quoted in newspaper features and tourist brochures, and has contributed to the popularity and preservation of the Pike County heritage.

George served as the Pike County Historian from 1977 to 1987, and was reappointed in 1996. He has also been Historian for the Wallenpaupack Area School District since 1988, and will soon announce the publication of a just-completed book about the Wallenpaupack Area.

In addition to his continued research and writing in the field of history he is a founding member of the Shohola Area Lions Club, and the Shohola Railroad and Historical Society. He has spent 27 years as an active volunteer fireman, and is currently serving his fourth six-year term as a Township Supervisor.

George's uncle, the late Thomas W. Fluhr, who was Chief Geologist for the

George J. Fluhr of Shohola was the first recipient of the UDC's Distinguished Service Award presented on February 4, 1989.

New York City Board of Water Supply, made him aware in 1950 of New York City's long-range plans for dams on the Upper Delaware River. In 1969, when he had become a full-time resident of Shohola, George attended a U.S. Bureau of Outdoor Recreation meeting at Grey Towers in Milford. At that time, rumors began to spread of a National Park Service take-over, similar to the Tock's Island events in lower Pike County. Meanwhile, increased use of the Upper Delaware River in the early 1980's, river pollution, and intrusion on private property by canoeists and campers created other concerns which needed addressing.

Elected as Supervisor of Shohola Township in 1977, George believed that it was urgent that local governments take the lead in protecting both the river and private property. He was a founder of the Conference of Upper Delaware Townships, an organization which, with much public support, ultimately forced the Federal Government to rewrite a controversial River Management Plan. The result was the present Management Plan and the Upper Delaware Council.

Fluhr's advice to local government officials is to be continuously vigilant, and faithful in participation in the Council. "It is important for the Towns and Townships to maintain a strong Council. There are three significant reasons for this. First, the Council keeps us aware of proposed changes almost as soon as they are proposed. Secondly, in a unified group of Town(ship)s there is strength to act and react, and thirdly, protecting the river and protecting the private property are ongoing concerns that must be continuously worked for."

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The Upper Delaware is a free quarterly publication of the Upper Delaware Council, a 501(c)(3) non-profit organization comprised of member governments from New York and Pennsylvania directly affected by the River Management Plan for the Upper Delaware Scenic and Recreational River.

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# Welcome Center Opening A Boon to Regional Tourism

## Showcases Growing Pike County and Upper Delaware Region Among Area's Best Attractions

When the Pennsylvania Department of Transportation cut the ribbon on its newest Welcome Center in Westfall Township on August 13th, the \$4.2 million facility was heralded as nothing short of an oasis on the interstate.

The architecturally impressive building located off I-84, Exit 11, at the convergence of Routes 6 and 209 in Matamoras, has significance beyond providing a rest stop for weary motorists, according to the dignitaries who applauded its recent grand opening. Among all the superlatives emerged some key facts.

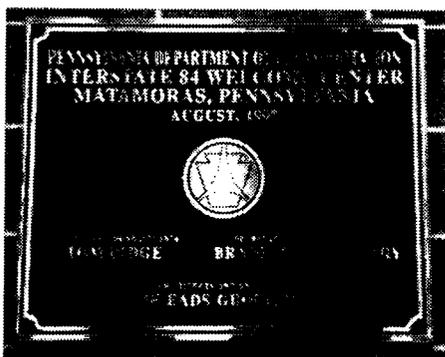
The I-84 Welcome Center promises to:

- open up a northeast gate of the Commonwealth to an estimated 300,000 travelers annually.
- boost local, regional, and statewide tourism promotional efforts through its offering of more than 1,000 brochures and rotating exhibit capabilities.
- shine a spotlight on the Poconos in general and Pike County in particular; widely considered to be one of the fastest growing regions in Pennsylvania.

In a state which cites tourism as its number two industry (behind agriculture) - raking in an estimated \$20.5 billion a year and employing 376,000 Pennsylvania citizens - the opening of its 14th Welcome Center makes good business sense. The facility hopes to capture the attention of many of the 18,000 motorists per day who travel along the interstate.

The Welcome Center concept is also consistent with the goals of the Upper Delaware Scenic and Recreational River Management Plan, which has traditionally found the Upper Delaware Council lending support to projects which "maintain and enhance the corridor's social and economic vitality and its diversity, consistent with efforts to protect the recognized values of the river corridor," particularly under a regional approach.

Public Relations Specialist Laurie Ramie



Plaque credits "builders" and shakers



Checking out the front plaza informational displays highlighting Pocono attractions at the August 12 reception for the new I-84 Welcome Center were, from left to right, Cal Hite, superintendent of the NPS Upper Delaware Scenic & Recreational River; Mathilda Harrison, deputy executive director of the Pocono Mountains Vacation Bureau; and Bill Laitner, the recently arrived superintendent of the NPS Delaware Water Gap National Recreation Area. One panel includes photographs, maps, and facts about the Upper Delaware. (Ramie photos)

and Executive Director Bill Douglass represented the UDC at the festivities which stretched from a sneak peek reception for invited guests on August 12 to a rainy-day indoor ribbon cutting celebration held the following morning.

Bradley L. Mallory, Secretary of the Pennsylvania Department of Transportation, said that continual customer surveys indicate that Welcome Centers rank only behind the Commonwealth's official road map and cleanliness of its facility bathrooms as the most valued services that PennDOT offers.

"Someone in the crowd said to me, 'This just doesn't look like something government does.' Well, it should and you should demand it," Mallory told the guests.

Among the government types mingling in the crowd were State Senator Charles Lemmond, Representatives Jerry Birmelin and Joe Batisto, along with the Pike County Commissioners, Westfall Township supervisors and Matamoras mayor.

Chuck Mattei, district engineer for Penn DOT, confessed that his agency had intended for the 6,472-square-foot Welcome Center building on 8.4 acres "to knock your socks off" and no one expressed any disappointment.

Bill Kiger, chairperson of the Pike County Chamber of Commerce's Tourism Committee, extolled the cooperation shown by the state, county, township and borough, as well as the travel promotion industry, chambers of commerce, and the private sector.

While action to build the Welcome Center took more than a decade, Robert

Uguccioni, executive director of the Pocono Mountains Vacation Bureau (PMVB), which did much of the leg work for the displays, pointed out that once construction began, the commitment level was 100 percent. Originally predicted to open this fall, the I-84 Welcome Center even came in ahead of schedule.

Looking around at the front plaza displays, the scenic vistas beyond a wall of windows, tasteful decorations, and well-organized brochure racks, Uguccioni asked rhetorically, "Isn't this a great place and aren't we proud of it?"

The design by architectural firm The EADs Group of Altoona and consultant Gwin Engineers appeared to be inspired by the proximity to the man-made phenomenon of modern highway and scenic natural beauty of the Delaware River, according to Pike County Commissioner Sally Thomson.

With the Upper Delaware Scenic & Recreational River, the Delaware Water Gap, state parks, game lands, forests, lakes, and rivers to anticipate on the road ahead, Thomson suggested that I-84 serves as a vital link to all the best that Pennsylvania has to offer.

The I-84 Welcome Center parking area and picnic facilities are available year-round, 24 hours a day. The Center is staffed by four "PA ambassadors" from 8:30 a.m. to 5 p.m. daily, including most holidays, and longer during peak season.

Staff may assist travelers with directions, help them to find information on local attractions, inform them of dated events, and offer a free accommodation reservation service.

# UDC Adopts New Budget and Work Plans, Signs Five-Year NPS Cooperative Agreement

To get ready for the start of a new fiscal year on October 1, the Upper Delaware Council devoted much of the past few months to preparing a budget and work plans for 1998, while also inking a new Cooperative Agreement with the National Park Service.

The Cooperative Agreement, which authorizes the UDC's continued partnership with the Park Service for a five-year period through September 30, 2002, was forwarded to the U.S. Department of the Interior for appropriate signatures following a unanimous vote of approval by the Council at its September 4th meeting.

"We are pleased to have worked successfully through two consecutive five-year agreements with the National Park Service and look forward to this future phase of productive service representing the interests of the local people in the Upper Delaware River Valley. There is still plenty of work to do," commented UDC Chairperson Charles Wieland.

The Five-Year Cooperative Agreement outlines the responsibilities of the Upper Delaware Council and the National Park Service to implement, oversee and assure adherence to the goals of the River Management Plan.

The document defines a pledge by both parties "to protect and enhance the Upper Delaware River's outstanding values: its free-flowing nature, excellent water quality and aquatic ecosystem."

The Upper Delaware Council provides a forum and mechanism through which the river corridor's property owners and visitors may address their concerns about the management and protection of this unique Scenic and Recreational River area.

By mutual covenant, the UDC and NPS give high priority to situations which could have detrimental effects on the river valley's health and integrity, such as the development of new landfills, transportation of hazardous materials and preparedness for emergency response.

The negotiated agreement also sets the federal allocation level for the Upper Delaware Council at \$300,000 per year.

Accompanying the Cooperative Agreement will be copies of the Upper Delaware Council's spending plan for Fiscal Year 1998 and three sets of work plans which detail the functions of the Operations, Project Review, and Water Use/Resource Management Committees.

The budget, adopted by the Council on August 7, supplements the \$300,000 federal allocation with projected income from

grants, donations, interest, and fees for a total of \$327,400.

Expenses for personnel, programs, overhead, operations, UDC member costs, and capital expenditures amount to \$350,225. Transfers from equity will make up the difference. The Upper Delaware Council is a registered, 501(c)3 corporation.

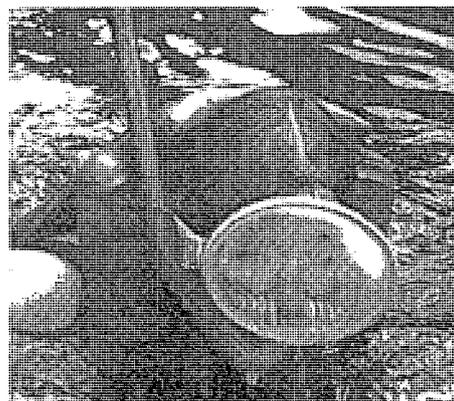
Resolutions approving each of the three Work Plans were also approved at the August 7 meeting after being brought before the respective committees in July.

## 1998 Delaware River Sojourn

Mark your calendars for the dates of the Fourth Annual Delaware River Sojourn: **June 20-27, 1998**. That period was selected to coincide with a comprehensive Watershed Conference being planned by the Heritage Conservancy on June 18-19 at an Upper Delaware location able to accommodate the expected 200-300 attendees.

Next year will find the Upper Delaware section hosting the first two days of the river canoeing and camping trip, a Saturday and Sunday. The Middle and Lower sections will each host three days of this ecological, educational experience.

Co-chairing the Steering Committee will be Flo Mauro (Pocono Environmental Education Center) and Mary Jane Hartmann (Delaware Water Gap). Watch for details!

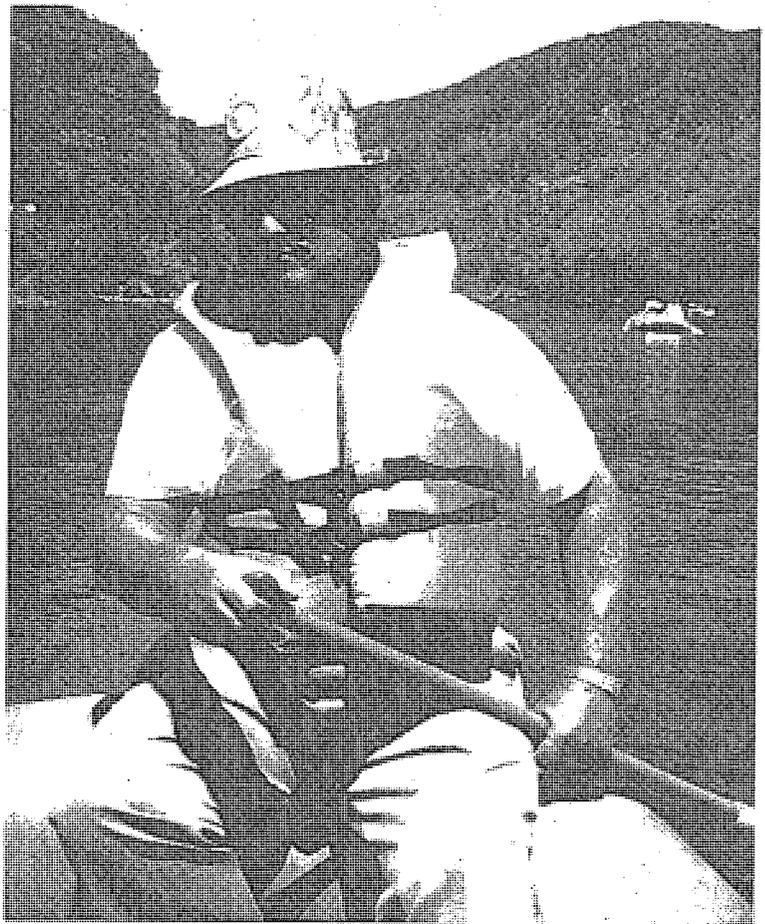


Joining the 8th Annual "On and Under the Delaware River Clean-up" coordinated by Kittatinny Canoes on July 22 to 24 (above photo) was a paddling team from the New York State Department of Environmental Conservation. Standing at right is DEC Region 3 Director Mark Moran as Bruce MacMillan, far left, Natural Resource Supervisor for Region 3 and the State's representative to the Upper Delaware Council, prepares to depart after a rest break in Lackawaxen, Pa. To the left is Paula Valentine, an interpretive ranger and web site manager for the National Park Service. A total of 19 tons of trash, including 507 tires, 580 lbs. of aluminum cans and five tons of scrap metal, was collected by 421 volunteers throughout the clean-up.

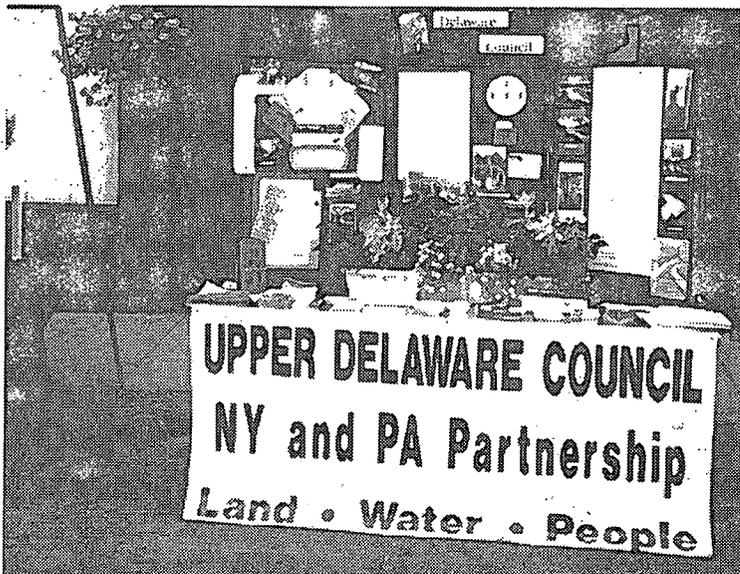
## UDC Activity Round-up

Highlights from mid-July to early September not previously mentioned in this newsletter follow:

- The Water Use/Resource Management Committee hosted a public informational presentation at its July 15 meeting in which Mike Giller, Project Manager with the National Park Service based at the Denver Service Center, explained the process by which visitor centers evolve in light of the River Management Plan's call for the opening of an **Upper Delaware Interpretive Center** on State Route 97 in the Mongaup area. *Federal legislation has yet to be proposed to authorize this estimated \$7 million project.*
- Flood control planning options** for the Upper Delaware were addressed in a letter to the UDC by the Delaware River Basin Commission responding to questions that were prompted by the five billion gallon Pepacton Reservoir draw-down this February. *Use of New York City's water supply reservoirs for flood control is encouraged by the UDC to reduce the potential for local property damage.*
- The UDC weighed in on the **National Park Service's Strategic Management Plan** by providing formal comments based on all three committees' review in August of a draft copy of the five-year, first-time document prepared in accordance with the Government Performance and Results Act. *The UDC recommends that NPS make direct references to their responsibilities as outlined in the River Management Plan to provide justification for their stated goals.*
- The Council's own **Five-Year Plan** for 1997 to 2002 was scheduled to come up for a vote at the October 2 monthly meeting following the review of a draft copy prepared by staff at the UDC's three committees in September.
- The following **press releases** were issued: "UDC Hosts Day on River," photograph from July 26 Raft Trip and Picnic; "UDC Applauds Release of Railroad Emergency Guide: Dispatches Copy to Potential Conrail Buyer," July 31; "Upper Delaware Council Adopts New Budget and Work Plans: Renews Park Service Agreement," Aug. 8; "UDC Mourns Tom Hill," Aug. 26; "UDC Awards Nearly \$14,000 in Technical Assistance Grants," Sept. 4.



Charles Wieland of Tusten, 1997 UDC chairperson, pulled "rudder duty" during the Council's 10th Annual Raft Trip which preceded the Summer Picnic held at Eddy Farm Resort Hotel in Sparrowbush on July 26. The UDC was pleased by a record attendance at this year's event of 162 participants. The six-mile raft trip from Kittatinny's Staircase base south of Pond Eddy to Sparrowbush attracted 123 guests, including 25 children under 12, while 118 people came to the scrumptious barbecue topped off by make-your-own ice cream sundaes. (Soete photo)



The Upper Delaware Council offered information booths featuring its new, six-foot-long banner at two summer activities, Riverfest on July 27, (pictured above), sponsored by the Narrowsburg Chamber of Commerce and the Delaware Valley Arts Alliance; and the Bluestone Festival on August 2, hosted by the Hancock Chamber of Commerce. (Ramie photo)

- As **Project Review** tasks, the UDC has recently offered comments on: the Callicoon Culvert Project (Town of Delaware) done by the Sullivan County Department of Public Works under permit from the Army Corps of Engineers; the Town of Delaware's Flood Damage Prevention Law; and Westfall Township's Comprehensive Plan. Projects under close watch include the Town of Tusten's proposed Commercial Timber Harvesting Law, Town of Highland's proposed Subdivision Law, Town of Cochection's draft Zoning Ordinance, and the upgrading by the DEC of a new public fishing access near the Hancock Sewage Treatment Plant. Six requests for six-month extensions of Technical Assistance Grants (TAGs) were approved. *An article on the 10th Annual TAG program recipients will be featured in the Fall Newsletter.*
- October highlights:** Upper Delaware Council monthly meeting, Oct. 2; Northeast Pennsylvania Environmental Awards, Oct. 9, Wilkes-Barre; UDC office closed Oct. 13 for Columbus Day; Pocono Northeast Community Awards, Oct. 16, Wilkes-Barre; UDC Water Use/Resource Management, Oct. 21; Delaware River Basin Commission, Oct. 22; Operations and Project Review Committees, Oct. 28.

Check in with the National Park Service Upper Delaware Scenic & Recreational River on-line:  
<http://www.nps.gov/upde>

# Where Have All the Froggies Gone?

Slimy to some, saviors to others. Frogs may just be the Rodney Dangerfields of the natural world. They don't get no respect, no respect at all.

Where others see warts, however, naturalists like Don Hamilton see wonders.

"Frogs are part of our biological wealth," said Hamilton, a member of the Delaware Highlands Conservancy which recently hosted his nature program entitled "Amphibians at the Water's Edge" at the nature center of the charitable land trust's headquarters in Milanville, Pa.

Significant declines in frog populations throughout the world have scientists and naturalists baffled, according to Hamilton. The alarming trend has stepped up study of frog characteristics and life cycles to uncover the cause of their disappearing act.

Heading up the suspect list are acid rain, pesticide use, the depletion of the ozone layer and increased exposure to ultraviolet light, according to Hamilton.

Unless you happen to be a frog, is this a cause for concern?

You better believe it, says Hamilton.

"Frogs are bioindicators of environmental and water quality, and they eat a lot of pest insects," explained the National Park Service resource management specialist. In addition to their service as watch-frogs over the health of our natural world, frogs



also have the potential to contribute to humans' physical health, as some have been found to produce vital enzymes that show promise in the treatment of ailments like stomach ulcers.

Zoologically speaking, amphibians are a class of cold-blooded, chiefly egg-laying vertebrates adapted for life both on land and in water.



Don Hamilton, kneeling in foreground with the sign, observes several frogs conveniently sunning themselves in the man-made pond outside the Butterfly Barn, the Delaware Highlands Conservancy's nature center in Milanville, Pa., during his recent program on "Amphibians at the Water's Edge." (Ramie photo)

The young have gills and develop through a larval or tadpole stage into the typically lung-breathing, skin-covered forms represented by frogs, toads, salamanders, newts and other such creepy-crawlies. The lives of amphibians are amazing microcosms of development, according to an admiring Hamilton.

If you can't tell a male from a female frog, you obviously haven't looked closely enough. Masculine frogs have larger ears (the round spots behind their eyes) and darker colored throats, while feminine frogs generally have white throats. Both genders gaze out at the world from eyes positioned atop their heads to keep their peepers from getting wet while they immerse the rest of their bodies in any convenient water hole.

While cold-blooded like reptiles, Hamilton noted that amphibians are unique because of their thin, moist skin and lack of claws at the end of their toes. Toads also differ. Unlike frogs, they take to water only when it's time to breed. Toads also lack the teeth along the upper jaw that frogs have, and prefer to stay hidden during the day in a cool, damp spot. The ready defense of a toad against would-be predators lie in the secretions of poison in the warts along their backs.

Both types of amphibians are carnivores, feeding chiefly on insects, and excel at leaping.

Don Hamilton, a National Park Service veteran of 14 years, has worked at the Upper Delaware Scenic & Recreational River for the past five years. His specialty is in aquatic insects and water quality monitoring. In addition to membership in the Delaware Highlands Conservancy, Hamilton also belongs to the Upper Delaware Chapter of Trout Unlimited.

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*The Conservancy's summer nature series will conclude on Saturday, October 11, with the program, "Wetlands: Just Swamps or Cradles of Life?" held at 10 a.m. at the Butterfly Barn in Milanville.*

*Guest presenter Jennifer Riley-Jacoby is a biologist with the Army Corps of Engineers based in Tobyhanna.*

*For more information on that program or the efforts of the Delaware Highlands Conservancy to negotiate conservation easements and accept land donations in a four-county region of PA and NY, call or write to Barbara Yeaman at HC 1, Box 1926, River Road, Milanville, PA 18443-9743; telephone (717) 729-7053.*

## In Memoriam . . .

The Upper Delaware River Valley lost one of its most committed and optimistic champions when Tom Hill passed away August 25. Medical complications arose following a bone marrow transplant that everyone had hoped would overcome the leukemia with which Tom had been diagnosed in February.

The 46-year-old leaves behind his mother, Eleanor Getz Hill; one sister, Cheryl Calabria; one brother, Steven Hill; his maternal grandmother, Margaret Kinne; and a niece, Maggie, all of Glen Spey; as well as several cousins. His father, Thomas F. Hill, predeceased him.

Funeral services were held on Thursday, August 28, at the Pond Eddy United Methodist Church, with the Rev. Nancy Vonderhorst officiating. Burial followed in the Glen Spey Cemetery. Arrangements were handled by the Knight-Auchmoody Funeral Home of Port Jervis. The family requested that memorial contributions be made to a charity of one's choice.

### Thomas F. "Tom" Hill

May 21, 1951 to August 25, 1997

The Upper Delaware Council mourns the August 25 death of one of its charter members and most active representatives, Thomas Hill of the Town of Lumberland (NY).

"I personally will miss Tom's good humor, friendly advice, and political savvy," said UDC Executive Director Bill Douglass "He was a man of many actions and few words, except, of course, when he had some new jokes to spread around the county."

"Tom liked to come across as a quiet, unassuming 'country boy,' but he was always thinking, listening, analyzing, waiting for the right time to step forward with a new idea, or to get discussions back on track, or to wrap up a debate succinctly, stating the consensus position.

"He was a hard worker who took reason-



UDC Charter Member and Town of Lumberland Supervisor Tom Hill

able approaches to issues," Douglass added. "The people of Lumberland were well represented by Tom."

#### Political Good Guy

A native of Lumberland, Tom dedicated his life to serving his community. He volunteered for 10 years as a member of Lumberland's Planning Board, during the last two years of which he also doubled on the Zoning Commission.

In May of 1984, he was appointed as the town's full-time Supervisor and representative to the Sullivan County Board of Supervisors. Election to that post followed in November of 1984.

When the county board transitioned into a nine-member Legislature a decade later, Tom stood beside his town residents, and they beside him as they returned him to the Supervisor's position every term.

#### Committed to River

Tom's involvement with and appreciation

for Upper Delaware River Valley issues was also lifelong.

In the "early days," Hill served as Lumberland's representative to the Conference of Upper Delaware Townships (COUP), which was established in 1981 to express the views of the local communities to the National Park Service.

As the precursor group of the Upper Delaware Council, COUP was ultimately responsible for drafting the 1986 Final River Management Plan, which now serves as the guiding principle for the unique federal, state, and local partnership that dedicates itself to the protection and conservation of the Upper Delaware Scenic & Recreational River.

Within the ranks of the UDC, Hill also worked on the front lines as a problem solver and facilitator.

He chaired the Council's Project Review Committee in 1988 and again in 1990; and was sworn in as the UDC's fourth chairperson on January 3, 1991.

Tom also actively participated on the UDC's Mongaup and D & H Canal Subcommittees.

Intrigued by local history, Tom was the driving force behind two Lumberland brochures (funded through the UDC's Technical Assistance Grant program) on restoration of old homes and archeology.

He was looking forward to the celebration of the Town of Lumberland's Bicentennial in 1998. Planning efforts on that front will now be dedicated to his memory.

Other recent efforts that excited Tom due to their potential as ecotourism boosts for this area were the New York State Scenic Byways program and the Bike Route 17 corridor along State Route 97.

Tom's active service to the UDC's Project Review Committee and attendance at the Council's monthly meetings continued until his illness. The Town of Lumberland's two alternate representatives are Peter Melnyk and Paul Brennan.

"Our condolences go out to Tom's family, friends, and all those whose lives he touched," concluded Bill Douglass.

## Do We Have Your Correct Address?

If your address has changed, or you no longer own land in the Upper Delaware River area, please help us to update our records. Fill in your new address, or the name and address of the new owner of your property, and return this notice to The Upper Delaware Council, P.O. Box 192,

Narrowsburg, NY 12764-0192.

New Address:

Old Address:

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Court Case, continued from Page 1 . . .

Manor case before the New York Court of Appeals, Barclay's attorney argued that fishing and navigating are two quite different activities.

"The right to anchor or wade for fishing purposes clearly has nothing whatsoever to do with effecting a safe passage in the river," concluded the *Douglaston Manor* legal brief filed in support of their appeal.

In its February 1997 ruling, the Court agreed with *Douglaston Manor's* position that the Appellate Division's decision served to diminish the "use, possession, and enjoyment of private landowners of their traditional property rights," as argued by the resort's counsel.

The unanimous opinion by the Court of Appeals concluded that "Douglaston enjoys a duly conveyed exclusive right of fishery." The Appellate Division's order was reversed and the order of the Supreme Court reinstated.

#### UDC Searches for Answers

UDC State of New York representative, Region 3 Department of Environmental Conservation (DEC) Natural Resource Supervisor Bruce MacMillan, first put the wheels in motion after the February 11, 1997 decision came down.

His formal request for a legal opinion from the agency's counsel preceded the UDC's decision to dispatch a letter to then-Acting DEC Commissioner John P. Cahill seeking an opinion.

#### DEC Replies

In its May 5 letter, the Council posed three basic questions:

1. Can the public drop anchor in the Delaware River and get out of the boat to stand in the river to fish?
2. Is the Delaware River navigable-in-fact or navigable-in-law?
3. Does the *Douglaston Manor* decision apply to the Delaware River since the Delaware is a boundary water with the Commonwealth of Pennsylvania?

In early July, a reply came from the then



Acting Deputy Commissioner for Natural Resources, Frank Dunstan.

The letter noted that, while the Delaware River is subject to the public right to navigation as a waterway, the State has authority to convey ownership of stream beds to property owners.

"Consequently," Dunstan wrote, "where the State has conveyed title of the Delaware River bed and the fishing rights situated thereon to private individuals, the holding of the Court of Appeals in the *Douglaston Manor* case appears to be applicable."

Even over those private underwater lands, however, the DEC cautions that the public right to navigation carries certain incidental privileges, which include the right to temporarily anchor as an aid to navigation, and the right to portage around obstructions or rapids in the waterway utilizing the most direct, safe routes, even where this might require temporary use of private property.

As to the question of navigable-in-fact (fishing rights that accompany land acquisitions) or navigable-in-law (fishing rights that are held in the public trust), Dunstan says no New York State case law has been found to define this issue. Even in *Douglaston Manor*, the court was not faced with the specific question of whether the public right to navigation includes the right to fish from a floating boat when the river bed is privately owned. This is "a somewhat open issue."

#### Impact Being Felt

The impact of the Salmon River case is already being felt, however, as the DEC instructs its law enforcement officers in guidance related to the Court of Appeals decision.

DEC officers have been advised that they may assist property owners who wish to charge someone with trespass based on exclusive fishing rights to fill out the necessary paperwork to press their claim. A person who refuses to leave the river bank after being requested to is subject to citation in the usual manner.

To press charges, the DEC's Division of Law Enforcement guidance points out that "a property owner's right to prevent persons from fishing in waters where he or she owns the underwater lands is solely dependent upon proof that he or she is the owner of such land" and that ownership carries with it "exclusive fishing rights."

Most representatives on the UDC have generally agreed in their numerous discussions that the actual disposition of these navigation and private property rights issues in the Upper Delaware River Valley remains to be tested, most likely in a court of law.

In light of this, the UDC is struggling with how to advise both the local property owners and the numerous visitors to the region regarding their respective rights to use and enjoy the Upper Delaware Scenic and Recreational River.

The UDC meets on the first Thursday of every month at 7:30 p.m. at the Tusten Town Hall, Narrowsburg, NY. Committees meet on the third and fourth Tuesdays of every month at the UDC Office, 211 Bridge Street, across from the Town Hall. All meetings are open to the public. Call (914) 252-3022 for details.

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