

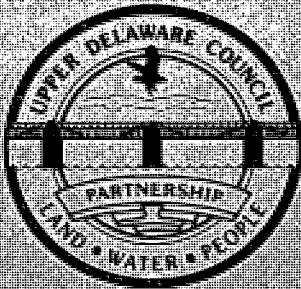
The Upper Delaware

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

Volume 11 Number 1

Published by the Upper Delaware Council, Inc.

Spring 1998



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Quotables: Kind words can be short
and easy to speak, but their echoes
are truly endless. —Mother Teresa

Interested in submitting
material to *The Upper
Delaware*?

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

Discover the Delaware During 4th Annual Sojourn

There is no better way to experience the Delaware River than to actually be on it.

For the fourth year, the Delaware River Sojourn will offer paddlers of all skill levels the opportunity to participate in a canoeing and camping adventure that crosses three states in eight days.

With a call to "Discover the Delaware" as this year's theme, the 1998 Sojourn will take place from **June 20 to June 27**.

Families and individuals are welcome to join the Sojourn for one or as many days as they prefer.

Each year finds some intrepid paddlers enthusiastically taking on the role of "thru-trippers" for the entire eight days.

The Sojourn's overall mission is to heighten appreciation of the Delaware River's unique ecological, historical, cultural,

and recreational attributes. By raising public awareness of all that the Delaware has to offer, a commitment to the stewardship of its resources is likely to follow.

Anyone who can paddle a canoe on a pond can paddle the Delaware River. Volunteer members of the National Canoe Safety Patrol will be along on the trip to offer paddling tips, safety instructions and briefings on river conditions. The Sojourn is sanctioned by the American Canoe Association. Canoe rentals are available for those who need them. The Sojourn is able to accommodate approximately 50 paddlers per day, so sign up quickly!

Programs offered along the way will focus on such topics as river geology, history, ecology, flora and fauna, with many fun surprises along the way. PA Governor Tom Ridge is expected June 25, while dig-

nitaries from each river section will carry the titles of "Lord/Lady High Admirals" each day. Sojourn meals will cater to all tastes, ranging from a Chinese take-out lunch, to camp cook-outs, to a gourmet dinner with live musical entertainment.

The Sojourn kicks off on Saturday, June 20, in Narrowsburg, NY, as the Upper Delaware section hosts the first two days through to Milford, PA. The Middle and Lower Delaware will each host three days, traveling through the Delaware Water Gap

National Recreation Area to Smithfield Beach, ultimately taking out at Yardley Access, PA in Scudders Falls on the following Saturday, June 27. The average daily river trip is 10 miles.

Prices are as follows to cover camping, most meals, programs, shuttles, insur-

ance, and souvenir item: \$25 one-time registration fee (\$10 for children ages 12 and under); \$25 daily fee with own canoe; or \$35 daily fee for a rental canoe.

Lead organizations in the Sojourn planning effort include the Pocono Environmental Education Center, National Park Service Upper Delaware Scenic & Recreational River and Delaware Water Gap National Recreation Area, Pocono Mountains Vacation Bureau, Delaware River Basin Commission, Heritage Conservancy, Skylands Tourism Council, Kittatinny Canoes, Inc., National Canoe Safety Patrol, Pennsylvania Department of Environmental Protection, and the Upper Delaware Council.

The Sojourn coincides with the celebration of June as both American Rivers Month and Pennsylvania Rivers Month. ❖

To Find Out More

Registration packets for the Delaware River Sojourn are available by calling the Pocono Environmental Education Center at (717) 828-2319, writing to PEEC at RR2, Box 1010, Dingmans Ferry, PA 18328 or sending an e-mail to peec@ptd.net.

Potential participants may also contact the Upper Delaware Council (914-252-3022) to request a 1998 Sojourn brochure.

For the most up-to-date information, please visit the Sojourn's Internet website at <http://www.nps.gov/upde/sojourn.htm>.

Most land along the Upper Delaware River is privately owned. Please be considerate and don't litter or trespass. Thanks!

UDC Representative Profile: Alan Bowers



Al Bowers, pictured at right, of Westfall Township, PA, accepts the gavel of leadership from the Upper Delaware Council's 1997 Chairman, Charles Wieland of Town of Tusten, NY, during the Jan. 8, 1998 annual meeting of the Council. (Ramie photo)

Alan Bowers believes in sticking with the basics.

He lives today in the area where he grew up. He has worked for the same employer for 28 years. The hunting and fishing passions of his youth predominate his adulthood as well.

And when it comes to his representation of Westfall Township, PA on the Upper Delaware Council, Bowers invariably turns his thoughts to the document commonly referred to as "the bible" of the Upper Delaware Scenic & Recreational River.

"The mission of the UDC, by definition, is to oversee the adherence to the River Management Plan. Any decision or vote I have to make, I try to relate it to the Plan," he says.

Bowers hopes that common sense and objectivity will ultimately characterize his 1998 term as UDC chairperson.

"I am entering this chairmanship without a personal agenda."

To his new role, Bowers brings the experience of serving as Alternate to Westfall Representative Phil Fitzpatrick from 1992-1994, at which time he became the township's Representative. Bowers served two stints in 1994 and 1996 as vice-chair of the Council; and, for the last four years, chaired the UDC's Water Use/ Resource Management (WU/RM) Committee.

As of January, Bowers took over the reins of the Operations Committee. Phil Chase of Deerpark, NY, elected as 1998 UDC vice-chairman, has now assumed chairmanship of the WU/RM Committee, while Highland's Lew Schmalzle retains his seat at the head of the table for the UDC's Project Review Committee.

Bowers came of age in Matamoras, Pa. A 1966 graduate of Delaware Valley High School, he went on to attend Penn State, earning a Bachelor's degree in Forest Science in 1970.

His first job out of college was with the New York University Medical Center (NYUMC) as an entry-level research technician.

Today, the 49-year-old is the Senior Research Technician at NYUMC's Nelson Institute of Environmental Medicine in Sterling Forest, NY.

Bowers's responsibilities include the operation and maintenance of multi-million dollar laboratory equipment used to analyze biological samples. Among the objectives of his independent work is to determine potential links between environmental pollutants and human health, specifically focusing on cancer prevention. He is certified by the American Association of Laboratory Animal Science.

In his personal time, Bowers is a member of the Fontinalis Fly Fishermen, the Pike-Wayne Chapter of Trout Unlimited, the Gifford Pinchot Chapter of the National Audubon Society, the National Wild Turkey Federation, and the Montana Wildlife Federation. Bowers is father to Alan, Jr., a resident of Audubon, NJ.

At the Jan. 8 UDC meeting, Tusten Supervisor Richard B. Crandall, the town's new UDC alternate, administered the oaths to Bowers, Chase and Secretary-Treasurer John B. Niflot, Fremont. New or returning UDC members in '98 are Bruce Selneck, Shohola; Fred Bartsch, Lackawaxen; and, from the CAC, Bernie Kozykowski and Elizabeth McKenna. ❖

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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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Printing Services: Tapco, Inc. P.O. Box 307

Camberton, NJ 08058 Tel: (609) 894-2282

Printed in the USA on recycled paper

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UDC Adopts Position Paper on Flows

By David B. Soete
UDC Senior Resource Specialist

The Upper Delaware Council (UDC) adopted a "Position Paper on Flows" at their February 5, 1998 meeting in anticipation that the Delaware River Basin Commission (DRBC) will undertake a study which will contain a flow needs analysis for the main stem of the Delaware River and major tributaries, and include these flow needs in an analysis of methods to reduce the number of drought declarations in the Delaware River Basin. The Position Paper has been forwarded to the DRBC for their consideration.

The flow of water in the Delaware River is influenced by a very complex system of dammed and un-dammed tributaries, land uses in the watershed, and how much precipitation Mother Nature is willing to provide us with throughout the year.

The releases from the reservoirs, associated with the dams, are able to be manipulated, but how this system is managed has been, and will continue to be, open to much debate. An article describing this flows system appeared in the Winter 1996-97 issue of *The Upper Delaware*.

As provided for in the River Management Plan, the UDC will make recommendations to the states, the DRBC, and the federal government concerning water releases and flows. The River Management Plan (page 66) further stipulates that "The Upper Delaware Council will work cooperatively with the Delaware River Basin Commission and the States of Pennsylvania and New York, and New York City, to address water flow issues relevant to protecting and maintaining the integrity of the Upper Delaware as a designated Scenic and Recreational River."

The DRBC's Flow Management Technical Advisory Committee (FMTAC) is in the process of developing a Request for Proposals (RFP) to look at the Good Faith Agreement and Level B Study to establish valid reasons for flow maintenance for the Delaware River.

Based on this, a list of priorities could be established and provide a basis for additional study. There must be an evaluation of what the minimum flows for the Delaware River should be, and how they will be carried out.

The UDC Position Paper is based on the Upper Delaware Scenic and Recreational River Management Plan and the UDC's perceptions of what flows are necessary to maintain and enhance the many natural and economic resources of the River corridor. It includes general background information and 14 recommendations regarding reservoir releases and flows. The seven-page paper is accompanied by a 12-page report of "Selected References" to flows from the River Management Plan. Copies are available upon request.

The DRBC is soliciting input from all stakeholders in the watershed on what they think the optimum flows should be.

Recommendations

In regard to reservoir releases and flows issues affecting the Upper Delaware Scenic and Recreational River, it is the position of the Upper Delaware Council that:

1. The Upper Delaware Scenic and Recreational River must be protected in its free-flowing condition and be managed for the benefit and enjoyment of present and future generations, as required by the Wild and Scenic Rivers Act. The Wild and Scenic Rivers Act does not permit the construction of dams, diversions, ice breaking devices, or channel modifications on any flowing water bodies within the boundary area, nor does it permit groundwater withdrawal programs to augment river flows.
2. Flow release schedules from tributary reservoirs should be adequate to protect or improve water quality and aquatic ecosystems, in order to conserve and enhance the values, including outstanding "scenic, recreational, geologic, fish, wildlife, historic, cultural, water quality, and other similar values" of the river and its immediate environment, that qualified the Upper Delaware as a Scenic and Recreational River.
3. Maintenance and improvement of the river's outstanding water quality is necessary for the full enjoyment of the river by valley residents and river recreationists.
4. A holistic approach for the entire Delaware River watershed needs to be looked at when considering flows, reservoir releases, and water quality. One area, or resource, of the watershed should not suffer unduly to benefit another. Controlled minimum flows for the Delaware River and all of its major tributaries need to be determined and considered. There should be more balanced releases from the tributary reservoirs, particularly in regard to Cannonsville Reservoir and Pepacton Reservoir. The integrity of the New York City water supply must also be maintained.
5. In addition to a basinwide drought management plan, a comprehensive flood management plan should also be prepared, looking at the entire watershed to provide substantial protection from flooding for the Delaware River and its tributaries.
6. Generally speaking, the minimum flow requirement of 1,750 cfs at the Montague, NJ gaging station has provided adequate flows for most uses in the designated Upper Delaware Scenic and Recreational River and should be maintained, and perhaps even increased to 1,850 cfs based on the new constant 100 cfs release now being made from the Rio Reservoir into the Mongaup River and any future minimum flow requirements mandated by the Federal Energy Regulatory Commission (FERC) on other tributaries, such as releases from Wallenpaupack Dam into the Lackawaxen River. Any significant effluent discharges from new wastewater treatment plants should also be taken into consideration. However, to ensure adequate flows in the upper reaches of the Upper Delaware Scenic and Recreational River, above its confluence with the Lackawaxen River, a minimum flow target, possibly 1000 cfs as suggested by the New York State Department of Environmental Conservation's "A Fishery Management Plan for the Upper

Delaware Tailwaters," dated March 1992, should be established and measured at the Callicoon gage or a combination of the gages on the East Branch (Harvard gage) and the West Branch (Hale Eddy gage). Maximum temperature targets should also be incorporated into any flow targets.

7. Aquatic life and habitat should continue to be maintained and improved. Infrequent, periodic flushes and/or low flows, based on scientific evidence, may need to be considered to help replicate natural conditions of a free-flowing river. To help improve the water quality of releases from Cannonsville Reservoir, bottom releases should be made in the Spring to flush out nutrients, instead of letting excess water spill over the top of the dam.
8. The high visual quality and consistent flows due to upstream dam releases should be maintained and improved to continue to make the Upper Delaware River one of the cleanest and finest recreational boating rivers in the Northeast. Providing adequate flows to cover rocks, particularly on weekends when most recreational use occurs, is necessary for a favorable boating experience. Many boating experts agree that the Upper Delaware receives more recreational canoeing use than any other river in the Northeast, and that it is certainly one of the most popular canoeing rivers in the country. Canoe livery and associated businesses are very important to the economy of the region.
9. The approximately 27 miles of river between Hancock and Callicoon should continue to be primarily maintained as a coldwater fishery. This stretch supports an abundant population of rainbow trout and brown trout, offering some of the finest trout fishing in the Northeast. Fishing is very important to the economy of the region. Refinements to the thermal stress bank for conservation releases should continue to be made, particularly now that the new release valves at Cannonsville Reservoir are in place. Minimum temperature and flow targets identified in the New York State Department of Environmental Conservation's "A Fishery Management Plan for the Upper Delaware Tailwaters," dated March 1992, should be considered in developing any reservoir release schedules. The recent radiotelemetry tagging study of trout in the Upper Delaware Tailwaters should also be taken into consideration. (Among other things, the Fishery Management Plan (page 4) states that "Year-round minimum flows of 175 cfs on the East Branch at Harvard, 225 cfs on the West Branch at Hale Eddy, and 1000 cfs on the Delaware River at Callicoon are needed to fulfill habitat needs in the system.") The Fishery Management Plan states that "Problems with thermal instability would be resolved by consistent attainment of specific temperature targets designed to enhance trout habitat on each river." The Fishery Management Plan further states that "Daily allowable maximum temperatures of 75° F at East Branch on the East Branch, at Hancock on the West Branch, and at Hankins on the Delaware River, and maximum allowable weekly average temperatures of 66° F at East Branch on the East Branch and Hancock on the West Branch and 70° F at Hankins on the Delaware River will produce high quality brown trout habitat between Downsville and East Branch on the East Branch and throughout the West Branch.")
10. The 50 miles between Callicoon and Port Jervis should continue to be maintained primarily as a warmwater fishery. Particular attention should be paid to the habitat and flow needs of the American Shad and American Eel.

Please see "FLOWS," Page 7

Upper Delaware Council Celebrates 10 Years of River Corridor Advocacy

Rooted in the desire to cooperatively manage and protect the Upper Delaware Scenic and Recreational River, the Upper Delaware Council proudly marks its 10-year anniversary in 1998.

The UDC's role as the primary entity through which local, state, and federal agencies discuss actions and policies affecting the river valley represents a unique working partnership that has been nationally recognized and emulated.

Since officially opening its doors on February 22, 1988, the Council has held as its mission the coordinated implementation of the Upper Delaware Scenic and Recreational River Management Plan.

The UDC is now in its third, Five-Year Cooperative Agreement with the National Park Service which will sustain this relationship and its federal funding through the renewal date of Oct. 1, 2002.

In the Beginning

The Upper Delaware Council evolved from a nucleus of concerned river valley residents who organized into several grassroots groups in the 1960's to monitor federal overtures to stake a presence in the Upper Delaware region.

The public vigilance ranged from making house-to-house visits to educate their neighbors to convening meetings where attendance nearly outnumbered the host communities' populations. Many of those early activists remain involved with the UDC and river valley issues three decades later.

The first legislation which sparked the public's interest came on October 2, 1968, when the Upper Delaware River was classified for study under the Federal Wild and Scenic Rivers Act (PL 90-542).

Evaluation by the Federal Bureau of Outdoor Recreation lasted for seven years. During this crucial period, intense local involvement planted the seed for the unique river corridor management structure which was ultimately adopted.

On November 10, 1978, Congress designated a 73.4-mile stretch of the Upper Delaware, from Hancock, NY to Mill Rift, PA, as the 19th component of the National Wild and Scenic Rivers System.

One year later, the U.S. Department of the Interior, through the National Park Service, arrived to begin interim administration of the Upper Delaware Scenic and Recreational River.

Controversy reigned over the development of the river management plan.



The 1998 membership of the Upper Delaware Council includes, seated from left, Vice-Chair Phil Chase (Deerpark); Chair Al Bowers (Westfall); and Secretary-Treasurer Jack Niflot (Fremont). Standing from left are: Cal Hite, National Park Service UDS&RR; Peter Melnyk, Lumberland; Peter Wulforth, Upper Delaware Citizens' Advisory Council; Charlie Wieland, Tusten; Dave Everett, Delaware River Basin Commission; Dave Lamereaux, PA Department of Environmental Protection; Fred Gerty, NYS Department of Environmental Conservation; Bruce MacMillan, NYS DEC; Bruce Selneck, Shohola; Harold Roeder, Jr., Delaware; Larry Richardson, Cochection; and Lew Schmalzle, Highland. Absent from this photo were representatives of Hancock and Lackawaxen. (Soete photo)

While the environmental impact of increased river use concerned many local residents, a vocal faction fought against the federal designation. In an area that prided itself on autonomy from governmental controls, fears of large-scale federal property condemnation dominated. Public pressure urged that the legislation emphasize the enforcement of local zoning over property acquisition.

In 1981, the Conference of Upper Delaware Townships (COUP) was established to provide a forum for local response to the planning effort. After two drafts of a river management plan were rejected by the public, the National Park Service in May of 1984 entered into a cooperative agreement with COUP to write a more acceptable version.

For the next year and a half, more than 100 individuals participated in often contentious meetings.

By November of 1986, COUP had a plan it could live with. Approval by the U.S. Secretary of the Interior followed in October 1987. After Congressional review, the final River Management Plan (RMP) for the Upper Delaware Scenic and Recreational River went into effect on Jan. 4, 1988. With it, COUP dissolved, making

way for the Upper Delaware Council as an alternative to federal management of the river corridor.

Legislation Sets Authority

The UDC was incorporated on Feb. 18, 1988 as a registered 501(c)(3) non-profit organization, able to apply for grants and accept donations to supplement an annual federal allocation.

Working in partnership with the National Park Service, the UDC's members - the two states (Pennsylvania and New York) and 11 local governments (eight NY towns and seven PA townships) in five counties which border the Upper Delaware - use their existing authorities to cooperatively implement the Plan's goals. The Upper Delaware Citizens' Advisory Council and Delaware River Basin Commission are non-voting members of the Council.

The 1978 legislation (PL 95-652) which designated the Upper Delaware as a Scenic and Recreational River placed a limit on the allowable federal land acquisition by the federal government, with the RMP specifically restricting it to 124 out of 55,575 acres in the river corridor on a willing seller basis only.

The National Park Service's role is
Please see "UDC," Page 5

"UDC," continued from Page 4

focused on managing its facilities, enforcing laws pertaining to the river's surface, visitor education, and assisting local governments with resource protection.

At the heart of the River Management Plan is the directive that all participants will act consistently with its policies.

The DRBC adopted the Plan on March 23, 1988. In Pennsylvania, Gov. Robert P. Casey signed Executive Order No. 1989-2 on Feb. 16, 1989 assuring compliance by all Commonwealth agencies. New York's Executive Order No. 169 was signed by Gov. Mario Cuomo on March 22, 1993. Towns and townships comply when their local land use regulations are declared upon review by the UDC, NPS and Secretary of the Interior to be in substantial conformance with the Land and Water Use Guidelines in the River Management Plan.

"The greatest achievement of the Upper Delaware Council is providing a forum for all involved parties to meet and discuss river-related issues," says UDC Executive Director William E. Douglass. "We are also proud of the fact that no land has been acquired by the National Park Service in the river corridor by condemnation - which was the greatest fear of the opponents to the Wild and Scenic River designation and the River Management Plan."

One of the most tangible benefits to UDC member governments is the availability of Technical Assistance Grants by annual application. Since 1988, the UDC has awarded more than \$375,000 for projects which further the goals of the River Management Plan.

The UDC has also hosted conferences and symposiums, produced position papers and a Toxics Identification and Control report, and co-sponsored public environmental improvement projects, educational, historical and cultural programs.

Major UDC publications include the quarterly *The Upper Delaware* newsletter, which reaches more than 13,000 readers across the U.S., a "Visitor Information Map and Guide" brochure, and Annual Reports.

Public outreach efforts include displays at festivals, speaker's bureau, Annual Awards Banquet, the popular Summer Picnic & Raft Trip, and a Steering Committee role for the Delaware River Sojourn.

Prepared to act as advocate, critic, or facilitator as the subjects require, the UDC continuously monitors proposed legislation, zoning issues, land developments, studies, and government policies to assess potential impacts on the Upper Delaware's resources, protect private property rights, and uphold the far-sighted vision of the River Management Plan. ❖

You're Invited to UDC's Reunion Picnic & Raft Trip

The Upper Delaware Council welcomes "alumni" and newcomers alike to its Summer Raft Trip & Picnic coming up on Saturday, July 11, 1998.

This fun, annual event promotes appreciation of the Upper Delaware River through direct contact with the resource.

In recognition of the UDC's 10th anniversary, a special call is going out to all early activists in the development of the Upper Delaware Scenic and Recreational River, former Council Representatives and Alternates, UDC associates and friends.

Last year, 162 individuals participated in one or both activities. Children were well-represented in the tallies.

The day's planned itinerary starts at 9 a.m., when the rafters meet at Lander's River Trips Minisink Base on Route 97 to check in and board shuttle buses to

the put-in location at Ten Mile River.

Rafts will launch at 10 a.m. following fitting of life jackets and a safety talk for a leisurely, eight-mile float back to the Minisink base. The trip is expected to take 4-1/2 hours.

The afternoon picnic will be held at the Lackawaxen Volunteer Firemen's Field, Rt. 590 and Biesel Road, Lackawaxen, PA, starting at 3 p.m., with dinner served at 4. Barbecued chicken, salads, chips, rolls, soda, coffee and cakes are on the menu. Families are encouraged to bring sports equipment.

The cost will be \$14 per adult and \$7 for children for the raft trip; \$8.50 adults and \$6.50 children for the picnic. Reservations are due by June 29.

To get on the Reunion Picnic mailing list, call the UDC office at (914) 252-3022. ❖

Businesses Donate Toward Printing Cost of UDC Visitor Map and Guide

On April 1, the Upper Delaware Council received shipment of 25,000 copies of its 1998 revised edition of the "Visitor Information Map and Guide for Touring the Upper Delaware Scenic and Recreational River: New York & Pennsylvania."

This four-color, 12-panel brochure features a 17 X 22" detailed map of the Upper Delaware Scenic and Recreational River Corridor, information and tips on boating, fishing, hunting, camping, sightseeing, appropriate agency contacts and emergency phone numbers. As a courtesy to the public, also provided is a listing of public lands and accesses; and a directory of visitor-oriented businesses located in the river corridor boundaries. The 86 businesses represent five categories: Accommodations; Bait and Tackle; Canoe and Camping; Fishing Guides; and Restaurants/Food.

When the revision process began in October of 1997, every current and potentially eligible business in the corridor was contacted to update their listings. Since the UDC has never charged an advertising fee to these commercial enterprises, a request was made for voluntary donations to offset the printing costs of the brochure.

The UDC gratefully acknowledges donations totalling \$875.00 from the following businesses, whose generosity is noted with an asterisk beside their names in the brochure:

River Champion (\$200) - THE 1906 RESTAURANT, Callicoon, NY.

River Partner (\$100) - KITTATINNY CANOES & CAMPGROUNDS, Barryville, NY; and SYLVANIA TREE FARM GUEST COTTAGES, Lackawaxen, PA.

River Sponsor (\$50) - MILANVILLE HOUSE B&B, Milanville, PA; INDIAN HEAD CANOES & CAMPGROUND, Barryville, NY; WILD & SCENIC RIVER TOURS, RENTALS AND CAMPGROUND, Barryville, NY.

River Booster (\$25) - BONNY BANK BUNGALOW B&B, Mill Rift, PA; CASTILLO DEL RIO B&B, Milanville, PA; SMITH'S COLONIAL MOTEL AND CANOE RENTALS, Hancock, NY; VICTORIA'S ROSE B&B, Pond Eddy, NY; HICKORYHAVEN LODGE, Barryville, NY; TWO RIVER JUNCTION, Lackawaxen, PA; GONE FISHING GUIDE SERVICE, Narrowsburg, NY; GRAY GHOST GUIDES AND FLYS, Equinunk, PA; THE CHATTERBOX CAFE, Narrowsburg, NY; EAST RIDGE ORGANIC COUNTRY STORE, Hankins, NY; HAWKS NEST RESTAURANT, Sparrowbush, NY; LACKAWAXEN HOUSE FAMILY RESTAURANT, Lackawaxen, PA; REILLY'S ICE CREAM PARLOR AND ART GALLERY, Cochection, NY.

For a free copy of the "Visitor Information Map and Guide," call the UDC office at (914) 252-3022 or fax a request to (914) 252-3359. ❖

Documentation Supports Private Property Rights

By George H. Frosch
UDC Representative, Town of Hancock

Many people feel the following facts may completely close the New York side of the Upper Delaware River.

This is not so. Sullivan County, N.Y., owns large reaches of the river, and New York State-owned lands are open to the public.

The only means of limiting fishing access are by legally posting property through publication in local newspapers, physically posting property at maximum intervals of 600 feet, or by situations in which a landowner requests a person to leave.

The following chronology of dates, documents, and case law establish private property rights in the Upper Delaware River corridor.



August 28, 1704 (Minisink Patent) and April 20, 1708 (Hardenburgh Patent). In both of these Royal Grants issued by Queen Anne of England, somewhat similar language is used to describe the lands as including "all woods, underwoods, trees, timbers, seedings, pastures, meadows, marshes, swamps, ponds, pools, waters, watercauses, rivers, rivolets, runs and streams of water, brooks, fishing, fowling, hawking, hunting, mines and minerals . . ." These grants have become the main source of title to the present day owners.

April 19, 1777 - New York State Constitution. Under the NY Public Lands Law, Section 4, the right, title, and interest in all land originally vested in the King of England immediately prior to July 9, 1776, were now vested in the State of New York. All pre-Revolutionary War patents were confirmed in the first New York Constitution. (Source: Warren's Weed New York Real Property, "Land Under Water," Section 2.01[2].)

April 12, 1822 - Chapter CXCIV of the Laws of 1822. At the 45th Session of the NY Legislature, passed was "An Act declaring the Delaware River and its Branches, *Public Highways*."

April 22, 1886 - Final Report to the Joint Boundary Commission of the States of New York and Pennsylvania. "The Channel of the Delaware River, from a line drawn across said channel, from a granite monument erected upon the Eastern bank of said River, in the year 1882, by the Joint Boundary Commission of the States of New Jersey and New York, to mark the Western extremity of the Boundary line between [said states], in a Westerly prolongation of said

Boundary line, up and along said channel of said Delaware River, as it winds and turns, for a distance of eighty-five miles or thereabouts, to a line drawn East across said River, from a granite monument erected upon the West Bank of said River, in the year 1884, . . . to mark the Eastern extremity of the first line hereinafter described, shall continue to be a part of the Boundary or partition line between the said two States: Provided, however, that the limit of territory between the said two States shall be the center of the said main channel; and Provided further, that each State shall enjoy and exercise a concurrent jurisdiction within and upon the water of said main channel, between the lines of low water at either bank thereof, between the limits hereinbefore mentioned." This boundary along the center of the main channel is plainly marked on current topographical maps.

1935 NYS Attorney General's Opinion to the NYS Legislature. "The right to fish is not an incident of a public highway or waterway...An appropriation of a stream for highway purposes does not include the fishing rights...My attention has not been directed to any acts condemning private waters for public fishing...Reference is made again to the essential nature of a fishing right. Being a profit a prendre, it inheres in and attaches to the land. It is not an easement in the waters. It must follow the ownership of the soil under the water. If title to the bed of a stream is...owned by an individual it includes the right of fishing in the stream and to con-

Part 2 Conclusion

vert it to a public use adequate compensation must be paid. In summary it can be said that the fishery rights in private streams and those public in the sense only that they are subservient to the common use in whole or in part because of navigability in fact are vested in the riparian owner." Based on this opinion, the Legislature has expended large sums of State money through Environmental Bond Acts to acquire private fishing rights on NY streams for the public.

Spring 1989 - Pace Environmental Law Review, Vol. 6, No. 2: "Public Rights in the Navigable Streams of New York" by Professor John A. Humbach. (Pages 461-564). Excerpt: "According to the English common law as of about 1764 the owner of land on each side of a non-tidal river...owned to the center of the stream and if he owned land on both sides he owned the whole river unless his grant specifically and in terms excluded the bed...[There is] no real difference in this respect between the English and American colonial law and the modern law of New York State." (Chapter III, Ownership of Stream Beds).

December 18, 1992 - Letter by Mr. Joseph F. Stellato, director of the Division of Land Utilization, Executive Department, State of New York Office of General Services, to the Upper Delaware Council. "Those having ownership of the bed of the River can reclaim such lands and place structures thereon
Please see "RIGHTS," Page 7

Our Readers Respond . . .

January 24, 1998

Dear Mr. Frosch:

Your piece in "The Upper Delaware" newsletter on the rights of riparian landowners is most interesting. I am looking forward to the next segment on the legal case work.

The procedures by the colonies for establishing a comprehensive body of law in the aftermath of the Revolution has always been a wonderment to me. In the case of New York, for example, in one bold and brilliant stroke, five hundred years of English common law were wrapped into the state's 1777 Constitution:

"... such parts of the common law of England, and of the statute laws of England and Great Britain, and of the acts of the legislature of the colony of New York, as together did form the law of said colony on [the date of the Battle of Lexington], shall be and continue the law of this state; subject to such alterations and provisions as the legislature of this state shall, from time to time, make concerning the same."

In the same year, the General Assembly of Pennsylvania adopted a similar acquisition of the English common law, effective as of January 21, 1777, the day the Colonial Congress advised the colonies to make new governments with authority in the people.

I will be interested in learning from your next article whether the riparian rights were delineated in mid-stream, and if so, the practical impact now with disgruntled landowners on both sides of the river. If push comes to shove, my guess, as with Ellis Island, is that the United States Supreme Court will be obliged to render a decision.

Sincerely yours,
Samuel S. Cross,
Wilton, Connecticut

"RIGHTS," continued from Page 6

consistent with the police power regulations of the State, the Federal regulations of commerce, local zoning and other regulations. Such owners may also occupy the lands underwater for the purposes associated with beneficial ownership; however, any activity cannot interfere with the public right of navigation. The public may use the River in connection with travel, trade and commerce and may also exercise activities incidental to navigation such as anchoring, scraping or pushing off the bottom, portaging, or scouting for safe passage. The extent of such activity must be that only deemed necessary in furtherance of safe navigation."

June 6, 1996 - Letter by Mr. Louis J. Gnip, L.S., Public Lands Surveyor Examiner, Bureau of Land Management, Executive Department, New York State Office of General Services, to George H. Frosch. "Please be advised that it has been determined that the bed of the Delaware River was included within the respective outshore portion of the Hardenburgh Patent and the State, therefore, claims no sovereign interest within the bed of the same."

February 11, 1997 - Douglaston Manor, Inc. v. George Bahrakis, et al., State of New York Court of Appeals. Commonly referred to as the 'Salmon River case.' "This Court has previously held that when land under rivers is included within the boundaries of a grant, the general language of conveyance is sufficient to transfer to the grantee the bed of the river and associated exclusive right of fishery (*Trustees of Brookhaven v Strong, supra, 60 NY at 71-72, supra; see also, Humbach, op. cit., at 533-542*). Moreover, the State's reservation of designated mineral rights and specific public rights of way, without reserving to the public a right of fishery, additionally supports our analysis and conclusion that Douglaston enjoys a duly conveyed exclusive right of fishery (see, *Blackman v Striker, 142 NY 555, 561*)."

This landmark case is now the law in New York State. The Upper Delaware, due to its Hardenburgh and Minisink Patents, makes a stronger case than the Macomb Patent since these Patents specifically give the right of fish (fishing) among many other specifically granted rights. ❖

"FLOWS," continued from Page 3

This stretch supports an abundant population of many species, including sunfish, bass, and wall-eye.

11. Large (>1000 cfs) releases typically ordered by the Delaware River Master in late summer should be ramped by New York City to eliminate cold plumes that shock fish and other aquatic life in downstream reaches of the Delaware River. Ramping should also be utilized at the end of such releases. Again, there should be more balanced releases from the tributary reservoirs, particularly in regard to Cannonsville Reservoir and Pepacton Reservoir. (Note that the Delaware River Master determines what volume of water is necessary to meet the flow target, but New York City decides which reservoirs to take the water from.)

12. There should be more uniform control of electric generators to provide for more predictable and consistent flows in order to meet flow requirements. Ramping should also be utilized at the beginning and end of releases for power generation.

13. The Upper Delaware Council supports the continued use of excess quantity releases from New York City tributary reservoirs to augment flows when excess water is available. These excess releases can be significant and should not be eliminated.

14. The Upper Delaware Council opposes additional whitewater boating use of the Mongaup River due primarily to concerns about boater safety and unsafe conditions for rescuing accident victims on the Mongaup River. We believe that any scheduled two-turbine releases for kayakers, and the resulting increased impact on the Mongaup wave, will pose a threat for novice boaters on the Delaware River (in the area known as the Mongaup wave), particularly during high use periods on weekends. Such special releases (435 cfs from each turbine for a total of 870 cfs, plus the 100 cfs being released below Rio Dam) could significantly reduce the amount of water in the Delaware River above the confluence with the Mongaup River at certain times of the year, particularly on weekends, when less water is called for from headwater reservoirs in order to meet the required minimum flow at Montague.

The UDC's position could change as new information and developments are brought to light, especially as work on the DRBC's flow study occurs, but this Position Paper presents our views at the present time.

Update

As of the writing of this newsletter article, the DRBC is considering a proposal from a consortium of Federal agencies, consisting of the U.S. Geological Survey, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and National Park Service, for the

initial step in the study. The agencies have developed a detailed proposal for Phase I, Task 1, which focuses on resolution of chloride issues in the Delaware Estuary. These issues include: vulnerability of the aquifer to contamination from the Delaware estuary salinity intrusion; overview of potability standards for chlorides and sodium; survey of water users and chloride related costs to these users; economic impact analysis of chlorides; calibration of the Corps' 3-D salinity model in the upper estuary; outreach; and, technical review and oversight.

Chloride levels in the lower basin may seem far removed from the Upper Delaware River, but flows in the Delaware River determine where the "salt front" is located at any given time. The existing minimum flow targets were established primarily to control the intrusion of ocean chlorides in the Delaware River Estuary and protect ground water supplies in the Camden metropolitan area from contamination by sodium. However, recent modeling by the U.S. Geological Survey has indicated that the estuary chloride levels that may occur during drought may not be as serious a threat to current ground water supplies as previously estimated.

The UDC will continue to keep abreast of the Delaware River flows issues in the years to come. ❖

CAC Welcomes Members

The Upper Delaware Citizen's Advisory Council (CAC) kicked off the year by introducing five new members.

Bernard Kozykowski, who served as a Town of Highland alternate representative to the Upper Delaware Council, is the U.S. Secretary of the interior's appointee and the CAC's 1996 chairman.

Also new to the CAC ranks are Martin Donnelly of Andes, NY; Elaine Giguere of Narrowsburg, NY; John Gorzynski of Cochection Center, NY; and Donald J. Jahn of Lackawaxen, Pa.

Five openings remain on the CAC for representatives of Wayne County, Pa. (2), Delaware County, NY (2), and the Governor of Pennsylvania (1).

For information, call Executive Assistant Caria Hauser Hahn at (717) 729-8251. ❖

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

<p>New Address:</p> <p>Name _____</p> <p>Address _____</p> <p>Box, Apt. # _____</p> <p>City/State _____</p> <p>ZIP+4 _____</p>	<p>Old Address:</p> <p>Name _____</p> <p>Address _____</p> <p>Address _____</p> <p>City/State _____</p> <p>ZIP _____</p>
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Check here to be removed from our mailing list.

Celebrate '98 Events

Our thanks to the Upper Delaware Heritage Alliance and National Park Service for compiling this list of activities. Contact information is provided to obtain details of these programs. Admission charges may apply in some cases.

April 17-26 - "Water Snapshot '98," basin-wide water quality monitoring project (Delaware River Basin Commission, Bob Kausch, 609-883-9500, ext. 252)

April 19 - Upper Delaware Council 10th Annual Awards Banquet (UDC, Laurie Ramie, 914-252-3022)

April 20-26 - National Park Week (Upper Delaware Scenic & Recreational River, Interpretation, 717-685-4871)

April 24 - D & H Canal Clean-up Day at Minisink Ford, NY (National Park Service, 717-685-4871)

April 26 - Environmental Management Council Earth Day Celebration at MacKenzie School, Glen Spey, NY (Lumberland Bicentennial Committee, Frank Schwarz, 914-856-6372)

May 2-3 - Upper Delaware Shadfest at Cedar Rapids, Barryville, NY (Pat Camuso, 717-685-2489)

May 3 - Grand Opening of Canal Country Museum Store at Leura Murray Center, Cuddebackville, NY (Neversink Valley Area Museum, 914-754-8870)

May 14-22 - Exhibit Honoring the Centennial of the Belgia Expedition to Antarctica, Fleet Bank, Callicoon, NY (Frederick Cook Society, Pat Burns, 914-434-8044)

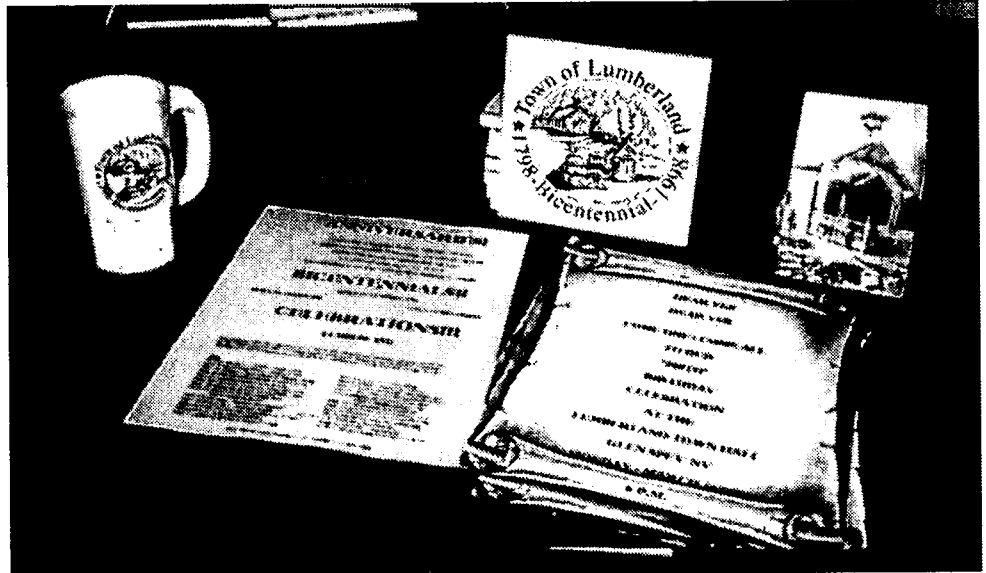
May 16 - 100th Anniversary Parade, Alert No. 2 and Texas No. 4 Fire Companies, Honesdale, Pa. (Glen Gunuskey, 717-253-1632)

May 16 - Antique Appraisal Party at Wayne County Visitors' Center, Honesdale, Pa. (Wayne County DAR, Dorothy Noble, 717-253-6705)

May 17 - Lumberland Town Heritage Day (Frank Schwarz, 914-856-6372)

May 17 - Deerpark Bicentennial Concert, Art Show & Town Quilt Presentation (Bicentennial Commission, Norma Schadt, 914-754-8070)

May 23 - "Upper Delaware Settlers" Student Essay Contest Awards and Ice



The Town of Lumberland, NY, whose commemorative items are pictured above, is one of eight municipalities in the region to mark their bicentennials in 1998. The others include Wayne County, Pa.; the NY towns of Neversink and Deerpark; the PA townships of Damascus, Buckingham, and Lackawaxen; and the Borough of Milford, Pa. (Ramie photo)

Cream Social, Calder House Museum, Equinunk, Pa. (Equinunk Historical Society, 717-224-6722)

May 23-24 - Great American Shadfest, Lackawaxen, Pa. (Dimitri and Charlie Zaires, 717-685-2010)

May 24 - Explore Nature in the D&H Canal Park (Neversink Valley Area Museum, 914-754-8870)

May 30 - Delaware River Run, Walk & 5K Run in Port Jervis, NY (Recreation Dept., 914-858-4045)

June 5 - "Hiss the Villain as Virtue Triumphs!", 19th Century melodrama by The Little Theatre, Grace Episcopal Church, Honesdale, Pa. (Gail White, 717-251-8251)

June 5-7 - Dazzle on the Delaware, Port Jervis festival (Rick at 914-856-5485 or Jan at 856-4717)

June 6 - Walking Tour of Downtown Equinunk, Buckingham Township, with Wellington Lester (Equinunk Historical Society, 717-224-6722)

June 7 - Dedication of New D&H Canal Trail Signs, Cuddebackville (Neversink Valley Area Museum, 914-754-8870)

June 13 - Walking Tour and Lawn Social in

Bethany, Pa. (Bethany Public Library & Historical Society, Dorothy Noble, 717-253-6705)

June 13 - Ethnic Dance Program by Tasha Williams of Sault Falls Inn, Calder House (Equinunk Historical Society, 717-224-6722)

June 13-14 - Ukrainian Festival, Glen Spey, NY (Ukrainian Fraternal Association, 914-856-1323)

June 14 - Deerpark 200th Anniversary Parade, Sparrowbush (Norma Schadt, 914-754-8070)

June 19 - "Christy Mathewson: An American Hero," exhibit opening and lecture at Wayne County Historical Society Museum, Honesdale (717-253-3240)

June 20-27 - 4th Annual Delaware River Sojourn (Pocono Environmental Education Center, 717-828-2319)

June 20 - German Foods & Customs Program, Calder House (Equinunk Historical Society, 717-224-6722)

June 27 - Scandanavian Welcome Summer Festival, train ride from Honesdale to Lackawaxen, Pa., arts, crafts, food, Norwegian bonfire (Joan Nilsen, 717-253-1530 or Grace Beck, 717-685-7801) ♦

The Upper Delaware Council, Inc. meets on the first Thursday of every month at 7:30 p.m. at the Tusten Town Hall, Narrowsburg, NY. Three standing committees, Operations, Water Use/Resource Management, and Project Review, meet on the third and fourth Tuesdays of every month at the UDC office, 211 Bridge Street, Narrowsburg, across from the Town Hall. All meetings are open to the public. Call (914) 252-3022 for specific meeting dates and agendas.

Upper Delaware Council
P.O. Box 192
Narrowsburg, NY 12764-0192

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