



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

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## PROPERTY RIGHTS ADVOCATE TO INITIATE TAKINGS CLAIM

Third generation farmer, PLA founder and property rights activist Bob Brace announced recently that he has instructed his lawyers to file a takings case to obtain just compensation from the Federal Government. The case will be filed under the Tucker Act in the United States Court of Claims located in Washington D.C. As a result of regulatory enforcement by three federal agencies, aided and abetted by three more Pennsylvania agencies, Mr. Brace has been denied all economically viable use of his family's homestead farm property in Waterford Township, Erie County, the value of which, if put to its highest and best use, would be \$3,000,000, Mr. Brace estimates. He has also been deprived of the use of his high quality farm land for over twelve years while his effort to challenge the government's wetlands enforcement action wound its way through the judicial system and he was compelled, by government fiat, to destroy the drainage system for the farm.

The supposed rationale for the Government's action is that real estate which meets a bureaucratic definition of "wetlands" cannot be developed because the wetlands must be preserved for public purposes. As result of the Government's regulation of Mr. Braces' property, it simply has no economically viable use and therefore has been taken. The Fifth Amendment to the Constitution of the United States unequivocally states "nor shall private property be taken for public use without just compensation." "To me," said Mr. Brace "these words ring hollow. We have not been able to use our ground for 12 years and now it is gone. This was to be a legacy to my children."

Mr. Brace has fought an exhausting and emotionally distressful battle against wetlands overregulation since the Government agencies first descended on him in 1987. He has been vilified in the press and wrongfully and irresponsibly accused of serious environmental violations.

Mr. Brace was heartened when then Congressman Tom Ridge took up the cause of wetlands regulation reform in the early '90s. At that time, Mr. Ridge, now Governor Ridge, said:

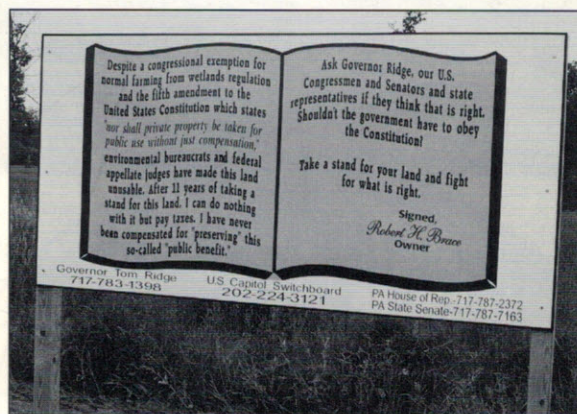
*"...Yet even as the Courts have been actively engaged in debating this issue, Congress has been conspicuously silent. H.R. 1330 can and must end that silence. The legislation, which is the most widely-supported piece of wetlands legislation in Congress, seeks to establish a more common sense and fair wetlands program in a number of ways. First, it would classify wetlands into three categories by recognizing that all wetlands are not created equal. A low spot in a Pennsylvania field cannot be equated with the Florida*

*Everglades. Secondly, the legislation would more clearly define what is and is not a wetland. Perhaps most importantly, the legislation would compensate landowners whose properties are "taken." The premise for this provision is the Fifth Amendment to the Constitution, which states, "nor shall private property be taken for public use, without just compensation." I have argued - and will continue to - that land-owners should not be forced into court at considerable emotional and financial expense to prove that a taking has occurred. The premise is simple. The government may*

*have reason to take certain property in the interest of the public good, but it can do so if, and only if, the property owner is compensated. It is also important to keep in mind that these lands are in the hands of private property owners, who are now individually bearing the burden of their so-called "protection," which currently is no more than a denial of the right to use the property."*

These were noble words but no legislation has been forthcoming.

Mr. Brace said he could no longer rely on the possibility that wetlands regulation reform legislation would restore the use of his land, his reputation or his peace of mind. Despite seemingly overwhelming odds against him, he is steadfastly resolved to continue his stand for his land through the second decade of this struggle. He wants his land back but now it appears that his only remaining remedy is to go to court for just compensation.



*The sign which now stands on Bob Brace's land informing passers by of the unconstitutionality of wetland regulations.*



# DON'T BE FOOLED

## A Message From The Board

As you may be aware, membership renewal time for the 1998-1999 season is upon us. The PLA Board would like to remind you how instrumental your membership fees are in preserving our constitutional right to own and use our land. It has been your support that has enabled us to continue our efforts in lobbying for comprehensive property rights reforms regarding wetlands, endangered species, watershed protection programs, and government land grabs, as well as keeping you up-to-date with recent private property related news.

The Board reminds you, however, "not to be fooled" by the takeover of Congress, our state legislature, and Governor's office by the Republican Party. Just because land use issues do not always make front page news does not mean the problems have been solved or that necessary action has been taken by our elected officials. While PLA and other property rights groups across the country have made significant strides in educating the public and elected officials about the unfairness of current environmental regulations, and while we have been able to assist many landowners and communities from having further regulations promulgated which would affect their ability to use their land, very little has changed regarding the repeal of laws that provide government agencies with the uncompensated and unconstitutional takings of your land. The only thing that seems more prominent is the lack of uneven enforcement. Elected officials seem only to have

managed to strap blinders on government agents, allowing selective enforcement to exist. This enables the bureaucrats to "lay low" and stay out of the limelight in order to get the public to go about their business with the belief that "things are better" and that our elected officials must have done something to change things for the better.

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DON'T BE FOOLED! More grassroots support in the form of letter writing, voting, and membership is needed if we are going to tackle these issues and protect private property rights.

If you have not taken the time to send in your membership renewal form, please do so. We also ask that you fill the forms out in their entirety. The information you provide helps us to better represent you in our continuing efforts and helps us to notify you in the case of upcoming events in your area.

Thanks for your support and get your pens and paper out! Your legislators are waiting to hear from you!



## PLA IS NOW ONLINE!

You can visit PLA on the World Wide Web at

**[www.palandownersassn.org](http://www.palandownersassn.org)**

or

send us an e-mail at

**[inquiries@palandownersassn.org](mailto:inquiries@palandownersassn.org)**



## "Wildlands Project"



From left to right: Rhonda McAtee (PLA Director of Policy), Matt Bennett (Guest Speaker) and Senator L. Slocum (R-25) discussing the evening's events. Slocum was recognized as PLA's "Senator of the Year" for his efforts in protecting private property rights, including his staunch opposition to S.B. 270, proposed comprehensive planning legislation.

movement's more radical solutions to this crisis called the "Wildlands Project." The project was spearheaded by well known environmental activist Dave Foreman and engineered by conservation biologist Reed Noss. Foreman is best known as one of the co-founders of organization *Earth First*, who's militant environmental protest ideals of "monkey wrenching" condone the practices of tree spiking and pipe bombing.

### What is the Wildlands Project?



Mark Troyer, Troyer Potato Products 1997-98 Outstanding Contributor Award Recipient.

the problem? The problem is, once the project is implemented, **any** human activity would be *severely* limited in the buffer zones and *entirely* eliminated in the core areas. Wildlands architect Noss explains that in both the core and buffer areas "the collective needs of non-human species must take precedence over the needs and desires of humans."

### How will the designated land be acquired?

According to Foreman, Wildlands activists would "iden-

On March 12, 1998, PLA convened for its 11th Annual Member Meeting at Cross Creek Resort, in Titusville, Pennsylvania. Over 200 members, legislators, and invited guests witnessed key note speaker Matt Bennett's speech on the "Biodiversity Crisis" in America. Bennett highlighted one of the environmental

tify existing protected areas" such as federal and state wilderness areas, parks, and refuges as core areas, and then proceed to demand buffer zones that would shield and protect these core areas. Once the buffers are in place, the next step would be to create wildlife corridors in order to connect these core areas.

### Where does the support and funding come from?

Bennett reminds us to consider three important points when weighing the validity and potential reality of the project. First, the Wildlands Project is derived from well developed scientific (Biodiversity) and philosophical (Buddhism and Taoism) principles. Secondly, the project is well organized. The Wildlands Project has affiliates located throughout the country and also publishes a national magazine called *Wild Earth*. This magazine educates and informs grassroots activists on how to design reserve areas, conduct GIS mapping, and network with other activists. Some of the affiliate groups have even received substantial monetary backing from large corporate and private foundations. That brings us to Bennett's third point, the project is well funded. The Wildlands Project and its affiliate groups are receiving hundreds of thousands of dollars from corporate and private organizations. One example that Bennett notes is the Wildlands affiliate "Southern Appalachian Forest Coalition." This coalition and its members have received grants from the Lyndhurst Foundation (\$394,000), Pew Charitable Trust (\$625,000), W. Alton Jones Foundation (\$100,000), and the Rockefeller Brothers Fund (\$225,000). Corporations like Patagonia and Ben & Jerry's have also made significant contributions to the project.



Tom Buzby, Director of Governmental Affairs, accepting on behalf of Weaber, Inc., 1997-98 Outstanding Contributor of the Year Recipient.

### What does this mean for me as a Pennsylvania Landowner?

It is obvious that in order to reach goal of the Wildlands Project, the personal property rights of landowners will be severely infringed upon. So the next logical question to answer is "how is the Wildlands Project affecting Pennsylvania?" The answer can be found in Department of Environmental Protection's regional round table Special Committee Report regarding proposed Senate Bill 270. In this report, Co-authors Douglas Carlson, Forest County Planning Director and Keith Klingler, PLA President, discuss the links between the Wildlands Project and S.B. 270. Klingler and Carlson conclude that in order for the Wildlands Project to turn over 50% of the United States land mass



back to wilderness, there must be a more centralized planning authority in place. S.B. 270 gives the state just that power by creating joint municipal zoning ordinances and expanding comprehensive planning components.



Henry Ingram, Esq., 1997-98 Outstanding Service Award Recipient.

ties called "municipal planning agencies" who would be granted a full range of authority, as provided by the Intergovernmental Cooperation Law, to make decisions on behalf of municipalities.

S.B. 270 would also strengthen the ability of municipalities to enforce their Comprehensive Plans (CP's). This is a novel idea at face value, however, it begins to sour when you look at who will now mandate the components of municipal CP's. Under S.B. 270, any natural or cultural resource that requires protection by the State or

Under the current Municipal Planning Code, (MPC) joint municipal zoning ordinances are illegal due to their "exclusionary zoning" nature. Under S.B. 270 the MPC would be altered to increase the parameters of the area in question, in order to escape exclusionary zoning. In point, municipalities would no longer be guaranteed the ability to provide for all types of land use within their borders. The joint municipal zoning ordinance would be enforced by enti-



Peter Winkler, accepting PLA's "Congressman of the Year" award on behalf of Congressman John Peterson.

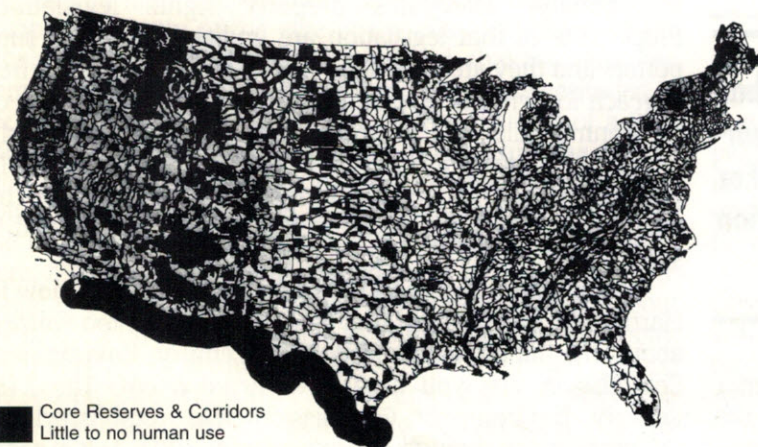
Federal governments must be identified in municipal CP's. Municipal CP's would also be forced to fall in accordance with county CP's. What happens if a municipality feels that its CP needs are different from County, State, and even Federal needs? Under S.B. 270 the Commonwealth is now given the power to withhold grant monies from municipalities that do not comply. Priority on grant funding is also given to municipalities that participate in these regional planning activities. This could become very costly to municipalities that would also be required under S.B. 270 to update their comprehensive plans every 10 years, no matter their economic or population growths.

The more planning power that municipalities secede to jurisdictional, county, and state governments, the more local autonomy landowners lose in determining how they choose to develop their land. Senate Bill 270 is promoting a "one-size fits all" planning solution to a Commonwealth that is experiencing a myriad of different problems in its numerous municipalities. Regional planning may work in metropolitan areas that are experiencing a great deal of urban sprawl. But, for the majority of rural Pennsylvania, regional planning, especially when designed and dictated by the state, does not address the specific problems that municipalities are facing today.

Source: "A Wild Idea," Matt Bennett, *The Consultant*, Fall 1997  
"Globalized Grizzlies," Michael S. Coffman, PHD



Norm Clark, 1997-98 Outstanding Service Award Recipient. An active member of the PA Bluestone Association, Clark also accepted on behalf of Rep. Sandra Major (R-111), PLA's chosen "Representative of the Year." Both Major and Clark were instrumental in the introduction of HB 1975, a bill designed to protect small quarry operations and landowners from regulations under The Non-Coal Surface Mining Act.



Core Reserves & Corridors  
Little to no human use  
Buffer Zones  
Highly Regulated Use  
Normal Use - Zones  
of Cooperation  
Border 21/La Paz Sidebar  
Agreement of NAFTA  
124 Mile Wide International  
Zone of Cooperation

Indian Reservations  
Military Reservations

## Simulated Reserve and Corridor System to Protect Biodiversity

As Mandated by the Convention on Biological Diversity, The Wildlands Project, UN and US Man and Biosphere Program, Various UN/US Heritage Programs, and NAFTA

Mapping for the area West of the Great Lakes and Mississippi River is completed. Mapping to the East of the Great Lakes and Mississippi River is at various stages of completion.

Sources: The United Nations Convention on Biological Diversity, Article 8a-e; United Nations Global Biodiversity Assessment, Section 13.4.2.2.3; US Man and the Biosphere Strategic Plan, UN/US Heritage Corridor Program, "The Wildlands Project", Wild Earth, 1992, and the Border 21 Sidebar of NAFTA.

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# 21st Century Environment...what?

by Keith Klingler

You've got to hand it to Governor Tom Ridge. He has amassed a huge war chest to fund his campaign for reelection which, by all accounts, is a foregone conclusion. Moreover, his Democratic opponent, a longtime state house member from Pittsburgh, is not real well known statewide and apparently will openly campaign as a business-bashing liberal. Political observers would probably say Mr. Itkin won't be able to raise enough money to achieve name recognition and get his message across, even assuming that his message is something voters want to hear. Pennsylvania is running a huge budget surplus for which the Governor doesn't hesitate to take credit. He can now propose to cut our taxes and increase his popularity and make us forget his recent gas tax hike. Politicians seem to have an uncanny knack for making us forget the bad stuff...our memories are pretty short.

OK, Tom Ridge is a shoo in and we may get a tax break. "What's wrong with that?" "After all, who else would I vote for? Where else would I go?" A good point but let's not allow the euphoria of the moment to obscure some political realities. Let's stop and think that we're going where the Governor is taking us and vice versa and by all accounts, he wants us to take him to Washington D.C. He is obviously extremely bright, attractive, energetic and ambitious. Good qualities. You never hear anyone question his honesty, his interest in helping people or his ability to lead and govern. Perhaps most significantly, he seems to have unerring political instincts. He seems to know intuitively which way the political wind is blowing or, for the cynics among us, which way the crowd is marching (important information to know if you're trying to get out in front and be seen as leading the crowd).

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**This might explain a lot of things the Governor has done which don't seem to make sense to landowners and which we wouldn't have expected. For example, he has abandoned wetlands regulation reform.**

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In terms of the tactics of election politics, Governor Ridge doesn't have to worry about his political base - the business community, farmers, suburbanites and rural Pennsylvanians. It is "locked in" with no other place to go. This might explain a lot of things the Governor has done which don't seem to make sense to landowners and which we wouldn't have expected. For example, he has abandoned wetlands regulation reform. In Congress he was a



vocal advocate of HR 1330 which would have brought much needed relief to landowners. When he got to the Governor's Mansion, he flipped. To blunt Howard Fargo's HB 200 (the state version of HR 1330), he appointed an advisory committee to investigate what reforms are necessary. It was a classic ploy to hold up legislation the Administration didn't want to see moving. What you do next if you want to appeal to wetlands huggers is appoint enough people to the committee who want more stringent wetlands regulation giving them a majority and then call it the

Wetlands Protection Advisory Committee. Voila, you are now viewed a supporter of environmental protection and natural resource conservation and you've derailed wetlands reform legislation. All the environmentalists can now feel free to forgive the Governor for HR 1330 and you owners of "wetlands" are left holding the bag. It isn't pretty but it works and it tells you a lot about which way the Governor thinks the crowd is marching.

This would also explain why the Governor would create something called the Green Government Council. In April he issued an Executive Order establishing the mission of the Green Council as "...putting environmentally sustainable practices into state governments planning, policy making and regulatory operations..." Some of you will consider this kind of thing as political posturing or eyewash but it does tell us to whom the Governor is reaching out. It surely is not PLA members who are striving to restore reason and balance in environmental regulation. If he was reaching out to us, it would have been called the Wise Use Coalition or Property Rights Council. With this kind of stuff going on, you can understand why the Administration is not supporting Senator Madigan's property rights legislation. Proponents of that legislation are traditionally Ridge supporters and they are locked in. This leaves the Governor free to reach for what he apparently perceives as a large bloc of environmentalist and preservationist voters. He obviously wants to be known as the Green Governor. This is probably good politics for him but bad for those of us who believe the pendulum has swung too far in the wrong direction and is stuck there.

When you understand the game that's going on now in Harrisburg, maybe - just maybe - you don't get too worried about the much ballyhooed 21st Century Environment Commission that you may have heard about. The 21st Century Environment Commission was established by Governor Ridge through Executive Order 1997-4. It is comprised of 40 members including: legislators, seven Cabinet Secretaries, the Physician General, and representatives of industry, environmental organizations, the service sector, academia, builders, mining, farming, and every level of municipal government.



According to the Commission's press releases:

**...The charge of the Commission is to establish Pennsylvania's environmental priorities for the 21st Century guided by the principle of providing a better environment for future generations without inhibiting the ability to prosper. The Commission first developed a vision for Pennsylvania, identified existing problems, and set ambitious goals for the state. It then developed strategies to meet those environmental goals based on sound science and cost-effective approaches, engaging the various levels of government, institutions and the private sector. It also proposed indicators and a report card to measure real progress toward those goals...**

Commissioners identified a broad range of issues and decided on four priority areas: Environmental Stewardship and Education; Sustainable Use of Natural Resources; Human Health and Environmental Protection; and Land Use. Areas being addressed include: life-long environmental education programs, natural resource management, the impact of state policies on our environment and growth patterns, going beyond compliance, facilitation of environmentally sound land use practices, and the recognition that the strength of Pennsylvania's economy is inextricably tied to the quality of its natural environment and community health.

It all sounds pretty good but, like everything else, the Devil is in the details and from what we hear, the Commission's draft reports are steeped in the concepts associated with today's pro-environmentalist, anti-growth climate and pay homage to the buzzwords which seem to have taken on an almost talismanic quality. You know them: biodiversity, control of growth, statewide planning, net gain of wetlands, government purchases of land to preserve natural areas, farmland preservation sprawl prevention - the list goes on and on.

As you might expect, the Commission's membership is comprised mostly of the elite of the elite, the bluest of the bluebloods and recognized movers and shakers, although some union guys and township supervisors are sprinkled in for zest and "diversity." This is a classic example of a Blue Ribbon panel - almost every base is touched and the assembled collective wisdom is somehow assumed to be able to solve some major problem or create some master plan for the betterment of mankind. But if that's what is going on here, a couple of questions should occur to you. First, Tom Ridge is only going to be in the Governor's Office for about 2% of the 21st Century. What gives him the right to appoint a commission to set an agenda for anything much beyond his second term? He wasn't elected Emperor - just Governor. More importantly, where did the 40 or so Commissioners get the right or, for that matter, the qualifications to set the agenda. Besides the Governor and Senators Madigan and Musto, the only elected officials in the whole shebang are a state representative from Philadelphia, a township supervisor from Lancaster County, a Commissioner from Somerset County and a recently defeated state representative from the

Northeast.

There were a couple of other cute tricks in the Commission appointment process. When you look at the Commission roster, you see an executive from a robotics manufacturing concern, Todd Simmonds, you see a prominent Philadelphia attorney, Joe Manko, and you see "young" Bill Scranton. "Not too bad," you think, "good to balance the Cabinet Secretaries with some solid, private sector people." But then look at their respective alternates. Mr. Manko's alternate is Joanne Denworth, head of 10,000 Friends of Pennsylvania and President of the Pennsylvania Environmental Council and a leading growth management advocate in Pennsylvania. Mr. Scranton's is Bernard McGurl, Executive Director of the Lackawanna Corridor River Association and Mr. Simmonds' is Ms. Geri Unger, Director of the Rachel Carson Institute. Doubtless these are all good people, who have nothing but their view of the best interests of Pennsylvania on their minds. But it is their affiliations that tell you what you need to know. Suffice it to say that none of these individuals are well known as advocates of property rights. Really this looks basically like another Green show.

Some of you may be tempted to think that this is all political eyewash and posturing - nothing to really worry about - just some report that will be put up on the shelf to gather dust. It may be but don't be too sure. Just remember, planners like to see their plans implemented and tinkerers love to tinker (how else did they get their name?!). Watch out when the "vision statement" is followed by an "action plan." Watch out when they tell you, somewhat defensive-

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ly, that "every step of the process has been open to the public and public involvement is encouraged." Politicians know that setting up a "public participation rubber stamp" is good politics and we're talking about darn good politicians. They also know that most of you out there don't have the time to go to open houses to discuss vision plans or to read a Commission draft report rolled out by the staff.

This is not to question the good faith of these Commissioners. I'm sure they truly believe they know what's best for Pennsylvania and Pennsylvanians. But you do need to focus on what this exercise tells you about which way the Governor thinks the wind is blowing and the direction he sees a majority of voters marching. It shouldn't give any comfort to those of you who think the pendulum has swung too far. And if the work of the Commission is going to be taken seriously, we all should check to see if there has been any meaningful discussion of the protection of private property. A lot of that biodiversity the Commission thinks should be preserved is in your backyards.



## ***Major Wetland Decision Good News for Property Owners***

It has been over twenty years since Congress last addressed the "wetlands" issue. This could change in the wake of a significant Court of Appeals Decision regarding the Section 404 wetlands permitting program. In *James Wilson v. U. S. Army Corps of Engineers*, the United States Fourth District Court of Appeals overturned a criminal conviction for the violation of Section 404 on the grounds that the Corps does not have jurisdiction to regulate activities in certain "isolated wetlands." The three-judge panel overturned criminal convictions against Interstate General Corp., and a Southern Maryland developer accused of illegally filling in wetlands.

Two years ago, a U.S. District Court jury convicted Interstate General Corp., and its chairman, James J. Wilson, of Middleburg, of criminally destroying wetlands in Charles County, Maryland. Wilson was sentenced to 21 months in prison and appealed his decision. The company argued that its land was miles from any major river and hundreds of yards from the nearest creek or stream, therefore, beyond the scope of the U. S. Army Corps of Engineers (COE). Upon appealing the case, the U.S. Fourth District Court ruled that the COE had no authority to regulate "isolated wetlands," which do not flow directly into navigable waters, hence do not affect interstate commerce. The COE has been interpreting the Clean Water Act (CWA) very broadly by using the Commerce Clause of the Constitution to assert regulating authority over all wetlands that hold the potential to affect interstate commerce. This could mean *any* waterway that eventually flows into rivers navigated by ships or *any* body of water used by migratory birds. In practice, this has given the Corps rights to pass judgment on nearly every patch of wetlands in the United States.

The full impact of the *Wilson v. U.S. Army Corps* decision is still unclear. The appellate courts opinion serves as precedent for only cases that encompass the Fourth District (Maryland, Virginia, West Virginia, and South Carolina) but courts hearing cases from other states do take guidance from decisions issued in other Federal Circuits.

The last time Congress addressed the wetlands issue was in a 1977 amendment to the CWA Section 404, which granted the Corps authority to issue general permits. This action was preceded by an influential Callaway court decision which broadened the Section 404 jurisdiction under the Commerce Clause.

Over the past twenty years, Congress has been extremely passive in using its authority to determine the structure of our nation's wetland policy, even though they have been aware of the unconstitutionality of such policy and the harsh affects it has had on landowners. Hopefully, *Wilson v. U.S. Army Corps* will spur some action by Congress, who in the past, has left the evolution of wetlands policy up to judicial and administrative actions.

## ***PLA President Appointed to Pennsylvania Greenways Partnership Commission***

On April 29, 1998, Governor Tom Ridge, under Executive Order No. 1998-3, established the Pennsylvania Greenways Partnership Commission. The Commission's role is to develop

an action plan for the advancement of the Pennsylvania Greenways Partnership Program, which includes Rails-to-Trails. Our own PLA President, Keith Klingler, was one of only 21 individuals to be appointed by the Governor to serve on this Commission. With this appointment, PLA plans to bring private property rights concerns to the attention of those involved.

## ***Future Looking Brighter for On-lot Sewage System Technology?***

In the November 1997 issue of the *Pennsylvania Landowner*, we discussed the lack of flexibility and affordability with current on-lot sewage technologies available to Commonwealth landowners. Since then, the Department of Environmental Protection, in conjunction with Delaware Valley College, have made some progress in finding a solution to this problem. On May 12, DEP Secretary James Seif, joined Dr. Thomas C. Leamer, president of Delaware Valley College in Doylestown, in highlighting potential new technologies for on-lot sewage disposal. Seif stated that "More than a million Pennsylvania residents rely on on-lot sewage systems for their homes."

Identified as six applicable technologies for Pennsylvania were constructed wetlands at-grade absorption beds; drip irrigation and various sand filters and filter media technologies. These technologies will not only give property owners additional options, but will also make on-lot septic systems more affordable. Although no official figures have been released, experts in the field are projecting the costs of these new technologies to range from \$1,500 to \$2,000. This would be a substantial savings from the current sand mound septic systems that can cost as much as \$8,000 to construct or spray irrigation systems which can run as high as \$15,000 to construct.

The four-year evaluation period for these new technologies will be over in October of 1999 and the Department will then determine which technologies could be approved for use in Pennsylvania. However, the use of these new technologies would require changes in the current regulations regarding on-lot systems.

## ***PLA Continues Property Rights Education***

On June 18, 1998, PLA President Keith Klingler once again had opportunity to present a select group of Pennsylvania teachers with an array of information about property rights issues. Known as the Americans for the Competitive Enterprise System (ACES), the program engages the participation of Pennsylvania businesses in hosting informational forums geared towards "educating our educators" about issues facing today's business world. Common sense environmental regulations and the effective and economic use of private property are certainly key factors in the success of business today. Hopefully, a better understanding and knowledge by our educators of today's unfair and unconstitutional environmental regulations will spill over into the classrooms where young people may ultimately help to make necessary changes occur.



# BAD NEWS

## ***Federal Judge Dismisses Chenoweth Suit Against AHRI***

On March 2, 1998, federal judge Henry H. Kennedy ruled that Congressman Helen Chenoweth (R-ID) did not have standing to bring suit against the Clinton Administration to stop the American Heritage Rivers Initiative (AHRI). Chenoweth had argued that, as a Member of Congress, she had been denied the right to vote on whether revenue could be spent for the Initiative. The Constitution requires that Congress first approve all revenue spending before the Executive Branch may act. The Clinton Administration skipped that part and went right to the check writing.

William Perry Pendley, attorney for Chenoweth's suit, said of the Judge's decision to dismiss the case, "I believe Judge Kennedy could not be more wrong." Pendley cited precedent in *Moore v. House of Representatives* in which a Member of Congress sued because a revenue bill did not originate in the House of Representatives as the Constitution requires. Perry argues the AHRI followed almost identical circumstances. "Needless to say we will appeal. I believe Judge Kennedy will be reversed," Pendley said.

Pendley went on to alert private landowners of their rights to sue on their own. "At the same time, if any rivers are designated and local people are hurt as a result of that designation - for example, they wanted out of the program but were included over their objections - those local people will have standing to sue and we will be back in court. This matter will be heard. A court will have the opportunity to decide if Article I of the Constitution means what it says, that Congress and only Congress writes federal programs into law." Pendley concluded, "Meanwhile, keep up the pressure at the grassroots."

*Reprinted from the Deweese Report, Vol. 4, Issue 4, April 1998*

## ***American Heritage Rivers list narrowed to 30, but still alive***

Although they were warned about meeting without congressional authorization, members of the American Heritage Rivers Initiative Advisory Committee met in Washington, D.C. May 11th and 12th to narrow the list of 126 nominated rivers. The committee was supposed to have selected 20 rivers to submit to the President for final selection of 10 waterways, however, members of Congress started to fax in heavy opposition to rivers located in their districts and things apparently got a little muddy. The group came up with 30 rivers and is expected to meet in the near future to slim it down to 20. Two rivers from Pennsylvania

have made the final cut of 30. They are the Upper Susquehanna River and the Rivers of Steel (Allegheny, Monongahela, and the Ohio.) Under the guidelines published in the federal register, opposition by a congressional member to a river in his or her district is the only way to exclude designation. We urge PLA members to write to their congressmen and request that these rivers be taken off the American Heritage Rivers List.

## ***Clinton Announces New Clean Water Action Plan***

Recently, President Clinton announced his Administration's new Clean Water Action Plan. The plan calls for an increase in programs regarding watersheds, stiffer protections against non-point source pollutants, and a goal of obtaining 100,000 acres of wetlands annually by the year 2005. These wetland gains are to be primarily funded through federal programs and achieved through compensatory mitigation. The Administration's quantifiable goal of 100,000 acres of wetlands annually spells disaster for small businessmen and landowners. The exorbitant cost and unreliability of wetland mitigation will render many small scale entrepreneur endeavors unfeasible.

## ***Tropical Forest Bill to Fund Environmental Causes***

The Senate may soon vote on a bill that the Clinton Administration could use to funnel money to the environment movement. Sponsored by Senator Richard Lugar (R-IN), the Tropical Forest Conservation Act of 1998 (S. 1758) would authorize \$400 million over three years to finance debt-for-nature swaps. Under the program, President Clinton could offer debt relief to certain developing countries, provided these countries agree to establish special funds in their own currencies for conservation programs. The bill places few limits on the use of these funds, stipulating only that they go to "nongovernmental environmental, conservation, and indigenous peoples organizations of, or active in, the beneficiary state." The inclusion of the words "active in" is significant in that these words provide a loophole through which U.S.-based environmental organizations could obtain funding. Past experience with the Enterprise for the Americas Initiative (EAI), which S. 1758 extends, suggests that S. 1758 would be used to support all kinds of environmental activism. Jamaica's "Earth Day 1994" and Bolivia's "Children Ecological Action Program" were both funded through the EAI.

*Reprinted from the Relief Report, Issue No. 65, June 1998.*



## BLUESTONE MEMBER WINS REPUBLICAN PRIMARY

Bluestone Association and PLA member, Don Sherwood, will be the Republican candidate for the 10th Congressional District seat being vacated by long-time Representative Joe McDade who is retiring. Mr. Sherwood is a prominent businessman and community leader from Tunkhannock who is a strong supporter of property rights and Bluestone quarrymen. Congratulations to Mr. Sherwood.

## BLUESTONE EXPO COMING THIS FALL

The Bluestone Quarrymen's Association will hold its first Bluestone Expo on September 19, 1998 at the Wyoming County Fairgrounds in Messhoppen. The Expo will feature quarrying equipment displays, stonecutting demonstrations and examples of the Bluestone craft. It promises to be an informative and entertaining event. Look for further announcements in your newspaper or call Norm Clark for details at (717) 965-2519.

### EDITOR'S NOTE:

Good grassroots work by PLA Board Member Norm Clark generated great support from the County Commissioners in the Northeast for HB 1975 and led to the following letter. PLA Legislators of the year, Senator Roger Madigan (1997) and Sandy Major (1998) have been instrumental in this effort to achieve regulatory relief. Disappointingly and somewhat incomprehensibly, DEP opposes HB 1975.

Honorable Robert D. Reber, Jr., Chairman  
House Environmental Resources and Energy Committee  
House Box 202020  
Harrisburg, PA 17120-2020

Re: HB 1975 (PN.2549)

Dear Representative Reber:

I am writing on behalf of Northern Tier Regional Planning and Development Commission (NTRPDC) consisting of Bradford, Sullivan, Susquehanna, Tioga and Wyoming counties. Our group was formed to foster and encourage economic growth in our region and to promote the well-being of our citizens. Over the past few years, we have joined in the efforts of the Bluestone Quarrymen's Association to save a small but vital industry in our region and to preserve a way of life, the small family farm and a unique local craft, which are important contributors to the cultural history and economic prosperity of the Northern Tier.

Generations of families in the rural areas in the Northern Tier have quarried Bluestone, a flagstone which is rare and highly prized for its beautiful appearance as indoor flooring, formal walkways and court yards and fireplace mantles, to name but a few applications, from inaccessible areas of their farm properties such as steep mountainsides and remote ledges. Bluestone is cut and shaped with hand tools and saws, in one or two man operations, to earn extra income and is a classic demonstration of the historic ingenuity of our citizens to make multiple use of land resources.

Unfortunately, the Bluestone craft does not fit neatly into the regulatory model which is designed for large mechanized mining operations, with hundreds of thousands or millions of dollars in sales and which can afford engineers and consultants to fill out voluminous permit application modules and undertake scientific studies and surveys of the impacts of mineral extraction on hydrology, wildlife, archeological values and the like.

Small Bluestone quarrymen were being driven out of business because of DEP regulations under Act 219, the NonCoal Surface Mining Act and what is essentially a cottage industry and art form in our part of the world was on the wane.

With our support and encouragement, in cooperation with the Bluestone Association and under the watchful eyes of Senator Madigan and Representative Sandra Major, DEP recently provided some regulatory relief to the Bluestone quarrymen in the form of streamlined permitting and other measures to ease regulatory burdens. However, DEP was limited in the relief it can give because of the express mandates contained in Act 219.

The final piece necessary to restore the health and vitality of the Northern Tier Bluestone industry is HB 1975, which as you know was introduced by Sandy Major. This Bill will relieve operators of registered Bluestone sites which do not affect local hydrology and don't harm the environment, from regulation under Act 219.

This will go a long way in preserving the local Bluestone industry and, I might note, put us on a level playing field with our flagstone competition from across the border in New York.

HB 1975 is a carefully crafted solution to a problem which burdens the Northern Tier Counties. We join statewide organizations such as the Pennsylvania Farm Bureau and the Pennsylvania Aggregates and Concrete Association in urging you to move this Bill through your Committee and then advocate its passage by the House.

Thanks for your interest and favorable support.

Very truly yours,

Kevin D. Abrams  
Executive Director



# 1998 Fly-In for Freedom:

*Local Vision, Global Hope*

## PLA REPRESENTED AT WASHINGTON CONFERENCE

Over 300 participants from across the country, united at our nation's capital on June 5-9 for the 1998 Fly-In for Freedom. The event theme "Local Vision, Global Hope" brought together people from numerous public and private industries and affiliations including natural resource extraction, farming, tourism, recreation, and the government. The conference was hosted by the Alliance for America, a fifty state network of hundreds of independent grassroots organizations (including the PLA) which advocate the responsible use of public land and natural resources and the restoration and protection of constitutional private property rights.

The PLA was represented at this national conference by Shane Cairns, PLA Director of Administrative Services, and Dale Anderson, PLA board member and affiliate of PA Forest Industry Association. Other Pennsylvanian's in attendance were Kim Cable and Roy Magee of the Hardwood Lumber Manufacturer's Association.

The Fly-In served as an educational platform providing seminars and workshops on issues such as private property rights, global treaties (Kyoto Protocol), the Interior Columbia River Basin Ecosystem Management Plan (for our friends in the west), the "Wildlands Project" (as introduced to you in this issue), and public lands management. In addition to the conference, the Fly-In offered an opportunity for individuals and organizations to voice their comments and concerns to elected officials. Among the national concerns lobbied by the PLA were the *Omnibus Property Rights Act* (S.781), which would establish a more uniform and efficient Federal process for protecting property owner's rights, and the *Private Property Rights Bill* (H.R. 1534), which would expedite the access to Federal Courts for injured parties who's rights have been deprived by final action of the Federal Government. The PLA also proactively voiced our members concerns for the lack of wetlands reform (Clean Water Act) and the Endangered Species Act.





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## Show Your Commitment to Property Rights!

The membership categories below were initiated with the presumption that those owning higher acreage were, in all probability, relying more on their land as a source of livelihood and therefore, had a much higher stake in the property rights debate. Since PLA relies solely on individual membership dues and contributions to meet its financial needs, we hope you will join under the appropriate category. If, however, finances preclude you from meeting the suggested guidelines, your education on private property rights issues is more important than the amount of your membership; therefore, you may enroll in a more affordable classification.

### 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 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 Business 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.*

Enclose form with check or money order payable to:

**Pennsylvania Landowners' Association**

P.O. Box 391  
Waterford, PA 16441

Please allow up to 6 weeks for delivery of membership card.

### 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 wetlands provisions." \$15.00 donation.

#### ☐ Wetlands Videotape (VHS) ☐ Part I ☐ Part II

"Our Environment, Whose Property?" \$15.00 donation each part.

### Please complete this information:

Name \_\_\_\_\_

Address \_\_\_\_\_

County \_\_\_\_\_

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

Phone Number (\_\_\_\_) \_\_\_\_\_

Fax Number (\_\_\_\_) \_\_\_\_\_

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

Membership amount \$ \_\_\_\_\_

Less 50% fee reduction if

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

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

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

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

### Pennsylvania Landowners' Association, Inc.

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