PENNSYLVANIA LANDOWNERS ASSOCIATION
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PENNSYLVANIA
LANDOWNER

VOLUME V • NUMBER 2 JUNE1992

Photo by: Linda Steiner courtesy of Penn Lines Magazine

Allegheny River Designated Under Wild & Scenic Rivers Act

U.S. Senator Arlen Specter Hears Disappointment From PLA

On April 8, 1992, Senator Arlen Specter, apparently responding to a flood of letters from opponents of the proposed Concord Resources waste disposal project in Clarion County, reneged on his commitment to PLA to notify affected landowners and PLA of his intention to reintroduce S. 606, the bill designating 85 miles of the Allegheny River as recreational under the Wild and Scenic Rivers Act.

PLA had expressed concerns about the reintroduction of this bill to the Senator's staff and had received assurance that if it were to be reintroduced, a Senate hearing would be held to all persons who might be affected to express their views.

Implicit in this assurance was the commitment to notify PLA if and when the bill was being reintroduced and when and where the hearing was to be held.

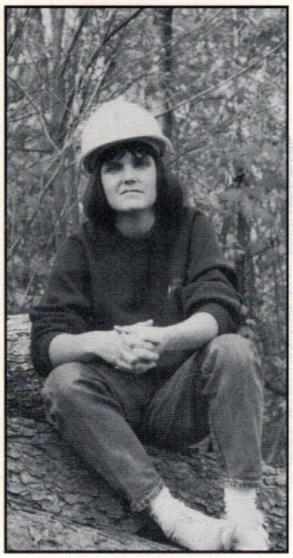
PLA had to learn from the media that Specter had, in fact reintroduced the bill without notifying PLA and that the hearing was held with only one person being invited to speak, a well-known and strong advocate of the river's designation.

Susan Becker from Specter's staff confirmed that the Senator had reacted to the "flood" of letters from opponents of the Concord Resources project, although earlier both Specter and freshman Senator Harris Wofford had expressed reservations about using the designation process under the Wild and Scenic Rivers Act to block a waste disposal project.

PLA is disheartened by the apparent willingness of elected representatives, such as Representative Bill Clinger and Senator Specter, to yield so quickly to political expediency when legislating in an area which can trample private property rights and believes the rights of Pennsylvania landowners should not be so cavalierly disregarded. Originally, PLA had been concerned that a designation would preclude or severely restrict the use and enjoyment of property without compensation. Now comes the dual concern that the entire process of environmental legislation can be subverted to serve the "agenda" of a very narrow interest group. It now appears that it is the number of letters, and not the merits of the proposal, that will influence our elected representatives.

ACTIVISM

Portrait of an Activist



Mary Wirth
Executive Director, Allegheny Hardwood Utilization Group

Mary Wirth is a wife and mother of two small children. She was instrumental in the formation of the Pennsylvania Forest Industry Association and recently accepted the position of Executive Director for the Allegheny Hardwood Utilization Group. Mary also serves as a regional director for PLA.

At some point in everyone's life there reaches a point where they are pushed to the wall, a point where to back off is to renege on one's values, a point where you can honestly say "I'm mad as hell and I'm not going to take it any more!" I reached that point several years ago and decided it was time to act, and I've been an activist ever since. I was recently awarded the American Pulpwood Association National Forestry Activist Award at their annual meeting in Orlando, Florida. The very fact that the award exists is evidence of the crisis the forest industry and other resource users and private landowners are facing. The American Pulpwood Association has recognized that it is going to take the efforts and ACTIONS of each and every one of us to reverse the current preservationist trends in this country. Never has our input and response been so crucial.

Becoming an activist is not a spontaneous decision one makes. It is a process that begins with an awareness of an issue, and the acknowledgement that this issue is important to you and your basic personal beliefs. Next there must be an understanding of the issue which involves researching the facts and knowing exactly what it is you are supporting. Then there must be a conviction, a realization that this is not just something you agree or disagree with, but something that touches your values and morals and is worth standing up for. Only then can there be the commitment to action, a decision that you are willing to fight for this cause and dedicate a portion of your time and efforts to it.

When one has reached a commitment to action, there is NO limitation to what one person can accomplish. Yes, it takes hard work, and no, you can't change things overnight. But YOU can make a real difference. For me it was an awareness that an entire profession of hard-working, decent people were under such a vicious and unfounded attack by people they don't even know. I was amazed that the forest products industry was labeled as anti-environmental simply because they utilize a natural resource, a renewable resource at that! It was an added incentive that I perceived our livelihood and way of life being threatened. The tactics of hysteria and misinformation used by environmental groups was more than I could accept, thus I got involved in educating people on what forest management REALLY involves and dispelling the myths of environmental destruction.

I can say point blank I am NOT a timber baron or an anti-environmentalist. I simply believe in wise management and utilization of our natural resources, and I believe people ARE important. I encourage each and every one of you who are upset with the direction environmental groups are taking our country toward to get involved. I am totally convinced that the day we all take action is the day common sense will be put back into resource management in this country.

The Northwest Chapter of the Pennsylvania Land Surveyors met on May 12, 1992, in Marienville with PLA business member, Lynn Hofius. Lynn, also a member of the Surveyors Association, provided a videotape presentation of "Wetlands: Our Environment, Whose Property?" (Part II) "A Call to Action." The videotape proved to be a documented source of information and an educational resource for the surveyors, frequently confronted with the wetlands issue. Shown L to R are Bob Mushweck, Lynn Hofius, and Ron Fox.

In support of the American Cancer Society, The Pennsylvania Landowners' Association donated a 1/2 cord split, seasoned ash firewood for a recent fund raising event thanks to PLA member George Kirik (shown right). Al Cox (left) of Cox Family Auction, hosted the complimentary auction in Corry, Pennsylvania on April 22, 1992. PLA thanks all members who participated in this fund raiser. Their activism is met with much enthusiasm and approval from the community.

TO: Good Housekeeping Editor
RE: "Green Watch" April 1992 issue

I always find it interesting how people who don't have to make their living off the land are so quick to condemn those who do as having no respect for the earth and environment. You all must have unusual homes that do not use farmers' products or products of trees—a home and workplace with no wood or paper. No one wants to do away with the wetlands as pictured in your magazine. But when a landowner cannot use his land because 7 days out of the year it may have wet soil 18" below the surface, that is when the regulations are too restrictive. Before making a decision on an issue, make sure to look at BOTH sides of the issue.

Denise McColly, Ligonier, PA

Court Decisions Continue To Benefit Property Rights

Michigan Circuit Court Judge Gene Schnelz has ruled that a woodlands ordinance is unconstitutional, saying that the right of private property owners to use their property is one of the basic freedoms on which the United States is based.

The dispute began when two private property owners in West Bloomfield Township removed trees on property they own. The township sued them under the woodlands ordinance, and a countersuit was filed claiming that the woodlands ordinance violated property development rights.

Judge Schnelz ruled against West Bloomfield, and observers termed the decision a victory for economic rights over environmental regulations.

Counsel for the property owners said that in striking down West Bloomfield's ordinance as unconstitutional the Oakland County judge was stating that the language of such ordinances cannot be vague or overbroad, lack definite standards, or be incapable of being rationally administered.

"In our rush to protect what has been construed as our "fragile" environment, we must never forget such basic rights. It is why such legislation must be precise with definite standards and proper protection for the property owner," said Judge Schnelz.

The decision is being appealed by West Bloomfield Township.

In another case, a Florida landowner may be paid $175,000 because the county's wetland law kept him from using his property. Seminole Circuit Judge O.H. Eaton recently ruled that the county wetland restrictions basically condemned Martin Chira's property. The land is in the environmentally prized Spring Hammock and abuts an industrial area. The judge ruled that the county can pay Chira $175,000 for five acres or water down the wetlands law so Chira can build.

Chira purchased 17 acres in 1974 and sold off 12 acres for $435,000. When he attempted to sell the remaining five acres in 1987, the county had enacted a wetlands law and he could build on only one-half acre.

Chira's attorney said the county's indifference to property rights has allowed overregulation of property, businesses and private life.

The U.S. Seventh Circuit Court of Appeals in Chicago recently ruled that the Environmental Protection Agency overstepped its authority when it fined a developer for filling in a depression in a 48-acre cornfield. This decision restricted the federal government's right to regulate certain wetlands. The ruling, Hoffman Homes, Inc. v EPA, is significant because the court found that some wetlands may fall outside of federal control if they are "isolated" or not directly associated with a river or lake. The ruling also rejects arguments that the Commerce Clause of the U.S. Constitution, which empowers the federal government to regulate interstate trade, gives federal agencies the right to regulate such "isolated" wetlands simply because they may be used by migratory birds "as a stopover" on the way to winter habitat.

Landowners Face Nutrient Dilemma

H.B. 496, The Nutrient Management Act, recently passed the state House of Representatives and is now in the Senate Agriculture Committee awaiting release. PLA was recently contacted by the Family Farm Movement based in Lancaster county regarding their concerns with the bill which led to the association's review of the current proposal.

H.B. 496 was designed to control pesticides, fertilizers, manure and other nutrients being applied in excessive amounts to prevent pollution of ground water and aid in the clean up of the Chesapeake Bay. PLA and many others are concerned and wondering if yet more regulation is the answer to higher water quality and pollution control measures. The association recently informed several key members of the Senate Ag Committee of its concerns, stating that "there are a host of regulations already in place which allow federal, state, and local agencies the ability to fine individuals actually causing pollution. Enacting additional legislation would merely add to the already existing quagmire of regulations currently protecting the state's water resources."

PLA believes farmers should be given the opportunity to enact voluntary management plans coordinated through private consulting firms. Mike Brubaker, an agronomist and president of Brubaker Agronomic Consulting Service, Inc., recently stated "Regulations would be okay if they were properly written and intelligently implemented." However, he emphasizes that "farmers are currently adopting new technology that is helping the environment on a voluntary basis. They have in the past and production agriculture will continue to be responsive to new technology that will improve profitability."

Pointing to the last five years since the Chesapeake Bay agreement was initiated, he cites the fact that "phosphorus levels are declining without regulations" acknowledging that phosphorus has already been reduced by 18 to 20 percent. "That's extremely significant," notes Baker, adding that "there is a very significant trend indicating farmers are making voluntary changes themselves as new information becomes available. They've also adopted nitrogen soil testing on a voluntary basis."

As currently written, the bill would designate the Department of Environmental Resources as the agency responsible for implementing and enforcing the bill, instead of placing authority with the Pennsylvania Department of Agriculture. Additionally, the bill would allow the DER power to establish mandates as to when and how a farmer or other landowner could apply fertilizers and animal manure. Such dictation would prove to be disasterous for farmers.

Representative John Barley (R-Lancaster) was an original cosponsor of the bill but has since withdrawn his support stating he was left out of negotiation meetings. Barley, who is also a master farmer, stated, "This is a total blank check to DER to have total control over farmers' operations."

Those concerned with H.B. 496 may contact the association office or write to their state senator as well as to: Honorable Edward Helfrick, Chairman, Senate Agriculture Committee, P.O. Box 27, Main Capitol Building, Harrisburg, PA 17120.

One Of The Reasons It Never Ends

By Henry Ingram, Esq.

We all know that environmental regulations can have dramatic and often devastating impacts on landowners and land use and development. Story after story is told about some poor citizen who has become ensnarled in a regulatory problem which defies solution on any rational basis. I have often heard the words "stunned," "astonished" and "outraged" used by people to describe the abusive conduct or arrogant attitude of an environmental regulator. I am sure readers of these pages are often struck with the thought "can this really be happening in Pennsylvania or America?"

When hearing about someone losing the right to use his land or being hit with an excessive penalty, a normal reaction is to think: "Something is really wrong here. I'll call my legislator and ask him to look into the situation." How many times has the response been "I've never heard of such a program. I'll look into it and get back to you" or "It couldn't be, that just doesn't sound right." When the legislator does get back to you, how many times have you heard: "I don't agree with it but my hands are tied, it's a DER regulation."

The normal reaction at this point is "Well, if we don't like it and he doesn't like it and he is our representative, why doesn't he do something about it?" Readers of the Landower will also think to themselves "Isn't that just what PLA convinced Tom Ridge to do on the wetlands issue and aren't Tom and Jimmy Hayes championing our cause in Congress?" The readers are right but should not be lulled into a false sense of security or go back to sleep. The outrage about some new horror story should not be forgotten because of this one example of something really being done about excessive or abusive environmental regulations.

Instead, readers should stay awake and alert. First, wetlands reform legislation embodied in H.R. 1330 has not passed. Powerful and influential interests oppose it and the ultimate resolution of the current Congressional debate about wetlands is in doubt. Much work remains to be done and supporters of this legislation must keep the pressure on. Readers also should keep in mind that the battle on the wetlands issue has been raging for at least three years and the outcome is still uncertain. Although organizations such as PLA have energized hundreds of thousands of ordinary citizens and focused public attention on the wetlands issue, anti-development, preservationist forces, although "slowed down" to some extent on wetlands, haven't given up and are pressing their agenda on other fronts.

For example, most readers are familiar with well publicized legislative and regulatory initiatives, long advocated by the preservationist lobby, such as the Endangered Species Act, the Wild and Scenic Rivers Preservation Act and the Rails to Trails Act. All the regulatory programs being implemented and even expanded under these federal statutes carry the potential to impose more restrictions on the use of private property and prohibit development of more land and other natural resources.

Similar legislative and regulatory initiatives are emerging continually at the state and even the local government level. For example, the Pennsylvania Department of Environmental Resources is developing regulations that would allow anti-development preservationists to petition the Environmental Quality Board to have areas in Pennsylvania declared off limits for extraction of sand and gravel and quarrying operations. Additionally, the Fish Commission continues to press to have Pennsylvania streams designated as Exceptional Value Waters just so, under DER policies, no permits will be issued for any kind of development. At the local level, anti-development, preservationist groups are seeking to create "environmental compacts" or conservation districts to add another layer of bureaucracy, enviro-regulation and to shackle the use of private property.

It seems that at almost every turn, we run into some new "environmental" initiative or regulatory proposal which affects us as landowners. In the majority of situations, the land use or activity being limited or prohibited is not causing pollution or harming the natural environment. More often than not, the initiative or proposal seems to be based on someone's (usually a stranger's) preference or whim as to how our property should be used or developed.

Much of this anti-development/preservationist activity is encouraged and nurtured by organizations which ordinary citizens and landowners may recognize by name but know little else about. Without getting into questions of their motivation, philosophy or even their political agenda, the purpose here is to focus the reader's attention on some vital facts and information about certain aspects of these organizations.

What follows are "capsule" profiles of five environmental organizations (among literally scores of others which have essentially the same preservationist philosophy) which are considered by many observers to be the most powerful and effective.[1] These organizations are generally considered by legislators and regulators to be in the mainstream, responsible and qualified to participate in the public debate on environmental issues. To put it succinctly, their often strident voices are listened to by public policy decision-makers.

(continued on page 6)

1. Information regarding these organizations appeared in Coal Voice, January/February 1992, Vol. 15:1, and is reproduced here with permission of its publisher, The National Coal Association. The reader's attention is specifically directed to the numbers: the budget, staff and membership of each organization.

National Wildlife Federation

Annual Budget
$92 million

Top Executive's Salary
$200,000

Staff
608

Members
5.5 million members and supporters

Annual Dues
$15.00

Founded
1936

Headquarters
Washington, D.C.

Organization Profile
Largest traditional environmental group in the nation and the richest.

Recent Claim to Fame
Worked with Bush administration to create "no net loss" policy for protecting wetlands.

Techniques
Spreads the message to young and old through at least seven periodical publications with circulation of at least 2 million; these include National Wildlife, International Wildlife, Ranger Rick for children and Your Big Backyard for preschoolers.

Environmental Defense Fund

Annual Budget
$18.2 million

Top Executive's Salary
$125,000

Staff
140

Members
225,000

Annual Dues
$20.00 and up

Founded
1967

Headquarters
New York, NY

Organization Profile
Early landmark victory: DDT ban in 1972; current slogan: "The Power of Positive Solution."

Interesting Info:
Netted $40 million in donated, public-service advertising in three-year campaign on recycling in conjunction with the Advertising Council.

Best Claim to Fame
Developed the key provisions of the acid rain control package of the Clean Air Act Amendments of 1991. Launched consumer boycott of disposable diapers.

Techniques
Uses litigation, public service media campaigns, boycotts and cooperative efforts with business to achieve goals.

National Resources Defense Council

Annual Budget
$16 million

Top Executive's Salary
$120,000

Staff
150

Members
170,000

Annual Dues
$10.00

Founded
1970

Headquarters
New York, NY

Organization Profile
Environmental movement's equivalent of a blue chip Wall Street law firm.

Recent Claim to Fame
Efforts to block oil drilling along the California and Florida coasts led to a 10-year moratorium on off-shore drilling.

Prevailed over U.S. Forest Service plans to clearout and sell timber in national forests in Virginia.

Techniques
Use the power of the courts to function as ad hoc environmental protection agency.

SIERRA CLUB

Annual Budget
$35 million

Top Executive's Salary
$86,000

Staff
325

Members
650,000

Annual Dues
$35.00 with discounts for students and seniors

Founded
1892

Headquarters
San Francisco, CA

Organization Profile
The Sierra Club is the most free-wheeling lobbying and political apparatus of any of the environmental groups."—The Washington Post.

Interesting Info
Political action contributions to candidates in 1989 – 1990 totaled $487,000.00.

Recent Claim to Fame
Worked as the lead floor lobbyists on the Clean Air Act Amendments. Current conservation campaign includes preventing the drilling of oil wells in the Arctic National Refuge. Worked with Bush administration to create "no net loss" policy for protecting wetlands.

Techniques
Strong grassroots philosphy, backed by 57 local chapters and 386 affiliate groups. Conservation campaign or issue agenda developed every two years by 15-member, unpaid board of directors which meets seven times a year.

SIERRA CLUB LEGAL DEFENSE FUND

Annual Budget
$9.3 million

Top Executive's Salary
$132,916

Staff
80

Members
150,000

Annual Dues
None (but $10 minimum contribution to receive quarterly newsletter)

Founded
1971

Headquarters
San Francisco, CA

Organization Profile
Has been referred to by other groups as "the Great Litigating Arm of the Conservation Movement."

Interesting Info
Efforts led to recommendations for/or listings as endangered species in 1990: the silver rice rat, marbled murrelet; and sockeye salmon.

Extracted agreement from the Fish and Wildlife Service to add 150 kinds of native California plants to endangered species list during next four years.

Recent Claim to Fame
Representing plaintiffs in the spotted owl case to stall old-growth logging in federal forests in Oregon, Washington and Northern California.

Techniques
The history of the group has been to sue and sue often. At least 30 law suits are brought annually, mostly against the government and not in its own name. The 1991-1992 docket includes at least 200 active cases.

(continued from page 4)

It is enough to say here that the reason for existence of these organizations is to design, initiate, promote, advocate and implement the anti-development, preservationist agenda in the United States. They are powerful, effective, influential and well funded.[2] What is alarming is that, generally speaking, large segments of the public don't fully understand their methods of operation or the extent of their influence.

Any person who believes in limited government should be very concerned about the influence and agenda of these organizations. There is a real risk that organizations such as PLA and other advocates of individuals' rights to use and develop private property, will be overwhelmed. Obviously, advocates of landowners' rights are currently being outspent and outshouted by the anti-development preservationist lobby. There may be a very serious mismatch in the public debate which will inform decision-making on critical environmental issues and policy.

In the circumstances, readers should abandon any thought of going back to sleep. Instead, stay alert and be prepared to recognize anti-development initiatives and defend yourselves against further restrictions on the use of your property. Above all, please continue and expand your support of organizations such as PLA which focus and advocate your interests and amplify the voices of all Pennsylvania landowners.

2. The national organizations profiled here have branches, sister entities and affiliates in Pennsylvania, all with members and separate funding.

Henry Ingram has practiced natural resources and environmental law in Pennsylvania for over twenty years. He is a member of Buchanan Ingersoll law firm and with John Ward, represents the Association in legal matters. Questions regarding this article or any other environmental matter may be directed to Mr. Ingram in Pittsburgh at (412) 562-1695 or Mr. Ward in Harrisburg at (717) 237-4815.

To sin by silence when they should protest makes cowards out of men.

– Abraham Lincoln

Pennsylvania Landowners' Association — Special Insert

Bills to Work

Information provided by and reprint courtesy of:
Fairness to Landowners Committee, Cambridge, Maryland
Peggy Reigle, Chairman

June 1992

We must push for the passage of the following bills before the election, if we are to resuscitate the 5th Amendment!!! See Page 4 for Action Needed.

W –Comprehensive Wetlands Conservation & Management Act (S 1463 & HR 1330)
P –Private Property Rights Act (S 50 & HR 1572)
N –No Net Loss of Private Lands Act (S 2326 & HR 1439)

W, P & N – Denotes co-sponsors ***W, P & N*** *– Denotes authoring sponsors*

ALABAMA	
Sen. Heflin -D	P
Shelby -D	W P
Rep. Bevill -D	
Browder -D	
Callahan -R	W
Cramer -D	
Dickinson -R	W
Erdreich -D	
Harris -D	W P
ALASKA	
Sen. Murkowski -R	W P N
Steverns -R	W P N
Rep. Young -R	***W*** P N
ARIZONA	
Sen. DeConcini -D	P
McCain -R	P
Rep. Kolbe -R	W
Kyl -R	W P
Pastor -D	
Rhodes -R	W P
Stump -R	W P
ARKANSAS	
Sen. Bumpers -D	P
Pryor -D	P
Rep. Alexander -D	W
Anthony -D	***W***
Hammerschmidt -R	W P
Thornton -D	
CALIFORNIA	
Sen. Cranston -D	
Seymour -R	P
Rep. Anderson -D	
Beilenson -D	
Berman -D	
Boxer -D	
Brown -D	
Campbell -R	P
Condit -D	W P
Cox -R	W
Cunningham -R	W
Dannemeyer -R	W P
Dellums -D	
Dixon -D	
Dooley -D	

CALIFORNIA (Cont'd)	
Rep. Doolittle -R	W P
Dornan -R	W
Dreier -R	
Dymally -D	
Edwards -D	P
Fazio -D	
Gallegly -R	W
Herger -R	W P
Hunter -R	W
Lagomarsino -R	W P N
Lantos -D	
Lehman -D	
Levine -D	
Lewis -R	W
Lowery -R	P
Martinez -D	
Matsui -D	
McCandless -R	W
Miller -R	
Mineta -D	
Moorhead -R	
Packard -R	W P N
Panetta -D	P
Pelosi -D	
Riggs -R	
Rohrabacher -R	P
Roybal -D	
Stark -D	
Thomas -D	W P
Torres -D	
Waters -D	
Waxman -D	
COLORADO	
Sen. Brown -R	P
Wirth -D	
Rep. Allard -R	W P
Campbell -D	W
Hefley -R	W
Schaefer -R	W P
Schroeder -D	
Skaggs -D	
CONNECTICUT	
Sen. Dodd -D	
Liberman -D	

CONNECTICUT (Cont'd)	
Rep. DeLauro -D	
Franks -R	
Gejdenson -D	
Johnson -R	
Kennelly -D	
Shays -R	
DELAWARE	
Sen. Biden -D	
Roth -R	
Rep. Carper -D	
FLORIDA	
Sen. Graham -D	
Mack -R	P
Rep. Bacchus -D	
Bennett -D	
Bilirakis -R	
Fascell -D	
Gibbons -D	
Goss -R	
Hutto -D	W
Ireland -R	W P
James -R	
Johnston -D	
Lehman -D	
Lewis -R	P
McCollum -R	
Peterson -D	
Ros-Lehtinen -R	
Shaw -R	
Smith -D	
Sterns -R	
Young -R	
GEORGIA	
Sen. Fowler -D	
Nunn -D	P
Rep. Barnard -D	W
Darden -D	
Gingrich -R	W
Hatcher -D	
Jenkins -D	
Jones -D	W
Lewis -D	
Ray -D	
Rowland -D	

IS IT FAIR?

By: Albert Wettstein, Bath, PA

Being an immigrant from Switzerland and having learned how to stand on my own two feet at an early age, I strived for the so-called American dream: not so much to get rich, but to live a comfortable life, like owning a nice home and having my own small business.

Fair isn't it?

After working and struggling for 41 years to achieve this goal, all my dreams are in jeopardy due to government interference or outright maliciousness by government agencies and their employees. It is pathetic that these people are totally immune to lawsuits and can have so much power to totally destroy the life of my family.

After starting my own machine shop in my garage in 1963, I managed by 1968 to save a down payment for a small lot to eventually build my own little shop close to my home. All went well until I tried to get a building permit from our town of East Hanover, NJ. Being that the lot was in low land, or what they now call wetlands (which I still dispute to this day), the town refused to allow a septic system—even a closed unit. I was told "wait until the sewer comes in very shortly." That was in 1972. In 1978 the sewer system was finally constructed and I again applied for the building permit. Once again, all was not well. First, the town had changed the zoning without my knowledge. After some nine months with the planning board and lots of money for a lawyer, they finally changed the zoning back to business. I thought we were back in business. Not so; the town decided that the lot was too small and offered to sell me an adjacent lot which the township owned. I had no other choice but to go deeper into debt and buy the additional lot.

Then, to get a building permit, it was necessary to hire an engineering firm and an environmental consultant for the varied permits (again lots of expenses). Having obtained the permits of the DEP, the soil conservation agency, the township, and various other agencies to fill the land to township specifications, I finally obtained the fill (lots of money), and was ready to get the actual building permit. Not so; less than two weeks after the last load of fill was placed, I received a citation from the Army Corps of Engineers for illegally filling wetlands. None of the agencies nor the town nor the so-called expert consultant had told me that an Army Corps permit was needed. After all this trouble to get this far, I am labeled a criminal for breaking the law.

Trying to get an "after-the-fact permit" proved to be a total nightmare and also useless. After again spending lots of money for an attorney and a consultant, the proper permits where filed. I held several personal meetings with an official of the Army Corps and was encouraged to proceed. I wanted to do the right thing. All this took a time span of 3 or 4 years. These people do not work very fast. At that point the Fish and Wildlife Agency got into the act and made the Army Corps deny the application.

Well, they said there was still a chance to resolve all this by "mitigation." So I went back on the merry-go-round. Again, I hired an environmental consultant (again several thousand dollars worth) trying to mitigate with two or three acres from a property in Pennsylvania. Remember, the property in question is less than one half acre. Now the Army Corps' excuse was that the property to be mitigated with was not in their jurisdiction. That is where it stands at this point.

An after thought: mitigation is a laugh as far as I am concerned. In the same location as my land, in fact even closer to the river, is a multi-million dollar office complex which is being built right now, and I can point out several other large projects that were built in the same area and time span. It is possible that the owners mitigated properties, but the Army Corps won't say. To be able to build a multi-million dollar complex they are also able to buy top-dollar properties to mitigate with. Where does that leave me or anyone in my position? There must be thousands in my predicament. To add insult to injury, not only did the Army Corps turn this propery into a white elephant (who would want to buy it?) but I am forced to pay property taxes on it! This is obscene!

Through all this the problems were compounded further. Because I could not build my own building in 1973, I moved my business into an industrial complex in 1975 to a tiny space of 1500 square feet, not much for a machine shop. All went well with that, but in 1984 the landlords decided to make it a condominium. This meant either buy or move. Due to the nature of my business, moving was out of the question, so I bought the space.

About one year later the space next to mine became available, and I decided to buy it also to possibly expand the business a little. That was the wrong move. One hour before scheduled closing we were notified that the DEP had stopped all transactions in the industrial complex due to a pollution investigation. In 1988 we were finally ready to close after the space was investigated by ECRA (a branch of the EPA).

For economic reasons, in 1989 we were forced to sell the property and move from our home town (East Hanover) of 33 years to Pennsylvania. In order to sell, the same space had again to be inspected by ECRA. This action put us on file with ECRA twice within one year. Because of that fact, and by misinterpreting these files without further investigation, the DEP felt we were polluters and put us on a compensation demand list with 31 other businesses. Again it took a gigantic effort and lots of money to prove to them that we were totally innocent and had no business to be on that list. A thorough unannounced inspection took place (the third in one year) and we were declared clean. The sale of that property was most difficult because of the DEP's efforts to destroy me. Now you should think that all is finally well, at least we thought so.

There is now a final blow to totally break me and my family. Early in 1991 a lawsuit was initiated against six parties, including myself, by the former landlord and owner of the industrial complex Dorine Industrial Park. This lawsuit is for 1.8 million dollars for compensation of expenses incurred by the DEP. Again, their attorneys picked me out of the ECRA and DEP lists without ever talking to me or at least conducting any investigation. There is absolutely no evidence that I ever polluted or that I ever used hazardous materials. The interrogatories of the landlords confirm this. Once again, I must defend myself. And to make matters worse, this one is in Federal Court. My legal fees for this alone are over $14,000 which I had to borrow from the bank to pay. I cannot afford much more!

Now I wonder, is there any justice or any hope at all for me and people like me. After working for a lifetime and doing my best for this great country, I think that I deserve better than being destroyed and forced to live in relative poverty because of government bumbling or outright maliciousness by government agencies that have more power than they deserve and have no heart and compassion for the individual citizen.

Mr. Wettstein grew up on a vegetable farm in Zuerich, Switzerland and earned a degree from the Geneva College of Horticulture in 1949. He states he is a naturalist at heart and an environmentalist by nature.

FORESTRY BY REGULATION

By Dr. Robert M. Shaffer, Department of Forestry, Virginia Tech, Blacksburg, Va.

As a forester and private landowner, I have become increasingly concerned about the threat of "forestry by regulation" in Virginia. Over the past three years, I have worked closely with the Forestry Task Force for Water Quality and the Department of Forestry to meet Virginia's water quality goals through our voluntary BMP program, and thus avoid government regulations. Most recently, I spent two months in California to see comprehensive forestry regulations in action. What I saw there might be described as the erosion of private property rights for the forest landowner. California's forestry regulations have gone far beyond what I believe could be justified under the rationale of resource protection. This can best be illustrated by the following account of events that I witnessed while in California.

Mildred Bates is a 64-year-old widow that I met while in California. Mrs. Bates and her late husband purchased 120 acres of forest land in Santa Cruz County in 1962. Today the property contains approximately two million board feet of second-growth redwood timber worth about one-half million dollars. It was to be Mrs. Bates' retirement income. About a year ago, Mrs. Bates decided to sell the timber on her property, and contacted a local sawmill. They told her that she would have to get an approved timber harvest plan prepared by a registered professional forester before they would be able to bid on her timber. Mrs. Bates was advised to retain the services of a forestry consultant who was a RFP.

The consultant informed her that preparation of a timber harvest plan for her property would take about 100 hours of his time, and his fee would be 15 percent of the gross sale revenues (standard for California), assuming the timber harvest plan was approved and the timber sold. If the plan was not approved, she would be billied for his time. He also pointed out to Mrs. Bates that California forest practice rules only permitted the harvest of up to 60 percent of the trees 18-inches in diameter and larger from her land, and no clearcutting was allowed. She also was informed that complex residual stocking rules must be met, no harvesting was permitted during the winter months, BMPs must be carefully followed, all logging slash must be "lopped" to within 30 inches of the ground following harvest, and only a "licensed timber operator" could perform the logging. Mrs. Bates further learned that she must pay a $850 fee to have her timber harvest plan reviewed, whether it was approved or not. She told the consultant "George" to proceed with the job. This was October 1990.

George spent about two weeks completing the field work necessary for Mrs. Bates' timber harvest plan. He cruised the tract, flagged the "streamcourse protection zones," located and flagged the haul roads, landings and skid trails, surveyed the tract for "sensitive" soils, slopes exceeding 60 percent, cultural or historic resources and rare or endangered plants or animals. He marked the timber to be cut, careful to leave enough trees in each size class to satisfy the complex residual stocking rules that apply. He determined "mitigation" procedures for protection of all environmentally sensitive areas found on the tract.

"No one I talked to...forsaw that those few regulations they grudgingly accepted in the mid-seventies would turn into the nightmare they have today."

Back in the office, he prepared a 40-page timber harvest plan, using forms and guidelines provided by the California Department of Forestry and Fire Protection, the "lead agency" in the timber harvest plan approval process. The plan contained, along with maps and ownership information, detailed sections on silviculture, harvesting practices, erosion control, roads and landings, watercourses, watercourse crossings, wildlife, cultural resources, hazard reduction, public notice, forest pests,

cumulative effects, and "other" information. As required by the regulations, he notified in writing all persons owning land within 300 feet of Mrs. Bates' property about the proposed timber harvest plan, and also placed a notice in the local newspaper and posted signs on the nearest public road to the property. Finally, he filed the plan with the California Department of Forestry. This was January 1991.

The bureaucrats then took over. CDF personnel went over the plan with a fine-tooth comb to determine if all sections were properly completed and the plan was acceptable for review. That took 10 days. Next, the CDF sent copies of the plan to all other state agencies involved with plan review—Game and Fish, Water Quality, Geology, Archeology, Coastal Commission and the County of Santa Cruz. Afterward, they set up a date for the review team to conduct an on-the-ground pre-harvest inspection. They also set up the date for a public hearing and notified all adjoining landowners, as well as other interested parties such as the Sierra Club. That took another 10 days.

On the appointed day, the review team, consisting of resource specialists from the previously named agencies, met on the Bates tract with George, the registered professional forester who prepared the plan. Mrs. Bates also was invited, but declined to attend. Timber harvest plans in hand, this group of "experts" dissected George's plan section by section. At the end of the day, several modifications to the plan had been "suggested." These suggestions were formalized by the CDF in a "Pre-harvest Inspection Report." This report was the main topic of discussion at a review team meeting which occurred several days after the field inspection. To increase the chances of the plan being approved, the suggestions, many of which would cost Mrs. Bates money, were incorporated by the consultant into a revised plan. That was in April 1991.

I was present at the public hearing. It was probably the most disturbing thing I saw during my time in California. Residents of the subdivision that bordered the east boundary of Mrs. Bates' property lined up at the microphone to present impassioned testimony in opposition to the proposed logging. They cited everything from "ecological devastation" to "runaway log trucks that would kill their children" as their reasons for opposition. A Sierra Club representative opposed the timber harvest plan on several highly specific technical issues, citing the regulations frequently by section, subsection and article. The parade of opposition was culminated by the apparently well-rehearsed testimony of an 11-year-old girl who gave several reasons why she and her friends would not be able to play outdoors anymore if logging were allowed on the Bates' property.

George, acting as agent for Mrs. Bates, was called on to answer the concerns that had been raised. He attempted to tell the assembled group that the land would not be destroyed, logging would only last about three weeks, log trucks would not run during school bus hours, and so on. His was a lone voice crying in the night. At the end of George's rebuttal, the county supervisor asked to be recognized. He had decided to oppose the proposed timber harvest even though the Bates' property had been zoned as timber production lands since the mid-seventies, long before the subdivision had been built.Although he cited safety and resource concerns, I believe his opposition meant that even if the CDF decided to approve the timber harvest plan, the county would file an appeal with the California Board of Forestry. Mrs. Bates, sitting alone in the back row, looked like she was ready to cry.

"If you listen to members of the 'production forestry' community in California, they will unanimously tell you that the Number One Rule of Regulations is, 'First a little — then a LOT'."

How did it come to this, in the largest state in a country built on private property rights and individual freedoms? If you listen to members of the "production forestry" community in California, they will unanimously tell you that the Number One Rule of Regulations is, "First a little—then a LOT." Back in the mid-seventies, environmental pressure and voter demographics (sound familiar?), along with an unimpressive record of resource protection that resulted in the Z'berg-Nejedly Forest Practices Act promoted the California forestry community to take action. A strategy was decided—propose some broadly defined regulations which would adequately protect the resource, place minimum constraint on forestry operations, be relatively simple to administer and enforce, and allow the field forester broad latitude to do his or her job. The California Department of Forestry and Fire Protection, an agency with a long history of cooperation with the forest industry and private forest landowners, would administer these "harmless" regulations.

"What had begun basically as a 10-page BMP handbook grew into a 200-page book of Forest Practice Rules!"

So originally, California's forestry regulations consisted of submitting a simple three-page timber harvest plan to the CDF for timely approval, and then basically following the BMPs. This worked well, I was told, until a new governor with a different philosophy was elected. He appointed a new director of the CDF who was much less interested in production forestry, reorganized the Board of Forestry to include more environmentalists, and challenged the "harmless" regulations in court. State judges decided they couldn't interpret "broad" regulations which allowed flexibility in forest operations, so they directed the Board of Forestry to come up with a more narrowly defined set of regs. What had begun basically as a 10-page BMP handbook grew into a 200-page book of "Forest Practice Rules" that can make a grown forester cry!

"Who's paying for all of this? The forest landowner, of course, and the forest industry, and the taxpayer and consumer."

Other state agencies saw a chance to gain control, and joined the act. While the CDF remained the lead agency, a landowner now had to deal with Departments of Fish and Game, Geology, Archeology, and Water Quality, as well as the Coastal Commission and the individual counties in some areas. Time required to prepare a typical timber harvest plan grew from a few hours to a few weeks, and the time it took the state to review that plan grew from a few days to over a month. Public hearings were incorporated in the process. And throughout it all, the forestry community continued to negotiate and compromise itself into oblivion, always fearful of being seen by the public as being insensitive to the environment. In 1992, complex

new regulations regarding "substained yield" and "cumulative impacts" will become law. Clearcutting will be eliminated in the few areas of the state where it is still allowed, and the Board of Forestry will be stacked even more heavily in favor of preservationists/environmentalists.

"There are some who believe that our best response lies in embracing "workable" regulations drafted and promoted from within the forestry community. I can report to you emphatically that this strategy did not work."

Who's paying for all of this? The forest landowner, of course, and the forest industry, and the taxpayer and consumer. A private forest landowner in California, like Mrs. Bates, will net 30 to 50 percent less for her timber than she could have received in a non-regulated, free market environment like Virgina. The forest industry's raw material costs are increased by the declining supply of available timber and the increased cost of procurement and harvesting. Finally, the California taxpayer and consumer pays for the proliferation of bureaucrats and higher lumber prices.

"There is no such thing as a 'little bit' of regulation."

I am alarmed by the pattern I saw in the evolution of forestry regulations in California, given the current situation in Virginia. Forestry in the Commonwealth is faced with the same wave of environmentalism and changing voter demographics that the California forestry community faced 15 years ago. There are some in Virginia who believe that our best response lies in embracing "workable" regulations drafted and promoted from within the forestry community. I can report to you emphatically that this strategy did not work in California, and I personally believe it would also fail in Virginia. If there was one common thread I heard from nearly everyone I talked to in California, it was that "there is no such thing as a 'little bit' of regulation." Over time, it is inevitable that those who believe they stand to gain from forestry regulations will push effectively to strengthen and increase them.

"Forestry regulations have been an effective tool for the preservationist groups to use in their quest to halt logging; natural resource agencies have gained positions, power and recognition due to the regulations."

In California, those groups have been the environmentalists/preservationists, the bureaucrats and somewhat surprisingly, many professional foresters. Forestry regulations in California have been an effective tool for the preservationist groups to use in their quest to halt logging; natural resource agencies have gained positions, power and recognition due to the regulations; and many jobs have been created for professional foresters, since they and they alone, can prepare, approve and administer timber harvest plans. Forestry consultants have proliferated, since it is virtually impossible for a non-industrial forest landowner to sell timber without the benefit of their services. Of course, this is a short term gain—when the forest industry completes its abandonment of California, there will be no need for timber harvest plans or those who prepare, approve or administer them.

Fortunately, there are major differences between Virginia and California. Thanks to the Virginia Department of Forestry and a united forest industry, we have a highly successful and documented voluntary program of resource protection well under way. In fact, from what I saw on the ground in California, we are doing at least as good a job in the water quality area, since California's emphasis is almost entirely on the up-front paperwork, plan and permits, while Virginia's BMP program concentrates on monitoring the operation in the woods. Forestry, while almost exactly the same size as the California industry in terms of total dollars, is a much larger piece of the economic pie in Virginia. And finally, and perhaps most importantly, we in Virginia have the advantage of being able to see the negative effects of "forestry by regulation" in states like California and Maryland, and can learn from their mistakes.

What should our strategy be during this time of regulatory fever? That was a question I asked myself often during my time in California and since I returned. Based on the experience I had as well as the hindsight advice of several Californians, I now recommend the following course of action for Virginia forestry:

■ First, get our house in order. Create a strong and defendable record of resource protection. Our voluntary BMP program can provide such a record. Let's be our own harshest critics.

■ Next, the entire forestry community must remain united in our determination to practice forestry "the Virginia way," to quote State Forester Jim Garner, without government regulation.

"Don't compromise to avoid confrontation or rationalize that 'we better accept this deal because our opponents might propose something worse if we fight them.' "

■ And finally, if forest practice regulations are proposed, no matter how unthreatening they may at first appear, force them to be debated openly in the legislative arena where it can be shown that they are unnecessary and counterproductive. Don't compromise to avoid confrontation or rationalize that "we better accept this deal because our opponents might propose something worse if we fight them." In debate, stress the increasingly positive record of resource protection and stewardship achieved by the Virginia forest industry and forest landowners. Freely quote our beloved Thomas Jefferson on the evils of too much government, and appeal to Virginia's colonial heritage as a defender of private property rights.

While this approach will win no friends among the preservationist movement, I believe it will be accepted by common-sense Virginians and their elected legislators, as long as we back up our claims of good stewardship with demonstrated results. And even if we ultimately lose the battle and have forest practice regulations forced down our throat, we will at least have had the satisfaction of standing up for what we know in our heart to be right rather than compromising our beliefs.

No one I talked to in California forsaw that those few regulations they grudgingly accepted in the mid-seventies would turn into the nightmare they have today. Let's try to avoid making that same mistake.

Updates

Natural Heritage Inventory

PLA participated in an April 15th meeting with the Erie County Planning Commission and several other organizations representing private interest groups and government agencies. The meeting focused on a contract awarded to the Pennsylvania Nature Conservancy in the amount of $35,000 to conduct an inventory in locating "significant areas" in the county which merit "protection." Properties targeted will likely be wetlands and areas containing key habitat for endangered or threatened plant and animal species. The areas of "significance" would then be noted by the Planning Commission and revised through local zoning ordinances ultimately aimed at preserving the property in its natural state.

Richard Gilmore, association president, voiced his opposition to the study (which was approved prior to the meeting by the Commission) along with several other key attendees. Gilmore also asked the Commission if they intended to inform local governments of their financial liabilities for compensation which may result int he form of regulatory "takings," since many of the designations may very well be found on private properties.

According to the Commission, the State has directed all counties to conduct such an inventory for purposes of updating their comprehensive plans.

Lucas Case... was heard in the Supreme Court on March 2, 1992. A decision is expected in the near future. On December 31, 1991, Defenders of Property Rights in Washington, D.C. filed an Amicus brief with the high court and were joined by PLA's national affiliate ECO, Land Improvement Contractors of America and the Outdoor Advertising Association.

Wetlands... H.R. 1330 continues to hold 174 co-sponsors and is still the favored bill of property rights activists and the regulated community. Congressional aides continue to indicate that the bill may go the the House floor for a vote sometime this summer, even as early as July. The environmental movement, however, pursuaded Congressman Don Edwards (D-CA) to introduce H.R. 4255, The Wetlands Reform Act of 1992, which currently has 62 cosponsors. This bill totally disregards landowner rights, offers no compensation for takings, does not categorize wetlands by value and would seek to add 2 additional regulatory agencies to the permitting process. PLA has written letters to every member of Congress indicating our continued support for H.R. 1330 and pointing out the inequities of H.R. 4255.

A White House meeting also occured in mid April to discuss the environmentalist's desire for requiring yet another "scientific" study to determine just what a wetland really is. The study would be done by the National Academy of Sciences, cost several hundred thousand dollars and take as long as another year and a half to complete. Vice President Dan Quayle, chairman of the Competitiveness Council—which was instrumental in developing the **proposed** 1991 manual—White House Deputy Chief of Staff Henson Moore, and Office of Policy Development Associate Director for Environment, Energy and Natural Resources Teresa Gorman are said to oppose the study.

Another option discussed was reverting back to the 1987 manual, but sources indicate that the regulated community has voiced strong opposition to this, pointing out that it was the problematic '87 manual that led to a revised manual in 1989. Many have also indicated that in essence, there is no difference between the '87 and '89 manuals.

The proposed 1991 manual has generated over 70,000 public comments, and support for and against are said to have been about 50-50. Thanks to all those who responded to our questionare and sent their formal comments in! Your voice made a difference. With the small population number that actually owns or utilizes land, equalizing the environmentalists' opposition to the manual changes was a job well done!

Ferngully... has drawn criticism from many religious and property rights groups. The currently popular children's film released by Fox promotes "trees and nature beings" as having "spirits" equivalent in value to human life and serves as environmental propaganda for the preservationists' agenda. Pizza Hut also engaged in a national campaign promoting the film.

Are your children being misinformed about our "fragile environment" and mother earth? Make sure they know **ALL** the facts and exercise wise judgment in your patronage of establishments not promoting "the whole story."

Timber Rights Protected!

At the urging of PLA and timber industry groups, S.B. 1505 recently passed the state Senate and now awaits passage in the House. This is good news for timber owners since the bill recognizes a landowner's right to harvest timber and will overrule local ordinances imposed to halt timber cutting. If passage occurs in the House, the bill will also recognize the fact that timber cutting and management is necessary to maintaining a healthy forest. Members are urged to contact their state representative in support of this bill.

Good News! Members of the Pennsylvania State Association of Township Supervisors recently adopted at their state convention a resolution in support of compensation when economic value of private property is substantially diminished through wetland classifications. The resolution passage is a direct result of collective efforts through the Erie County Association of Township Officials.

Grassroots Organizations Are Having An Affect! The property rights movement is gaining national momentum as recently indicated on April 2, when Peter Jennings of ABC's American Agenda spoke of the wise use environmental movement and the effect it is currently having on the American public. Also airing in April before a national audience was Rush Limbaugh, a nationally syndicated radio personality highly supportive of property rights issues, who appeared on the Phil Donahue Show.

"And it comes with a guaranteed exemption from the clean water act..."

Unless Environmental Regulations Begin Making Sense, You Might As Well Live In A Tree.

- Current environmental law allows agencies of the government to restrict, and often prevent the use of privately owned land — without compensation to the landowner.
- Every landowner needs to convince Congress that environmental law must respect individual property rights and economic opportunity.
- Join PLA and make sense out of environmental legislation.
- Tell a friend.

Please Enroll Me As A Member Of PLA To Help Secure The Right Of The Individual While We Respect The Environment

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Any individual supportive of private property rights.

❑ Associate membership $50.00
Not-for-profit organization supporting property rights issues.

❑ Business membership $100.00
Any business entity supporting the free enterprise system and the principle of private ownership.

❑ Sustaining Associate Membership $250.00
Inclusive of any corporate not-for-profit organization.

❑ Corporate Membership –
Any corporation supporting the above classifications.

Sustaining ..... $ 500.00
Silver Club ..... $ 1,000.00
Gold Club ..... $ 5,000.00
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❑ **Wetlands Videotape (VHS)** ❑**Part I** ❑**Part II**
"Our Environment, Whose Property?"
$15.00 Donation each
Please send me a copy of this limited edition PLA videotape.

❑ **"Posting For Support" program** —Yes, I wish to become a participant in this program. Please send me _____signs. I have enclosed 40¢ for each sign ordered.

❑ **PART — Political Action Response Team** —Yes, I wish to participate in this program sponsored through PLA's national affiliate ECO. Please put me on the PART mailing list.

❑ **YES!** I will help the PLA to continue its fight to put PEOPLE back into the environmental equation, and to uphold the principle of private land ownership. Please find enclosed my additional contribution of:

_____ .

❑ **YES!** I wish to subscribe to ECO-LOGIC, the monthly publication of the Environmental Conservation Organization. I understand ECO is a national property rights organization of which PLA is affiliated. I have enclosed $15.00 for this annual subscription.

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