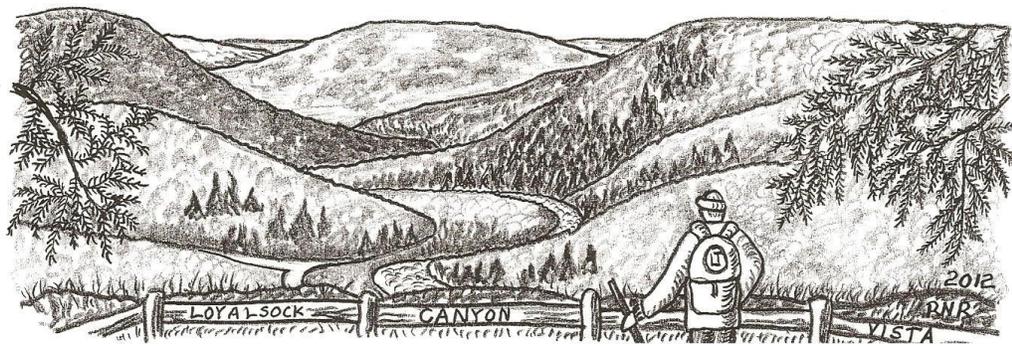


# Loyal to the 'Sock

July 2013



“Conservation: a careful preservation and protection of something; esp.: planned management of a natural resource to prevent exploitation, destruction, or neglect.”  
*Webster's Collegiate Dictionary*

Hello, LCWA Members!

As one gets older, one tends to become forgetful. When I learned about some of the decisions being considered locally and in Harrisburg that are detrimental to beauty and pristine conditions of the Loyalsock Watershed, I thought maybe I had forgotten what the word “conservation” means. So I looked it up. Nope! I did not forget. But I think some of our elected officials and their appointees have forgotten, and they need to be reminded.

As ever, Carol Kafer

LCWA President

## *IT'S PICNIC TIME!*

**When?** Tuesday, July 23 at 5:30 p.m., serving at 6:00 p.m. Mark Your Calendar!

**Where:** Dwight Lewis Lumber, Hillsgrove, PA

Once again we will be holding our annual picnic at the creek-side pavilion behind the Dwight Lewis Lumber Company, which is about ¼ mile south of Hillsgrove on route 87 (watch for the sign and follow the arrows). The LCWA will provide pork BBQ and buns, some beverages, plates and cutlery. Please bring an appetizer, side dish, or a dessert to share. Water “toys” and lawn chairs (or a blanket to sit on) will come in handy, too.

This is the meeting when directors are elected. Since it is the directors who nominate the president, vice-president, secretary and treasurer, attending the picnic is your best opportunity to influence the direction and activities of the LCWA. Due to vacancies on the Board, please come forward if you have an interest in serving as a Director. We could use people to help organize open meetings, plan projects, and contribute to coordinating with various conservation-minded organizations and with our elected officials.

Memberships will be available at the picnic. If you know people who would like to become members of the LCWA, please encourage them to join us, or better yet, bring them with you!

**Directors for 2012 – 2013:** Carol Kafer (President), Steve Szoke (Vice President), Wendy Etzel (Treasurer), Doug Albertson, Marc Lewis, Bruno Najaka, Ruth Rodes, Barb Thompson, Georgene Wurster, Tom Yarnell; Advisor: Corey Richmond (Sullivan County Conservation District)

Did you know: The LCWA is now on FACEBOOK. If you would like to email us regarding questions or suggestions, our official email address is [loyal2thesock@gmail.com](mailto:loyal2thesock@gmail.com).

## Public Access to Rivers and Streams

Where can you legally enter the Loyalsock and its tributaries to fish, canoe or swim? This question was asked at our last open meeting. In the spirit of "sticking to the facts", LCWA member Harvey M. Katz studied the information published by the PA Fish and Boat Commission and wrote the follow article.

In general the public's right to access rivers and streams in Pennsylvania is complex and is based on a number of court decisions. Normally the larger the waterway the more opportunity the public has in order to gain access to that waterway. So, for example, the Susquehanna River is open to anyone that wants to use it for recreation. Of course to reach the river you must either use public lands (such as boat ramps) or have the owner of private lands permission to use that property. In most cases for any point along a river the land owner on one side is different than the owner on the opposite bank. This has importance since while the owner of land on one side of a river can keep you from crossing that property you might be able to gain access through the opposite bank land owner.

Legally all waters of the Commonwealth belong to the Commonwealth. That means that anyone wanting to remove water or discharge into water in a river/stream must obtain a permit to do so. Some waters in Pennsylvania are considered "Public Waters." These include the great/large/principal rivers in the state. In Pennsylvania an 1826 court case "Shrunk vs. Schuylkill Navigation Company defined the great rivers to be the Ohio, Monongahela, Youghiogheny, Susquehanna, Juniata, Schuylkill, Lehigh and Delaware. Another category of "Public Waters" includes any "navigable waterway." this includes not only rivers but also lakes.

Navigable waters are designated as per Federal law. The way PAF&BC describes this is as follows: Waterways must be regarded as "navigable in law if they are navigable in fact." According to the United States Supreme Court in "The Daniel Ball in 1870" court case, waterways are "navigable in fact" when they are used or are susceptible of being used in their ordinary conditions as highways for commerce over which trade and travel are or may be conducted in customary modes of trade and travel on water. Note that when these court decisions were being made the bulk of commerce had been and still was being conducted on the waterways. Roads were available but not easily used and the railroad was just becoming the favored way of moving goods. For the history buffs you may recall that the canal boat means of moving commerce along our part of the Susquehanna was established primarily in 1830.

The determination of whether a waterway is navigable water is based on it being used for commerce at any time in its history. So a river that no longer is being used for commerce still would qualify as a navigable waterway if it had been used for the purpose sometime in its history. As the courts say it is an historic test or the test of navigability is rooted in its historical use. Use of a river for recreation purposes does not give the waterway the navigable waterway designation. In our part of Pennsylvania the most common commercial use of our waterways was for floating logged trees downstream to sawmills. However, a farmer moving produce or livestock on the waterways would also constitute a commercial use of the river. As far as the courts are concerned you cannot guess at this use but must show through existing records that commercial use of a waterway actually occurred.

For readers that want to know more about water law you can read "Water Law" written by William Goldfarb. This is a 233 page book published in 1984. A second edition published in 1988 and contains 284 pages. Goldfarb (a Rutgers University professor) discusses water diversion, interbasin water transfer, agencies such as the Bureau of Reclamation, Army Corps of Engineers and National Resource Conservation Service and what role these groups play in regulating the nation's rivers. He also discusses who owns the bed and banks of our rivers, instream flow protection, Wild and Scenic Rivers Protection, floodplain protection and wetlands protection. He completes the book with information on water treatment and protection from pollutants. This part centers on the Federal Clean Water Act of 1972.

A follow up article will be written that will deal with public access and use of the smaller streams, creeks, runs and brooks. As a general rule, as the waterway gets smaller the issue of public access becomes more contentious. For most of the main stem of Loyalsock Creek the waterway is large enough so that it historically qualifies as a navigable river and thus the public has a right to be on the creek. However, finding a place to get to the creek where you do not have to walk on private property may complicate getting access. As for the little tributaries or the runs that will be discussed next time. Finally, some of you know that I like to walk the creeks and runs in the area. This gives me firsthand look at the quality of the waterway and also provides information on how the waterways are being impacted by people. Last year I walked parts of twelve creeks and runs without having any issues with access or trespassing. My personal observations and findings will be added at that time.

Harvey M. Katz, July 2013

## Joining Forces with Other Organizations

**I. The Loyalsock Coalition:** The Loyalsock Coalition is a large, diverse group of organizations and individuals who are very worried about the future of one of the most beautiful portions of the Loyalsock Forest. The Clarence Moore Tract forms the southwestern portion of our Watershed. Although the State does not own the mineral rights on 25,621 acres of this tract, which includes the Old Loggers Path and Rock Run, the deed was written such that the State has “exclusive” surface rights on 18,600 acres, a special designation which gives the State greater control over surface development. Anadarko and Southwestern own the sub-surface rights and have been meeting in private with the Department of Conservation of Natural Resources (DCNR). Anadarko has submitted one set of plans for development, which have not been approved. The Coalition has created a petition to be sent to Governor Corbett. Here is what the Coalition is asking for:

“Specifically, DCNR should post on its website Anadarko’s most recent proposed development plan, then accept public comments on the plan for ninety (90) days. Meanwhile, DCNR should hold six (6) public hearings, one in each region of the Commonwealth. Any proposed development agreement between DCNR and Anadarko should likewise be subject to public review and input.”

LCWA members often ask, “What can I do to help?” Here is an opportunity. Go to the Coalition website (<http://www.change.org/petitions/corbett-administration-listen-to-the-people-s-voice-no-drilling-in-the-clarence-moore-tracts>) and send Governor Corbett a petition. Urge your family and friends who care about our state forests to fill one out, too. No Internet access? Write to Governor Corbett and include the paragraph above. His address is: Governor Tom Corbett, 255 Main Capitol Building, Harrisburg, PA 17120

**II. The Pennsylvania Environmental Defense Foundation:** At our March open meeting, John Childe, an attorney for the PA Environmental Defense Foundation, presented his reasons for filing a lawsuit against the Commonwealth of PA and Governor Tom Corbett to stop further leasing of State Forest land for gas extraction development. The goals of the lawsuit are

- (1). Stop further leasing of State Forest land for oil and gas extraction.
- (2). Require a thorough impact analysis of the current and future development of State Forest and State Parks land for gas and oil extraction.
- (3). Require the return of the \$400,000,000.00 to Department of Natural Resources (DCNR) taken from leasing State Forest land for gas extraction. (Note: Monies from the Oil and Gas Lease Fund, an important source of funding for the DCNR, were diverted to the General Fund to cover budget deficits. DCNR is divided into the Bureau of Forestry and the Bureau of State Parks. The Oil and Gas Lease Fund was created to pay for conservation and protection of your state forests and parks.)
- (4). Establish a de facto trust fund out of the Oil and Gas Fund that will insure protection, restoration and mitigation of our natural resources.
- (5). Put DCNR back in charge of the Oil and Gas Lease Fund and in charge of protecting, restoring and mitigating our natural resources.

The lawsuit is moving forward, and the LCWA will be submitting an affidavit stating our concerns about how gas well development will impact our public lands in our watershed.

Constitution of Pennsylvania: Article I Section 27: *“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”*

Did you know: On June 13<sup>th</sup>, the State Republican Caucuses for both the House and the Senate petitioned to prevent the lawsuit. The Republican Caucuses want to challenge the very basis of the public trust. They see the leasing of State Forest land for gas extraction and the money from those leases as their own golden goose to provide a continuing source of general revenue, without any consideration of the costs to our natural resources. Amazingly, their Petition argues that the Article I Section 27 can and should be ignored whenever the legislature decides to lease more State Forest land for natural gas, and to take the funds from those leases for whatever purposes they determine appropriate.

## Dredging versus Stream Cleaning (Problems versus Solutions)

Even though it has been over a year-and-a-half since the devastating flood caused by Tropical Storm Lee in September 2011, concerns about flooding are discussed at every LCWA directors meeting. An article in the March 2013 issue of *PA TownshipsNews* magazine, written by associate editor Brenda Wilt, caught our attention. The sources of information include the Department of Environmental Protection (DEP), the PA State Association of Township Supervisors (PSATS), the National Flood Insurance Plan (NFIP) coordinator and the Federal and Pennsylvania Emergency Management Agencies (FEMA and PEMA). Here are some excerpts of the article titled, **“Stream dredging will not solve flooding problems, experts say.”**

Stream Cleaning	Stream Dredging
Stream cleaning refers to removing storm debris and rocks or sediment that was deposited during a flood. If the debris can be removed from the banks of the waterway without entering the stream, it is not necessary to obtain a permit.	Dredging refers to excavation a streambed below its natural level, deepening or widening the channel, removing gravel bars to less than 6 inches above the water level, or straightening curves in the stream channel. Dredging requires a permit from the DEP.

- The Commonwealth of Pennsylvania is the most flood-prone state in the country.
- Dredging often causes increased stream bank erosion, increased sediment build-up, increased downstream flooding and increased stream habitat destruction.
- The PSATS supports legislation that would streamline the permitting process to enable municipalities to remove storm debris before flooding occurs.
- With the proper permits, gravel bars may be removed to within 6 inches of the water level at its lowest ebb.
- Dredging doesn't address the impacts from a 100-year storm, although it may help with smaller events.
- Lowering potential flood levels by 6 inches on a 900-foot-wide floodplain would require dredging an existing 30-foot-wide channel another 15 feet deep and maintaining it at that depth.
- Removal of gravel bars can cause the loss of riffles, pools and vegetation which act as “speed bumps”.
- A gravel bar that is removed will almost always reform in the same place during the next high-flow event.
- A deeper channel may not allow the water to flow into the adjacent land during high-flow events. When a stream is cut off from its floodplain, the later loses its function, which helps dissipate energy as the water flows over the land.
- Alternatives to dredging: Make sure you know where the floodplain is and keep it clear. When you change the land use, you'll start to have issues if you don't plan accordingly.
- **The floodplain is there for a reason.**

## Collecting Data within the Watershed

The Loyalsock Creek Watershed Association has been collecting data since the early 1970's. For past two years, Dr. Jonathon Niles and interns from Susquehanna University have been collecting data of water quality, and fish and macroinvertebrate populations. They have been working on two separate projects: a study of the rate of recovery of aquatic ecosystems in our headwater streams after Tropical Storm Lee, and collecting information on un-assessed streams which are small tributaries that have not been sampled by the PA Fish and Boat Commission.

This year there have been two teams of five interns plus Dr. Niles collecting data. During the two weeks of June 10 –21, two teams completed collecting data on the 30 streams which are the focus of the flood-recovery project. They also collected data on 52 (!) previously un-assessed streams in our watershed. Some of the stream are tributaries of tributaries of tributaries and are un-named.

The biggest brook trout found in the 52 un-assessed water was 12.5 inches. The greatest number of trout was 219 fish in 100 meters of stream! There are four other tributaries between this small tributary and the main stem. These small tributaries are in a section of the State Forest for which DCNR does not hold the sub-surface gas rights, which makes the forest surrounding these streams vulnerable to development.

Dr. Niles and the interns also worked on 20 streams in the Pleasant Stream watershed in the Lycoming Creek. Eleven of the 20 tributaries of Pleasant Stream had wild trout populations. They will be back in the watershed collecting data the week of July 9<sup>th</sup>.

The LCWA would like to thank the land owners who allowed Dr. Niles and the interns to cross their land to access the un-assessed tributaries. If you have a small tributary on your property and would like to have it assessed, please contact Dr. Niles ( 570-372-4707; [niles@susque.edu](mailto:niles@susque.edu) ).

Your membership dollars are being used to fund this vital research.



Sam Silknetter, John Panas, and Desmond Edwards take a well-deserved break from data collection.



Dan Isenberg, John Panas, and Sam Silknetter electroshocking at Huckle Run.

Did you know: 97% of the water on the earth is saltwater. Of the 3% fresh water, 2% is in the polar ice caps. So all of life on land is supported by 1% of the water we see and looks so available. Much of that 1% is concentrated in the northeast quadrant of the United States. We who live in this quadrant have a distorted view of water being an abundant resource.

*Rivertown Coalition*

## Stream Bank Remediation Projects on Wallis Run

The PA Fish and Boat Commission is planning to build another stream bank stabilization / trout habitat structure on Wallis Run. Other organizations involved in the project are the PA Northcentral Conservancy, the Department of Conservation of Natural Resources' Bureau of Forestry, and Anadarko. The location is on State Forest land upstream from the 2013 project and adjacent to some stream-side wildlife food plots. Construction is scheduled for September 9 – 11. As in the past, the LCWA will provide volunteers to help with installation. If you would like to participate in this project, give your name and email address or phone number to one of the directors and we will keep you informed on the details.

## Gasland II

On June 19, the Responsible Drilling Alliance sponsored a showing of *Gasland II*, directed by Josh Fox. The 2011 documentary *Gasland* was nominated for an Academy award. The LCWA was asked to provide comments after the screening, and director Steve Szoke gave the following statement: "The LCWA believes the State and developers must be mandated to use peer-reviewed, published, scientific research that clearly provides evidence that current practices used by the natural gas industry will not impair our Exceptional Value streams." *Gasland II* is being shown on HBO on Monday, July 8, at 9:00 pm.

Did you know: On June 15, the Democratic State Committee voted 118-81 for a statewide moratorium on hydrofracking until it can be proven safe. The three-year moratorium in the Delaware River Basin, which supplies the water for over 15 million people in PA, NY and NJ, is still in place. So is the moratorium in New York State. The Commissioner of the New York State Board of Health, Dr. Nirav Shah, states, "The time to ensure the impacts on public health are properly considered is before a state permits drilling."

## 2013 Loyalsock Creek Watershed Association Membership

The LCWA is a 501( c ) 3 non-profit organization whose members care about maintaining and improving the natural resources of the Watershed. To keep up with events in your watershed, become a member and receive our newsletter "Loyal to the 'Sock" and reminders of upcoming events.

Renewal     New Member

Please send me newsletters and updates by

Name \_\_\_\_\_

Mail     E-mail     Both

Address \_\_\_\_\_

\$10 - Loyalists (our loyal members)

\$25 - Guardians (of our streams)

\$50 - Protectors (of our forests)

\$100 - Defenders (of our Watershed)

\$200 - Historians (of our past)

E-mail: \_\_\_\_\_

When you mail something to us, please be sure to address envelope to the **Loyalsock Creek Watershed Association** and not just LCWA. Our mail box is right next to the **Lycoming County Water Authority** (also LCWA) and too much of our mail ends up in the wrong box.

**Loyalsock Creek Watershed Association, P. O. Box 216, Montoursville, PA 17754**