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Master's Paper

The Aginners and Others:

A Case Study of Citizen Protest

On the Upper Delaware Scenic and Recreational River

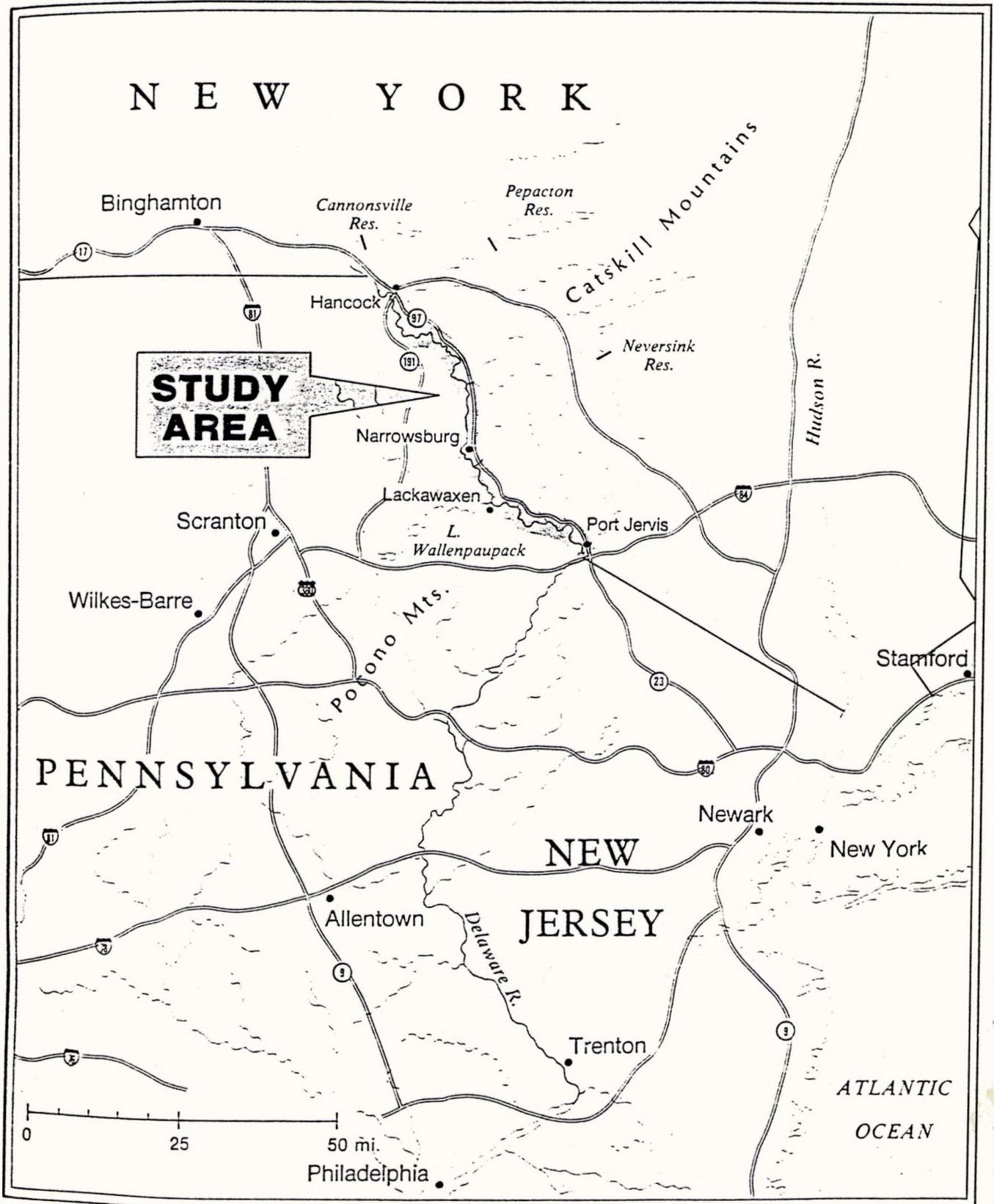
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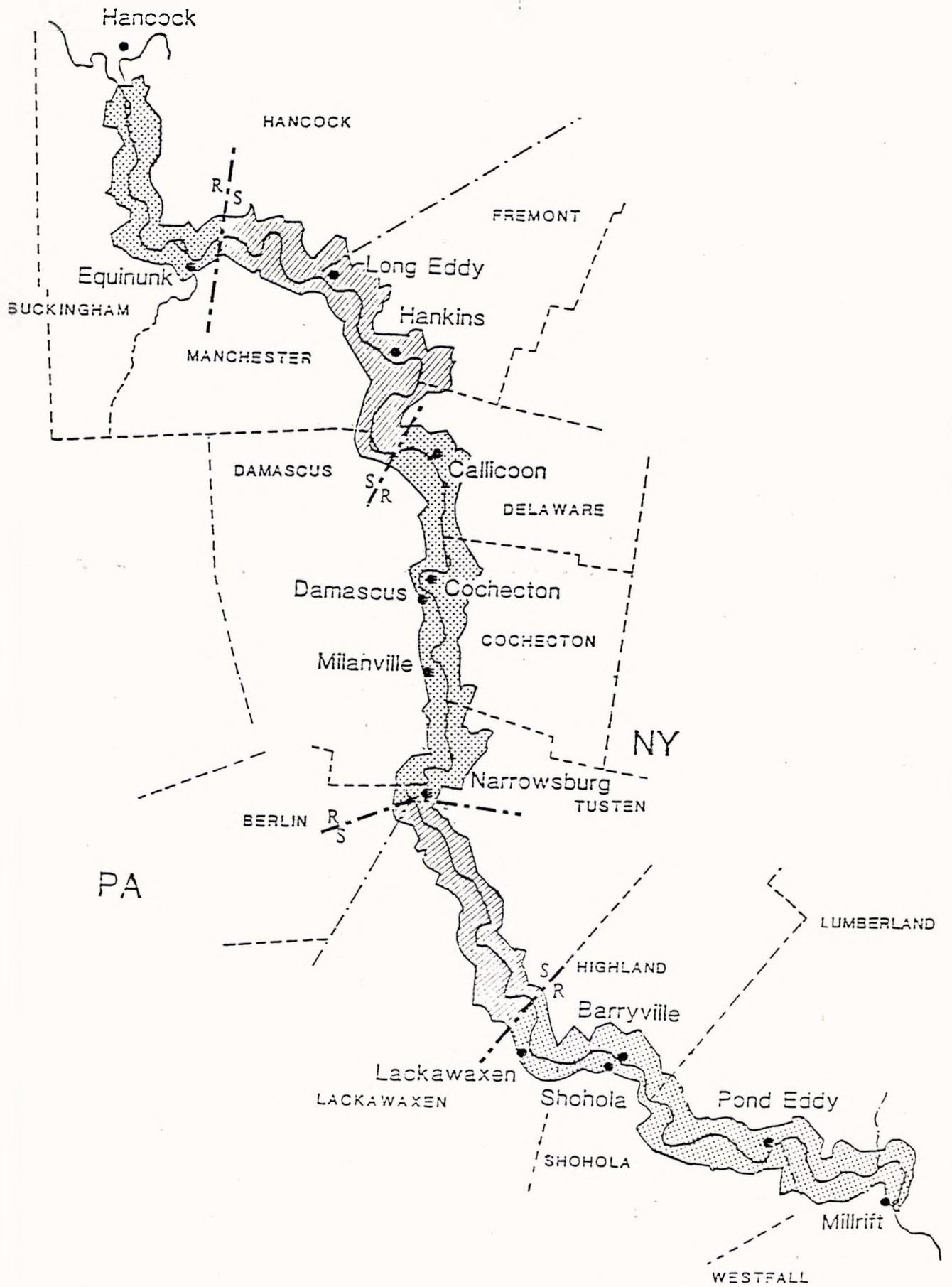
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UPPER DELAWARE SCENIC AND RECREATIONAL RIVER

The Delaware River Region





## INTRODUCTION

### Introducing a Case Study in Citizen Protest

In October of 1968, Public Law 90-542, naming the Upper Delaware for potential inclusion in the Wild and Scenic Rivers System, was signed into law by President Lyndon Johnson. In October of 1987, Secretary of the Interior Donald Hodel signed off on the River Management Plan for the Upper Delaware. The 19 years between those two signatures marked a persistent, often effective, period of citizen protest in the Upper Delaware Valley. Despite acknowledgement of the ultimate power of the federal government, the sometimes patient and reasoned, sometimes explosive challenge from this small community left Congressmen and federal bureaucrats reeling. In an atmosphere where public meetings were punctuated by name calling, cowbell ringing and at least one fist fight, changes were effectuated by a group of people with little traditional economic and political power and a limited range of mutual agreement on issues.

Neither enactment of the Wild and Scenic Rivers Act nor endorsement of the Upper Delaware River Management Plan were isolated events occurring in a vacuum. They were the result of ongoing federal policies and concerns interacting with local interests and dynamics.

From the federal perspective, preservation of the environment had been a major contemporary theme following the Industrial Revolution and the essentially unfettered economic development of the 19th and early 20th century. As the nation moved into the second half of the 20th century, the leadership and electorate became increasingly aware of the dangers -- both physical and psychological -- of continued degradation of the country's natural resources. What had once appeared to be an unlimited natural endowment was now seen as a fragile legacy in need of protection.

An important law conceived to meet that challenge was Wild and Scenic Rivers Act (PL95-542). It was designed to identify the country's remaining unspoiled, free flowing rivers, and develop a strategy for protecting them. One of the rivers named in that act was the Upper Delaware.

About the same time, another federal action -- the later aborted decision to build a flood control dam at Tocks Island on the Middle Delaware -- made follow up with specific Upper Delaware protective legislation and a subsequent River Management Plan a difficult and controversial business. Public outcry and distrust emanating from seemingly needless and insensitive eviction of property owners surrounding Tocks Island sent shock waves upstream fueling opposition to federal intervention on the Upper Delaware.

It took ten years and five Congressional bills before an acceptable Upper Delaware law could be enacted. That resulting legislation was a seemingly elegant solution to the struggle between home rule advocates and fiscal conservatives on the one side, and governmental control advocates and environmentalists on the other. It called for a bottom line of federal responsibility (insisted upon by the earlier Wild and Scenic Rivers Act), but put land use management in the hands of local zoning authorities. The federal government in the person of the National Park Service would manage the river itself. But almost all of the land would remain in private hands, with management of the area jointly controlled by local, state and federal governments.

Even with all the creativity and responsiveness that went into drafting that legislation, even with a law uniquely designed to please fearful local residents and the budget conscious government of the 1980s, implementation of the law through a River Management Plan involved a long and painful struggle.

The federal government's attitude undoubtedly played a role in that pattern of struggle. On the one hand, there was a strong commitment by elected officials and a number of key

bureaucrats to this cooperative management, minimal federal acquisition approach. As the country moved into the 1980s, sympathy with environmentalists' passions had been tempered by fiscal realities. There was a lingering suspicion that the wave of the future did not include massive federal buy-outs of private property. Although the Upper Delaware law pre-dated Ronald Reagan's presidency and was introduced by a liberal Democratic congressman, its basic idea of protecting the environment through local control with stringently limited federal land acquisition was made to order for Reagan conservatives. Thus, it was not really surprising that Interior Departments directed by Reagan appointees Watt, Clark and Hodel clung to the concept and resisted de-authorization pleas.

On the other hand, the bureaucracies under their direction had little experience in dealing with anything the federal government did own and/or exclusively control. Some field personnel and planners were enthusiastic about the "grand experiment." But for most of managers and planners of the National Park Service and Bureau of Outdoor Recreation, it was a case of making do with a strange situation. With governmental policies resulting in expansion of mining, oil drilling and lumbering on public lands elsewhere, the handwriting seemed to be on the wall. If this was the best they could get (now and perhaps in the future), they had somehow better find a way to make it work. But there was no particular commitment to a specific method or policy for implementation.

This attitude made federal interests especially vulnerable to pressures applied by local residents. And those local residents -- though far from the classic profile of the power broker -- proved to be quite adept at applying pressure.

In some ways, Upper Delaware residents are very much like residents of other small towns scattered across America, with very little apparent potential for political power. By national standards, there are few wealthy people. There is no IBM, General Motors or other major

manufacturer. Rumors occasionally circulate that some celebrity, titan of the business world or a Mafia boss has moved to the area; but if they are in residence, they are carefully hidden away, not inclined to exert their power or to surface publicly. Personal wealth, where it exists, is cautiously disguised and seldom utilized to exert social or political power.

A sparse population -- 3,000 to 4,000 residents according to National Park Service estimates -- means there is little power through the ballot box. Given the general (beyond the river valley) popularity of the three Congressmen serving the area, coupled with the fact that the valley only represents a tiny segment of the districts of each, it is unlikely that any of them could have been voted out of office even if every single voter in the river corridor rose up in anger and voted against them.

Yet power was exerted and changes were made. As a result of citizen protest, the government's bureaucracy has been moved to adapt, time and again. Federal legislation has been written and rewritten. Plans have been revised, and begun all over again, and revised, and revised yet again. A unit of the National Park Service originally envisioned as a traditional federal land purchase turned into "an area of federal concern" with cooperative management of a river corridor largely left in private ownership. A River Management Plan, which was supposed to have been completed in three years, was nine years in the making before finally becoming official public policy.

At times it seemed as if every protest technique short of self-immolation had been employed. Pressure was applied through local newspapers, telephone calls, letters, public appearances, and face-to-face meetings. Conservative elements lobbied, testified at hearings, wrote letters, and arranged private meetings with Congressmen and bureaucrats. More radical elements picketed, rallied, shouted down speakers at hearings, hanged bureaucrats in effigy, threatened law suits, painted swastikas and slashed automobile tires.

In another time or place, once Congress made it clear that no laws would be repealed or invalidated, the protestors might have thrown in the towel, sold their property and moved on. But this is a region where a high value is placed on rugged individualism. Long a haven for feisty, independent personalities, it boasts a 200-year tradition of opposition to outside government control. These people do not give up easily or quietly.

Likewise, in another time or place the federal government and its agent, the National Park Service, might have been the ones to abandon efforts to gain local cooperation and approval. Pleading that local residents refused to cooperate in the spirit of the law, they could have condemned the property and thrown the protestors out. Or they could have de-authorized the area and walked away. But the idea of cooperative management was a new concept, thought to be the vision of the future in a world where federal funding for land purchase was becoming increasingly scarce, even as urban sprawl was threatening pristine landscape. The pride of the Service, concern for the environment and the faith of the Congressmen and a few bureaucrats in this "grand experiment" resulted in a certain tenaciousness on the part of the federal government.

And so the battle was pitched, with a war of sorts continuing for nearly two decades, only ending with (or perhaps interrupted by) an uneasy truce.

#### Motivation for a Study

As a native of the river valley with contacts and interests on both sides of nearly every Upper Delaware argument, I have long believed this to be a subject crying out for sociological analysis. As far back as 1972, when the protest was in its infancy and I was taking sociology classes at Syracuse University, I put together a paper titled, "The Challenge to Bureaucracy in Rural Government," based on the first struggles between Upper Delaware residents and the Bureau of Outdoor Recreation.

A decade and a half later, with the controversy apparently winding down, the time seemed ripe for a full fledged study of the dispute. By this time, the "great experiment" had clearly reached the implementation stage. Background, events and opinions had been extensively documented in minutes, letters, reports, memos, public statements and newspaper articles. The information base was available in its raw form, waiting to be utilized.

From time to time newspapers or magazines have tried to review and analyze the situation, but given the nature of that medium the effort was inevitably superficial and non-academic. After this study was under way, a Park Service report was initiated to look at the controversy in the light of "how should NPS respond in the future," approaching the subject from a somewhat more limited perspective. But no one had attempted to put all the elements together and determine what patterns might be at work here, what this experience might reveal about the nature of citizen protest, its successes and failures.

#### An Approach to the Study

This study focuses on the people and organizations of the Upper Delaware River Valley. Specifically, it deals with those who have involved themselves in the struggle to preserve the valley's environment while maintaining the individual rights of local residents. Given the importance of these locally based groups, much of the case study concentrates on their history, protest techniques, successes and failures.

But this is not meant to be an Upper Delaware organizational analysis. Rather, it is an attempt to look at the pattern of the controversy, and see what can be learned about the nature of the citizen protestor and the circumstances under which he or she achieves success, or tastes failure.

In order to understand the Upper Delaware dispute fully, four general areas have been reviewed: 1) the history of the controversy; 2) socio-economic factors; 3) identity of the

protestors; and 3) conditions under which protest has succeeded or failed.

The history of the controversy is a long one, traceable from the pre-Revolutionary War pioneers who challenged William Penn's jurisdiction, through a 230-year-old tradition of local citizen resistance, to the orange-shirted anti-Park Service elements of the 1980s. Among the events examined in this study are: controversies of earlier times; introduction of the Wild and Scenic Rivers Act; lobbying to influence the form of the Upper Delaware legislation; development of citizen organizations with varying viewpoints and protest techniques; the stormy public meetings over the River Management Plan; attempts to negotiate and rewrite the Land and Water Use Guidelines and the Plan; and eventual endorsement of the Plan by the Secretary of the Interior.

A brief socio-economic history of the area introduces the discussion of the area's economy, demography and sociological elements. The current economic picture is analyzed in terms of the few non-service industries at work in the valley: agriculture; lumbering and quarrying; outdoor recreation; and real estate. Special attention is given to the outdoor recreation and real estate industries and their impact upon the changing social make up of the area, helping to create a community divided between second-home owners and full-time residents, with differing perspectives and levels of community involvement. These elements, their background, motivations and behavior are examined.

The chapter focusing on identities of the protestors deals with the local organizations which were created in response to, or energized by, the controversy: The Upper Delaware Scenic River Association and the Equinunk-Lordville Upper Delaware River Association represented riparian landowners with a conservative, within-the-system approach to protest, striving for negotiation rather than surrender. The Upper Delaware Defense Committee, the Coalition of Concerned Citizens About Constitutional Rights, the Citizen's Alliance and the Independent

Landowners Association, adopted a more radical, frontal attack, calling for repeal of the federal law and removal of the federal presence. The Citizens Advisory Council and the Conference of Upper Delaware Townships, officially designated organizations authorized by traditional governmental structures, took on the role of ombudsmen for the local residents. The Upper Delaware Canoe Association, Delaware Valley Outdoor Recreation, and Association of Upper Delaware Independent Outfitters, defended the rights of local canoe livery and campground operators, while occasionally participating in a big-livery-versus-small-livery quarrel among themselves. The Upper Delaware Heritage Alliance acted as an advocate for history and cultural resources interests. The Upper Delaware Clearinghouse bridged the interests of local riparian landowners and bureaucrats advocating land use controls.

Each of these organizations is discussed in terms of its membership, its expressed goals and its effectiveness. In addition, there is examination of two individuals who, over a period of years, have been at the forefront of protest but have not been identified with any one organization. The National Park Service's role is also examined. Circumstances under which the organizations and individuals achieved or failed to achieve their goals are outlined.

Once this body of case study information is presented, analytical questions concentrate on the relationship between history, socio-economic factors, the protestors and their effectiveness. Two basic questions are addressed: 1) How has the history of the dispute related to the protestors and their success or failure? and 2) How have socio-economic factors related to the protestors and their success or failure?

#### A Broader Perspective

With its feisty characters, distinct local flavor and intermittent drama, the Upper Delaware controversy is a fascinating case study, in and of itself. But interest in it goes beyond the river corridor and parochial concerns. In recent years, a number of authors, writing from

the social science perspective, have dealt with theories and concerns which pertain to the Upper Delaware dispute.

In what is probably the most famous of all small town studies, Vidich and Bensmen<sup>1</sup> analyzed class, power and religion in a rural community similar in population density to the Upper Delaware Valley. Although socio-economic factors and geographic circumstances differ, the authors' discussion of Springdale and the very personal nature of all rural life, including its power structure, has particular relevance to the Upper Delaware situation. In addition, their identification of the importance of 19th century values, even when the reality of small town life and the encroachment of mass society no longer support those values, both illuminates and adds poignancy to the Upper Delaware situation.

Philip Selznick's TVA and the Grass Roots<sup>2</sup> dealt with the issue of outside forces effecting a local community from another perspective, looking at it from the viewpoint of a federally authorized program at work in a regional setting. The basic dilemma he articulated has a striking resemblance to the Upper Delaware's situation: "On the one hand, it must be conceded that increasingly large powers ought to be intrusted to the federal government, for there are too many basic problems which cannot be handled through the organs of local control; on the other hand, the centralization of large powers is always a menace to democracy."<sup>3</sup> TVA's solution was somewhat more formally and comprehensively centralized -- development of a centralized

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<sup>1</sup>Arthur Vidich and Joseph Bensman, Small Town In Mass Society: Class, Power and Religion in a Rural Community. Revised Edition. (Princeton: Princeton University Press, 1968).

<sup>2</sup>Philip Selznick, TVA and the Grass Roots. A Study in the Sociology of Formal Organizations. (New York: Harper & Row, 1966).

<sup>3</sup>ibid., p. 25.

governing mechanism with strong grass roots input on the administrative level -- in contrast to the Upper Delaware, whose legislation specified cooperative management involving local entities, with the bottom line administrative responsibility in the hands of the federal Department of the Interior. In the process of democratizing administration (TVA) and developing cooperative management (Upper Delaware), both situations entailed complex and controversial efforts to involve local institutions in the planning and policy making aspects of a new entity.

Other studies have dealt with the bureaucracy, its workings and its relationship to local activism. Those most closely relating to this situation deal with the land conservation agencies of the federal government.

Sociologists have paid relatively little attention to the National Park Service. However, two books on its sister organization, the United States Forest Service, shed some light on the Park Service and its reaction to the Upper Delaware controversy.

Ben Twight's examination of the struggle over Olympic National Park -- ironically, a conflict in which the Forest Service and the National Park Service were adversaries -- highlights the difficulties experienced by a government agency whose traditional values and policies are so entrenched as to block effective negotiations with the public.<sup>4</sup> Twight's work validates the earlier writings of Ashley Schiff,<sup>5</sup> who discussed the role of value orientation in inhibiting the ability of federal conservation agencies to produce adaptive decision making.

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<sup>4</sup>Ben W. Twight, Organizational Values and Political Power: The Forest Service Versus the Olympic National Park (University Park: The Pennsylvania State University Press, 1983).

<sup>5</sup>Ashley L. Schiff, "Innovation and Administrative Decision-Making: The Conservation of Land Resources," Administrative Science Quarterly 11, no. 1 (1966).

As with Twight's study of the Olympic National Park, a examination of the National Park Service's actions and reactions on the Upper Delaware reveals much about the degree to which that agency "may make policy decisions on the basis of a long-standing belief pattern or value orientation, regardless of the political consequences."<sup>6</sup> Throughout the Upper Delaware controversy, one of the keys to successful negotiations between the National Park Service and local interests has been that agency's ability or inability to accepted creative approaches beyond the boundaries of their traditional orientation.

Herbert Kaufman, in his study of the forest ranger,<sup>7</sup> gives some attention to the other side of the coin, examining the difficulty such organizations as the Forest Service and the Park Service have in keeping field personnel in line with national policy. This analysis is germane to the Upper Delaware situation where tensions frequently surfaced between the Park Service's regionally and nationally based management and its field personnel. The conflict between regional managers, who assigned high priority to national policies and political realities, and field personnel, who identified more strongly with local concerns and local politics, had a continuing impact upon the agency's ability to negotiate with local protestors.

In another work, Kaufman looks at the entanglements of bureaucracy from a different, but equally enlightening perspective. In his slim volume on the historical and philosophical roots of government red tape in America, he concludes that "a society less concerned about the rights of individuals in government and out might well be governed with a much smaller volume of paper and much simpler and faster administrative producedures than are typical of governance

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<sup>6</sup>Twight, op. cit.

<sup>7</sup>Herbert Kaufman, The Forest Ranger. A Study in Administrative Behavior. Second Edition (Baltimore: The Johns Hopkins University Press, 1967)

in this country."<sup>8</sup> This pointedly addresses the contradictions inherent in a situation like that on the Upper Delaware, where protestors call for protection from the whims of unfettered government, at the same time as they chafe at the frustration of protracted review, due process and bureaucratic paper shuffling.

The above sources have all dealt with the bureaucracy and its reactions. The other side of the story, and the major concern of this study, is that of the citizen protestor and the organizations in which he or she operates.

One way to look at these organizations is within the context of other contemporary community based protests. Harry Boyte, in his book, The Backyard Revolution, addresses the idea that a new kind of community based citizen revolt which surfaced in the United States following the self-consciously revolutionary 1960s. Although an outgrowth of the earlier civil rights movement, Boyte sees this "new citizen movement" resulting in grass roots level activism without liberal connotations. Clearly including such protests as that found along the Upper Delaware, this activism is both personal and community oriented, based on the "people's hope for a measure of control over their lives."<sup>9</sup>

Even within the context of a national trend toward community protest, the Upper Delaware remains an unusual kind of confrontation, one which seldom finds its way into the social science literature. The great majority of protests relating to environmental issues and documented in scholarly writings feature the environmentalists versus the government, or big business influencing government to ignore environmental concerns. The Upper Delaware offers only a

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<sup>8</sup>Herbert Kaufman, Red Tape, Its Origins, Uses and Abuses (Washington: The Brookings Institute, 1977). p. 46

<sup>9</sup>Harry C. Boyte, The Backyard Revolution: Understanding the New Citizen Movement. (Philadelphia: Temple University Press, 1980), p. 31.

minimal amount of these classic conflicts. By and large, this is been a clash between local residents concerned about retaining home rule and personal property rights and a federal agency concerned with policing and monitoring. Both sides of the argument claim a concern for protecting the environment.

In addition, there is a general understanding (though grudging, and not always publicly admitted) that each side must eventually work with the other, that there must be long range cooperation. The anti-Park Service elements may post signs read "NPS Get Out of Town". But most of the protestors are well aware that the federal government holds the ultimate power and that, if secession didn't work for the Confederacy in the 19th century, it has even less of a prospect for the Upper Delaware in the 20th. Likewise, the National Park Service is aware that it has the full power of the federal government behind it. But it also knows that Congress, which makes the laws and holds the purse strings, has given NPS orders to put together a cooperative management system. And that management system can only be "cooperative" if the local residents agree to go along with it.

At the core of this analysis, then, is an acknowledgement that negotiations were mandatory and, therefore, that there is a special interest in how the negotiating process has worked.

A part of that negotiating process is illuminated by what James Coleman calls the "legitimate and uses of power,"<sup>10</sup> an analysis of political "deals" and the circumstances under which they are accepted as proper behavior. Along the Upper Delaware, because of the public nature of the controversy and the long range need for cooperation, legitimacy has been a continuing and long range concern, frequently spotlighted at public meetings and in the press.

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<sup>10</sup>James S. Coleman, "Legitimate Use of Power," in The Idea of Social Structure: Papers in Honor of Robert K. Merton, edited by Lewis A. Coser (New York: Harcourt Brace Jovanovich, 1975).

Along with legitimate use of power, the problem of developing a close and influential working relationship with the bureaucracy, without being co-opted by it has long been a sensitive negotiating issue. It is of particular relevance in discussing the effectiveness of such organizations as the Citizens Advisory Council and the Conference of Upper Delaware Townships. Jeffrey Berry, writing in the *Journal of Applied Behavioral Science*,<sup>11</sup> observes that "institutionalized" citizens groups such as advisory councils are seldom effective. One cause of this is their need to walk a tightrope between working closely with an agency, on the one hand, and resisting co-option by the agency, on the other hand.

Roger Fisher discusses negotiations from a different viewpoint,<sup>12</sup> outlining six categories of negotiating power: 1) the power of skill and knowledge; 2) the power of a good relationship; 3) the power of a good alternative to negotiating; 4) the power of an elegant solution; 5) the power of legitimacy; and 6) the power of commitment. All of these categories come into play in the case study. But the power of a good relationship and its negative side -- the constraining influence of a bad relationship -- is revealed with special clarity.

Each of these writings offers theoretical explanations for, and is in turn substantiated by, the material in the case study. That illumination and re-enforcement will be further examined in the concluding chapter.

Each of these writings offers theoretical explanations for, and is in turn substantiated by, the material in the case study. That illumination and re-enforcement will be further examined in the concluding chapter.

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<sup>11</sup>Jeffrey M. Berry, "Beyond Citizen Participation: Effective Advocacy Before Administrative Agencies," *The Journal of Applied Behavioral Science*, vol. 17, no. 4 (1981).

<sup>12</sup>Roger Fisher, "Negotiating Power: Getting and Using Influence," *American Behavioral Scientist*, vol. 27, no. 2 (November/December 1983).

## A HISTORY OF THE CONTROVERSY

In order to understand the Upper Delaware and its protestors, it is first necessary to look at the historical background of the controversy and the events surrounding the Scenic and Recreational River designation.

The legislation creating the Upper Delaware Scenic and Recreational River didn't come into being until 1978, but there is a sense in which the "river controversy" and citizen protest surrounding it began more than 200 years ago. Few of the protestors of today are physical descendants of those who fought against outside control in the 18th and 19th centuries. However, many seem to be their spiritual heirs, people drawn to the area by a sense of unfettered individualism. In order to understand today's protestors, it may be useful to look at their predecessors.

### Early Controversies

In the 1750's, the first white settlers came into the valley from Connecticut, as part of the Delaware Company. The charter which brought them there was based on a 1662 proprietary grant from Charles II of England, defining the colony's boundaries as all land between the 41° latitude, from Atlantic to Pacific. It had been amended to exclude lands deeded separately to the Duke of York. In 1681, King Charles further deeded the west bank of the Delaware from 42° latitude to William Penn, neglecting to mention that this grant superceded the one from Connecticut. The Delaware Company, ignoring Penn's grant, assumed the west bank of the Delaware was Connecticut property<sup>1</sup>.

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<sup>1</sup>Robert C. McGregor, "A History of the Upper Delaware Valley", in SUNY-Binghamton's Cultural Resources Survey of the Upper Delaware, vol. II, Mid-Atlantic Regional Office, National Park Service, 1983; pp. 3/43-3/45.

On the east bank of the river, settlement came a few years later, although some Delaware Company settlers ignored official claims, establishing their squatters' rights at an early date. Here again, overlapping land grants led to confusion, conflict and disregard for higher levels of authority. Both New York and New Jersey claimed 50 miles of valley, from Station Rock at Cochection (Cushetunk) to Port Jervis (Carpenter's Point). Although most of the trouble erupted along the southern boundary, outside the area now called the "Upper Delaware," New Jersey's attempt to collect taxes and enforce laws north of Carpenter's Point was met with enough resistance<sup>2</sup> to be termed a "border war," with repercussions throughout the valley.

After the Revolution, when more formal government was established in the valley, the matter moved into the courts, disputes finally being settled by decision of the Continental Congress in 1783.<sup>3</sup> Neither evasion nor armed confrontation by settlers made any impression on the authorities. By the time decades of delay and confusion were over, some settlers found themselves paying for their land as many as four times over: to two different states and two different Indian tribes.

These land disputes were just part of the continuing conflict between local residents and outside government.

If the Upper Delaware settlers ever viewed government beyond the valley as their friend, the Revolutionary War disabused them of that idea. Depending upon their precise location, they were as much as 60 miles from the nearest sizable settlement; and when Indians sympathetic to the British attacked, no colonial soldiers rushed to their aid. Mohawk Chieftan Joseph Brant led

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<sup>2</sup>ibid., p. 3/50.

<sup>3</sup>ibid., p. 3/51.

raiding parties into the area in an attempt to divert General Sullivan's attack on Indian villages to the west, but Sullivan did not respond.<sup>4</sup> The fact that it was good military judgement was little consolation to a family whose home had been burned or whose son had been forced to run the gauntlet. The local population remained loyal to the patriot's cause, but unimpressed by higher levels of the new American government.

#### Isolation & Independence

After the Revolution, when the country settled down to the business of expansion, the Upper Delaware remained remarkably isolated and undeveloped. Less than 200 miles from the Philadelphia/New York metropolitan areas, it maintained a wilderness quality long after the frontier had pushed on to the west. It wasn't until the coming of the New York and Erie Railway, in the 1850's, that things began to change. But even the building of the railroad, coming on the heels of some turnpike development and construction of the Delaware and Hudson Canal, didn't "civilize" the area. It only provided a kind of escape hatch for those fleeing the big city to the less restrictive atmosphere of the Upper Delaware.

By and large, local residents avoided contact with "outside" government. They came to think of themselves as independent, rugged individualists, little affected by domestic policies of nation or state. Only when there was the need for a major highway or an interstate bridge did they consider inviting the interest of "big government."

The pattern of life begun in the 18th century continued on into the 19th and 20th centuries. The population remained small and scattered; only two hamlets (Hancock and Callicoon) grew to anywhere near 1,000 people. Beyond those businesses which extracted from the

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<sup>4</sup>ibid., p. 3/53.

natural resource (timbering, tanning, quarrying), industry left the area untouched. Most products of the Industrial Revolution -- e.g., factories, organized labor, accumulation of industrial capital -- had little impact on the valley.

Local government developed with a non-intrusive attitude. Pennsylvania townships elect their supervisors (the highest municipal office) with a primary concern for road maintenance, essentially as highway superintendents. New York's towns separate the highway superintendent's job from the supervisor's, but make it clear that they expect their supervisors to exercise very limited powers. The municipal functions common to urban areas -- police, sanitation, water supply, fire protection -- are seldom handled by these municipal governments. What policing is necessary normally falls into the hands of the State Police or County Sheriff. Fire Departments are volunteer organizations. Sanitation and water supply are usually the business of private enterprise.

Prior to the 1970's, municipal planning had no significant impact on the area.<sup>5</sup> Even in the 1980's, the zoning which had long been a way of life in nearby suburban areas, continued to be a cause for contention along the Upper Delaware. Several townships still do not have zoning ordinances, with many local residents viewing them as a dangerous erosion of their inalienable rights.<sup>6</sup>

#### Wild & Scenic Rivers Act

Into this atmosphere came the Wild and Scenic Rivers Act of 1968, declaring that it is "the

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<sup>5</sup>The first zoning ordinance in the river valley was enacted in the Town of Deerpark, Orange County, New York, in 1970.

<sup>6</sup>In the spring of 1986, there were zoning ordinances in place in 11 of the 15 towns and townships of the river corridor.

policy of the United States that certain selected rivers of the Nation, which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geological, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit of present and future generations."<sup>7</sup> Among the 27 rivers which the Act designated for "potential addition to the national wild and scenic rivers system"<sup>8</sup> was the segment of the Delaware between Hancock, New York, and Matamoras, Pennsylvania.

Although initially thought to be the kind of "motherhood and apple pie" legislation that nobody opposed, on the Upper Delaware it opened the door to a seemingly endless stream of new citizen protest. That protest centered on local residents' desire to retain ownership of their private property and to minimize land use regulations. It resulted in a ten-year struggle to develop legislation specific to the Upper Delaware.

Little is recorded about the way in which the Upper Delaware became a part of the list of study rivers included in the legislation. It appears that mention of the nearby Susquehanna (which was on an early Bureau of Outdoor Recreation Task Force list, but was later dropped) sparked the interest in the Upper Delaware.<sup>9</sup> Among those calling for its inclusion were environmentalists seeking to preserve the clean waters and good fishery,<sup>10</sup> outdoor

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<sup>7</sup>Public Law 90-542, 90th Congress, S. 119, October 2, 1968. Section 1(b).

<sup>8</sup>Ibid., Section 5(a)(6).

<sup>9</sup>Benton P. Cummings, letter to Secretary Stewart L. Udall, United States Department of the Interior, November 20, 1963.

<sup>10</sup>John S. Grim, letter to Edward Crafts, Director, Bureau of Outdoor Recreation, United States Department of the Interior, October 17, 1963.

recreationists concerned about keeping the river available to canoeists,<sup>11</sup> and citizens groups and bureaucrats worried about the population and development pressure expected to result from the proposed Tocks Island Dam and Reservoir downstream.<sup>12</sup>

The Tocks Island project weighed heavily upon the minds of many concerned residents. Centered in the Delaware Water Gap or Middle Delaware region, the dam had been authorized under the Flood Control Act of 1962. Over the next decade, public concern about the environmental effects and economic feasibility of the project was voiced. Congress appropriated money for feasibility studies and land acquisition, but did not appropriate funds for the dam. Finally, in 1975, the governors of the concerned states (through the Delaware River Basic Commission) requested that the dam and reservoir project be de-authorized. But land had already been condemned, property owners ousted, and plans for a recreation area, with or without the reservoir, developed. At this point, the Army Corps of Engineers bowed out and Congress directed the National Park Service (NPS) to take exclusive control of the project. Not only did NPS fall heir to a large parcel of real estate, it also inherited the hostility and bitterness of local landowners who had been thrown off their lands. The hard feelings were sharp enough when the dam and flood protection were part of the picture. The controversy became a full blown scandal when family homesteads were wrested away to sit empty, houses vandalized and burned, and once viable business properties condemned and left unutilized.

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<sup>11</sup>Cummings, op. cit.

<sup>12</sup>Paul Felton, Technical Director, Water Resources Association of the Delaware River Basin, letters to BOR, 1965-68; letters from Tocks Island Regional Advisory Council to BOR during the same period; resolution by the Water Resources Association of the Delaware River Basin, April 1966.

With Tocks Island on their minds and a generalized fear of "ruthless, brutish, confiscatory methods,"<sup>13</sup> which might rob them of their homes, some local residents opposed the Wild and Scenic Rivers Act. The section of the proposed legislation which particularly worried them was that which would authorize federal acquisition of up to 100 acres of land per river mile.<sup>14</sup>

Despite this opposition, the Wild and Scenic Rivers Act, including listing of the Upper Delaware as a study river, did become law. That led directly to formation of a bureaucratic task force to study the Upper Delaware. That task force became the target of even more vocal citizen protest.

#### A Chronology

Because the period following passage of the Wild and Scenic Rivers Act includes so many separate, sometimes confusing events, an overview is presented here, in the form of a chronological outline:

1968 Passage of the Wild & Scenic Rivers Act, including the Upper Delaware as a study river.

1969-73 Interagency Task Force, headed by U. S. Bureau of Outdoor Recreation, presentation at Callicoon sparks protest, leads to formation of riparian landowner associations.

1973 Riparian landowners draw up "pertinent points concerning the proposed plan for the Wild and Scenic Rivers Act on the Upper Delaware" and pressure the Department of the Interior and Congressmen to accept the idea of limited federal land acquisition and land use control through local zoning.

1973-78 Unsuccessful attempts, by several Congressmen, to develop Upper Delaware legislation.

1975 Upper Delaware Clearinghouse organizes local planners to develop land use guide-

lines in anticipation Upper Delaware River legislation.

1978 Congressman Matthew McHugh, with the support of other local Congressmen, sponsors the bill that becomes Upper Delaware law. It includes many of the provisions requested by local residents: separation from the Middle Delaware (Tocks Island), minimum federal land acquisition, provision for land use guidelines and a management plan, funding for law enforcement and trash collection, and cooperative management with primary responsibility in the hands of the Department of the Interior.

1979 National Park Service establishes operations on the Upper Delaware as an area under the overall supervision of the Middle Delaware.

Citizens Advisory Council for the Upper Delaware formally installed.

1980 NPS separates Upper Delaware operations from Middle Delaware.

NPS buys Roebling's Delaware Aqueduct (America's oldest suspension bridge) across the Delaware, and closes it to traffic; closing incites protest.

Intergovernmental Planning Team formed with NPS as lead agency.

1981 Guidelines for Land and Water Use, written by the Planning Team, based on Clear-house materials, published in the Federal Register.

1982 Conference of Upper Delaware Townships formed, to give local elected officials an opportunity to monitor planning efforts.

1983 Planning Team presented "Final Draft River Management Plan" after two previous drafts, numerous public meetings and hearings; Planning Team disbands.

Film "For the Good of All" shown in the valley, mobilizing anti-NPS sentiments.

"Monday Night Massacre" (meeting at Damascus, PA) features local attacks on NPS and the Plan; leads to formation of the Coalition, organized to fight for drastic

plan revisions.

1984 NPS Rewrite Task Force attempts quick fix of plan.

Chuck Cushman of the National Inholders Association (brought into the area by canoe livery interests) draws large crowd, energizes emotional and active opposition to NPS; leads to organization of the Alliance, with a more aggressive anti-NPS stance; other anti-plan, anti-NPS public meetings follow.

COUP, with hired consultants financed by federal monies, takes over responsibility for rewrite of the River Management Plan and Land and Water Use Guidelines.

1984-85 NPS negotiates licensing agreement with canoe liveries.

1984-87 Meetings, demonstrations, fist fights, angry publicity, threatened law suits, political pressure and rumors of arson punctuate anti-NPS, anti-plan efforts.

1987 Roebling Bridge re-opened after complete restoration.

Upper Delaware River Management Plan and revised Land and Water Use Guidelines complete review, receive signature of Secretary of the Interior (go into effect January 4, 1988).

#### BOR Task Force

To continue with details, in the history of the controversy: in a sense, the real contention over the river valley began in May of 1969, when a cooperative Interagency Field Task Force was set up to conduct the Upper Delaware study that had been mandated by the Wild and Scenic Rivers Act. Under the leadership of the Bureau of Outdoor Recreation (BOR), it included representatives of NPS, the Bureau of Sport Fisheries and Wildlife, Forest Service, Environmental

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<sup>13</sup>Harry M. Phillips; letter with 33-name petition from residents of River Road, Callicoon, to President Lyndon B. Johnson, April 22, 1966.

<sup>14</sup>Public Law 90-542, op. cit., Section 6(a).

Protection Agency, Army Corps of Engineers, Delaware River Basic Commission, and the Pennsylvania Department of Environmental Conservation.<sup>15</sup>

Two public information meetings were scheduled for the BOR's Upper Delaware Study. The purpose of these meetings was to describe the National Wild and Scenic Rivers Act, and to discuss the study and its findings. The public was also to be given an opportunity to express views of the overall concept and the alternatives offered. The Milford, Pennsylvania, meeting (May 20, 1970) was attended by over 200 people.

The majority opinion there indicated that the Upper Delaware should be included in the National Wild and Scenic Rivers System and that the National Park Service should administer the river. The major problems mentioned by the public were water releases from the upstream reservoirs (too little)<sup>16</sup> and public access to scenic portions of the river (too many).

Further upstream, however, the natives were becoming considerably more restless. In fact, it was the informational meeting at Callicoon that proved to be a watershed for citizen protest on all the issues relating to the Wild and Scenic River designation.

The Callicoon meeting attracted over 300 people. The reception was loud and angry. The majority opinion opposed the Upper Delaware's inclusion in the Wild and Scenic Rivers System. Although they voiced concern about increased use of the river and its effects on the environment, protestors believed that designation would make that situation worse, rather than improve it. BOR officials were shaken and confused by the unexpected hostility.

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<sup>15</sup>Data for this section was drawn from an internal NPS legislative history of the Upper Delaware Scenic and Recreational River, this portion of it written by Glenn Pontier between 1981 and 1983.

<sup>16</sup>The water releases issue relates to the New York City impoundments at Cannonsville and Pepacton on the East and West Branches of the Delaware, upstream from the proposed area of designation.

Following the Callicoon meeting, a series of local meetings were called by concerned residents, primarily property owners. This led to formation of two citizens' organizations, the Upper Delaware River Association (UDSRA) and the Equinunk-Lordville Upper Delaware River Association. These soon consolidated into one group, using the UDSRA name.

On the one hand, these people were concerned about the growing local inability to deal with law enforcement (especially trespassing) and trash removal problems created by river recreationists. On the other hand, they were afraid that the federal government might force them off the lands they wished to retain in the river valley.

These relatively short-lived organizations turned out to be extremely influential. It was the UDSRA's input which turned the federal disposition away from buy-out (the alternative originally preferred by the Bureau of Outdoor Recreation) and toward the cooperative management alternative. In essence, they developed the concept which became the Upper Delaware law.

UDSRA, whose membership eventually numbered about 150,<sup>17</sup> prepared a 12-point position paper, which was the basis for lobbying Congressmen and the BOR. It included recommendations to limit and develop river access areas; to control land use through local zoning; to subsidize local police, water, sewage and garbage collection services; and to set up a citizen's advisory group and a county/federal commission for consultation and coordination purposes.<sup>18</sup> Meetings of the UDSRA's representatives with Congressmen and BOR officials were key factors in negotiating the kind of legislation which eventually set the Upper Delaware apart from traditional units of the National Park System.

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<sup>17</sup>"Upper Delaware Scenic River Assn. Roster", courtesy of R. E. Ohman (undated) lists 149 names.

<sup>18</sup>"A General Outline of Some Pertinent Points Concerning the Proposed Plan for the Wild and Scenic Rivers Act on the Upper Delaware," November 20, 1973.

However, even at this early date, there was dissent in the local ranks, with a group calling itself the "Upper Delaware Valley Defense Committee" splitting off from UDSRA, and calling for the federal government to "cease and desist from plans to acquire lands in the upper Delaware Valley above Port Jervis, N.Y., and to avoid further harassment of the citizens thereof."<sup>19</sup>

Expanding concern over Upper Delaware designation, and its local land use ramifications, led to formation of yet another organization, this one made up of professional planners. By its own definition, the Upper Delaware Clearinghouse was "an informal intermunicipal, inter-county and interstate organization of planning interests in the Delaware Valley formed to share ideas and exchange information on land use guidance and management measures now in effect and to develop a cooperative approach to the federal proposal"<sup>20</sup> for the Upper Delaware. Organized in the fall of 1975, the Clearinghouse prepared a basis for the federally enacted Land and Water Use Guidelines, and sought public input. This group introduced many of the planning professionals who were involved in the later Interagency Planning Team.

#### The Upper Delaware Act

Of course, the people who are officially responsible for enacting laws are Congressmen, not bureaucrats. While BOR was pursuing its study, Congress was putting together its own series of proposals and negotiations. And the Congressmen were being subjected to the same push and pull of public opinion which had been directed at BOR.

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<sup>19</sup>This wording comes from a petition "prepared by the Upper Delaware Valley Defense Committee." Further discussion of the dissent appears in letters exchanged by Dr. Vernon Leslie and UDSRA Co-Chairman V. Edward Curtis in October 1973.

<sup>20</sup>Background section on "The Upper Delaware Clearinghouse - Origins and Activities" in "Proposed Zoning Guidelines for the Upper Delaware River Towns & Townships", prepared by Upper Delaware Clearinghouse, 8/31/76.

The first Upper Delaware bill, introduced in 1973, offered nothing that would separate treatment of the Upper Delaware from that of other units in the Wild and Scenic Rivers System.<sup>21</sup> Just three months later, a different bill, introduced by a Congressman representing the Pennsylvania side of the Upper Delaware, began to show the influence of local input,<sup>22</sup> specifically limiting the federal government's powers of condemnation and acquisition. No action was taken on either of these bills.

Another bill, introduced after four years of legislative inactivity on the subject, considerably muddled the waters.<sup>23</sup> It all but ignored the Upper Delaware's special characteristics and linked it to the Delaware Water Gap National Recreational Area. The sponsor was a suburban Philadelphia area Congressman, with no particular interest in the Upper Delaware. Congressman Peter Kostmayer's concern was with the Middle Delaware, where many of his constituents owned second-home properties. Those constituents, anxious to retain control of their property, were pressuring for abandonment of the Tocks Island dam project. Kostmayer hoped to take advantage of the Upper Delaware designation to impose that part of the Wild and Scenic Rivers Act forbidding impoundments upon the Middle Delaware. Such a linkage would have killed the Tocks Island project, once and for all.

Although at variance with previous discussion, the bill carried enough weight to spawn

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<sup>21</sup>H.R. 9951, introduced by Representative Jonathan Bingham, August 3, 1973; reintroduced January 4, 1977.

<sup>22</sup>H.R. 11148, introduced by Representative Joseph McDade, October 19, 1973.

<sup>23</sup>H.R. 6403, introduced by Representative Peter Kostmayer, April 20, 1977; reintroduced August 5, 1977.

companion legislation in the Senate (S.2270). However, it was not supported by residents of the river valley.

The Department of the Interior released the BOR study in December of 1973, but it was not until 1977 that the administration made its first recommendation for designation. In his May 23, 1977, Environmental Message, President Carter called for designation of the Upper Delaware, followed up by specific Department of the Interior recommendations on legislation.<sup>24</sup> As NPS historian Glenn Pontier later summarized, "Obviously concerned that development be controlled, yet aware that local public opinion opposed the traditional methods (i.e. purchase), the bill muddled around the issues in an attempt to compromise."<sup>25</sup> That compromise seemed to offer local townships the option of inclusion, with the possibility of creating a "checkerboard park" with some parts of the river valley included and others left out. It did raise a key element which eventually gave the Upper Delaware its oft referred to quality as "a unique experiment": the primary tool for land use control was zoning, the exclusive responsibility of local municipalities. In Pontier's words, "By establishing standards on the one hand, yet relying on their implementation by the lesser political subdivision on the other, the legislation was forging a new compromise: a public park which is not publicly owned."

Congressman McDade followed up the Interior recommendations with a bill calling for a nodal management approach, the land being protected primarily through land use controls and

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<sup>24</sup>Assistant Secretary of the Interior Robert Herbst, letter with attached Legislative Review to Representative Morris K. Udall, Chairman, Committee of Interior and Insular Affairs, House of Representatives; November 10, 1977.

<sup>25</sup>Pontier, op. cit.

small clusters of land purchases, rather than through massive federal ownership.<sup>26</sup> This bill, the most comprehensive yet to address the subject, was received enthusiastically by many of the groups and interests which had been working on the issues for as long as seven years.

Early in 1978, a new approach was presented, one which ultimately gathered support of all who had submitted previous legislation.<sup>27</sup> It was introduced by Congressman Matthew McHugh, who represented Delaware and Sullivan Counties, the major portion of the river corridor on the New York side of the river. His bill was co-sponsored by all those who previously co-sponsored bills.

McHugh acknowledged that there was some opposition to the bill within his district.<sup>28</sup> However, he did address a number of special local concerns: that the Middle Delaware (Water Gap) be kept separate; that land acquisition be kept to a minimum; and that no single community have veto power over establishment of the Scenic and Recreational River. His bill called for immediate designation (no waiting for local zoning approval); a 450-acre federal land acquisition limit, with an additional 1,000 acres possible if the management plan called for it; a prescribed time period in which land use guidelines and a management plan should be developed; and establishment of an advisory commission to ensure local public involvement. It also called for primary management responsibility to be in the hands of the Department of the Interior, rather than the previously suggested Delaware River Basin Commission.

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<sup>26</sup>H.R. 10241, introduced by Representative Joseph McDade, December 6, 1977.

<sup>27</sup>H.R. 11131, introduced by Representative Matthew McHugh, became Public Law 95-625 on November 10, 1978.

<sup>28</sup>Gerry Tays, Department of the Interior file memorandum, concerning a February 23, 1978 meeting with Representative McHugh.

### NPS on the Upper Delaware

After years of study and contention, the law was finally in place. In retrospect, the four years that followed were something of a honeymoon. Although bureaucratic snafus, some single-issue problems and the occasional harsh voice of a local curmudgeon did surface, most of the planning and administration along the river was done in an atmosphere of cooperation and compromise.

Following enactment of the legislation, the National Park Service moved to establish its presence on the Upper Delaware. With the BOR no longer in existence and the National Park Service (contrary to its own desires) now the designated interim management agency, NPS planning officials had already made several appearances in the river valley. In August of 1979, John Hutzky was named Area Manager and opened an office in the central section of the river valley, at Cochecton, New York. Despite some internal confusion about the Park Service role in the valley, he began the process of hiring staff and developing a program for administration, interpretation, and law enforcement in the river corridor.

In September of that year, the Citizens Advisory Council (CAC) mandated by the legislation, was formally installed<sup>29</sup> amidst grumbling that appointments had been delayed and too much had happened before the CAC had an opportunity for input. The atmosphere was generally cordial, but many of the issues and criticisms which would continue to plague NPS and the professional planners surfaced at the first meeting.

NPS Regional Director Richard Stanton indicated he had heard accusations that the "National Park Service is trying to ram the guidelines down the public throat before the Council

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<sup>29</sup>CAC meeting transcript, September 8, 1979.

meets."<sup>30</sup> Work on the guidelines, which were supposed to be in place within 180 days after the law passed, were thus slowed down in order to solicit public reaction. It was nearly three years before the Land and Water Use Guidelines became official.<sup>31</sup>

According to CAC Chairman Herbert Fabricant, some of the Council members were also "troubled" by the NPS organizational set up.<sup>32</sup> For the sake of budgetary and administrative efficiency, NPS planned to run the Upper Delaware as an adjunct to the Delaware Water Gap National Recreation Area. It would have an Area Manager under the supervision of the Middle Delaware's superintendent. Asserting that Upper Delaware people worked hard for their separate legislative identity, that they had "nothing in common . . . [with the Middle Delaware] except the river flowing from our area to there" and that they didn't want "funds and controls and policies . . . laundered before we have a chance to put our full input into it."<sup>33</sup> Residents demanded an independent administrative organization. The CAC made it their first resolution to request that the Upper Delaware be managed separately from the Delaware Water Gap. CAC member George Frosch was particularly vocal on the subject, and CAC Chairman Fabricant is reported to have applied political leverage through Congressman Gilman, a politician who had long valued Fabricant's support.

Director Stanton's may have assumed that one superintendent/one river was the only policy that made sense and that "In about two or three years when we get our plan and so forth

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<sup>30</sup>ibid., p. 23.

<sup>31</sup>The guidelines were printed in the Federal Register September 11, 1981.

<sup>32</sup>CAC transcript, op. cit., p. 54

<sup>33</sup>ibid., p. 56.

we may well decide that now it's time to have a complete new park,"<sup>34</sup> but he was ambivalent enough about the Park Service's role in the valley to give in to local pressure. In less than a year, Area Manager Hutzky was named Superintendent with a separate unit under his direction. The administrative bond with the Middle Delaware was completely severed.

Another continuing issue raised at the first CAC meeting was the NPS acquisition of Roebing's Delaware Aqueduct, the oldest wire suspension bridge in America. In late 1979, the privately owned and decaying bridge was about to be purchased by NPS, but the final sale had been held up by "a significant title defect."<sup>35</sup> Concerned by the delay, locals who had long used the bridge as the direct crossing to Lackawaxen, Pennsylvania, were anxious to have NPS buy it and once again turn it into a viable traffic artery.

Public concern turned to public outcry in the Lackawaxen section of the valley, when NPS bought the bridge and, for safety reasons, did not reopen it to traffic. Local people appeared at every river related meeting and reminded NPS that Director Stanton had promised the bridge would be opened to highway traffic. Meanwhile, with Stanton no longer Regional Director, NPS officials were examining their responsibilities as custodians of a National Historic Landmark, while the Highway Safety Administration was telling them that there was much rehabilitation work to be done before the bridge could meet federal standards for a highway bridge.<sup>36</sup>

Despite official statements about not yet having sufficient information to make a decision, local people firmly believed that NPS was trying to back down on its commitment to let vehicles

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<sup>34</sup>ibid. p. 57.

<sup>35</sup>ibid.

<sup>36</sup>National Park Service press release: "Highway Agency Evaluates Delaware Aqueduct As In 'Critical Condition'." November 13, 1980.

cross the bridge. Among some professional historians and planners, who didn't have to cope with the Aqueduct as a historic site restricted to pedestrian traffic. Park Service officials began to feel the pressure, through the local media as well as at public meetings (800 signed a petition turned in at one Guidelines hearing), and hinted privately that local people should influence their Congressman to come up with enough funding for a full rehabilitation job. That's exactly what happened. With a special appropriation pushed through by Congressman McDade, rehabilitation work began in 1985. The bridge reopened to vehicle traffic on June 13, 1987.

#### The Intergovernmental Planning Team

With the Park Service staff and the CAC in place, the final officially designated body was about to come into being. The legislation specified that "Within three years from the date of the enactment of this Act, the Secretary, in cooperation with the DRBC, the Advisory Council, the directly affected States and their concerned Federal agencies, shall develop, approve, and submit to the Governors of the directly affected states a management plan." The Secretary of the Interior delegated that responsibility to the National Park Service, which opted for an intergovernmental planning team, with NPS as lead agency. It included planners from New York, Pennsylvania, the five counties bordering the river, the Delaware River Basin Commission and NPS. NPS and the county planners assumed the most active roles.<sup>37</sup>

The earliest controversy surrounding this group concerned delay in getting it into full operation. This was a bone of contention both within the Park Service and with the public. According to the legislation, the land and water use guidelines were supposed to be in place by May of 1980, and the plan complete by November 1981. The staff designated to draft those

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<sup>37</sup>Material for this section is drawn from the files of the Planning Team and from personal notes made by the author during this period.

documents didn't rent offices or begin official meetings until the fall of 1980.

This delay was primarily attributed to internal NPS problems, including difficulty in staffing the planning team. Most of the NPS planning staff, including the NPS choice for planning team captain (Richard Giamberdine), were located at the Denver Service Center in Colorado. NPS balked at the expense of moving them to the river valley. Later analyses laid much of the blame for problems with the plan on the long distance commuting which resulted.<sup>38</sup>

Work on the land and water use guidelines began immediately. Planning Team staff developed the guidelines, based in large part on earlier work done by the Upper Delaware Clearinghouse. Public hearings were held. Revisions were made. The guidelines, including "general objectives for the river corridor as well as specific management objectives and recommended land uses for scenic and recreational segments,"<sup>39</sup> were completed and published in the Federal Register in September of 1981. Prior to that publication, planners had taken the guidelines to every town and planning board in the river valley, but with little reaction. There had been some public comments and disagreements. More often, however, planners complained of poorly attended hearings and public apathy.

As publicity focused on the drafting of the plan and the guidelines, some township officials became concerned that they were not having enough input into the process. This resulted in formation of the Conference of Upper Delaware Townships, which for some reason never clearly documented became known as COUP. This group, established in March 1982, was made up of supervisors, or their representatives, from municipalities in the valley. In theory, it included the 15 Upper Delaware towns and townships. In reality, there have been some towns which

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<sup>38</sup>Glenn Pontier, "Impass On the Upper Delaware", an article in Planning, vol. 50, #8, August 1984.

never participated and others who have, from time to time, withdrawn their support. However, it has been the one organization to represent the official level of the majority of towns and townships. At first the Park Service was uncertain about how to react to COUP's appearance on the scene. Soon, however, local NPS management and planners recognized that municipal zoning was the key to management under this law, and they began to look to COUP as the vital link in the cooperative management network. Thus COUP's role increased in strength.

Meanwhile, the Planning Team, which had developed the Guidelines, went to work on the River Management Plan and its related Environmental Impact Statement. Several drafts were completed. A mail survey form was sent out to valley residents. Public meetings were held. In October of 1983, the Planning Team presented its supposedly final Draft River Management Plan.

Even before the explosion of negative sentiment surrounding the 1983 plan, there was some evidence that more vigorous controversy was brewing. The problem first became evident with discussion of the boundary issue.

The law, as enacted, mentioned the upstream and downstream boundaries of the river. It called for the plan to present "a map showing detailed final landward boundaries, and upper and lower termini of the area."<sup>40</sup> The map developed by BOR had been small and inexplicit in its rationale. It relied upon a visual corridor defined as "essentially that zone of adjacent land which has a visual impact on the river user and which, therefore, should be protected from adverse use and development if natural and scenic appeal of the riverway is to be

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<sup>39</sup>Summary section of "General Guidelines for Land and Water Use Controls", published in the Federal Register, September 11, 1981.

<sup>40</sup>Public Law 95-625, op. cit. Section 704(c)(2)(A).

maintained."<sup>41</sup> With enactment of Upper Delaware legislation calling for very limited government land acquisition, a need was seen to broaden the protective boundary, and develop the ridge-to-ridge concept. Since there were multiple ridgelines in many portions of the valley, the ridge-to-ridge concept was very difficult to translate onto paper. Local residents looked at the maps, and couldn't understand why a piece of property from which the river couldn't be seen should be part of the river valley. They, with some justification, accused planners of drawing a line on some map at the NPS planning headquarters in Denver, without ever standing on the site and seeing where it was located.

When NPS Management Assistant Malcolm Ross was sent out to meet with town boards to explain the boundary and get them to adjust their zoning boundaries to coincide, NPS became the target for negative public opinion. There was dissention within the Planning Team on this subject, with some planners favoring a more visually oriented boundary, which local residents could more readily accept; but those who had worked on the boundary issue refused to compromise, maintaining that the resource could not be adequately protected if that boundary were changed.

It was at this point that some of the "aginners"<sup>42</sup> (those against anything short of the law's repeal and departure of the Park Service) became noticeable, arguing that the boundary was

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<sup>41</sup>The rationale behind each of the boundary strategies was explained in a "Review of the Upper Delaware River Boundary", by Maelien Yuen, written for the Sullivan County Planning Department and NPS in the fall of 1983.

<sup>42</sup>This term, which didn't appear in print until the fall of 1985, came into common usage among NPS staff people and others at least as early as 1984. By 1986, they were referring to anti-NPS people as the "contras". The anti-NPS, anti-plan people referred to by this term included residents who had traditionally opposed change in the community (e.g., closing of the one-room schools) as well as those with a specific concern about federal encroachment. Their background and motivations are discussed in later chapters of this paper.

more than an area of federal concern. Instead, they saw it as a "take line," the border within which the government could condemn or perhaps confiscate property.

To support their claim of impending disaster, some of these "aginnners" rented a copy of the PBS television documentary, "For the Good of All."<sup>43</sup> This anti-Park Service film focussed on the complaints of property owners in the NPS managed Cuyahoga Valley of Ohio. Despite the fact that the legislation was essentially different from the Upper Delaware's legislation, people made the connection with prospects for the Upper Delaware, and were frightened.

#### A Winter of Discontent

The most heated -- at times violent -- contention of the issue erupted in the winter of 1983-84. Dissention became so loud and hostile that NPS decided to scrap the plan in which it had invested three years and hundreds of thousands of dollars.

The October 1983 draft plan had gone through its public hearings and was opened to comment until January 30, 1984, when it was scheduled to begin revision and final agency review. There had been criticism, but nothing that could be viewed as a groundswell of public rejection.

Then, at a December 19 meeting, the explosion came. The meeting was sponsored by the PTA of an elementary school in Damascus, Pennsylvania, and NPS Regional Director James Coleman had been invited to attend. Rather than being asked to provide information, Coleman found himself under attack. The exchanges were so brutal that NPS employees later called it the "Monday Night Massacre."

The Damascus meeting was the opening salvo by a group called the Coalition of Concerned Citizens About Constitutional Rights. Inspired by a local minister who was afraid his church

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<sup>43</sup>Jessica Savage was the on-air reporter for this show, produced by Front Line, aired by the Public Broadcasting System in June of 1983.

might be restricted because of the building's historic architecture and flood plain location or lose membership as had happened to a church in the Cuyahoga Valley, it was primarily made up of his Baptist parishioners from the Town of Damascus. A few of its members were aggressive and articulate enough to rally wider public opinion.

It had been assumed that the Intergovernmental Planning Team had completed its job, and no more funding was allocated for their work. The problem of dealing with local protest reverted directly to the National Park Service.

Veteran local planners cautioned against over reaction. Sullivan County Planning Commissioner David Seibert warned that those frightened by the legislation and the plan wouldn't calm down until it had been fully in place for a few years and nothing disastrous had happened to them. Planning Consultant Tom Shepstone, a native of the area who had written a number of the local zoning ordinances and represented Wayne County on the Planning Team, pointed out that the loud voices at the Damascus meeting were essentially the same people who had opposed the closing of the one-room school in his youth: the "aginners", those who opposed any change.

NPS reaction was one of confusion and concern. However, some members of the NPS staff believed that there were real problems with the plan, but that they could be solved with a few fundamental changes. This belief led to formation of the Re-write Task Force, a small group of NPS writers (themselves local in their residence and orientation) which met with representatives of the Coalition and others, addressing the controversial issues. Throughout January and February, they met and argued and wrote, producing written material designed to be more readable than the planners' draft,<sup>44</sup> outlining "due process" for any condemnation procedure, and specifying protection of such traditional activities as hunting, lumbering and farming.

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<sup>44</sup>Bureaucratic jargon in the original plan had been an object of much local confusion and ridicule. Since this plan was meant to be used for general public consumption, one Rewrite Team member used his mother as a test for the group's efforts.

But the Rewrite version was never seen by the public. Only one section written by the Task Force ever got beyond staff review.

Officials on the NPS regional level in Philadelphia had come to believe that repairs to the old plan would not be enough to stem the tide of angry local opinion. That belief was reinforced by frequent calls to Philadelphia by opposition leaders, and by two heavily attended local meetings.

The largest and most impressive of the meetings was held February 6, at the Eldred Central School. An overflow crowd of nearly 1,000 people came to hear Chuck Cushman of the National Inholders Association. A charismatic speaker, Cushman used emotional language and examples of NPS abuse elsewhere in the country to rally anti-government feelings. He solicited memberships for his organization and offered to serve as a consultant in the local fight against NPS.

The real beneficiary of Cushman's presentation was the Citizen's Alliance, a newly formed organization which would usurp the Coalition's leadership role. Initially, the Alliance entered into an agreement to accept Cushman's help. But after a few months, disagreement over fees and Cushman's reluctance to call for de-authorization (repeal of the Upper Delaware legislation) severed his relationship with the Alliance and the river valley.

But it was not those who formed the Alliance or the local chapter of the Inholders Association who brought Cushman to the valley. Although the circumstances are clothed in a degree of mystery, Cushman himself alluded to an earlier meeting with livery owner Frank Jones.

Seen by some as more natural allies of the National Park Service than of local residents, the canoe rental businesses on the Upper Delaware were in the midst of negotiating their first licensing agreement with the National Park Service. For a time, that licensing agreement (opposed in principle by the liveries) became part of the overall controversy.

Eventually, the liveries diluted their power to negotiate, disagreeing among themselves and splitting into two separate organizations. The Delaware Valley Organization for Recreation (DVOR) represented the large liveries. The Association of Upper Delaware Independent Operators (AUDIO) was made up of smaller canoe rental businesses. Large liveries wanted a moratorium on expansion, with the present number of canoes owned to be the basis for any expansion formula. Smaller operators opposed anything based on the status quo. They jockeyed for position, both sides opposing regulation by NPS. The licenses were issued May 21, 1985, and very little was heard of it afterwards.

Although the licensing controversy quieted down, it had caused just enough concern to serve as a catalyst for the greater controversy. That contention continued on a very loud and volatile level.

Congressman Benjamin Gilman, responding to local pressure, called a meeting at Lenape Arena on March 10, bringing in top NPS officials from Philadelphia and Washington to listen and respond. Most who attended remember it as a cold and unpleasant experience in an unheated horse show arena. Characterized by earthy language, uninhibited behavior and verbal abuse of NPS officials, its most memorable presentation was an anti-NPS parody sung by a local politician.<sup>45</sup>

#### COUP's Consultants

Meanwhile, the CAC and COUP were furiously at work, trying to find a way to salvage the situation while meeting the concerns of the local population. As a result of prodding by the Upper Delaware Citizens Alliance and others, COUP came up with a proposition that they hire outside consultants and put together their own plan. NPS, shell shocked and relieved to let someone else hold the center of attention for a time, agreed to finance the new effort.

Three consultants were hired to deal with three different areas of concern. Thomas Shep-

stone was contracted with to rewrite the land use guidelines. Urban Research and Development dealt with water use guidelines. Foresight Consultants (suggested by Chuck Cushman) received the primary contract for rewriting the plan itself. Each developed committees including representatives of local interest groups, planning professionals and bureaucrats, to work out details of their documents.

A number of those who had been most vocally opposed to the Planning Team's efforts were not satisfied with this approach. Noel Van Swol (a dissenter from the days of the Upper Delaware Scenic River Association), Don Rupp (President of the Alliance) and others raised a cry for "de-authorization." They circulated petitions and convinced some town boards to issue official statements supporting de-authorization. However, they received no encouragement from their Congressmen, and their petitions were often criticized for the number of non-resident signatures they contained. Their meetings decreased in attendance, despite introduction of well publicized outside speakers. Nevertheless, about a hundred people could still be depended upon to appear at such meetings, and a handful of people were dedicated enough to the de-authorization cause to travel long distances to attend any river related meeting and speak at length on the subject.

One of the issues which was especially popular with the de-authorization people was that of hunting rights. Early in the controversy, a magazine article, called attention to the fact that the Code of Federal Regulations allowed the National Park Service to restrict or prohibit hunting in national parks. It was circulated in the river valley. Some local people, with backing from

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<sup>45</sup>Former Lumberland Supervisor Paul Kean sang his own composition to the tune of "The Battle Hymn of the Republic", beginning with the words, "My eyes have seen the coming of the glory of this park; I am left awaiting, hoping and dreaming in the dark." (excerpted from the transcript of the "Upper Delaware River Valley Public Meeting, Lenape Farms Arena, Narrowsburg, New York, March 10, 1984."

National Rifle Association interests, believed that NPS would be able to stop residents from their traditional practice of hunting on their own land. Although solicitors' opinions and NPS policy statements explicitly ruled that this did not apply to the Upper Delaware and that NPS can only control hunting on land its owns or leases, the concern continued to be raised. The issues was resolved, at least to the satisfaction of the National Rifle Association,<sup>46</sup> by language in the 1987 plan explicitly protecting traditional hunting rights.

As the consultants worked on their versions of the plan and the guidelines, opposition continued to be heard at public meetings and in the media. Marge Hillreigel, the chairman of COUP, was defeated for re-election in her town, in part because of a last minute, inflammatory letter to voters by Noel Van Swol, linking her to pro-NPS sympathies. The Plan Oversight Committee, working with Foresight Consultants, was the frequent focus of heated debate and controversy. A local farmer hung NPS Superintendent Hutzky in effigy in his field, on the day the Land Use Committee was touring the river valley. The Alliance entered an anti-NPS float in local parades. POC members had their car tires deflated and one member found bullet holes in his truck window.

But the winter of 1985-86 was almost an anti-climax after the previous one, when swastikas had been painted on Park Service vehicles and a CAC meeting had been punctuated by a fist fight.

By January of 1986, after the delays that had become typical in this process, the COUP plan was presented to the public. At the request of local officials, the review period was extended until NPS published its companion Environmental Impact Statement. The 1986 plan

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<sup>46</sup>The National Rifle Association officially endorsed the River Management Plan in July 1987.

called for cooperative management to be overseen by an Upper Delaware Council made up of the towns, the states, NPS, the CAC and the Delaware River Basin Commission.<sup>47</sup> Key to its implementation was the belief, expressed by Foresight Consultants early in the process, that at least 10 of the towns could be convinced to endorse the plan and participate in the Council. Response to a survey of land owners indicated there was strong public support.<sup>48</sup> However, threats of law suits and genuine fear of federal intervention swayed four towns to withdraw from COUP rather than be associated with the plan. The planners abandoned to idea of bringing it to formal votes on the town and township level.

By the summer of 1987, the plan had made it through the local revision process and was in the hands of the Department of the Interior. But the fireworks were not, by any manner of means, over.

The August meeting of COUP erupted into a shoving match when the "contras" objected to George Frosch bringing his large black dog into the meeting. Frosch said his dog went with him everywhere, and he wasn't about to leave him locked in the car on a breathlessly hot night. At COUP's next study session, several ILA and Alliance members showed up with their dogs, took over the COUP office, and started rifling through files and drawers. Local police had to be called in to clear the space and allow the study session to proceed.

Meanwhile at the CAC, Chairman Karen Ridley abdicated her post, citing the pressure of business and family commitments. Vice Chairman Larue Elmore took over from her. Perhaps

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<sup>47</sup>Final River Management Plan, November 1986, p. iii - iv.

<sup>48</sup>A Report on the 1986 Landowner Survey Along the Upper Delaware, prepared for the Conference of Upper Delaware Townships by Foresight Consulting Group and Williams Computer Associates.

believing that the aging Elmore would be more vulnerable than the young and efficient Mrs. Ridley, the "contras" resumed their agitation.

Following disruption of the COUP meeting earlier in the week, town constables were on hand for the August CAC meeting. Wayne Oliver of the ILA was particularly vocal and disruptive, invoking the flag, the constitution and other patriotic themes. But the meeting, where flood insurance issues were to be discussed, continued. Once the meeting was adjourned and the constables had departed, however, Oliver and Elmore became involved in a personal discussion. Elmore suggested that Oliver be cautious about parading his patriotism, in the light of Oliver's black market activity during World War II. Oliver's temper exploded. Cooler heads prevailed before actual violence erupted, but a number of friends expressed concern for Elmore, who is not physically robust. Oliver later claimed that they were good neighbors and friends, and that he was merely trying to tap Elmore on the shoulder to get his attention.<sup>49</sup>

Elmore was again the target of the "contras" at the October COUP meeting. Alliance President Don Rupp obstructed the meeting, demanding that Elmore's position at the official table be explained before the meeting was begun. When Rupp (followed by his brother and two other protestors) refused to leave the head table and be quiet, the State Police were called in. Four protestors were arrested. But by then Elmore had developed his own counterattack: he simply turned off his hearing aid.

By this time, Secretary Hodel had signed off on the plan, and it was headed for its 90 day Congressional waiting period. Since all three Congressmen representing the area had stood firmly behind the legislation, there was no reason to expect Congressional opposition.

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<sup>49</sup>Letter to the editor, by Wayne Oliver, in the Sullivan County Democrat, October 29, 1987.

During this period, ILA leader William Matz, Jr., died unexpectedly. A lawyer-psychologist in his mid-30s, he had been thought to be in good physical condition. The coroner ruled his death a heart attack, but ILA members contacted the media to raise suspicion of murder by slow acting poison, presumedly perpetrated by NPS sympathizers.<sup>50</sup> No evidence of foul play was produced, but the charges continued to be made.

On January 4, 1988, the River Management Plan went into effect. Noel Van Swol labeled the event meaningless, but other NPS opponents thought it important enough to stage a mock funeral procession in downtown Narrowsburg. The demonstration coincided with a real funeral whose mourners did not find the honking horns and effigies amusing.

#### Conclusions

The oddly ironic twist of events at that January 1988 demonstration seemed a fitting close to this often strange and painful historical narrative. Admittedly, to label the protest as over may be premature. ILA members are still threatening lawsuits. The new management council has not yet been formed. The possibilities for cooperative management and the role of the National Park Service continue to be under fire. But the law and the plan have now reached the implementation stage, which would seem at the very least to have brought a close to this phase of protest activity.

The effort has come a long way from that night in 1970, when the BOR task force faced hostile local residents at the Callicoon school. The legislation and its subsequent plan were forged and attacked and honed into new forms by behind the scenes lobbying efforts, carefully reasoned negotiations, loud and emotional abuse, and occasional eruptions of violence. The methods, the individuals and the organizations involved have been as diverse as the events themselves, and people on both sides of the issue are still struggling to understand what happened and why. Local people have learned a lot about the kinds of protest that bring change.

So have government government officials. The next few chapters will attempt to sort out those lessons.

Discussion of the controversy's history has been long and detailed. But without those details, it is difficult to explain the chain of events or the remarkable nature of the changes accomplished along the way. Succeeding chapters will deal with the protestors who made those changes happened, the protest techniques they utilized, and the circumstances under which they accomplished the desired changes.

The major players in the story have already appeared in the preceding pages: the Congressmen, the BOR and NPS officials, and the planners on one side; the river associations, the special interest groups, the CAC and COUP, the radical protestors on the other. Few on the protestors side appeared to hold serious economic or political power. But power was indeed wielded.

Between these forces, pushing and pulling, often screaming and yelling, they managed to forge a unique piece of federal legislation and management plan. Their effort to protect an important segment of the environment, utilizing intergovernmental cooperation, includes the strongest bid for local control and citizen input ever attempted in this kind of management system. It may be that the unusual character of this rural area with its urban influences has made a difference no other area could replicate. Or it may be that -- as many planners and government officials believe -- this hard fought battle will pave the way for new thinking about protection of environment without massive restriction of personal rights.

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<sup>50</sup>During December of 1987, letters to the editor from ILA officials were printed in The River Reporter, Sullivan County Democrat, and Hawley News Eagle. The News Eagle ran editorial supporting the contention, but it was judged by observers to be more an opportunity taken to attack the county coronor than real support for the ILA.

## SOCIO-ECONOMIC FACTORS

Among factors underlying the actions and character of the Upper Delaware protest are those relating to economic and social background and organization. Like the area's history, these subjects are dominated by themes of geographic isolation and the desire for personal independence.

With this in mind the next few pages will focus attention on these socio-economic factors at work in the valley. A brief socio-economic history of the area preceeds an examination of the economy as it exists today. Dominant economic forces -- agriculture, extractive industries, the outdoor recreation industry and real estate -- are discussed individually. Contemporary sociological factors are then reviewed, utilizing census data, a valley-wide landowner survey and analysis of immigration and residential patterns. Later chapters analyze these factors in relationship to the controversy itself and the protestors involved.

### Socio-Economic History

The social and economic factors at work in today's Upper Delaware Valley are part and parcel of the historic population trends and use of the natural resources.

From the 18th century to the modern era, people have come to the region in order to escape the crush of more populated areas. Throughout that period, the economic vitality of the region has been dependent on exploitation of natural resources, particularly in the form of extractive industries such as lumbering, tanning and quarrying.

The earliest native people did not, strictly speaking, settle in the area. The Lenape -- later known as Delaware Indians -- primarily used the valley as hunting and fishing grounds. White men from the Hudson Valley, as well as points east and south, followed suit, finding the area attractive and virtually uninhabited. They soon migrated to the valley, bringing their families and settling on the land.

The white settlers were still in the process of clearing land for subsistence farming when they discovered the potential for timber rafting. The process allowed them to move logs from the abundant forests to the markets of Philadelphia, Trenton and Easton, using the river itself as transport system. Various uses of timber products, including the tanning of hides and the production of charcoal, continued on into the 20th century, until the hills were depleted of their forest cover.

The bluestone quarrying industry also began at an early date ( 1865) extracting slabs of that natural resource and exporting it to more populated areas for curbing and sidewalks. The industry was reduced to a relatively small scale when concrete and macadam came into common use.

One natural resource dependent industry remains: tourism. From the 1850s, when the Erie Railroad first brought vacationers to the valley, the beauty and clarity of the river, the surrounding landscape and fresh air have formed the basis for an industry that continues with considerable strength today.

Although loss of the railroad as a passenger vehicle severely damaged the boardinghouse and hotel business, a new form of tourism has shown steady growth since the 1960s. Specifically focussing on the river itself, this new tourist industry is primarily made up of canoe and camp-site rental operations.

#### The Economy Today

It is often said that no one lives along the Upper Delaware without personal financial sacrifice, that almost any valley resident could make more money in some other part of the world. Although such sweeping statements invite evidence to the contrary, personal experience indicates this one contains a substantial element of truth.

Other than one or two small operations, employing little more than a handful of people,

there are no factories or major corporations in the valley. The valley's steep terrain and its relatively primitive public infrastructure are major problems for most industry. The narrow river corridor, with flat land confined to a small amount of flood plain, is not conducive to factory construction. Infrastructure problems create an additional "Catch 22": without public sewage disposal, adequate public water supply, and modern four-lane highways to the city, industry is unwilling to locate in the area; without a substantial tax-paying population to support it, public agencies are not likely to fund water, sewer and highway projects. For generations, parents have complained that their children leave the area because there are no jobs. Without major corporations, however, employment opportunities are limited.

#### Agriculture

Agriculture has traditionally formed an important part of the local economy. Starting with the subsistence farmers of the 18th century on through the dairy and poultry farms of the 20th century, the hard working, conservative farms has often been the economic foundation of these communities. A local banker<sup>1</sup> often observed that it was the German farmers of the Beechwoods (just over the ridge from the river corridor) who allowed the Callicoon bank to survive the Depression with so little disruption; those farmers were the ones who kept substantial savings accounts and exerted a conservative influence on banking policies.

But farming today presents a whole new set of challenges. Competition from large scale corporate agriculture makes it difficult for the small farmer to compete. Low interest rates, Pond Farm at Callicoon Center, observed that the old timers who owned their farms free and clear were surviving the current agricultural/financial crisis; it was the newer people in the

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<sup>1</sup>Valleau Curtis was a director of the First National Bank in Callicoon, later the United National Bank (the result of a merger) for 41 years. At the time of his death in 1978, he was Chairman of the Board.

area who were losing their farms to the high interest rate crunch.

There has not been the kind of heartrending tragedy here that has marked the agricultural crisis in the Midwest. In part, this may be attributed to the relatively small, conservative nature of the local business. In part, it is simply because farming is not the dominant local industry. Upper Delaware Valley land, with its steep hillsides, rocky soil and short growing season, was never particularly suited to agriculture. It is only proximity to the New York metropolitan area, and the stolid determination of German immigrant farmers that led to a substantial agricultural economy. Those factors remain, but farming is no longer thought of as the major occupation of the area.

#### Extractive Industries

As previously mentioned, the extractive industries, especially lumbering and quarrying, were the backbone of the valley's economy until the 1920s. By the 1980s, lumbering had made something of a comeback, with second growth timber once more covering the hills. However, the current harvest is minimal in comparison with that taken by the tanning and timber rafting entrepreneurs. The quarry men were left with ample product, but their business faded in competition with concrete and macadam; a few of them carry on today, providing bluestone for decorative use in landscaping and building.

Beyond provision of local services, the two most important economic forces in the valley today are real estate and outdoor recreation.

#### Outdoor Recreation Industry

According to a 1980 survey of tourism related businesses in the valley,<sup>2</sup> this industry

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<sup>2</sup>"Tourism-Related Businesses Along the Upper Delaware Scenic and Recreational River," by D. J. Decker, C. P. Dawson and T. L. Brown. p. 37. Department of Natural Resources, New York State College of Agriculture and Life Sciences, Cornell University. January 30, 1981.

accounts for the equivalent of 200 full time jobs annually. That includes hotels, motels, boat liveries and campgrounds. In a sparsely populated area where a large portion of the residents are retired or disabled (about 33%)<sup>3</sup> and there are few large employers, this amounts to a major economic force.

For the most part, the Upper Delaware outdoor recreation industry of the 1980s is supported by canoe and campground rentals. Sport fishing is also important, but more elusive in terms of specific economic impact. Industry data, however, shows that liveries are currently in a position to float as many as 8,000 rental canoes<sup>4</sup> on the river on any given summer weekend.

The Lander family, owners of one of the nation's largest canoe liveries, likes to tell this story<sup>5</sup> about their entry into the major canoe rental market: In 1969, Bob Lander, who had moved to the area from Brooklyn and gone into the motel business, was interviewed by a reporter from the New York Times. At that time, Lander owned a relatively small stock of canoes and flat-bottomed fishing boats, rented out as part of his modest Ten Mile River Lodge operation. He provided boats to sportsmen as part of his motel business (i.e., serving visitors to the nearby Boy Scout camps in summer and deer hunters in the fall). When Lander realized that canoe rentals were about to receive major publicity in the Times, he put in an urgent order to buy 100 canoes. By the time the canoes arrived, the Times article was in print and he had

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<sup>3</sup>Ibid. p. 55.

<sup>4</sup>The 8,000 figure was cited by John T. Hutzky, NPS Superintendent of the Upper Delaware Scenic and Recreational River, at a May 15, 1986 press briefing in Lackawaxen, Pennsylvania.

<sup>5</sup>This story has been told both privately and to the press by Lander's sons, Rick and Bob, who took over the family business when their father died in 1984. Growth of the Lander business was detailed in Upper Delaware magazine, Summer 1983.

reservations to rent all of them.

That story says much about the swift growth of the canoeing industry and the personal style of some of its operators. A study<sup>6</sup> done by the Sullivan County Planning Department indicates that, as late as 1962, there was not a single canoe for rent on the Upper Delaware north of Port Jervis. By 1969, four Sullivan County liveries accounted for most of the business with 191 canoes. Upper Delaware boat livery owners reported 3,336 canoes in 1980.<sup>7</sup> By 1986, liveries were estimated to own 8,000 rentable canoes. On any given Memorial Day Weekend, there is a good chance that all of those canoes will be out on the river.

#### Real Estate

In the 18th century, it was land speculation by large absentee land owners which stunted the valley's economic growth. Today, real estate activity and absentee landowners are at the core of the valley's economic vitality.

In the 1760s, wealthy men like New York distiller Joseph Griswold and (later) his lawyer son, Edward, bought large tracts of land, seldom if ever setting foot on the property, and making little attempt to develop it. Today's absentee landowner is not that kind of investor. Typically, he or she works in the New York metropolitan area during the week and escapes "to the country" for weekends and vacations.

The demand for this kind of life style has sent real estate prices soaring. "Each year breaks new price records," according to Jennifer Canfield of Calbert Realty.<sup>8</sup> From 1985 to 1986,

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<sup>6</sup>"Sullivan County's Upper Delaware Canoe Industry: Summer 1969", researched and written by Mary Curtis. An internal report for the Sullivan County Planning Board, 1969.

<sup>7</sup>Decker, Dawson, Brown, op. cit.

<sup>8</sup>"Property values soar in river valley," by Barbara Yeaman, in The Second Section, The River Reporter. May 8, 1986 p. 1.

local real estate agents estimate their business increased anywhere from 30% to 50%. Gibson McKean, who is both a realtor and a developer (a relatively rare combination in the valley), summed up the attraction: "Access here is perfect for a second home weekend commuter. We get a lot of people who looked at New England. New England is too far to travel for a weekend retreat from New York City. This valley has many of New England's amenities with lower prices, and it is closer."<sup>9</sup>

What does this mean for the local economy? Initially, it means substantial income for real estate agents and land sellers. Secondly, it means an influx of new people who pay taxes, buy groceries, hire local carpenters and plumbers, but seldom enroll children in the local schools or require that their roads be plowed in winter.

#### Who The Residents Are

Although the second home owner is an important part of the Upper Delaware picture, he is not the dominant element. It is, therefore, useful to look at residents in general (both full-time and part-time) in order to analyze how the society works and what factors have impacted upon the Upper Delaware situation in the 1980s.

Census material, usually the best source of demographic information, is difficult to use here because the valley corridor does not coincide with the political subdivisions used by census takers. No town or township (the smallest political subdivision) falls entirely within the valley. Reference, for instance, to the Town of Delaware figures includes not only Callicoon (within the corridor) but also Hortonville, Kenoza Lake and Kohlertown (outside the corridor). Characteristics of communities in and out of the river valley often differ significantly.

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<sup>9</sup>ibid.

County figures can be even more misleading, as all five counties bordering the river have their major population centers outside the valley. This is particularly obvious in Orange County, New York, which has become a bedroom community for New York City area commuters, but whose portion in the river valley is still sparsely settled and rural.

A study<sup>10</sup> done by Cornell University, under contract to the National Park Service, offers some data specific to the river valley. As a result of survey work done in the summer of 1980, the study concluded that Upper Delaware landowners "tended to be older, well educated people, often having white-collar occupations (among those not retired) and what might be considered above average family incomes."<sup>11</sup> This conclusion is more accurate in relationship to absentee landowners than to residents. The statistics reveal a striking contrast:

	<u>absentee</u>	<u>resident</u>
college education	50%	38%
professional/technical occupation	27%	13%
family income \$20,000 or more	64%	33%
mean age	53 years	59 years

If anything, these statistics indicate that full-time residents don't fit the description above, and that statistics dealing with this region are often misleading and confusing.

Though no scholar or census bureau has yet developed statistics in this area, one of the most useful ways of looking at the population is by dividing it into major immigration groups. The

<sup>10</sup>"Characteristics and Management Preferences of Landowners Along the Upper Delaware Scenic and Recreational River", by D. J. Decker, C. P. Dawson and R. A. Smolka, Jr. Outdoor Recreational Research Unit, New York State College of Agriculture and Life Sciences, A Statutory College of the State University, Cornell University, Ithaca, NY. February 1981.

<sup>11</sup>Ibid., p. 5

Old Immigration group -- a relatively small segment -- would include those descendents of settlers who came to the area between 1750 and 1850; they are primarily of English, Irish, Scot, Welsh or Dutch background, but have long since ceased to think of themselves as anything but American. Then there is the Railroad Immigration group, those who helped build or were transported in by the Erie, roughly between the years 1850 and 1925. That includes descendents of the Irish and Italians who helped build the double-track in 1874 and the Germans who were attracted by land speculators who advertised in Germany. The more recent influx of European-born residents might be called Displaced Immigrants. Often following relatives who had immigrated in earlier times, these people fled military conscription, war, fascism and communism, most arriving between 1925 and 1950. A few (especially Czechoslovakians) continue to arrive in the 1980s. Finally, there is the Urban Immigrant, escaping from the stress, restrictions, crime and general unpleasantness of city life. In a sense, these "city people" have been coming to the Upper Delaware for as long as Americans have felt the pressure of increasing population. However, in the last 20 years there has been such an acceleration in this movement that local residents who were born in cities may now outnumber Upper Delaware natives.

Another useful way of looking at the population is by dividing it into Year-Round, Weekend, and Seasonal Residents. In thinking of community, the Year-Round Resident is the one most often recognized. He or she lives and probably works locally, sends the children to local schools, participates in local community activities and owns or rents one home in the river valley. An increasing part of the local scene -- seemingly a development of the past decade -- is the Weekend Commuter, the second home owner who may be looking to retirement or some other way of moving to the Upper Delaware full time. Unlike the second home owners of earlier times who were essentially "summer folks," these people come to the country nearly every weekend

summer and winter. Even the Seasonal Residents of the 1980s present a different picture from the "summer people" who brought their families to spend their vacations at the summer cottage, in earlier generations. Today's Seasonal Residents are often former full-time valley residents who are now "snow birds". With a high proportion of retired and elderly residents,<sup>12</sup> it is not surprising that most of the Seasonal Residents are in the valley during the summer months, but spend the winter in a warmer southern climate.

More dramatically, and perhaps simplistically, valley residents may be divided into psychological categories: the Prisoners and the Liberated. Those natives who are "stuck" in the valley might be characterized as Prisoners. They tend to be jealous of urbanites who make more money, are scarred by the economic depression that has been a fact of valley life throughout the middle part of the 20th century, and are defensive about protecting their hard won livelihood and lifestyle. The Liberated are those who live in the valley by choice. Some are natives who have considered other options and concluded that the valley is the best of all places to live; many have returned to the area after careers elsewhere. A more prevalent Liberated group are those who have escaped from another place -- usually the New York metropolitan area -- and see the Upper Delaware as a haven. Their attitudes and priorities depend upon what they have tried to escape. If big government, rules and regulations drove them from their former residence, they will be wary of restrictions, protective of their freedom. If dirt, smog and ugliness sent them fleeing to the country, they may be more concerned about protecting the environment. If fear -- perhaps of urban crime, perhaps of oppression by a totalitarian government -- was their motivation, they will be especially concerned about personal rights and protection, and may

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<sup>12</sup>Decker, Dawson, Smolka, op. cit. indicated that one-third of the river valley landowners surveyed in 1980 were retired or disabled.

behave in a similar manner to the native Prisoner group.

### Conclusions

The socio-economic forces at work along the Upper Delaware today are extensions of patterns reaching back into the 19th century. Although the traditional industries of farming, lumbering and quarrying are relatively minor components of today's economy, there is still a strong feeling among valley residents and others concerned about the traditional character of the valley that they are vital elements of local life. Given that sense of traditional value, they are able to exert influence beyond of their economic power.

In recent years, the outdoor recreation and real estate industries have taken on far greater significance, dramatically affecting the demographics of the area. No longer are local residents primarily descendants of those who came directly from Europe in search of freedom and economic opportunity. Increasingly, they are "urban refugees," attracted to the area by outdoor recreation experiences in the valley, who have bought property during the current real estate boom and, though earning their living in the city, are spending more and more time in the valley. Yesterday's recreationists are today's real estate investors and tomorrow's residents.

Intertwined with these basic economic and social factors are the personal motivations that brings new residents to the area and keeps old residents there, along with the complex relationships between these people.

Any or all of these factors are likely to influence an individual's reaction to the federal government's presence. When coupled with personal background and the peculiar occurrences of local history, they begin to form a significant overall picture of motivations, successes and failures within a very complex situation.

## WHO ARE THE PROTESTORS?

The combination of historical, economic and sociological factors described in previous chapters set the stage for a special breed of contemporary Upper Delaware protestors. These citizen activists are a diverse collection of personalities including developers and mobile home owners, red-necked good old boys and well educated professionals, commercial livery owners and environmentalists, lawyers and farmers. A few knew each other, or were known to the general public, from other protests on other subjects. Others are new to the area or new to the public arena. Some of their names appear in the newspapers -- in news stories and letters to the editor. Some can be seen on picket lines and at public meetings. Still others do almost all of their work behind the scenes, seldom seen or heard by the general public.

After the entrance of California activist Charles "Chuck" Cushman upon the Upper Delaware scene, the catch phrase among NPS sympathizers became "Who was that masked man?" A few of the other leading citizen protestors have been as unexpected as Cushman. However, most of the loud and/or effective voices have been more predictable: either perennial local gadflies or people with clearly identifiable personal interests.

One way to identify those who have articulated citizen protest on the Upper Delaware is by looking at the organizations which have served as their platforms. Virtually every protestor has been associated with one or more of these groups. In this chapter, we will examine the policies and strategies of these organizations along with the personalities, methods endorsed and style of the dominant protestors.

### Organizations

National organizations, notably the Sierra Club, the Audubon Society, the National Rifle Association, and the National Inholders Association have been heard from. But, because their tactics and response are more clearly defined and confined to the Upper Delaware situation, the

focus of this discussion will be on local organizations and their composition.

The specific local organizations, in chronological order of their appearance are:

Delaware River Canoe Association/Delaware Valley Outdoor Recreation

( 1973 - present)

Upper Delaware Scenic River Association/Equinunk-Lordville Upper Delaware Scenic

River Association ( 1970 - 75)

Upper Delaware Defense Committee ( 1973)

Upper Delaware Clearinghouse ( 1975 - 80)

Citizens Advisory Council ( 1979 - present)

Upper Delaware Heritage Alliance ( 1981 - present)

Conference of Upper Delaware Townships ( 1982 - present)

Coalition of Concerned Citizens About Constitutional Rights ( 1983 - present)

Citizens Alliance ( 1984 - present)

Association of Upper Delaware Independent Outfitters

( 1984 - present)

National Inholders Association, local chapter ( 1984 - present)

Upper Delaware Review Board ( 1985 - 86)

Independent Landowners Association ( 1985 - present)

#### Canoe Livery Organizations

Prime movers in formulation of the Upper Delaware Canoe Association were Bob Lander and Frank Jones, owners of the two largest canoe liveries serving the area. Primarily conceived as a vehicle for unified advertising and general promotion of the valley's river

recreation, the group initially consisted of eight livery owners<sup>1</sup>.

In its original form, the group included a variety of businesses, ranging from the multi-million dollar operations of Kittatiny Canoes and Bob Landers to small businesses with a handful of canoes providing a supplementary rather than primary income for the owner. The backgrounds of the operators varied: Lander was an electrician from Brooklyn who invested in a lodge for fishermen and hunters. Jones had grown up along the river in the Delaware Water Gap area, and developed his economic base downstream before moving into the Upper Delaware. Russ Warner, who with his wife Gail runs one of the smaller liveries, is an environmental science teacher during the winter, and emphasizes environmental education in conjunction with his livery business. Al Kaufman, who operates Upper Campground with a substantial canoe rental business, was in the aluminum siding business on Long Island before finding his way to the Upper Delaware. Examination of the 40 or more livery owners reveals little commonality beyond the business interest. With the exception of Warner, who has been vocal on environmental issues, and Rick Lander, who is Town of Tusten Supervisor, the livery owners have restricted their political/advocacy role to matters involving the recreation industry.

#### Scenic River Association

The Upper Delaware Scenic River Association (encompassing the Equinunk-Lordville Upper Delaware River Association), formed in response to the 1970 BOR hearings, was almost entirely made up of riparian landowners. The membership roster listed 1582 names. It

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<sup>1</sup> This section is based on a "Memorandum to The Honorable Benjamin Gilman, United States Department of Interior, National Park Service, from Delaware River Canoe Association and Delaware Valley Organization for Recreation," April 12, 1982. This document, along with personal recollections and accompanying papers, was provided by Robert Lander II, attorney for the organization and co-owner of a livery.

<sup>2</sup>"Upper Delaware Scenic River Assn. Roster," undated

included some, such as Noel Van Swol and William Matz, Sr., who would later involve themselves with more radical approaches. However, its leaders tended to be conservative, established local men who were accustomed to working within the system. The co-chairmen -- George Hocker from Damascus Township, Pennsylvania, and V. Edward Curtis from the Town of Delaware, New York -- were both town Planning Board chairmen and members of families who have long owned large tracts of river valley property; one was a farmer, the other a nurseryman.

#### Defense Committee

The Association, however, was not without its opposition in the river valley. The organization had barely ratified its constitution when Dr. Vernon Leslie, a retired educator who owned land on the Pennsylvania side of the river, seceded from its ranks to form the Upper Delaware Defense Committee<sup>3</sup>. Members of the "Defense Committee" were apparently limited to a handful of Dr. Leslie's close associates. Their input consisted of signing a petition protesting any involvement by the Federal government in the river valley.

#### Upper Delaware Clearinghouse

Established in 1976, the Clearinghouse was primarily made up of professional planners, although a few interested residents did continue to sit in on the process. Despite the facts that its members were almost exclusively bureaucrats, the group itself took on a strong element of citizen advocacy.

Because planning was a relatively new concept along the Upper Delaware, these planners tended to be young, idealistic, well educated and visionary. Of these professionals, only one was a native of the Upper Delaware Valley. Many were transplanted from far removed parts of the

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<sup>3</sup> Leslie to Curtis letter, op. cit. 10/23/73.

country. Virtually all were based in county seats 20-50 miles from the river valley. Much of the leadership within this group -- e.g., Sullivan County Planning Commissioner Dave Seibert, Wayne County Planning Commissioner /later consultant Tom Shepstone, Pike County Planning Commissioner Carson Helfrich -- became part of the Intergovernmental Planning Team which presented the Land and Water Use Guidelines approved by Congress in 1981, and created the first drafts of the River Management Plan.

#### Citizens Advisory Council

While most of these organizations have been citizen initiated and self-appointed, one was created by law and appointed by the Secretary of the Interior. The Citizens Advisory Council (CAC) was specifically designated by the Upper Delaware legislation to act as a channel for citizen protest. Members were nominated by counties, states and the federal government.

One-third of that 15 member panel had been members of the Upper Delaware Scenic River Association.<sup>4</sup> Over the years since, as members have resigned or been replaced, an additional four former UDSRA members<sup>5</sup> served on the CAC. The first chairman of the CAC was Herbert Fabricant, a prominent Orange County attorney who owned a weekend home along the Upper Delaware in Sullivan County. He was succeeded by Robert Van Arsdale, a Pike County real estate agent. His successor was Karen Ridley, co-owner of an Orange County resort just south of the Upper Delaware's downstream boundary.

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<sup>4</sup> Those members were Delaware County nominee George Frosch, Sullivan County nominee Carl Grund, Wayne County nominee Clinton Dennis, Wayne County nominee Larue Elmore, Commonwealth of Pennsylvania nominee Matthew J. Freda, and Commonwealth of Pennsylvania nominee Frank Jones.

<sup>5</sup> Other UDSRA members who became later CAC members were Richard Lander, George Hocker, V. Edward Curtis, and Edward Rosenfeld.

### Upper Delaware Heritage Alliance

The Upper Delaware Heritage Alliance was founded in 1981 as a result of a Valley History Workshop sponsored by the Intergovernmental Planning Team. A coalition of about a dozen local historical/cultural groups and approximately 50 interested individuals -- membership has fluctuated slightly from year to year -- it has deliberately limited its influence and comment to cultural resource issues. Although claiming to represent over 2,000 members from its constituent organizations, only 20 to 25 people are active participants, these people controlling decisions of the organization.<sup>6</sup>

A few are professional historians. Most are simply local history buffs. Some have college degrees in history. At least as many are of limited educational background, people who are history hobbyists with special concern for preserving the heritage of their local communities. Many of the core group are from old time local families; some have lived in the area just a few years. Most live within five miles of the river valley; but a few are located as much as 25 miles away. Most are middle-aged and older. A number of them are individuals thought of in their own communities as "eccentric."

### Conference of Upper Delaware Townships

The Conference of Upper Delaware Townships (COUP) is not strictly speaking a "citizens" group. Although made up of elected officials who have considerable direct political power, this group has acted as an advocate for local interests, and has been a forum for many of the citizen protestors in the valley. By a quirk of its operation allowing an elected official to send an appointed alternate delegate and by virtue of the fact that some elected officials have

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<sup>6</sup> Upper Delaware Heritage Alliance minutes, 1981-87.

very specific vested interests,<sup>7</sup> COUP has often been more a citizens group than a coalition of elected officials.

As political pressure was exerted by anti-NPS elements, some of the COUP members who had been perceived as pro-NPS disappeared from the public scene. In large part, these abdications or defeats were due to the nature of local rural politics. These are not thick-skinned, sophisticated, professional politicians. They are part-time public servants who seldom have ambitions beyond their local communities. In comparison with urban politicians, they deal with relatively small budgets and a very personal approach to government.

In Pennsylvania, the township supervisors are primarily elected as highway superintendents. Most of them personally drive the snow-plows and fix the potholes. When faced with vocal participation at Town Board meetings and with petitions demanding rejection of federal government plans, they tend to drop out and go back to filling potholes.

New York towns separate out their supervisors' and highway superintendents' positions. However, the supervisor's job is parttime, and (at least in the smaller towns of Sullivan County bordering the river) is not considered powerful or lucrative enough to attract the ambitious.<sup>8</sup> The supervisor who was head of COUP when the loud protests began -- Don Sheetz from the Town of Lumberland -- resigned from COUP and from his town office, citing harassment by NPS opponents. Marge Hillreigel of Fremont, who succeeded Sheetz heading COUP, was voted out of office as the result of a personal effort mounted by NPS opponent Noel Van Swol. Her successor,

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<sup>7</sup> Richard Lander, co-owner of Landers' Canoes, is Supervisor of the Town of Tusten. Andrew Boyar, attorney for one of the area's major realtor/developers, is Supervisor of the Town of Highland.

<sup>8</sup> Only one supervisor (Town of Deerpark) in the river valley received a salary in excess of \$10,000 for 1986.

Craig Stewart, declined to run for a third term as Town of Delaware Supervisor because river issues were taking too much time away from his private business. Sheetz is a retired civil servant. Hillreigel is a real estate agent. Stewart is a sign painter. None of them could be described as a single-minded professional politician.

#### Upper Delaware Coalition

In the fall of 1983, when the Draft River Management Plan was presented to the public, an outburst of public protest resonated throughout the river valley. Following the so-called "Monday Night Massacre" meeting, with its loud and frequent abuse of NPS officials and sympathizers, the Upper Delaware Coalition was formed.

A variety of different stories<sup>9</sup> have circulated about the origins of the organization. The one cited by Coalition activist Bob Carey<sup>10</sup> relates to its concern with restrictions that might be imposed on the Damascus Baptist Church property, should it be placed on the National Register of Historic Places. The possibility of National Registry, alluded to in an NPS study,<sup>11</sup> drew the minister's attention to the River Management Plan.

Following the Eldred presentation by Chuck Cushman, the protest became broader based geographically. Two new organizations, the Upper Delaware Citizens Alliance and a local chap-

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<sup>9</sup> One story has it that the antagonism began because the Baptist minister saw a recreationist, with beer can in hand, talking with a uniformed NPS ranger at the access area adjacent to the church. Another claimed that the Baptists were upset with NPS because a seasonal employee had an automobile accident and damaged a head-stone in their cemetery. Still another story cited the Cuyahoga film's portrayal of a church whose congregation had been depleted when NPS took over the area.

<sup>10</sup> Sullivan County Democrat

<sup>11</sup> Cultural Resources Survey of the Upper Delaware National Scenic and Recreational River, by State University of New York at Binghamton. Produced, under contract, for the National Park Service, Mid-Atlantic Regional Office. 1982.

ter of Cushman's National Inholders Association, were formed. A struggle over leadership ensued. Local activists without ties to the Coalition or the Baptist Church -- notably Noel Van Swol and Don Rupp -- moved into the forefront. Rumors circulated that a secret meeting of the Coalition had expelled all non-Baptists. Marion Schweighofer, who had been one of the early and most articulate spokesmen for the Coalition, stepped away from involvement, reportedly due to a disagreement over protest tactics. The group, in general, seemed to abdicate its leadership position.

#### The Citizens Alliance

On the heels of the excitement generated at the Chuck Cushman meeting in the spring of 1984, the Citizens Alliance was formed. Initially, it was closely allied with the charismatic Cushman. In a dispute over payment for services and Cushman's refusal to back the de-authorization idea, the Alliance soon broke with Cushman.

Don Rupp, a coffee shop proprietor and valley property owner, was unhappy with the National Park Service over denial of a cable television crossing.<sup>13</sup> He became the prime leader and voice of the Alliance. Known locally for his forceful tactics -- some of his neighbors refer to him as a "bully" -- Rupp took a militant anti-park, anti-plan stance. Signs reading "NPS Get Out of Town", were posted on his property. He wrote frequent letters-to-the editor<sup>14</sup>

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<sup>13</sup> The Delaware River Basin Commission denied Rupp's petition to string a television cable across the river in order to bring cable tv service to himself and neighbors in the Knight's Eddy area. Rupp blamed NPS for the denial. NPS help in preparing an appeal on the case neither won Rupp over to the Park Service side nor did it convince the DRBC to allow the cable.

<sup>14</sup> When a local newspaper decided to start printing his letters as is, without editing, his limited education became evident. His statement that NPS used "gorilla" tactics resulted in a spate of sarcastic response letters.

related to the controversy. Representing the Alliance, he appeared at Plan Revision Committee meetings, but his personal convictions seemed more closely to adhere to the sign he carried at local demonstrations: "No Park, No Plan, No Way".

#### National Inholders Association

Chuck Cushman's appearance in the river valley also spawned a local chapter of his California based organization, the National Inholders Association. Nationwide, this is an organization dedicated to protecting the rights of those who own property within units of the National Park Service.

In the weeks following Cushman's appearance, it was unclear whether the Inholders Association or the Alliance would take over leadership in the protest. The Inholders essentially reflected Cushman's view:<sup>15</sup> that the law was a good one; that it was in resident's best interest to participate in the planning process in order to get a plan that suited their needs; but that the bureaucratic Park Service must be monitored and curtailed wherever possible.

Members of the Inholders were local property owners who were worried about federal intrusion. The more frightened and radical of these people migrated to the Alliance and the ILA, leaving the Inholders with a more conservative element.

#### Association of Upper Delaware Independent Outfitters

During the controversy over NPS licensing of canoe liveries, a new livery owners' association came into being. Made up of those owning small liveries, AUDIO was not protesting against the plan or the law or the National Park Service.

Among its members were part-time livery operators, with other businesses on the side. Some voiced special concern for the environment.

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<sup>15</sup> "Congressional Alert", publication of the National Inholders Association, May 28, 1986.

### Upper Delaware Review Board

In 1985, NPS opponent William Matz came up with the idea of an independent review board of town officials to critique the proposed river management plan. At this point, several towns had passed non-binding referendums calling for withdrawal from the planning process. Others had dropped out of COUP in the wake of threats and controversy. Matz reasoned that officials from the disaffected towns could be brought together to review and, presumably, to reject the plan.

Town officials, under fire from all directions and under the scrutiny of the press, were apparently unwilling to take this kind of stand. Meetings were called, but officials did not show up. The organization disintegrated before it was able to organize.

### Independent Landowners Association

The Independent Landowner's Association, according to newspaper accounts at the time of its founding,<sup>16</sup> was "designed to serve as a forum for landholders in the Upper Delaware Valley who are concerned about the proposed federal management plan." With officers from Wayne County, Pennsylvania, and Cochection, New York, it appeared to serve the same ideology and geographic constituency as the Coalition did -- but without the Baptist connection.

The president was Rolf Beck, a Damascus landowner, a somewhat mysterious individual, given to wearing camouflage outfits to public meetings. Also among the ILA leadership was the Matz family. William Matz, Sr., is a real estate man from New Jersey, who owns property in the river valley. His wife, Mary Matz, is treasurer for the ILA. Their son, William Matz, Jr. is a former attorney who is now studying social psychology in graduate school.

This group, made up primarily of Wayne County residents, has taken a very aggressive

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<sup>16</sup> Middletown Times Herald Record, March 4, 1986.

"No Park, No Plan, No Way" approach. With the Coalition, it co-sponsored the 1986 public demonstrations against NPS.

### Some Individuals

Two individuals, on opposite sides of the controversy, deserve mention, separate from this organizational break down. Both have been involved with the controversy since the early days of the Scenic River Association. Neither can be tied to a single one of the organizations mentioned above.

George Frosch raises horses on an isolated riverside farm containing the deteriorated remains of his ancestors' once active stone mill, at Kilgour Spur. A burly middle-aged man, who in his youth developed some reputation for using his size and strength to settle troublesome arguments,<sup>17</sup> Frosch has been an outspoken opponent of river recreationists who trespass on his land, and a vocal critic of the canoe liveries who attract those recreationists to the river valley. From the earliest local discussion of federal involvement, he has been a strong voice supporting the rights of riparian landowners and attacking the river recreation industry.

He was one of the representatives of the Scenic River Association who met with Interior officials in Washington and convinced them to listen to the concept of home rule through zoning, subsequently the essence of the Upper Delaware Scenic and Recreational River legislation. He has been a member of the CAC since its inception. He has served as delegate for the Town of Hancock to COUP. During a private conversation, one official noted that "you can tell where the

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<sup>17</sup> A favorite local story tells of a bothersome local drunk who Frosch picked up by the collar and hung on a coat hook.

power is by watching where George goes."<sup>18</sup>

Noel Van Swol administers a social studies program at a Syracuse high school over 100 miles from the Upper Delaware. He and his parents, however, own more than 300 acres of land along the river, and he spends much of his time at the family home there. Newspaper accounts report that he "has lived along the Delaware all his life,"<sup>19</sup> but he is not a native.

In recent years, however, VanSwol has become an outspoken activist on local issues. Local people tend dislike him intensely or else view him as a savior, a la Ralph Nader. His law suits, particularly against the local school board and the former school superintendent, have made frequent headlines in local newspapers over the past several years. He has yet, however, to win any of the numerous cash judgements he has sought.

Van Swol too was a member of the Scenic River Association, but did not take a leadership role at the time. It wasn't until the winter of 1983-84, when the issue became heated and volatile that he came to the forefront. Not specifically associated with the Coalition, the Alliance or the ILA, he nonetheless has served as advisor to them and as frequent spokesman for the de-authorization point of view.

#### Conclusion

The individuals and organizations which have led the protest on the Upper Delaware area a diverse lot.

Some have arisen from a spontaneous citizen response to local events (e.g., the scenic

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<sup>18</sup> During the period when COUP was hiring planning consultants and the CAC was having minimal effect upon the process, Frosch attended COUP meetings regularly with less attention to the CAC. Once the planning process was completed and the CAC resumed, he went back to attending CAC meetings with less attention to COUP.

<sup>19</sup> "Fears drive plan's foe," by Shirish Date, Middletown Times Herald Record, June 9, 1986.

river associations after the BOR hearing, the Coalition after the Monday Night Massacre, the Alliance after Chuck Cushman's appearance); others developed out of deliberate government action (e.g., CAC, COUP). Some were based on specific special interests (e.g., the canoe associations, the Heritage Alliance); others were concerned with more general interests of the local residents (e.g., the scenic river associations, the Alliance, the Coalition, the ILA). Some were governmentally affiliated (e.g., the CAC, COUP, the Clearinghouse); others were strongly anti-government (e.g., the Defense Committee, the ILA).

With few exceptions, each group seemed to fill a special need, fit in with its own constituency and time frame. Portions of those constituencies, including such high profile individuals as Noel Van Swol and George Frosch, were able to flow freely between organizations, selecting the ones which fitted their needs at any given time.

Their own common denominator has been the defense of the rights of local residents. Some have tempered that defense with a concern for protection of the environment and consideration of governmental authority. Others have chosen a more purist, at times even anarchist, approach. But all would agree that their primary concern was to protect the valley and its residents.

## SOME SUCCESS, SOME FAILURES

The Upper Delaware protestors have been remarkably successful in influencing the federal government to change legislative and administrative decisions. Their record, however, has not been one of unequivocal achievement.

In this chapter, each protest group will be examined individually. The group's concerns will be outlined. From time to time, each of these organizations has gone on record with specific concerns, changes they wished to implement. These concerns -- documented in newspaper articles, public statements, press releases, letters and meeting notes -- will be outlined. If changes in policy or plan were achieved as desired, they will be labeled a success. Likewise, if expressed changes were not achieved, they will be labeled failures. The circumstances under which each success or failure occurred will be examined. Finally, the role of the National Park Service and its ambivalent attitude is considered as an agent of successful protest.

### Problem of Definition

There are two basic problems in analyzing which protestors have been successful, and under what circumstances: 1) Can you establish a "winner" when the contest may not yet be finished? 2) How do you define success?

The controversy along the Upper Delaware is probably not yet over. When the River Management Plan, compiled by the Plan Oversight Committee and edited by the Revision Committee (both including representatives of federal, state and local governments, as well as local special interest groups) was published in late 1986, NPS and plan opponent Noel Van Swol told a reporter he hadn't yet seen this version, but he was sure he wouldn't like it.<sup>1</sup> Implementation of the plan has brought promises of law suits from Van Swol and others. Apparently, more

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<sup>1</sup> Middletown Times Herald Record, November 1986

controversy and conflict were ahead.

It is still possible that the plan could be changed or the Upper Delaware legislation repealed. Neither seems likely. Authorities have gone through all the review procedures stipulated by law. The plan has been delivered to Congress, armed with all the necessary bureaucratic signatures. Only Congress has the power to repeal (de-authorize) the law. Since all three Congressmen serving the area were co-sponsors of the legislation, and have urged dissenters to cooperate with the Park Service, they would not be expected to support repeal. No similar unit of the National Park Service has been de-authorized, and it seems unlikely that Congress would go against Representatives serving this area in order to overturn that precedent.<sup>2</sup>

Opponents of the Park Service indicate that there will be law suits, protests, and insurrections in the future. But the outcome seems evident: The Upper Delaware legislation will remain the law of the land for some time to come. The 1986-87 plan and revised guidelines will become the 10-year plan for management of the river valley.

Knowing the final product, however, does not make measurement of success a fait accompli. Has a protestor "succeeded" if he has managed to disrupt public meetings, gotten opponents out of office, or convinced people to sign petitions? Or is she a failure because her poster read "No Park. No Plan. No Way." and she ended up with a park and a plan?

Attempting to read a person's mind or judge his intentions is always a tricky course to pursue. Unless there is evidence to the contrary, the researcher must assume that the

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<sup>2</sup>Letter from U.S. Representative Bruce F. Veno, chairman of the House Subcommittee on National Parks and Recreation, to Craig Stewart, COUP chairman, dated April 29, 1986: "In response to your specific question about de-authorization of the Upper Delaware Wild and Scenic River, I, for one, would find it necessary to oppose such an action. The Congress could, of course, act to deauthorize the designation of the river, but I believe that would be highly unlikely."

protestor means what she is saying. If "No Park. No Plan." is the battle cry, a park and a plan in place must constitute a defeat.

Of course, there is seldom such a black and white picture. Some of the same people who called for "No Park. No Plan" also made specific points about provisions that displeased them. When these points were accepted and changes made, success was certainly achieved.

Therefore, this analysis will assess success or failure based on the ideas and desires specifically expressed by the protestors. A protestor may have failed in calling for de-authorization, but may have succeeded in gaining protection for hunting rights. Both aspects of the protest are documented and evaluated.

#### Delaware Valley Outdoor Recreation

Initially, the canoe livery owners were concerned about protecting their right to use the river and their land-base access. Kittatiny Canoes and others had suffered severe losses when their downriver land was taken for the Delaware Water Gap National Recreation Area. During the period prior to passage of the Upper Delaware legislation, they lobbied heavily for protection of private property rights and continued access to the river.

At the time the 1978 legislation was being drafted, the Upper Delaware Canoe Association (Delaware Valley Outdoor Recreation's predecessor) directly and quite successfully put pressure on their Congressmen in an effort to protect their land and water rights. They were aided and abetted by other local voices such as the Upper Delaware Scenic River Association, who were applying similar political pressure at the same time. Although local residents were often sworn enemies of liveries and their clientele, the low profile, behind the scenes nature of their activity allowed archenemies to support each other without ever actually meeting or conspiring.

During much of the controversial period, DVOR and its members were unobtrusive. It wasn't until livery licensing appeared on the horizon that their voice was again heard. This

issue coincided with release of the 1983 plan and the December "Monday Night Massacre" in Damascus. At Damascus, the liveries were heavily villified, along with the National Park Service. Soon afterward, however, livery owners managed to convince the Coalition and its supporters that they too were potentially victimized local businesses.

It was the liveries (working anonymously) who brought Chuck Cushman to the Valley. And it was Cushman who brought an almost religious fervor to the anti-NPS proceedings. DVOR was closely linked to the early days of the Citizens Alliance, one of the organizations formed in Cushman's wake.

Their motivation was then, and continues to be, protection of their business interests. Inherent in any Wild and Scenic Rivers legislation is control of the waterway and lands surrounding it. As long as NPS did not exert that control in a way that had potential for negative impact upon them, the liveries remained quiet. As soon as the Park Service moved to put a commercial use license into effect,<sup>3</sup> DVOR members countered by aiding in the recruitment of anti-NPS protestors.

This inserted two new and potent elements into the situation<sup>4</sup>. The introduction of the charismatic Mr. Cushman stirred up many valley residents who had previously been apathetic. It also forced consideration of water related management, so that the planners and the National

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<sup>3</sup>According to Upper Delaware Superintendent John T. Hutzky, NPS regional management pushed for livery licensing on the Upper Delaware because the Middle Delaware was ready to license. Upper levels of NPS management believed it was important to deal with both sections at the same time, despite the fact that it was not the ideal time to raise a new issue on the Upper Delaware.

<sup>4</sup>These observations are based on "An Analysis of Community Response to Federal Presence in the Upper Delaware Valley, A Report to Managers," by Matthew S. Carroll, Ben W. Twight and Marsha McCabe of The Pennsylvania State University, and a verbal report based on that research presented to NPS staff on the Upper Delaware, by Dr. Carroll, June 29, 1987.

Park Service had to deal with both land and water use issues at the same time.

The attempt to agitate the previously uninvolved was timely and successful, but opposition to commercial use licensing ultimately failed. They were unable to stop it for two reasons: 1) NPS commitment to licensing was bolstered by strong legal precedent; 2) a split in the DVOR ranks broke their united front and defused their power.

#### AUDIO

During the process of negotiating the livery licensing agreement, it was suggested that there be a moratorium be put on the number of vessels (canoes, boats, rafts) available for rental on the river. In lieu of a formal carrying capacity study (currently in progress),<sup>5</sup> this was viewed as a way to hold the line until it could be determined what constitutes overcrowding on the river. For the large liveries with hundreds of canoes already in use, this sounded like a workable idea. But new and small liveries complained that they would be unfairly restrained from expansion.

The conflict led to formation of a new organization, the Association of Upper Delaware Independent Outfitters (AUDIO), dedicated to promoting the interests of the smaller liveries. They specifically opposed the moratorium.

In the meantime, some livery owners put in immediate orders for additional canoes, anticipating the moratorium. One of the smaller liveries upped its number of "river craft" by purchasing inexpensive rafts of a type the larger livery owners charged were too light in construction for safe river use. Other liveries let it be known that nothing short of a court order would induce them to allow NPS rangers on to their property to count canoes. Rumor circulated it that liveries were moving canoes from one location to another, in order to avoid an accurate count.

In the end, the Park Service decided not to include the moratorium concept in the licensing procedure. The door was left open for a moratorium or ceiling at some later date, when the

carrying capacity study is complete and more information is available. For the time being, AUDIO had won on the point that most concerned its members.

#### Scenic River Association

Formed with the idea of influencing federal officials to come up with legislation sensitive to the needs of local residents, the Upper Delaware Scenic River Association (UDSRA) specifically outlined its concerns in a document dated November 20, 1973.<sup>6</sup> An examination of each of those ideas and the ways in which they were addressed or ignored, in the law and the plan, offers insight into the success of this organization:

"1. Improvement of those existing access areas to provide the necessary facilities for public use."<sup>7</sup> This was not included in the legislation, but it has been dealt with operationally by the National Park Service, with that aspect of NPS operations accepted as a given in the 1986-87 plan.

"2. Prohibition of debarking from the river between the access points. This should include posted rules and enforcement."<sup>8</sup> In part due to the problem of enforcement and in part due to the increasing desire to limit federal jurisdiction, this point did not become part of either the law or the plan.

"3. Providing control of river lands under zoning or reasonable easement. The local government should be given two or three years to zone prior to any easement proceedings.

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<sup>6</sup>"A General Outline of Some Pertinent Points Concerning the Proposed Plan for the Wild and Scenic Rivers Act on the Upper Delaware River", November 20, 1973.

<sup>7</sup>ibid.

<sup>8</sup>ibid.

Easements should match the zoning so as to give the people a fair choice."<sup>9</sup> The use of local control through zoning was a major breakthrough in the legislation, doubtless the UDSRA's most important victory. The legislation gave towns a grace period of "not less than two years"<sup>10</sup> to bring their zoning into conformance with the guidelines. The use of easements was not specified in the law and only mentioned as a supportive tool in the plan.

"4. Provision of services to the public at authorized access points . . ." <sup>11</sup> This met the fate of point #2, for the same reasons, i.e., difficulty in enforcement and the desire to limit federal jurisdiction.

"5. Subsidies to local town governments for the maintenance of police, water, sewage and garbage collection in conjunction with federal management of access areas, where desirable."<sup>12</sup> Although water and sewage subsidies were not included in the legislation, this point was essentially won. Like point #3, its inclusion in the federal legislation was a revolutionary breakthrough.

"6. Submission of locally developed zoning guidelines in conjunction with the B.O.R. . . ." <sup>13</sup> This was a short-term goal, relating to the ongoing negotiations with B.O.R. It laid the basis for incorporation of the zoning ideas developed by the Clearinghouse into the Guidelines produced and submitted to Congress by the Intergovernmental Planning Team. They were then revised, but kept essentially intact by the Guidelines revision committee. The concept of developing

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<sup>9</sup>ibid.

<sup>10</sup>Public Law 95-625, Section 704(e)(2)

<sup>11</sup>"A General Outline . . .", op. cit.

<sup>12</sup>ibid.

<sup>13</sup>ibid.

zoning guidelines through local planners, with review and consultation by the federal government, has continued throughout the planning process, with the work of the Clearinghouse serving as the basis.

"7. Establishment of a mini-park under federal management at Skinners Falls."<sup>14</sup> Nothing specifying this was mentioned in the legislation or the plan. Operationally, however, the National Park Service has entered into a cooperative agreement with the New York State Department of Environmental Conservation (DEC) which owns and manages the river access area at Skinner's Falls. NPS takes over summer management of the area with both interpretive and law enforcement personnel stationed there during heavy use periods. It is not as the UDSRA envisioned, but deals with many of the law enforcement and environmental management concerns behind this suggestion.

"8. Flood plain building controls which match the current federal flood insurance programs are being set up in the various towns . . . and it would seem that any B.O.R. plan should conform to another government agency's plan."<sup>15</sup> Although not referred to in these terms in the legislation or the plan, this kind of interagency coordination has become the linchpin of much of the planning and federal management of the Upper Delaware.

"9. Establishment of information centers, road control stations and informational telephone numbers in an effort to control the population as it moves toward use of this area."<sup>16</sup> These specifics were not mentioned in the legislation, but have become the operational way of

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<sup>14</sup>ibid.

<sup>15</sup>ibid.

<sup>16</sup>ibid.

life for National Park Service staff on the Upper Delaware.

"10. An effort to get these ideas incorporated into the B.O.R.'s plan prior to submission to the Secretary of the Interior."<sup>17</sup> This was accomplished through direct meetings with federal officials.

"11. Management by an Upper Delaware Trust Commission composed of one member from each of the five counties involved, plus one federally appointed commissioner. . . ."<sup>18</sup> This was the first of many proposals for a management agency to oversee the river corridor. The concept was not included in the legislation, and is quite different from composition of the Council proposed in the final River Management Plan.<sup>19</sup> Ironically, this Trust Commission concept developed by local people would have given the local people far less direct power than the kind of Council finally adopted. In terms of direct adoption, the proposal was a failure. In the sense that it started the planners and activists on the road to considering a management concept that was not purely federal, it was another important breakthrough.

"12. Establishment of the Upper Delaware Advisory Council, to be consulted and used regularly by the managing agency as directed by the Secretary of the Interior."<sup>20</sup> This was adopted directly into the legislation,<sup>21</sup> a clear victory for the UDSRA.

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<sup>17</sup>bid.

<sup>18</sup>bid.

<sup>19</sup>Final River Management Plan, op. cit., pp. 18-28.

<sup>20</sup>"A General Guideline . . .", op. cit.

<sup>21</sup>Public Law 95-625 Section 704(c)(1).

Like most others examined in this thesis, the Scenic River Association had both successes and failures. What sets them apart is the importance, often revolutionary character, of the points they won. Even with points not included in the legislation and drastically changed before they got to the plan, the UDSRA's suggestions more often than not formed the basis for development of later concepts, or simply their way into day-to-day NPS operations without much further comment.

The Scenic River Association operated during a time when B.O.R. was vulnerable due to the unexpected explosion of public disapproval at the Callicoon public informational meeting (May 1970), and would-be sponsoring Congressmen were open to suggestions. The Association dealt with that opportunity by approaching the federal bureaucrats and their Congressional representatives through direct face-to-face meetings, submitting specific, clearly expressed ideas. They combined application of political pressure with direct recommendations for dealing with the situation.

#### Defense Committee

The Defense Committee used a different approach. This short-lived group protested any involvement by the Federal government in the river valley. Their one effort to forestall the Federal presence was a petition which gained little support. When the Upper Delaware legislation passed in 1978, their expressed goal was defeated.

#### Upper Delaware Clearinghouse

Initially, the Clearinghouse was one of the most successful groups exerting pressure on the Upper Delaware situation. They were viewed as professionals by the outside professionals of the National Park Service. Local people, including influential members of the Scenic River Association, thought of them as local representatives.

With formation of the Intergovernmental Planning Team, they took on key leadership

positions. The original Land and Water Use Guidelines submitted to Congress in 1981 were based on proposals they had developed in anticipation of the Upper Delaware legislation.

Clearinghouse members contributed much to the early development of the River Management Plan. However, by the time the 1983 draft plan was completed and came under fire, many of the original planners found it hard to defend that document as "their plan." Some complained that decisions they participated in as part of the Planning Team went back to the Denver Service Center with the NPS planners and were so altered as to be unrecognizable.<sup>22</sup> On many key issues they felt they had won the battle in Planning Team meetings locally only to lose the war in Denver.

At the same time local people, to a greater and greater extent, were coming to view the plan as a "Denver plan," with the Clearinghouse people as nothing more than outside professionals who happened to live a little closer than Colorado. On the eyes of plan opponents, they had been co-opted by the enemy. As county planners, they were hired and paid for by local politicians, highly vulnerable to public opinion. Whether influenced by the frustration of dealing with the Upper Delaware and local political process, feeling pressure from their county officials or looking to better career opportunities elsewhere, several planners left the area or backed off from further involvement with the Upper Delaware project. Only Tom Shepstone continued active involvement, serving as the professional consultant on revision of the Guidelines.

#### Citizens Advisory Council

Because the Citizens Advisory Council has represented a wide spectrum of personal views and has been the conduit for citizen protest on a broad range of issues, it is difficult to assess its overall success.

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<sup>22</sup>Carroll, op. cit.

Soon after its formation, there were, arguably, a number of important successes. It was the CAC and its chairman, Herb Fabricant, who forced NPS to change the Upper Delaware from a satellite area of the Middle Delaware to fully autonomous unit of the Park Service. It was through the CAC that residents voiced their concern about the closing of the Roebling Bridge, fears about loss of home rule and boundary issues.

For a time, the CAC was the only avenue for citizen involvement, and those in power (especially, the Park Service) took them very seriously. Then a combination of factors began to erode its influence. COUP, made up of local supervisors with direct political power, was formed and began to take on an advocacy role. Attendance at CAC meetings fell off to the point that lack of a quorum was a frequent occurrence. Members began to squabble among themselves, on a very personal level.<sup>23</sup> The Secretary of the Interior didn't get around to re-appointing members when their terms expired, making it literally impossible to hold an official meeting for several months.

With COUP (through its private consultants) taking over production of the Management Plan, the separate roles of COUP and the CAC became more clearly defined. Once again the CAC gained a degree of credibility.

Throughout the planning process, the CAC has served as a sounding board and conduit for local concerns about the Plan. Its members served on the various oversight and revision committees. Apparently satisfied that the final product answered their concerns, they endorsed the Plan, with one reservation. Chairman Karen Ridley, on behalf of the CAC, protested the

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<sup>23</sup>For example, CAC member Matthew Freda resigned, publicly complaining about Chairman Fabricant's long winded and autocratic behavior during meetings.

concept of penalizing<sup>24</sup> towns which choose not to participate in a Management Council for the river valley. That protest, though backed up by others involved in the project, fell on deaf ears at the regional level of the National Park Service. NPS officials, feeling that it was more important to reward those who chose to go along with the Management Council than to encourage the fainthearted, decided to keep the penalty clause in the plan. This indicates that, although the CAC may have regained much of its stature, it is still not powerful enough to change the direction of federal policy, in cases where the thinking of upper level bureaucracy had become entrenched.

#### Upper Delaware Heritage Alliance

With no one else exhibiting a passionate interest on anyone else's part in history and cultural resources of the river valley, the Upper Delaware Heritage Alliance (UDHA) has been able to dictate much of the management and policy in these areas. From its origination, UDHA has been closely linked to the Park Service. The result of these factors has been that both NPS and the planning consultants have been inclined to accept recommendations of the Heritage Alliance.

UDHA has never reached beyond the bounds of its special interest area. It has, however, carefully reviewed each plan and monitored each action in the area of cultural resources preservation and management.

At one point, in the early days of the Plan Oversight Committee (1984), the Committee presented a cultural resources section which was totally unacceptable to the Heritage Alliance. The consultant working on the plan had presented cultural resources first, on the principle that it was a non-controversial topic. That decision resulted in the anti-plan, anti-NPS forces

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<sup>24</sup>Final River Management Plan, p. viii: "If a town elects not to participate, it will have decided not to avail itself of the benefits and assurances that have been provided to Council members, including the provisions for maximum local input into decisions within that town or within the corridor."

opening fire on cultural resources management, removing all "teeth" from the proposals and all specifics from that section. When told by a Pennsylvania official<sup>25</sup> that such a section would be vetoed by the states, the POC directed the consultants to write something acceptable. Virtually all suggestions and revisions submitted by the Heritage Alliance were eventually included in the plan. In effect, the Heritage Alliance got exactly what it asked for.

#### Conference of Upper Delaware Townships

Perhaps even more than the CAC, the Conference of Upper Delaware Townships influenced policy making, whenever it was able to show strong interest and a united front.

Neither Congress nor NPS had envisioned an organization like COUP, and it took some time for those in power to sort out what COUP's role was to be. Based on a concept introduced by CAC Chairman Herb Fabricant, COUP was created by local elected officials to allow them to monitor the CAC and NPS, particularly in relationship to the writing of the River Management Plan. Ironically, COUP itself eventually produced the Plan, with the Park Service striving for a low profile and the CAC serving as monitor.

In the early days of COUP, there was considerable apathy, with meetings poorly attended and only a small group of officials participating. NPS officials tracked those meetings, but treated them as another of many valley interest groups, not necessarily a controlling factor. Midway through the planning process, it dawned upon the bureaucrats that, if zoning were to be the primary land management tool here, then the only people with the power to make the project work were local elected officials. COUP was the body representing those elected officials and NPS began to take them very seriously.

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<sup>25</sup>Roger Fickes, head of the Scenic Rivers Division of the Pennsylvania Department of Environmental Resources.

Another turning point came in 1984 when, with attempts to produce an acceptable plan in disarray, COUP proposed that it assume the planning responsibility. Although NPS paid for the private planning consultants, they were chosen and controlled by COUP. Willingness to accept the role of "lightning rod"<sup>26</sup> gave them the power to negotiate a plan their constituents could live with.

#### Upper Delaware Coalition

The first of the anti-NPS groups with a substantial following, the Coalition critiqued the 1983 draft river management plan and offered counter proposals. Although members later gravitated to the "NPS Get Out of Town" ranks, their original stance was not that radical. As a result of the showing of the PBS documentary about the Cuyahoga valley, they were upset about the possibility of infringement upon the rights of local residents, and were primarily concerned with curbing NPS regulatory power and land acquisition. There was no serious discussion of de-authorization.

There was some suggestion that the Coalition might write its own River Management Plan. However, Coalition President Bob Carey and Marion Schweighofer, a member who had given Coalition presentations on the Plan, agreed to participate in a Task Force for Revision of the River Management Plan, set up by the Park Service. At the Task Force meeting on January 18, 1984, Carey explicitly stated that the Coalition's preference was to have input into a NPS plan which they could find acceptable.

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<sup>26</sup>This phase, often used by NPS Superintendent Hutzky, seemed especially appropriate in the course of some of the more volatile and fiery COUP meeting at the time the plan was being rewritten.

Drawing upon notes from these Task Force meetings,<sup>27</sup> it is possible to identify many of the issues of concern to the Coalition<sup>28</sup>. They included: the feeling that the plan promoted recreation; encouragement of excursion trains into the valley would bring more non-residents to the area; canoe livery development should be restricted; encouragement of ownership by private trusts could take property off the tax rolls; the power of the Delaware River Basin Commission should be limited; guarantees to local citizens were not spelled out in the plan; the CAC didn't represent riparian landowners; CAC selections didn't emanate from the river valley; the CAC appointment system was cumbersome; fear that hunting would be regulated or prohibited in the "National Park"; fishermen's rights needed to be protected; the valley shouldn't be "frozen in time" as a museum; application of the Guidelines was unclear (just advice or the law?); condemnation as a result of "degradation" could be at the whim of some federal official; fear that Route 97, the main highway the length of the valley, might be turned into a scenic highway without commercial traffic; need for protection against trespassers. Although Carey was adamant in stating that they were more concerned with issues than language, Coalition members criticized the planners for using technical language and "planner-eze."

The Coalition's concerns could be divided into eight basic areas: 1) restriction of the recreation industry; 2) protection of personal rights of residents; 3) home rule concerns; 4) protection of residents' rights to conduct commercial activity; 5) strengthening of the CAC; 6)

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<sup>27</sup>No formal minutes were written. However, one member of the Task Force (either Ed Wesley or Mary Curtis) took informal notes at each meetings, and distributed them to participants as an aid in the continuing work. The meetings took place January 5, 10, 18, 23 and 26, February 2 and 7, 1984.

<sup>28</sup>In many cases these issues are not separated out in the meeting notes as "Coalition concerns." However, the two members of the Coalition present were the only members of the small group at the first few Task Force meetings who weren't either environmentalists, NPS employees or somehow connected to the earlier planning effort, so it is relatively easy to identify the issues surfaced by them.

clarification and restriction of the Guidelines and conditions leading to condemnation; 7) protection of the local tax base; 8) "cleaning up" the plan's format and language. With the exception of those items relating to the CAC, all of these issues were addressed by the Plan Oversight, Guidelines and Plan Revision Committees, resulting in changes in both the Guidelines and the River Management Plan. No formal changes were instituted in appointments to the CAC -- that would take an act of Congress -- however, the Department of the Interior has improved the efficiency of its system for renewing appointments.

Several factors resulted in the Coalition getting nearly everything it asked for. They were first on the scene with highly vocal protest, utilizing the Cuyahoga film which aroused previously apathetic local residents. Their list grievances included practical concerns which could be addressed without changing the law. And they were willing to articulate those concerns directly to those in power initially.

The fact that there was only NPS and the Coalition on the scene during this period helped to hold down the rhetoric and clarify the issues. Ironically, the Coalition dropped out of the Task Force (which was subsequently dissolved) because they felt it was too dominated by NPS staff and did not allow them enough time to get the opinions of "the people" across.<sup>29</sup> Subsequent committees dealing with the plan had only minor representation by the Park Service.

An internal split over election of officers within the Coalition coincided with appearance of Chuck Cushman on the scene. Disenchanted members were drawn to Cushman's inspirational approach, and joined forces with the newly formed Citizens Alliance or the local chapter of the Inholders Association. At that point, the organization faded from public attention except as the

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<sup>29</sup>Letter to "Task Force Members" from Marion Schweighofer, January 29, 1984.

cosponsor of anti-NPS events. Those who remained affiliated with the Coalition became gradually more anti-plan and anti-NPS, supporting efforts with the Alliance and the ILA

### The Citizen's Alliance

Originally, the Alliance, like the Coalition, sought to write a Management Plan with more control allocated to local residents. Over time, both the Alliance and the Coalition became increasingly anti-NPS and anti-plan.

A June 1984 statement by Alliance President Don Rupp attacked the planning process and offered a list of complaints. Most of them simply addressed the inequities of the National Park Service (e.g. "THE NATIONAL PARK SERVICE NOT accountable for what they say or tell us"). He did, however, list some specific concerns:

"-WHAT IS THE MEANING OF Habitat-Steep slopes-Shallow bed rock-Wetlands-  
Endangered Species-Unique Land Forms-Erodable soils, etc???

-ZONING...from town to town . . .

-LEGISLATIVE LAW ( 95-625) same as the Middle Delaware where 3000 homes  
destroyed . . .

-BOUNDARY LINE...Is It a take, or a protective line???. . .

-SECTION 2.22 of the CFR-ABANDONMENT OF PROPERTY...WILL APPLY TO PRIVATE  
PROPERTY . . .

-SCENIC HIGHWAYS...We find no reason why this will not apply here!!! . . ."30

As mentioned in reference to the Coalition, the issues of language clarification and Scenic Highways were addressed by the various revision committees. A boundary line was mediated and

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30A message from Alliance President Don Rupp given at a guidelines meeting in June 1984.  
Distributed with the Alliance newsletter, August 1984.

published in the plan, but it remains a matter of personal definition whether it is termed "take" or "protective." Those involved with the plan and/or NPS insist there has never been "town to town" zoning or a short term "abandonment" clause applying to private property; Alliance members disagree. The law, which Rupp calls the "same as the Middle Delaware," remains unchanged.

By the spring of 1986, the leadership of the Alliance was more closely associated with the call for de-authorization than with efforts to write a more sympathetic plan. Alliance members Ethel and John Poley, and occasionally Rupp himself, participated in Plan Oversight Committee meetings. But Rupp and other Alliance members were also in evidence at a May 17, 1984 rally, picketing with signs reading "DOWN NPS" and "NO PARK NO PLAN NO WAY," Rupp's statement to the press, at that time, was, "Literally hundreds of people are against the plan and the presence of the Park Service in the river valley."<sup>31</sup>

Whether this indicated one man's rejection of the process or a change in the direction of the organization remains open to argument. However, Rupp's voice was the only one heard representing the Alliance. This movement toward a "de-authorization or nothing" stance now seems to have no hope for success.

#### National Inholders Association

The local chapter of the National Inholders Association appeared at the same time as the Alliance, immediately following the appearance by Chuck Cushman (National President of the Inholders) in the river valley. When the Alliance and the Coalition moved toward a more radical

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<sup>31</sup>"Protestors Picket Park Service Sending Message to Leave Town", Sullivan County Democrat, May 20, 1986, p. 1.

stance, however, the Inholders continued to back Cushman's contention that the law was a good one, if the power of the Park Service could be kept under control. And that a good plan, they believed, could be written.

A February 1985 resolution by the Inholders supported the planning process, with the following recommendations:

"A. Upon completion of the plan in its [sic] entirety with all appropriate documents, it shall be submitted to each of the 15 Town Boards and concurrently sent to all landholders within these 15 townships for their recommendations. There shall be a minimum of 120 days for both town residents and town boards to review and make any appropriate changes. Only through an educated populace can studies be made.

"B. Plan shall be sent to the entire membership of COUP for any revisions as may be required. After any changes and with total participation by the 15 towns, changes will be sent back to respective committees with full membership participation. Any major changes should be resubmitted for the towns' acceptance.

"C. Only after full cooperative participation by the 15 town boards may COUP schedule and hold 5 public hearings as required by Legislation 95-625. Public hearing process will be given an additional 120 days.

"D. Only after final town participation through public hearings process should each and every Town Board with its [sic] entirety including all documents and a boundary map as per Public Law 95-625. No plan will be accepted without a minimum of 2/3 of the 15 towns' [sic] acceptance."<sup>32</sup>

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<sup>32</sup>Resolution of the Upper Delaware Inholders, passed at its meeting, February 24, 1985.

An effort was made to follow the procedure outlined by the Inholders. However, the ILA was so successful in undermining the planning process that several townships formally refused to participate in the planning process, dropping out of COUP rather than risk association with the plan. This made it impossible to have "full cooperative participation by the 15 town boards." The plan was submitted to the town boards, both before and after revision, but the attempt to gain formal acceptance by 2/3 of the boards was abandoned.

#### Upper Delaware Review Board

The Review Board, as an organization, was a failure. Town officials opposed to the plan were simply not willing to show up together to review the plan.

William Matz, originator of the Review Board idea, was successful in getting some town officials to retreat from the plan and withdraw from the planning process. That success resulted from the gathering of petitions and other tactics used by the Independent Landowners Association.

#### Independent Landowners Association

The Independent Landowners Association (ILA) was formed for the immediate purpose of halting the planning process. Its members, largely drawn from the Coalition and the Alliance, loudly supported the goals of removing the Park Service from the river valley and de-authorizing the Scenic and Recreational River. According to William Matz, ILA Legal Council, "members oppose any 'management plans' or regional zoning schemes for our valley, rejecting federally mandated zoning standards in favor of zoning that comes from local officials."<sup>33</sup>

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<sup>33</sup>Letter to the Editor, Wayne County Independent, from William J. F. Matz, Esq., July 31 1986.

Their tactics, which included noisy disruption of public meetings, gathering of anti-plan petitions, picketing, and distribution of literature at public events, were successful in influencing several towns to drop out of COUP and refuse cooperation in the planning process. During the height of their activity in the spring and summer of 1986, they made headlines with their large rallies and their takeover of public hearings.<sup>34</sup>

These events demonstrated that there was a substantial group of people totally in opposition to the plan and the Park Service. At the same time, however, it had a backlash. Local residents who had attended the hearings to comment on the plan were shouted down, along with the NPS personnel. Those who had supported the plan, now backed by others who were offended by ILA tactics, were more resolute in their determination to complete the process.

The planning process was slowed down. The planners were not able to proceed with the full cooperation of the towns, as they had hoped. But the plan was completed, and moved into the realm of public policy.

#### Two Individuals

The two individuals given special attention in this study -- George Frosch and Noel Van Swol -- not only have contrasting personalities and often contrasting opinions, but also have chosen tactics and associations which seldom place them in the same camp.

George Frosch has been involved with efforts to change laws and plans on the Upper Delaware from the earliest murmurs of dissatisfaction. He was one of those from the UDSRA who lobbied so successfully in Washington, prior to finalizing the 1978 legislation. He was one of the original appointees to the CAC and remained a member of that body, as such being a party to

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<sup>34</sup>"Battle cry echoes in river valley," by Frank Burbank, The Times Herald Record, Middletown, N.Y., June 9, 1986.

their successes, failures, and power fluxuations. Not being an elected official, he wasn't an original participant in COUP, but successive supervisors from his township (Hancock) officially chosen him to represent them, rather than attend the meetings themselves. Although he did appear as the opponent of Superintendent Hutzky at a 1983 debate on the plan, most of his activity has been within "the system". He has stood out from the crowd, in part because he was willing to put a great deal of time into personal lobbying and meeting attendance, in part because he gained occasional media attention for his outspoken, sometimes controversial style.<sup>35</sup>

His primary concern has been protection of riparian property rights. Among the issues drawing his particular concern have been: property loss due to a federal buy-out; compensation to riparian land owners; trespassing; curbing of the canoe liveries; mining rights; the closing of the Lordville bridge. Although as part of the UDSRA he was able to eliminate the initial fear of a federal buy out, his proposal to offer financial compensation to riparian land owners never made in into a law, a plan or a policy. Trespassing and mining rights were among the issues addressed in the 1987 plan. Licensing allowed NPS to curb the activities of canoe liveries, although not to the extent Frosch would have preferred. Despite his, the CAC's and COUP's efforts, the Lordville bridge was dismantled and has not yet been rebuilt; the New York State Department of Transportation has promised to rebuild in about two years, but is currently re-evaluating that decision.

Beyond these specifics, Frosch's successes and failures have been closely associated with the successes and failures of those who have chosen the conventional, within-the-system route.

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<sup>35</sup>Frosch's verbal attack on livery owners and their trespassing customers led to a fist fight with liveryman Brian Achivetti, at a public meeting.

Initially, that meant getting Congress to write a law without a federal buy-out and leaving much of the regulatory power in local hands. In that, they succeeded. Since then, his has been a struggle to develop a management system that protects local interests and to use the powers vested locally to help riparian land owners. The system is still in the developmental stage.

Noel Van Swol was a member of the UDSRA in those early years of the legislation, but he did not take on a leadership role. Younger than Frosch, he has developed as a voice to be reckoned with in more recent years.

His has never been a behind-the-scenes presence. Van Swol's views are more characteristically identified at public meetings and in the media. His personal tactics include: long, often vitriolic speeches at CAC, COUP and public information meetings; circulation of letters to voters<sup>36</sup>; picketing and disruption of public meetings; letters to the editor; interviews with the media, and threats of law suits<sup>37</sup>.

Van Swol was one of the first protestors to call for de-authorization. He has consistently opposed the plan, and worked to derail the planning procedure.

His short term and local efforts have often been successful. His personal letters to voters, mailed just late enough so that those attacked couldn't respond, were successful in defeating COUP Chairman Marge Hillreigel in her re-election bid and in influencing several towns to go

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<sup>36</sup>At his own expense, Van Swol mailed a letter to "All Buckingham, Damascus, and Manchester Township Voters" calling for a "no" vote on a plan referendum. He sent out another letter to Fremont voters, calling for the defeat of COUP Chairman Marge Hillreigel in a local election.

<sup>37</sup>In the past he had filed numerous law suits in separate disputes with the Delaware Valley Central School Board. His only successful suit led to lifting of a rule limiting speech at meetings. He has threatened law suits against members of all town boards participating in the plan.

on record opposing the plan. These actions certainly showed down and impeded the planning process.

His broader based efforts -- to stop the planning process and have Congress repeal the legislation -- have not succeeded. The courts are yet to be heard from. It is possible that, by inducing local towns to disassociate themselves with the plan and any form of valley-wide management system, he may succeed in doing the one thing he opposed: taking the power away from valley residents and handing it to the federal government. It will be some years before that outcome is known.

#### National Park Service Response

All of the analysis above has centered on the protestors and the way their tactics have interacted with contemporary conditions to produce success or failure. An important element not yet adequately considered is the role of the National Park Service and its attitude.

As the lead agency for planning and the perspective manager of the valley's resources, NPS was the chief target of the protestors. Its vulnerability -- or to put it in a more positive light, flexibility -- had much to do with the protestors success in achieving changes.<sup>38</sup>

From the beginning of its involvement with the Upper Delaware, NPS had very little idea what to do with this strange management scheme. The legislation had been worked out between BOR, local citizens and Congress. NPS was given the lead role, despite the lack of enthusiasm on the part of its higher levels of management.

From the inception, its role was not clearly defined in the minds of those charged with planning and implementation. The Upper Delaware legislation was far removed from traditional

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<sup>38</sup>Insight into the role of NPS was gained through private conversations with Upper Delaware Superintendent John Hutzky, in 1986 and 1987.

Park Service thinking, and had few champions in the ranks. A whole new concept was being introduced, one which NPS neither understood nor particularly favored.

Regional Director Stanton paid lip service to the ideas contained in the law. But he showed no real intention of creating a park separate from the Middle Delaware. Initially, he stationed Area Manager John Hutzky in the valley as a public relations man, with no staff and no program. It was only well timed pressure by the CAC, coupled with NPS's vague understanding of its own role, that caused Stanton to give in and create a separate Park Service unit with Hutzky as superintendent.

This same kind of pattern occurred over and over again, giving protestors the upper hand in dealing with the Park Service. Originally, NPS hoped it wouldn't have to do much of anything in the river valley. Even in the area of planning, the agency only intended to take on a facilitator's role, expecting to rely upon the Clearinghouse for leadership. Without a clear commitment to any particular role, the agency had little compunction, later, in taking over the leadership role itself, and, when protest heated up, passing that role on to COUP.

Likewise, it never intended to become involved with COUP, had no real idea how to react to such an organization. But when Regional Director Coleman found himself personally attacked at the Monday Night Massacre, Superintendent Hutzky was able to convince him that COUP could be an effective intermediary.

Time and again, because it had no real commitment to a specific role or policy, NPS was willing to compromise. And when NPS compromised, the protestors won.

### Conclusions

A pattern of background elements and tactics underlying the success or failure of protests begins to emerge.

Timing appears to have been a major contributing element. Those who were "in on the

ground floor," such as the river associations, the Clearinghouse, the CAC and the Coalition, were especially successful in early attempts to make changes in intended legislation and Park Service policy. They were able to establish themselves as entities to be dealt with, offering direct input at a time no one else from the public was an active participant, and government officials were open to suggestion.

Timing also had its negative effects. The Defense Committee's early anti-NPS petition was clearly an idea ahead of its time; it received little support. Later Alliance and ILA petitions of a similar nature were circulated after anti-NPS sentiments had been aroused, and they gained large numbers of signatures. The number of signatures on those later petitions clearly had an impact on support of the plan by local officials, just as the small number of signatures on those earlier petitions convinced both elected officials and bureaucrats that there was little opposition to the federal government's presence.

The ability to communicate with those who hold the power at any given time was also important to the success or failure of a protest.

Those who spoke the politically acceptable and rational language of the bureaucrats -- the river associations, the Clearinghouse, the Heritage Alliance -- had a definite advantage in getting their ideas across. Although Congressmen and others might have had final say on controversial issues, it was the bureaucrats of the BOR, National Park Service and the Planning Team who formed the first line of decision makers, especially in the years up to 1983. The critics who presented their ideas in terms the bureaucrats found familiar and acceptable had a distinct advantage over those who spoke in emotional terms and lashed out at bureaucratic terminology with bitter sarcasm.

Beyond the level of conversation and written statement, the network of personal relationships also made communications between some groups -- especially the Clearinghouse and the

Heritage Alliance -- and the bureaucracy much easier to accomplish. On the opposite side of ledger, those without personal contacts with the bureaucracy felt alienated and believed they could not communicate directly or have effective input. Dr. Carroll and his colleagues from Pennsylvania State University pointed to "the lack of strong interpersonal ties between a significant segment of Valley residents and the NPS, a resulting perpetuation of a feeling of 'them versus us' on the part of such residents and a lack of credibility of the NPS in their minds."<sup>38</sup>

The same groups which communicated easily and had a network of interpersonal relationships tended to have had experience in working within the system. Experience in working within the system not only meant "knowing the ropes" and expressing protest confidently, it also meant understanding the limits of acceptable change. Organizations such as the Clearinghouse, the CAC, the Heritage Alliance and COUP understood the legislation and the flexibility/rigidity of the Park Service well enough to call for changes that could be made within the jurisdiction of the negotiating parties. Organizations like the Alliance and the ILA demanded concessions that would literally take an act of Congress or a major nationwide policy change.

Another characteristic of those who protested successfully was the ability to articulate specific changes or concepts within a limited scope. The Heritage Alliance is a particularly good example of this, was an organization which specified its recommendations within a very narrow area of interest, achieving almost total success in gaining acceptance of its viewpoint. Other groups, such as the scenic river associations, the Clearinghouse and the Coalition, were able to utilize this tactic to their advantage on several occasions over the years of negotiation.

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<sup>38</sup>Carroll/Twight/ McCabe, op. cit. p. 99.

This limited sphere effectiveness also applied to the success of those individuals and organizations which were considered experts in their subject areas. For example, those in power repeatedly looked to Clearinghouse members for direction on zoning issues, and to the Heritage Alliance on cultural resource questions.

The power of those with expertise is closely related to the power of those with the ability to implement programs. This can be most clearly seen in COUP's changing fortunes. At first viewed as "just another interest group," it began to dictate change effectively when the bureaucracy realized that, without COUP, no cooperative management system could be implemented.

Another characteristic of successful advocacy was the unified approach. Two faces of this unity deserve consideration.

Internal unity of any organization or interest group can be especially important. Both the canoe liveries and the Coalition diminished in their ability to protest effectively when there was dissent within their ranks.

When interest groups or organizations were able to form coalitions or gain support from a broader constituency unifying their interests with others, their chances of success were enhanced. In the Upper Delaware Valley, where the people put such a high value on independence, that advantage was difficult to maintain. The bargaining power of the canoe liveries was clearly enhanced when they were able to enlist the sympathies of the general public, following Chuck Cushman's appearance in the valley. Forcing the Park Service to deal with water use issues at the same time the agency was struggling with public reaction to land use issues worked to the liveries' advantage. However, they were not able to maintain control of public sentiments and, crippled by their own internal schism, were unable to resist commercial licensing.

The tactics employed by the more radical and emotional NPS critics were successful in

dealing with local officials, but had little impact on bureaucracy or legislators on the state or federal level. Circulation of petitions, door-to-door campaigning, letters to voting constituents and confrontations with officials were effective in influencing some town supervisors to withdraw from support of COUP and the plan. During the period when local municipalities controlled the planning process (1984-86), these efforts appeared to exert great influence. In the final analysis, however, the power to make changes was in the hands of Congress and the Secretary of the Interior. With Congressmen who were secure in their offices regardless of their small constituencies in the river valley and a Secretary of the Interior far removed from local pickets and accusations, these tactics did not have the power to overturn the law or the plan.

Another tactic employed by these same groups -- disruption of public meetings -- was also successful in the short term, but ineffective in the long term. Their goal, as expressed by the ILA, was to stop the planning process. Long speeches and fiery accusations at meetings of the CAC, COUP and the Plan Oversight Committee certainly impeded speedy consideration of the issues. Chanting, bell ringing and other noise making halted two public hearings and kept away many of those who might have supported the plan and NPS. But it had its backlash. Virtually every local newspaper and many non-involved citizens expressed horror and dismay at this display of rude behavior and subversion of others' right to speak. Not only did they fail to halt the planning process, they lost public support in the process.

Looking at all these factors, it appears that the single most important element in the success of protest on the Upper Delaware has been the ability to identify those who have control the situation and exert influence which that individual, group or agency accepted as appropriate.

## PROTESTORS & HISTORY, AN ANALYSIS

Given the diversity of organizations and approach to protest, it is often difficult to sort out exactly what happened on the Upper Delaware. A condensed reprise of the history of the controversy, this time utilizing the historical perspective to analyze the protestors and their activities, promises to shed additional light on the subject.

For the purpose of this analysis, the history of the controversy relating to federal presence on the Upper Delaware has been broken down into three basic periods: 1) the pre-legislation era [1963 - 1978]; 2) the Planning Team era [1979 - 1983]; 3) the consultancy era [1984 - 1987]. During each of these periods, new advocates and protest groups surfaced. Each emergence, success and failure was greatly impacted by the historical period in which it occurred and the power structure in place at the time.

### Pre-legislative Era

The pre-legislative era began with first discussions of the Upper Delaware's inclusion in the National Wild and Scenic Rivers System,<sup>1</sup> at the time when that basic legislation was being drafted. That period came to end with passage of the Upper Delaware legislation<sup>2</sup>

The activist groups emerging during the pre-legislative era were: the Delaware Valley Canoe Association; the Upper Delaware Scenic River Association; the Upper Delaware Defense Committee; and the Upper Delaware Clearinghouse. There was some overlapping between them, but they represented very distinct interest groups, all looking to have an affect upon the legis-

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<sup>1</sup>Public Law 90-542 enacted October 2, 1968.

<sup>2</sup>Public Law 95-625 enacted November 10, 1978.

lation regulating the Upper Delaware. The canoe liveries (Delaware Valley Canoe Association, later called Delaware Valley Outdoor Recreation) were a commercial interest group focusing on economic impacts relative to the outdoor recreation industry. The river associations, specifically the Upper Delaware Scenic River Association, were almost exclusively made up of riparian land owners; they were concerned about the environment, although their primary interest was in protecting the economic and social rights of local residents. The Upper Delaware Defense Committee, the first of the "aginner" groups, rallied opposition to any federal involvement on idealistic grounds, calling for absolute control by local residents. The Upper Delaware Clearinghouse, made up of local planners, assumed that the federal government would take control; they focussed on developing a zoning framework sensitive to both the environment and the local economy.

The power base relating to the Upper Delaware during this period was clearly ensconced in Washington, D.C. Up until 1978, the focus was on development of the legislation. Congress held the well defined power to introduce and enact an appropriate Upper Delaware law. The bureaucracy, in the form of the Bureau of Outdoor Recreation, was directed to provide the research and alternative recommendations which would form the basis of the law.

The canoe liveries and the river associations put pressure on both the bureaucracy and Congress with considerable success. Although local in origin, they were people who had experience in dealing with government and "spoke the language" of the legislators and bureaucrats. They employed tactics such as letter writing, phone calls and private meetings, utilizing whatever personal and political contacts they could muster. The negotiations were intense but polite and conventional.

The Upper Delaware Defense Committee was not inclined toward polite tactics or negotiated compromises. It was essentially the effort of one man whose major tactic was the circulation of

petitions telling the federal government to stay out of the valley. Even on a local level, there was little support for such an extreme viewpoint, at the time. It drew no noticeable response from either the bureaucracy or Congress, but did serve as a model for later protest groups.<sup>3</sup>

The Upper Delaware Clearinghouse was an organization preparing for the future. Inspired by the conviction that the valley could and would be managed through protective local ordinances, they began to develop plans for zoning recommendations. Their pragmatic approach influenced the lobbying efforts of the river associations. However, they were not directly involved in pressuring Congress. They were building a base for adoption of their ideas in the period following the legislation.

#### Planning Team Era

With passage of the Upper Delaware legislation, the Congressmen and Washington bureaucracy stepped back from direct involvement, only entering the scene at later times in an attempt to calm troubled waters and support the legislation. They delegated authority over the area to the Department of the Interior, which in turn appointed the Intergovernmental Planning Team. The National Park Service was designated as interim manager, overseeing immediate operational needs and acting as lead agency for planning. The Intergovernmental Planning Team was assigned to produce the Land and Water Use Guidelines and River Management Plan specified by the law.

Advocacy groups active during the Planning Team era were: the Upper Delaware Clearinghouse; the Citizens Advisory Council; the Upper Delaware Heritage Alliance; and the Conference of Upper Delaware Townships.

A bureaucratic group itself, the Clearinghouse immediately moved into a effective position for promoting its viewpoint when responsibilities were handed over to the NPS and locally

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<sup>3</sup>Carroll et. al., p. 79.

based bureaucracy. During this period the Clearinghouse, for all practical purposes, merged with the Planning Team. It was no longer an outside influence group but, depending upon your viewpoint, a subversive or a collaborator within the ranks. The local planners' influence upon the writing of the 1981 guidelines and the 1983 plan were immense.

The Citizens Advisory Council, appointed during this period, had the advantage of being the only advocacy group designated by the law. They were in a position to command attention, to force all levels of the bureaucracy to listen to them. At no time was that more evident than in the struggle with NPS over independent park status separate from the Middle Delaware.

The CAC was fettered by the kind of apathy and defusion of interests that comes with a group created by governmental appointment rather than mutual commitment. CAC members came from a variety of different viewpoints and backgrounds with little in common beyond sufficient interest and political influence to gain a federal, state or county appointment. Their appointments did not emanate from the towns and they did not necessarily live in the valley, so they were not always considered legitimate representatives of local opinion.

The CAC was also at a disadvantage because the primary focus of this period was establishment of NPS operations, and research and planning by the Planning Team. That work was being done on a daily office hours schedule. CAC members had other careers, coming together only for monthly meetings.<sup>4</sup> There just wasn't enough time to be aware of, and understand, all the developments.

All of this was complicated by persistent bureaucratic fumbling with re-appointments resulting in long periods without official meetings. Not surprisingly, many CAC members found

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<sup>4</sup>Not long after its establishment, the CAC found the mandated monthly meeting to be inadequate to their needs and began scheduling an additional monthly "study session".

the experience frustrating, stifling and a waste of time.

The Upper Delaware Heritage Alliance was a volunteer organization with more amateur historians and community activists than bureaucrats. Still, it was closely tied to the planners, having been formed as a result of a Valley History Workshop sponsored by the Planning Team. While a handful of its members were bureaucrats serving on the Cultural Resources Work Group of the Planning Team,<sup>5</sup> there was enough of a relationship to foster communications and trust. UDHA's advocacy was within the very narrow confines of cultural resources protection and management, not a key area of concern beyond its small interest group. The Heritage Alliance's presentations were unemotional, carefully articulated and directed through official channels. They seldom involved controversy, great expense or extreme adjustment in bureaucratic thinking.

In virtually every situation where the Heritage Alliance expressed its opinion, it eventually got what they asked for. Over time, the effectiveness of this organization, in combination with the Cultural Resources Work Group, led to a heightened interest in the area of cultural resources by NPS on the local level. By 1983, the National Park Service had added a Cultural Resources Specialist to its staff, despite the Regional Director's previous admonition that it was "a river park, not a historic park."<sup>6</sup>

The Conference of Upper Delaware Townships was established during this period, but it was not immediately effective. For some time after its founding, NPS officials continued to think of the CAC as the primary local voice. The Planning Team soon recognized that the power to utilize

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<sup>5</sup>The NPS Superintendent and Assistant Superintendent, along with two other members of the Planning Team, were active in the organization.

<sup>6</sup>Personal comment attributed to Mid-Atlantic Regional Director James Coleman, August, 1983.

zoning for land management lay with local government. But they continued to talk to the more firmly established individual town boards.

The situation was complicated by the fact that the more conservative COUP members -- and virtually all COUP members could be labeled "conservative" -- were uncomfortable with the spectre of a regional government. They feared being put in the position of blowing the whistle on a neighboring township, and wanted nothing to do with each others' political and town issues. To them, the complex management schemes and planning jargon sounded like another big government scheme to gain more control over the region. They didn't want Big Brother to take over, but they didn't want to do the "dirty work"<sup>7</sup> for Big Brother either.

The cultural clash between these two groups of people also made it difficult to communicate effectively.<sup>8</sup> The planners were well educated, sophisticated, out of town bureaucrats. The NPS officials were not only well educated outsiders, but ones who wore those symbolically threatening uniforms sometimes carrying guns. COUP, on the other hand, was made up of local "good old boys,"<sup>9</sup> only a few of whom are educated beyond the local high school, and nearly all of whom have exhibited a distaste for outsiders with their costly rules and regulations. In the words of

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<sup>7</sup>This phrase was used by Supervisor Rick Lander when he argued against COUP's successor, the Upper Delaware Council, hiring professional staff and reviewing possible condemnation candidates prior to formal action by the Secretary of the Interior.

<sup>8</sup>Among the "contextual factors" mentioned by Dr. Carroll (op. cit.) in his study was that of "clash of cultures," with traditional local cultural versus the more modern cultural context of imported NPS employees.

<sup>9</sup>Two women have served on COUP, Town of Cochection Supervisor Jean McCoach and Town of Fremont representative Marge Hillreigel, both represented conservative politics and traditional rural values. Hancock Supervisor Joy Row delegated her representation to George Frosch.

an NPS report on the subject,<sup>10</sup> "The controversy can also be seen as a clash of two cultures: the more formal, rule and process-oriented bureaucratic world of the National Park Service versus the less formal, personal yet tightly knit world of the local community resident."

With two groups who neither shared the same values nor spoke the same language, it is hardly surprising that there was little productive interaction. Only when dissention reached a fever pitch, and both sides concluded that they must join forces, did they find a way to work together.

#### The Consultancy Era

The consultancy era coincided with an explosion of emotional, grassroots protest. It began with the informal, but very vocal, rejection of the Planning Team's efforts by local protestors in the winter of 1983-84, and ended with submission of the 1987 plan to the Secretary of the Interior. During this time span, a few previously organized groups -- the CAC, the Heritage Alliance, COUP, DVOR -- continued activities and a number of new protesting organizations were founded -- the Coalition, the Citizens Alliance, AUDIO, the Inholders, the Review Board, the ILA.

The CAC's role as a formal sounding board for local concerns became better understood and its relationship to COUP more clearly defined. Members of the CAC served on consultant's local planning committees, but COUP was the center of local power. The CAC received both verbal and written complaints and comments. As an organization, it took stands on such issues as organization of the management council and treatment of non-participating towns. Its recommendations carried some weight. But, when it came to making a final determination, the power was in the hands of COUP and the Park Service. After a brief early period when they

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<sup>10</sup>Carroll et. al., p. 102

were "the only game in town" as the only citizens group with an official relationship to NPS, the CAC was reduced to a subsidiary, advisory position.

It should also be mentioned that the protestors on the Upper Delaware had begun to learn that they could circumnavigate normal bureaucratic channels. During the Planning Team era, when the planners were more often in Denver than in the river valley, local activists like Noel Van Swol found that they could call the NPS Regional Director and speak directly with him about their concerns. Once this tactic was established, the formal grievance structure (through the CAC and local NPS officials) was weakened.

However, the decline of the CAC's effectiveness -- or perhaps, more appropriately, the reversion of the CAC to its original "advisory" concept -- was primarily the result of COUP's ascendancy. That change resulted from a pivotal set of decisions: COUP's proposal that the planning process be turned over to them, and NPS's agreement to finance independent planning consultants hired by COUP. With this movement of planning control from NPS and the Planning Team to COUP and its planning consultants, the process became much more vulnerable to local pressure. The CAC, set up as a more formal organization tied to the Upper Delaware Legislation, was not viewed as the local power base.

COUP developed as the official local force to be reckoned with. At the very time when the legitimacy of its power in relationship to the federal government was affirmed, however, its power base on the local level was eroded. It also became the target for protest groups. As the members and their consultants struggled to develop and present a plan that was sensitive to local needs, protest groups let them know they would have to pay the price. Don Sheetz resigned as COUP Chairman and Lumberland Supervisor, moving out of the river valley to avoid the harassment. Marge Hillreigel was voted out of office and lost her position as COUP Chairman as a result of anti-NPS sentiments. Four of the 15 river townships withdrew from COUP as a direct

result of local pressure. Two others refused to participate in the final planning process.

COUP was successful in developing a plan which it believed addressed local concerns while being acceptable to the Park Service. The power (under the legislation) still lay in the hands of the Secretary of the Interior and his designated agency, the National Park Service. But NPS acknowledged that no cooperative management system had a chance of working if the local power base did not support it. For an agency like NPS, which is not used to sharing management or planning responsibilities with the public, this was a difficult transition. The alliance between COUP and the regional officials who represented NPS was an uneasy one, with a productive outcome due more to stubbornness and determination than to a smooth working relationship.

Even an organization as small and limited as the Heritage Alliance had its ups and downs during this period. During the brief time when controversy was focused on cultural resources and committees vulnerable to "the aginners" were in control, it appeared that UDHA had lost all influence. It was only through the influence of an outside bureaucrat, who presented the vision of a state veto to the Plan Oversight Committee, that responsibility for cultural resources planning was turned over to the planning consultants. The combination of negligible controversy and planners who had little knowledge of subject area put the Heritage Alliance right back in control.

The activities of the livery organizations (DYOR and AUDIO) during the consultancy era focussed exclusively upon canoe livery licensing. They were concerned with gaining leverage in negotiations with the National Park Service. Some members of DYOR -- at that time the only livery organization -- saw the opportunity to enlist the local public on their side when controversy erupted over the 1983 plan. They were responsible for Chuck Cushman's appearance in the valley, and were closely tied to the founding of the Alliance. AUDIO, in what might be

described as a family squabble within the livery industry, was formed later. In its efforts to protect the interests of small liveries, AUDIO pressured the Park Service privately, through the Land and Water Use Guidelines Committee and in the local media. Once the licensing negotiations were completed, the liveries of both DVOR and AUDIO withdrew from protest activities.

The consultancy era also ushered in a new wave of opposition organizations -- the Coalition, the Alliance, the Inholders, the ILA -- representing segments of the local population who had not previously been involved. As other groups became more radical, the Inholders faded in prominence and influence.

Membership in these organizations included people who normally avoided contact with government and the bureaucracy, finding it both frightening and confusing. Once mobilized, they formed a constituency which was neither experienced with, nor inclined toward, dealing with bureaucratic forms. For them, people in uniforms and government titles were not to be trusted or compromised with. They could, however, deal with their local politician. They could talk with him at the local coffee shop, call him at home, hand him a petition or scream obscenities at him during a town board meeting.

At an earlier time in the history of the controversy, this would have had limited effect. Coming at a time when NPS had abdicated its planning authority to the local politicians (COUP), it hit at a vulnerable spot. The surprising element is not that these very vocal and emotional groups should have gained the spotlight, but rather that so many of the local officials were willing to hold out against them.

#### Some Conclusions

Looking at the citizen groups as a whole, it is evident that none of them have been consistently successful. Their success or failure was heavily influenced by the historical context. Their timing and their relationship to the people in power became all important.

During the period when the bureaucrafts of the BOR, the National Park Service or the Planning Team were in control, organizations who were first to be heard from in specific, articulate fashion (e.g, the river associations; early efforts of the Coalition) were especially effective. Those who spoke the language of, or were easily understood by, the bureaucrats (e.g, Clearinghouse; Heritage Alliance) were successful. This was even easier if, as in the case of the Heritage Alliance, goals were limited and non-controversial.

When the power based moved to COUP and local elected officials, those using direct political pressure (e.g., petitions, appearances at town board meetings, letters to the voters) flexed their political muscles. Towns withdrew from the planning process and individual supporters dropped by the wayside. Over and above tactics, it was a case of different players taking the stage. For a brief time, the previously uncommitted and apathetic were drawn into active involvement.

Ultimately, however, all except the die-hard "No Park No Plan" advocates acknowledged that the power lay with the federal government and Congressional legislation. Those who had chosen the broader, more radical goals of de-authorization and removal of the National Park Service were consigned to failure.

## PROTESTORS & SOCIO-ECONOMIC FACTORS, AN ANALYSIS

Unlike the historical perspective, socio-economic factors do not line up neatly with individual protest groups. A farmer such as Glenn Swendsen writes inflammatory letters to the editor, hangs the park superintendent in effigy, and allies himself with the Coalition and the ILA. Another farmer such as George Hocker co-chairs a river association, serves on the Citizens Advisory Council and remains a voice of moderation. Neither would be characterized as particularly typical or atypical by his socio-economic group. They may even agree on concerns relating to their business.

This does not mean that social and economic factors have had a negligible role in the Upper Delaware controversy. It is, however, a role that cannot be readily analyzed in the light of organizational activity. Economic and social factors can be more clearly analyzed in this context by examining the socio-economic groups in relationship to the overall controversy, with reference to the specific protest organizations where applicable.

### Economic Factors

As we have previously noted, the Upper Delaware economy of the 1980's is grounded in five basic areas: 1) agriculture; 2) extractive industries; 3) outdoor recreation; 4) real estate; and 5) support services. With the exception of support services (whose group self-identification is negligible) each of these occupational groups have, at different times, identified NPS and the River Management Plan as impacting upon their livelihood negatively. When that happened, they protested.

The farmers of the region provide a good example of this reactive role. Although few farms remain active in the river valley, farming is still regarded as of great importance, influencing both the economy and the culture of the area. This dual role may result in greater influence

than its share of the economic picture would otherwise warrant. The socio-psychological importance of the family farm, though difficult to quantify, should not be minimized.

In the early days of legislative jockeying and planning efforts, farmers had occasional input, but more in the role of riparian landowners than in relationship to their agricultural interests. Their first major input was heard in 1983, when they began to raise concerns about the plan's stipulations concerning farming practices. Members of the Coalition<sup>1</sup>, at the "Monday Night Massacre" and later meetings, focussed attention on potential limitations on farming techniques. Glenn Swendsen, one of the few farmers living within the river corridor, authored a number of vitriolic letters to the editor, hung an effigy of NPS Superintendent Hutzky along the highway on the edge of his pasture, and helped put together the parade floats ridiculing the Park Service and the plan. He was closely allied with the Coalition, the ILA and de-authorization efforts.

The farmers were concerned about the plan's ambiguous directives concerning intensive livestock practices and agricultural waste disposal.<sup>2</sup> They were particularly afraid their use of pesticides would be restricted. In essence, they feared that modern agricultural practices would be so limited as to drive them out of business. At one point Swendsen accused the planners of forcing them to go back to using horses and oxen, creating a museum for outsiders to come and see.

Even after revisions to the plan,<sup>3</sup> some remained convinced of the threat to their liveli-

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<sup>1</sup>Marion Schweighofer, who did much of the plan analysis for the Coalition, is the wife a farmer from nearby Tyler Hill, Pennsylvania.

<sup>2</sup>The River Reporter, January 5, 1984.

<sup>3</sup>Final River Management Plan, op. cit., p.iii and pp. 122-123.

hood and continued, to call for de-authorization. Many signed petitions and voted to have their towns avoid involvement in the Upper Delaware Council. Most shrugged their shoulders and continued to go about their business. For some, concerns about restrictions coupled with the worsening economic picture among farmers resulted in a decision to get out of the business. Perhaps significantly, George Hocker, owner of one of the larger farms in the valley, who was former co-chairman of the Upper Delaware Scenic River Association and a member of the Citizens Advisory Council, sold his farm to a real estate investor in the spring of 1987. He did not leave the area or lose interest in the river. But he did retire from farming.

As much a traditional part of the local economy as agriculture, the extractive industries have also lost their dominant position in the valley's economy. There are still lumbering and quarrying/excavation operations active in the area, but not on the scale found before 1930. Lumbering can be seen throughout the valley, at times as a prelude to the clearing of land for development. A few relatively small quarries continue to be worked; sand and gravel pits are more commonly in use.

No lumberman, quarryman or excavator has been a prominent activist during this controversy. Some of the general protestors -- notably George Frosch and Noel Van Swol -- own property with potential for quarrying and excavation. They added this to other concerns they raised. As with Hocker and Swendsen, Frosch and Van Swol represented opposing advocacy tactics. Frosch allied himself with the groups such as the UDSRA, the CAC and COUP, who chose to work within the system. Van Swol was a leader of the de-authorization faction, closely allied with the Alliance and the ILA.

The original guidelines and 1983 plan, they believed, would restrict quarrying and excavation to the point that these activities would be halted. This was not a major protest issue. However, based on the contention that these are traditional local activities, their complaint did

receive serious consideration. In the 1987 guidelines, the planners and their advisory committees endorsed the continuation of "traditional resources extraction operations,"<sup>4</sup> falling back on existing federal, state, county and local laws to protect the public and the resource. At the same time, they continued to exclude "subsurface mining and major surface mining."<sup>5</sup>

Protestor Noel Van Swol quickly moved to test the local communities' willingness to back up this position. In 1986, he applied for permission to reopen a quarry on his property. Despite the fact that it required a variance for local ordinances, the Town of Fremont Planning Board granted the permit. Although not a clear-cut case, it would appear that Van Swol succeeded in getting the local agency to back away from the guidelines.

Lumbering continues actively but unobtrusively. During one period there was concern about the restriction of clearcutting. The final guidelines stood firm on that point, although the practice was deemed acceptable within the confines of less than two acres or "for agricultural purposes and wildlife management programs."<sup>6</sup> Since larger lumbering operations do not generally consider clearcutting a good business practice, the outcome did not raise any major protests. No one from that industry has appeared as a prominent figure on the protest scene.

The outdoor recreation industry, unlike the agricultural and extractive industries, has moved far from its traditional roots. No longer boardinghouse based, its foundation now lies in the canoe livery business. For the sake of discussion, therefore, today's outdoor recreation

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<sup>4</sup>"Land and Water Use Guidelines" in Final River Management Plan, op. cit. p. 123.

<sup>5</sup>Ibid., p. 123.

<sup>6</sup>Ibid.

industry has been treated as a single entity whose interests are synonymous with those of the canoe livery industry. From an ideological perspective, this would seem to be a mistaken premise; sport fishermen, for example, often find themselves in direct opposition to canoers.<sup>7</sup> But from the economic perspective, the canoe liveries are not only the most clearly identifiable force, they are also inexorably meshed with other aspects of the industry through campground and boat rental operations. Philosophically, there may be a separation. In economic terms, they are intertwined.

The legislation, the plan, the guidelines and NPS operational policy (e.g., licensing) has dealt directly with the outdoor recreation industry. Not surprisingly, its reaction was identifiable and direct.

Concerned about the possible loss of land bases as happened in the Middle Delaware, the livery owners, acting as constituents, lobbied Congress for legislation which would prohibit large scale federal land acquisition. Despite the impression that many residents backed the Scenic River idea in order to counteract problems created by the outdoor recreation industry, the economic interests of the livery and campground owners often dovetailed with those of other riparian landowners who favored a federal presence without a federal buy-out.

When the issue of livery licensing threatened to place restrictions on the industry, its organizations (DYOR, AUDIO) exerted what pressure they could on the bureaucracy (NPS) negotiating the licenses. Where Congressmen had been presumed vulnerable to pressure from voters and financial supporters of their campaigns, the NPS was only indirectly responsible to the voters. Fearful that NPS would not respond to lobbying, some of the livery owners decided to

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<sup>7</sup>Recreationists on the river often make the distinction between "canoeists" (the serious, environmentally conscious sportsmen types) and "canoers" (the careless, dare devil, party-time boaters).

join forces with anti-NPS elements, in order to rally the public to their cause. Livery owners were responsible for bringing Chuck Cushman to the river valley, and were instrumental in the founding of the Alliance.

In each case, once the issue under negotiation -- the legislation; livery licensing -- was completed, the outdoor recreation industry disappeared from the protest scene. Each time their input helped to set in motion far reaching consequences. In the case of the legislation, the consequences were largely as anticipated. In the case of Chuck Cushman's affect in rallying formerly apathetic anti-NPS forces and the increasingly radical influence of the Alliance, the industry appears to have gotten more than it bargained for. With the licensing issue substantially settled but the protest still rampant, the co-owner of a large livery remarked wistfully, "I think I liked it better when it was just us and the Park Service."<sup>8</sup>

In comparison with other dominant economic factors, the growth of the real estate industry is a new element. Land speculation was certainly a factor in the valley during both the 18th and 19th centuries, but today's real estate industry has little relationship to those earlier eras. This real estate market is a creature of the 1980's, the result of the circumference of amenities moving further and further from the cities, the increasing development of adjacent areas, and the rising popularity of second homes for middle and upper middle class families.

It is an business heavily impacted upon by the Upper Delaware legislation. The whole concept of a law depending upon local zoning to protect the environment has major repercussions for the real estate industry. Most realtors agree<sup>9</sup> that zoning is good for real estate values, giving perspective buyers the confidence that the area will be kept unspoiled, thus

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<sup>8</sup>Robert Lander, II, personal conversation, July 1986.

maintaining high property values. Some, however, resist the idea of any restrictions on development.

One of the central issues of the Upper Delaware controversy has been that of property values and how they will be affected by the federal presence and mandated local zoning. Studies including an Upper Delaware land value survey,<sup>10</sup> indicate the very presence of NPS may drive up land values. At the same time, NPS and the legislation are committed to controlling development, thus limiting or excluding some types of real estate activity.

Real estate, like the agricultural and extractive industries, has had its prominent activists in both the conservative and radical camps. Matthew J. ("Joe") Freda, a Callicoon realtor, was one of the UDSRA members who lobbied for the Upper Delaware legislation in Washington. He was also an original member of the CAC and is, on many issues, a conservationist. Gibson ("Gibby") McKeon, a Barryville realtor and developer, is viewed by informed sources as the power behind Supervisor Andrew Boyar, an outspoken Park Service critic who chaired the Chuck Cushman public meeting and served as first president of the Alliance. Dorothy Hinck, a Narrowsburg realtor, has made no public statements but has been personally sympathetic to the Park Service. Jennifer Canfield of Calbert Real Estate in Damascus has been a vocal critic of the NPS at Coalition and ILA meetings. Robert Van Arsdale of Van's Real Estate, Shohola, served for a time as chairman of the CAC.

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<sup>9</sup>Matthew J. Freda and Gibson McKeon are among the local real estate businessmen who have gone on record supporting zoning. However, Jennifer Canfield of Calbert Realty has made statements at public meetings, insisting the zoning recommended by the plan and guidelines would frighten off her clients.

<sup>10</sup>"Effects on the Land Market of the River Management Plan for the Upper Delaware National Scenic and Recreational River", by John E. Coughlin and John C. Keene. Coughlin, Keene and Associates, Philadelphia, PA. 1985.

It is difficult to sort out what effect these people and their economic interests have had on the controversy. Those who believed zoning and a modified federal presence would be good for the river valley and good for business seem to have gained control on a valley-wide basis. Where both the federal presence and strong zoning is in effect, the land values have escalated and the real estate industry is booming. However, the same is true in towns where zoning is ignored or non-existent. How much of this is due to the federal presence and how much is due to outside economic and social factors would constitute a complex study in and of itself.

The success or failure of the Upper Delaware experiment is dependent upon the strength and enforcement of local zoning. It is there, on the local level, that real estate interests have the potential for the greatest affect and, in turn, can be most affected. Through two generations, the Landers family (who are heavily involved in real estate as well as the outdoor recreation industry) has duelled with the Town of Tusten Planning Board. In other towns, the pressure of real estate interests has not been so clearly defined.

A case of two contrasting situations may be revealing. In the Town of Delaware, where Joe Freda has his office and does much of his business, the Town has been a major supporter of COUP and has a strong, stringently enforced zoning ordinance. The Town of Highland, where Gibby McKeon has his office and does much of his business, has been in frequent opposition to the NPS, is very development oriented, and has the only river district in the valley which is zoned commercial. It may be a case of the realtor and his style influencing the town, or simply the case of a realtor being in tune with the community where he does business. Either way, it highlights the differences in the real estate business practices and philosophy which, coupled with community sentiments, have influenced attitudes toward the legislation, the plans and the concepts they represent.

Aside from the real estate industry per se, further comment should be made on the subject

of land use and its importance to the economy and the controversy. With few exceptions, protest on the Upper Delaware has not been based on specific occupational concerns. The economically directed discussions have focussed on the effects of land use regulation, with property owners exhibiting strong feelings about the potential impact of zoning and conservation efforts.

Nearly everyone involved in the Upper Delaware controversy is a property owner. Since a property owner may be a newly-wed with a trailer on a two-acre lot or an investor with 300 acres of woodland, the simple term "property owner" may not tell all that much. It may be even less useful when large property owners and small ones disagree amongst themselves about the value of land use regulations and NPS presence. Still, that property ownership is the major economic element behind most of the protestors and their motivation.

#### Social Factors

With one exception, formal social groups in the community have resisted alliance with any particular viewpoint or tactic in this controversy. That one exception was the Damascus Baptist Church.

What made that group different? First, their religious philosophy included a strong sense of isolation from the rest of the world, a conviction that those outside their group were sinful and needed to be saved by them. This made them especially receptive to accusations that an evil outside force (NPS) was out to destroy them, and must be vigorously opposed. Other groups, religious and otherwise, hold this kind of view of the outside world. For the Baptists, however, it became a very personal concern with the showing of the Cuyahoga film. That documentary depicted a church whose membership had severely dropped when the National Park Service began taking over land in their area. Coupled with the belief that National Registry nomination would somehow restrict use of their church property, this fear mobilized the Damascus Baptists, and made them the leading force in organization of the Coalition.

Although no other specific social group was involved in a public stance of this kind, social factors certainly had an some impact on protest involvement. As confusing and cloudy as the picture often seems, a look at the residency backgrounds of valley residents offers some insight.

Unlike the economic groups analyzed, the area's residency groups seldom agree on clearly defined short term goals. Their concerns about NPS/plan impacts, their likelihood of participation in protest and their success or failure in causing change have relatively little to do with specific common goals. Their attitudes and actions are more closely connected to personal background, mind set and physical presence.

Distinct differences exist between those who claim the river valley as their primary residence and those who own land or second homes in the area but live out their work and community lives elsewhere.

As documented in the chapter on socio-economic factors, the absentee or secondary residence property owners tend to be middle aged, well educated and of relatively high income. Although the most rapidly growing segment of the local population, they seldom become an integral part of the local community. These people have come to the country to escape. They are not interested in becoming embroiled with local politics or controversies. Their social and economic backgrounds, coupled with concern for protection of the environment which attracted them to the valley, may make them sympathetic with land use controls and the aims of the National Park Service. But few of them attend public meetings or sign petitions to defend that viewpoint. They will fill out landowner surveys and answer questionnaires, sometimes giving those results a pro-environmentalist bent at odds with the sentiments expressed in local meet-

ings and elections.<sup>11</sup> But since they don't vote in local elections, they have little chance of pressuring local politicians, even if they are so inclined. Their voices have been virtually mute in the uproar of protest.

Nearly all of the protestors have been people who claim the valley or adjacent areas as their primary residence. These people tend to be less educated, lower in income and older than the second home owners. They are the ones who attend public meetings, work on local committees, and vote in local elections. They see the basic fabric of their lives either threatened or supported by local political decisions and land use controls.

A few of the protestors have been people who work elsewhere or have another residence in an urban or suburban area. They don't precisely fit either of the profiles above. They are not the newcomers. Neither do they spend most of their time in the valley. Noel Van Swol, for instance, lives during the week in Syracuse, where he works in the public school system; however, his parents have lived in the river valley since he was a child and he spends a part of each week there. Dan Billard, a Washington DC attorney who was for a time a vocal NPS critic, grew up in the area and has a daughter who is married to Tusten Town Supervisor Rick Lander. These exceptions to the rule have a closer, longer term involvement with the local community than does the typical second home owner.

Within this context, one other group should be mentioned. These are the people who do not live within the valley, but are close enough to claim involvement without being labeled "outsiders." They are people like Coalition President Bob Carey, who lives in Beach Lake (about

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<sup>11</sup>A survey, done for COUP in the winter of 1984-84, showed the large majority of landowners favored the curbing of development in the river valley. At the same time, local protestors were successfully pressuring some town boards to drop out of COUP in hope of avoiding federal restrictions on land use.

five miles from the valley), and Marion Schweighofer, whose family farm is near Tyler Hill (also about five miles from the valley). These people, though technically not within the area of federal concern, usually became involved because of community interests in the valley, such as membership in the Damascus Baptist Church. As the rhetoric, including talk about "buffer zones"<sup>12</sup>, escalated, some became convinced that federal intervention and condemnation would eventually extend well beyond the legislative boundaries and threaten their property five or ten or fifteen miles away. Because of their close connections with the river valley and because municipal boundaries extend far inland from the valley itself, they were often able to exert the same kind of social and political power available to valley residents.

Another way of looking at valley residents is by considering them in terms of the circumstances that brought them and their families to the river valley. This breaks down into four basic migration groups: 1) early immigration (1750-1850); 2) railroad immigration (1850-1925); 3) displaced immigration (1925-50); 4) ex-urban immigration (1950-present).

There are not a great many descendants of the 18th century settlers left in the river valley. A few of the citizen advocates, including Larue Elmore, George Frosch, Ed Curtis, and David Hulse, can trace their ancestors back to the earliest settlers. Possibly due to pure longevity of family service, these people tend to be part of "the establishment," with some experience in, and tendency toward, operating within the system. Elmore, Frosch and Curtis were part of the UDSRA and served on the CAC. Much of the central core of active members in

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<sup>12</sup>The buffer zone concept calls for National Park Service superintendents to comment upon federally funded projects beyond the boundaries of a National Park but close enough to have an environmental impact upon the park. Some Upper Delaware protestors claimed this would be extended to give NPS power over lands far beyond the prescribed boundaries of the valley.

the Upper Delaware Heritage Alliance is drawn from this group (e.g., Elmore, Hulse, Eleanor Keesler).

A second group -- those associated with railroad immigration -- includes those whose families have lived in the river valley for several generations, but are not in the category of original settlers. Many have German names, tracing back to the Great Immigration period of the late 1800s, when so many new residents came directly from the transatlantic steamers to the valley via the Erie Railroad. As with several of the economic groups, representatives of this migration groups appear on both the conservative and radical sides of the Upper Delaware protest. Alliance President Don Rupp traces his ancestry to this period, as does former CAC member Joe Freda.

Like the early settlement groupings, these families have lived in the valley long enough to have well established roots in the traditional community. In comparison with the earlier families, fewer of them had experience in working within the system. Most had little contact with the legislation, the planners or NPS before the "Monday Night Massacre." Few are among those who have taken leadership in the protest arena.

These are people who have never lived in urban areas and see no reason to accept restrictions (e.g. zoning) on land use. They tend to be the most concerned about retention of traditional hunting rights. They are the most likely to be infuriated by a ranger issuing them a citation for fishing without a license, especially if it is along the river in front of their own property. Many of them are the "good old boys" who, before the winter of 1983-84, may have grumbled about the officious behavior of the uniformed rangers, but did not fill out questionnaires, lobby their congressmen or have direct contact with the bureaucratic system. During that winter, however, Chuck Cushman, Noel Van Swol, Lavina Powell and others focussed the spotlight on ways government restrictions might alter their lifestyle. Although most were

not accustomed to working with bureaucratic system, they were quite capable of making their desires known publicly. Once rallied to the cause, many of them picketed, signed petitions, voted "no plan" on local referendums, and pressured local politicians to avoid involvement in COUP and the Upper Delaware Council.

For the "displaced immigrants," those who had come to the area from Europe since World War I, reaction to NPS and the plan was similar to the "railroad immigration" group. Their motivation, however, was quite different. Few understood or were worried about local life-style. Traditional hunting and fishing rights were only of minor concern. They did, however, fear confiscation of property by the government. With recent and often very personal memories of European totalitarian governments, the elderly German and Ukrainian residents of the area in particular were easily convinced that the government might take their homes away from them. After all, it had happened to them in the past. America might be different and the law might say something else, but there was always the frightening possibility that "it could happen here."

Few of these people were willing to take on leadership or direct advocacy roles. Perhaps due to personal histories with the consequences of speaking out against the government, most were silent at public meetings, seldom heard from in the newspapers. But they were afraid, and they often opposed NPS and the plan via petition and referendum.

In contrast, those who came from urban areas of the United States (mostly the New York City metropolitan area) were often up front and very vocal. People like Noel Van Swol, Bob Lander Sr., Glenn Pontier, Brian Acciavetti, and Marion Schweighofer may not have been born in the valley, but were quite willing to stand up and be counted on issues relating to it. Products of a purely American upbringing, they were not intimidated by experience with totalitarian governments. Acciavetti and Lander presented an image of street smart New Yorkers, deter-

mined to keep anyone from putting anything over on them. Van Swol, Pontier and Scheighofer, though differing greatly on the issues, were all examples of a more intellectually sophisticated approach. Some with urban experience relished "fighting city hall." Others with a Ralph Nader zeal for protecting "the people" were equally aggressive in challenging government.

Residents and protestors may also be examined in the light of time spent in the river valley. Three time frames were discussed earlier: 1) seasonal; 2) weekend; 3) year round.

Seasonal residents are primarily "snow birds," people who spend anywhere from four to nine months in Florida or some other southern state. Nearly all of these people were once active, full-time valley residents. Most are elderly. They are retired, and see no reason to spend the winter where they have to shovel snow. They may be concerned about valley issues. They may even vote on referendums (if the vote is taken when they are in residence). But they have not taken an active protest role. One seasonal resident's comment was typical of this group: "I can't go to these public meetings or say anything. I've got high blood pressure, and it just gets me too upset."<sup>13</sup>

The role of the weekender is essentially that of the absentee or second home owner, discussed earlier in this chapter. They rarely take an active role in local politics, community activity or protests.

With the exception of a few weekend commuters (e.g., Van Swol), all of the protests have come from the year round residents. The reasoning behind involvement of year round residents is virtually identical to that of those claiming the valley or adjacent areas their primary residence, previously discussed. They are the ones on site, all of the time. They attend the public meetings, work on committees and vote in elections. They are the ones who see the total

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<sup>13</sup>John Dimattina, personal conversation, August 1985.

fabric of their lives -- not just a season or a portion -- affected by the presence or absence of governmental regulations and controls.

In addition, the individual's motivation for living in the river valley appears to play a role in his or her attitudes and actions relating to the controversy and varying protest styles. These factors are difficult to access without separate psychological data. With nothing more than personal impressions and public behavior as a basis, reference to specific individuals in this light becomes tricky . . . perhaps libelous. Therefore, this kind of analysis will be limited to a few basic personal observations.

Motives for residency, as outlined in a previous chapter, tend to fall into four basic categories: 1) inability to leave due to personal or economic restrictions; 2) desire to remain or return home despite other choices being available; 3) escape from negative aspects of urban life; 4) attraction to a pristine environment. Some people fall into more than one group, but most identify with one or another as the dominant motivation.

Those who remained in the valley because they were unable to leave due to economic or personal restraints are, in a sense, prisoners. As such, they are likely to feel powerless. They have traditionally been a part of the silent majority, not involving themselves in the early days of legislative and management planning. It would never occur to these people that they could lobby Congress or be part of a planning committee. When mobilized, however, these are the protestors most likely to be stirred up emotionally, frightened by the prospect of losing what little control they have over their lives. At that point, they have often become genuinely terrified, panicky. A restrained, conciliatory discussion session is not on their agenda. Those who slash tires, vandalize government property or shout down a speaker at a public meeting are likely to come from this group.

The natives who have chosen to live in the valley because they didn't want to live anywhere

else or, more often, because they had tried living in an urban environment and decided they would rather "come home," tend to have a more positive, less defensive attitude. Many of these people have been involved with lobbying and planning from the earliest efforts in that direction. Few feel the desperation inherent in vandalism and disruption of public forums.

Parallel groups can be found among those who have moved from urban areas to the valley in recent years. Like the native "prisoners," those who came to the valley fleeing the rules and regulations of urban life, the self-styled rugged individualists, who were looking for a place where they can do just as they please without governmental interference, have felt threatened, cornered. For them, the prospect of federal government takeover presents a very real danger, easily provoking a desperate, radical response.

On the other hand, those who left the city in order to find a more pristine environment, less crowded surroundings, often look to governmental restrictions (e.g., zoning) as a way of protecting rather than interfering with their life style. These people tend to be supportive of lobbying and planning for environmental control. A few, like Barbara Yeaman and Ed Wesley, have taken a public role in the controversy. For most, however, their commitment to a private isolated, pristine environment has taken the form of "hiding out in country," precluding participation in the community or a public role as a protestor.

#### Success/Failure & Socio-Economic Factors

The success or failure of any socio-economic group in influencing this controversy is not clearly defined. Where a relationship can be established, it tends to be indirect and/or clouded by individualistic behavior.

Members of specific economic groups have not necessarily clustered together in terms of organizational participation or conservative versus radical tactics. Farmers and realtors, for instance, have had prominent representatives on both sides of nearly every issue.

Economic factors have influenced specific situations, such as canoe livery licensing and land use guidelines on agriculture. When they were able to unify and speak with one voice, that voice had considerable impact. However, the independent character of the individuals involved seldom allowed for that unity to remain intact for long. The inability to present a united front often crippled their negotiating efforts.

No example more clearly illustrates this "united we stand, divided we fall" syndrome more vividly than the case of the canoe livery negotiations. Initially, the liveries faced off against the Park Service as one, augmenting their power by bringing in Chuck Cushman to rally anti-NPS sentiments among the general public. Whether or not they would have succeeded in resisting NPS licensing efforts had they remained united is a moot point. The fact of the matter is that they began to fight among themselves, split into two groups and dissipated their power. Not long after that, the licensing agreement was completed and the liveries acquiesced.

The social groups are at least as difficult to sort out and characterize in terms of success and failure. But social and psychological factors may be more closely linked to success than are economic ones. The dominance of these factors in the success of protest originates from two sources: 1) the highly emotional quality of the controversy, with fear serving as the overriding motivation; 2) the role of previous experience in working within "the system" in establishing involvement, tactics and impact.

With few exceptions, active protest has been limited to full time, year round residents from either the oldest (old Immigration group) or the newest (urban immigrants) residency groups. Members of these groups have been both individualistic and variable in the choice of issues, tactics and participation.

Those who had more previous experience, and were more comfortable, with the bureaucratic system have been more successful in gaining desired change. Although differing in other

characteristics ranging from ethnic background to social interests, the old immigration group and the urban immigrants held in common that ability to deal with the bureaucracy.

Those with less experience in "working within the system" and those shackled by feelings of powerlessness (displace immigrants, psychological "prisoners") were late in becoming aroused, and tended to use more emotional tactics. This emotional approach succeeded in short term harassment, but seldom achieved the long term changes desired.

### Conclusions

An overall view of the Upper Delaware controversy and its protestors reveals that social factors present a very different picture from economic factors.

Economic interests (with the exception of canoe livery involvement) have not had a strong impact on the people or the situation and have been individual issue oriented. This may be the result of a relatively weak local economy. It is also impacted by the fact that many residents (i.e. second home owners, seasonal residents) have little personal connection with the local economy. Those who are dependent on local jobs for survival have often accepted financial sacrifice as the price they are willing to pay in order to live in the valley. Such people have already chosen to position financial gain as a low priority, and are not likely to be highly motivated by economic interests.

In contrast, sociological and psychological factors have played a strong role in determining who would protest, how they would go about it, and how well they would succeed. Where sociological and psychological factors came into play, protest was broad based and long term. Here the low priority given to financial gain reveals its companion values. Those who have sacrificed financially in order to remain in the valley tend to place greater value on social and psychological aspects of their lives than economic ones.

This dominance of social concern when coupled with the area's historic attraction to feisty

characters has resulted in an emotional and seemingly endless penchant for noisy protest and debate. The bone of contention is more likely to be ideological than economic. Although "aggravers" may claim they believe the Park Service will confiscate their property, they are more likely to be genuinely concerned about restrictions and their lives, their ability "to do what they want on their own property."

In the final analysis, it may be that only one economic factor -- ownership and development of private property -- and one social factor -- a free, unregulated life style -- have had any great importance in the controversy. Certainly every discussion eventually centers on these two elements.

Over and above contention between local residents and the National Park Service, the battle has raged long and loud between those choosing conflicting approaches to protection of property and life style. Friends may agree that private property rights must be protected, but one may favor zoning to protect him from the destructive practices of his neighbors, while the other resents any restriction on her right to "do what he wants with his own property." Those same two friends may agree that they treasure the free and unfettered lifestyle of the river valley, but one may want to avoid laws and regulations and gun-toting law enforcement officers, while the other may want rangers to keep canoes/trespassers off his front lawn.

The clashes between these friends and neighbors may be social and economic at their roots, but in the newspapers and at public meetings, it sounds a lot like protest.

## CONCLUSION

As the preceding chapters have revealed, the people of the Upper Delaware valley are a feisty lot. Even a meeting of a seemingly uncontroversial group such as the Friends of the Roebling Bridge has been known to erupt into a shouting match. It should, therefore, come as no surprise that intervention by the federal government on a broad scope, including mandating of land use regulations, would bring screaming and yelling and gnashing of teeth.

Those involved with the controversy -- especially the newly transplanted residents and government employees whose frame of reference is New York City or Philadelphia or Washington -- tend to think of the Upper Delaware controversy as an aberration. In some sense, of course, that may be true. If not unique, it is at least a rare circumstance.

Here, a small group of people in a sparsely settled rural area, with little voting power and limited economic resources, have managed to back the federal government into a corner. Time and time again (though certainly not in every instance), they have won major concessions, forced traditional and relatively rigid government agencies to rethink their positions, to develop creative approaches to protection of the environment taking into consideration the needs and values of the local population.

### Relating to the Social Sciences

What is so different about this situation, these people and this place? And how does this unusual story relate to studies and theories previously developed by the social sciences?

The protestors in this case study are 20th century Americans, a mixed bag of ethnic, social and economic groups not all that different from those found in hundreds of other communities. There is nothing to indicate that the Congressmen and bureaucrats they dealt with were any more sensitive or creative than Congressmen and bureaucrats elsewhere. But, just as there have been differences in the outcome here, there are also differences in the people and the

setting. The relative isolation of the area in close proximity to urban centers seems to hold the key.

This environment, with all the dedication, hardships and sacrifices implicit in the decision to live on what was often the edge of "civilization," has played a dominant role in the history of the area and the controversy over the river. These special conditions tend to attract and retain the single-minded, often irascible, rugged individualist. And that kind of personality, when armed with adequate weapons for protest, is a formidable enemy.

These people are not hermits. They may have abandoned or rejected the city and the suburbs. But, though they may not care to admit it, they are very much in contact with the urban world. Their leadership is not drawn from a population of naive hillbillies. As examination of the demographics has indicated, an ever increasing number are urban people who have chosen not to live in an urban setting. Others are rural people who have, for most of their lives, been in close contact with urban influences, through daily mass media from metropolitan areas and through contacts with the "city people" who are their neighbors.

In Small Town and Mass Society<sup>1</sup>, Vidich and Bensman presented the picture of a rural community, in close contact with the more sophisticated outside world (i.e., college town), bombarded by the pressures of "mass society." The people of Springdale clung to their 19th century values, even when the realities of small town life and the encroachment of mass society no longer supported those values. They used it, coupled with an occasional symbolic victory over the "city people," to protect themselves and their self-image from a hostile outside world.

In a sense, that is what has happened on the Upper Delaware. But there are two very important differences: First, the opposition was not the great vague mass society; it was a very

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<sup>1</sup>Vidich and Bensman, op. cit.

specific, identified enemy (during much of the period, the National Park Service), which was universally identified as an outsider. And secondly, the personalities involved in the controversies might have been rurally based, but their link to urban circumstances and technology was close enough to bring a wide range of sophisticated advocacy techniques into play.

#### Targeting the Bureaucracy

The target of the protest undoubtedly made a difference. Since early advocacy centered on drafting of the law, the Congressmen and BOR officials were the first to draw the attention of the protestors. Without obligation to any strong or heavily financed opposing pressure groups, the Congressmen were open to suggestion, and accessible to the traditional lobbying such as that initiated by the Upper Delaware Scenic River Association. The BOR, the bureaucracy then involved in the situation, had less of a stake in the administrative outcome (since they were not to be the managing agency) and more of a stake in pleasing Congress.

The attitude of the National Park Service was key to success of the protestors in later negotiations. Saddled with a policy worked out by others (the BOR and local citizens), NPS had no clear idea what to do with the Upper Delaware. With an ambivalent attitude on the part of regional management and little experience in dealing with property destined to remain in private ownership, they were easily influenced by strongly articulated local sentiments.

This was quite a different situation than that of the Middle Delaware just a few miles down river. There, Congress was motivated by an undisputed concern for flood control in the wake of a disastrous hurricane. In addition, there was strong sympathy from nearby urbanites for a construction of a lake which could serve as a recreation area and, potentially, a water supply reservoir. Once Congress enacted the law, the project was taken over to the Army Corps of Engineers, an agency not noted for responsiveness to either the public sentiment or environmental concerns. By the time the area was turned over to the National Park Service, it was too

late for public protest to have much impact.

Along the Upper Delaware, however, new options continued to become available.

Though few people in the area held the tools of big money or high powered connections, occasional use of traditional political pressure was employed. The example which comes most immediately to mind was the situation when as a long time supporter of Congressman Benjamin Gilman, Herbert Fabricant, enlisted Gilman's help in forcing NPS to separate administration of the Upper Delaware from the Middle Delaware. This strategy worked efficiently and without any public criticism. It was what James Coleman defines as a legitimate use of power,<sup>2</sup> where the other constituents benefitted to as least as great a degree as the person (Fabricant) who engineered the "deal."

Once the National Park Service became the designated interim manager and lead agency for planning, the circumstances changed. In comparison with BOR, this bureaucracy had more at stake, as it fully expected to be the permanent, primary managers of the river valley. Applying Schiff's conclusions concerning administrative decision-making by government land conservation agencies,<sup>3</sup> it is easy to see how the value orientation of NPS planners and managers made it difficult for them to adapt their thinking to this innovative management approach. The very nature of the Upper Delaware situation -- a unit of the National Park System that has very little land in public ownership and whose primary land protection tool is municipal zoning -- goes against the grain of traditional Park Service thinking. Park Service employees working in the valley are acutely aware that much of upper level management believed the Upper Delaware

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<sup>2</sup>Coleman, op. cit.

<sup>3</sup>Schiff, op. cit.

to be a foolish experiment that could not succeed. Within that atmosphere, any innovation was at best difficult to achieve.

Perhaps someone in the Park Service had read, and learned from, Ben Twight's conclusion about the Forest Service at Olympic National Park: "Tenacious adherence to a system of values by a professional bureaucracy, the United States Forest Service, guided that agency's political decisions over a 29 year period to ultimate loss of jurisdiction over almost a million acres of public forest."<sup>4</sup> Unlike the Forest Service, the National Park Service managed to adapt enough to maintain control of the river.

Part of the flexibility resulted from legal mandate. This legal mandate recalls Selznick's discussion of the TVA.<sup>5</sup> As with the TVA, enabling legislation specified decentralization of control with citizen input into management. Both the TVA and the Upper Delaware planners attempted to involve local institutions and individuals in the planning and policy making aspects of their new entity. Although TVA had an independent governing board made up of non-federal officials, the members weren't necessarily local residents. The Upper Delaware, however, developed systems with far greater local involvement than TVA: on all councils and committees, local representation far outnumbered federal government officials. Unlike the TVA, there was the persistent, legally documented understanding that final authority was in the hands of the federal. And that threat hung like the Sword of Damocles over negotiators. It often made positive negotiations difficult. But it also kept protest alive.

Legislation can call for cooperative management, advice and review on the local level and grass roots involvement. But implementation of those directives are not easily accomplished

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<sup>4</sup>Twight, op. cit.

<sup>5</sup>Selznick, op. cit.

and may, in the process, give rise to contention and protest.

Like the TVA, Upper Delaware planners conceived of grass roots involvement as development of working relationships with local power bases. Members of the Citizens Advisory Council, for instance, have often been drawn from the ranks of the scenic river associations and other established avenues of power and advocacy. This known leadership did surface local concerns. But it also left a large segment of the local population untouched. As Carroll reported, "the agency [NPS] lacked strong direct ties and therefore credibility with a significant segment of the Valley population."<sup>6</sup> Similarly, TVA in its choice of allying with the more passive land-grant college system, lost its opportunity to establish ties with those favoring the administration's aggressive farm policies. With the TVA, it was a case of tensions between proponents of the American Farm Bureau Federation and those siding with the Farm Security Administration. On the Upper Delaware, it was COUP versus the ILA.

Another problem, identified by Herbert Kaufman in an earlier study of the Forest Service,<sup>7</sup> caused some further stumbling blocks. As with the Forest Service, NPS field personnel often came to identify more closely with the values of the local community than with higher level policy of the agency. This divergence of thinking between local NPS personnel and those based in Philadelphia, Denver and Washington soon became obvious to the public along the Upper Delaware. Local proposals were vetoed. Regional personnel made public statements contradictory to the local superintendent's statements. Local NPS management was critical of the planning operation overseen by the Denver Service Center.

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<sup>6</sup>Carroll et. al., op. cit., p. 96.

<sup>7</sup>Kaufman, The Forest Ranger, op. cit.

An agency with a split personality quickly earns the distrust of its constituency, and NPS was no exception to that rule. To say this made it more difficult to gain support and cooperation would be an understatement. In addition, protestors found themselves with a new weapon. It wasn't long before some of them realized that, if they didn't get the answer they liked on a local level, they could simply get on the telephone, go over the head of local staff and talk to the Regional Director. Although this gave protestors a higher court of appeals, it undercut formal negotiations and seriously reduced the credibility of NPS's local decision makers.

But the Upper Delaware protestors were not limited to a responsive stance, basing actions solely upon locating chinks in the armor of the opposition. These people were also independent creative and aggressive advocates.

The residents of Vitich and Bensman's Springdale felt powerless in the face of mass society, and used adherence to a kind of mythology of long lost 19th century values to mask their defeat. Through the use of a certain urban savvy coupled with a strong sense of rural heritage, the people of the Upper Delaware overcame whatever impotence they might have felt, utilizing identification with those very 19th century values as a rallying cry for protest.

As Harry Boyte suggests, with other small town protestors of the 1980s, they may have gained courage and insight from the civil rights protests of the 1960s and applied it to their own parochial concerns. It is difficult to deny the ring of truth in Boyte's words, when he writes, "On many fronts, Americans sought to regain some measure of power over a world seemingly out of control, a world in which impersonal forces threatened and destroyed with apparent indifference."<sup>8</sup>

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<sup>8</sup>Boyte, op. cit., p. 3

The courage and confidence essential to call for change was certainly a beginning. For such organizations as the Scenic River Association, the Heritage Alliance and the Clearinghouse, that was not a particularly serious problem. They were comfortable with advocacy within the system, and spoke the same language as the legislators and bureaucrats. For those who were uneasy working within the system, more at home in the farm yard than in government offices or meeting rooms, and more accustomed to earthy language than government jargon, the role of protestor came more slowly and painfully.

In addressing the subject of zoning, Assemblyman Maurice D. Hinchey (101st District, New York State), offered a group of planners an example of that empowering process closely related to the Upper Delaware situation. He talked about the turning point in the fight over zoning in the Town of Saugerties, when that supposedly popular ordinance was defeated as the result of a local junkyard dealer's decision to go against the tide of professed public opinion.

"There were, however, people in the town who, for reasons of their own, were disturbed by sections of the zoning ordinance, but they were not ready to come forth publicly and state their objections because they realized it would be only too obvious that they were posing their own private interests against the best interests of the town as a whole . . . But under the junk yard dealers' guidance the group did not focus only on the ordinance's provisions regarding junkyards, but deliberately appealed to individual home owners who might feel discriminated against by one or another provision of the ordinance."<sup>9</sup>

This was very close to the scenario on the Upper Delaware, when the canoe liveries (whose own motives would have been suspect) brought Chuck Cushman to the river valley. Like the

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<sup>9</sup>Maurice D. Hinchley, "Political Reality and the Planning Process," NYPF Planning News vol. 48, no. 6 (November-December, 1984).

junkyard dealer in Saugerties, he rallied those who may have been disturbed by the Park Service presence but had not previously been willing to come forward and state their objections. Together with those whose consciousness was raised and fears played upon, they formed the new, more radical group of protestors.

The CAC, COUP and to some extent the Heritage Alliance moved in quite a different direction from the radical protestors. They managed to achieve one of the primary goals of an effective citizen advocacy groups identified by Jeffrey Berry. These groups became "institutionalized" into the policy-making process of the agency.<sup>10</sup> That is, they reached the point where the Park Service automatically kept them informed on policy and incorporated their recommendations into the decisions-making process. The danger, according to Berry, is that the citizen group may be co-opted by the agency. The new protestors of the Alliance and the ILA believed that was exactly what happened. With that mind set, it was predictable that they would see these established groups as the opposition, rather than as fellow protestors.

This attitude opened up a whole new realm of possibilities of them. The direct, personal, emotional approach with which they were most comfortable did little beyond arousing anger among the bureaucrats. Shouting matches, pickets, and personal accusations aimed at local officials, on the other hand, tended to receive direct and immediate response.

All of this may be viewed as manifestation of negotiating power. In an article focussing on that subject, Roger Fisher approached it from a slightly different perspective, identifying six power categories.<sup>11</sup> Fisher's categories apply so well to the Upper Delaware controversy that they are worthy of individual examination:

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<sup>10</sup>Berry, op. cit, p. 464.

<sup>11</sup>Fisher, op. cit.

1. The power of skill and knowledge – This asset helped such skilled interest groups as the Clearinghouse and the Heritage Alliance to achieve the changes they advocated. In a sense, it was available to all resident groups, because of their special knowledge of the territory.
2. The power of a good relationship – Such groups as the Clearinghouse, COUP, the CAC and the Heritage Alliance used this to their advantage. However, it worked against the Alliance, the ILA and others who did not trust those they were negotiating with, and developed an adversary posture; it's not easy to utilize the power of a good relationship with someone you've just hung in effigy.
3. The power of a good alternative to negotiating – This power was primarily in the hands of the federal government, which possessed the authority to condemn and acquire property in the valley, should local government (and residents) refuse to cooperate. One of the problems with the more radical protestors was that their only alternative to negotiation was continued harassment.
4. The power of an elegant solution – Despite the subsequent controversy, all except the most extreme de-authorization proponents agree that the basic concepts behind the Upper Delaware legislation (primarily conceived by the Scenic River Association) is a prime example of an elegant solution.
5. The power of legitimacy – Such organizations as the COUP and the CAC, along with the National Park Service, have a legitimacy enacted by law. Other groups such as the livery associations and the Heritage Alliance based the legitimacy of their involvement on special interests directly related to the river valley. The scenic river associations were made up of riparian landowners, whose legitimate interests were undeniable. More broad based groups such as the Coalition and the Alliance drew their

membership from area residents, though not entirely valley residents.

6. The power of commitment – Virtually every protest group, on the one side, and the Congressmen and federal bureaucracy, on the other, have evidenced a strong, long term commitment to shaping the protection, management and development of the valley according to their particular vision. This strong commitment on both sides may be the key element in the sustaining of the controversy over such a long period.

Much commonly, discussions of power focus on the role of economic and political power. Little of that profile applies to the Upper Delaware. Although some of the advocacy was accomplished through conventional channels by those accustomed to exerting political pressure, many of the successful protestors were inexperienced and armed with few of the clearly recognizable tools of power (e.g., wealth, political connections, social status).

The exercise of this kind of power is often identified through the offering of a reward (conversely, the collecting of a debt) or threatening dire consequences should the favor not be granted. In dealing with government, those payoffs are usually thought of in terms of campaign contributions or political favors. In this case, however, the "currency" was cooperation. Ultimately, the Park Service was willing to make concession after concession, in order to "buy" the cooperation of local residents.

With so many of these powerful negotiating weapons at the disposal, it should not be so surprising that the protestors of the Upper Delaware were able to be effective.

#### Answering the Questions Posed

Having once again scanned the history of the controversy and looked more closely at the scholarly literature as it relates to the case history, it is time to return to the original, stated concerns of this study. We began by saying that our purpose was to examine the patterns at work in the Upper Delaware controversy with special attention to the nature of the protestors

and the circumstances under which the protest succeeded or failed.

The pattern of the controversy formed within the frame of several events, which energized and shaped the protest: 1) authorization of the Tock Island project on the Middle Delaware; 2) enactment of the Wild and Scenic Rivers Act, with inclusion of the Upper Delaware as a study river and provision for federal purchase of up to 100 acres per river mile; 3) BOR's presentation of their preliminary study at public meetings in the river valley; 4) enactment of the Upper Delaware legislation; 5) establishment of NPS administration in the valley; 6) purchase of the Roebling Bridge; 7) licensing of the liveries; 8) presentation of the 1983 draft River Management Plan; 9) Chuck Cushman's appearance in the valley; 10) COUP's take over of the planning process. Arising from and playing off of these events, the Upper Delaware protestor appeared in a variety of different guises, using a broad spectrum of protest tools.

What, then, has this case study told us about the people of the Upper Delaware valley?

We know that he or she is likely to live in or adjacent to the river valley year round, claiming the area as primary residence (as opposed to second home). His family probably came to the area in either the earliest (early settlers) migration or the most recent (ex-urban migrant). She is likely to be feisty, independent and defensive about her personal rights. If he is dependent on one of the primary valley-based industries for his livelihood, he is not likely to assume a prominent protest role, except on issues directly related to his profession. There's a good chance that she has been active in previous local protests such as resisting the closing of a one-room school or rejecting the school budget. He may be motivated by membership in an independently organized group (e.g., DVOR, the Damascus Baptist Church, the Heritage Alliance), with a purpose beyond the scope of the river controversy but enough of a stake in it to take an active role. If she is one of the natives who is content with her decision to live in the river valley, she probably joined with the more conservative protestors. If a native who views

the valley as his last and only choice, or a migrant who has fled the city with a defensive attitude, he is more likely to join the radical protestors.

And what have we learned about the circumstances surrounding the success or failure of their protest?

We have seen that the right timing, especially being "in on the ground floor" with a complaint and a possible solution, often paved the way for success. Communications skills, especially in "speaking the same language" as those in power, were of great importance. A network of personal relationships was also useful. Requests for clearly defined changes with a limited scope were almost always approved. Expertise carried some weight. Organizations which presented a united front stood a better chance of getting what they wanted than did those which quarreled among themselves. When a small interest group gained support from a wider range of the population, it stood a good chance of winning concessions. And perhaps most importantly, if an organization or individual could correctly target the source of power and choose tactics appropriate to that adversary -- rational, impersonal presentations conforming to government regulations for the bureaucracy; direct, personal, perhaps even emotional confrontations with local politicians -- their chances of success were excellent.

In the broader sense, what does this study have to say about the role of citizen protest in 20th century America?

Writers from the time of Max Weber have warned about the dangers of bureaucratic dominance. The novel, 1984, offered a terrifying vision of Big Brother run amok. And there are times in the America of the 1980s when that seems to be exactly what has happened. Centralized government and those delegated to work in the interest of "the greater public good" seem to hold all the power.

Then along came a relatively small group of people without any of the trappings of power,

demanding that their personal concerns be addressed. Their concerted efforts in defense of "parochial interests" generated sufficient heat to bring the bureaucracy to heel, to force changes the central government's policies. It's enough to prompt a different vision of the relationship between big government and "the little guy," one in which "the people" hold the power and are fully capable of forcing the government to respond to their demands.

#### An Ending and A Beginning

Like all challenging studies, I suppose, the Upper Delaware case study opens as least as many doors as it closes. We are left with questions yet to be asked and controversies unresolved. Isolation of the valley's socio-economic elements surfaces as just one of the extensive and challenging possibilities for research. Development of more precise information in a number of other areas would shed light on the protest issue as well as additional issues facing the region.

But the major unfinished business, which cannot be ignored, is that of the continuing protest activity, and its repercussions.

When, a little over two weeks after Secretary Hodel had signed the River Management Plan, four members of the Alliance were arrested for disorderly conduct, it was obvious that some protestors had not given up. Whether this was the death throes of a fading movement or the beginning of a whole new phase of the controversy remains to be seen.

It could make an interesting follow-up study.

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# WILD AND SCENIC RIVERS ACT (EXCERPTS)

U.S. Code, Title 16 (1976 ed. and Supp. V 1981)

## CHAPTER 28—WILD AND SCENIC RIVERS

- Sec.
1271. Congressional declaration of policy.
1272. Congressional declaration of purpose.
1273. National wild and scenic rivers system: Congressional authorization for inclusion; designation by State legislatures; permanent administration by States; application for inclusion by Governors; satisfaction of criteria; eligibility for inclusion.
1274. Component rivers and adjacent lands; establishment of boundaries; classification; development plans.
1275. Additions to national wild and scenic rivers system.
- (a) Reports by Secretaries of the Interior and Agriculture; recommendations to Congress; contents of reports.
  - (b) Study of report by affected Federal and State officials; recommendations and comments; transmittal to President and Congress.
  - (c) Publication in Federal Register.
1276. Rivers constituting potential additions to national wild and scenic rivers system.
- (a) Enumeration of designated rivers.
  - (b) Studies and reports.
  - (c) State participation.
  - (d) Continuing consideration by Federal agencies to potential national, wild, scenic and recreational river areas.
1277. Land acquisition.
- (a) Grant of authority to acquire; State and Indian lands; use of appropriated funds.
  - (b) Curtailment of condemnation power in area 50 per centum or more of which is owned by Federal or State government.
  - (c) Curtailment of condemnation power in urban areas covered by valid and satisfactory zoning ordinances.
  - (d) Exchange of property.
  - (e) Transfer of jurisdiction over Federally owned property to appropriate Secretary.
  - (f) Acceptance of donated land, funds, and other property.
  - (g) Retained right of use and occupancy; termination; fair market value; improved property.
1278. Restrictions on water resources projects.
- (a) Construction projects licensed by Federal Power Commission.
  - (b) Construction projects on rivers designated for potential addition to system.
  - (c) Activities in progress affecting river of system; notice to Secretary.
  - (d) Grants under Land and Water Conservation Fund Act of 1965.
1279. Withdrawal of public lands from entry, sale, or other disposition under public land laws.
1280. Federal mining and mineral leasing laws.
1281. Administration.
- (a) Public use and enjoyment of components; protection of features; management plans.
  - (b) Wilderness areas.
  - (c) Areas administered by National Park Service and Fish and Wildlife Service.
  - (d) Statutory authorities relating to national forests.
  - (e) Cooperative agreements with State and local governments.

- 1282. Assistance in financing State and local projects.
- 1283. Administration and management policies.
  - (a) Review by Secretaries and heads of agencies.
  - (b) Existing rights, privileges, and contracts affecting Federal lands.
  - (c) Water pollution.
- 1284. Existing State jurisdiction and responsibilities.
  - (a) Fish and wildlife.
  - (b) Compensation for water rights.
  - (c) Reservation of waters for other purposes or in unnecessary quantities prohibited.
  - (d) State jurisdiction over included streams.
  - (e) Interstate compacts.
  - (f) Rights of access to streams.
  - (g) Easements and rights-of-way.
- 1285. Claim and allowance of charitable deduction for contribution or gift of easement.
- 1286. Definitions.
- 1287. Authorization of appropriations.

### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 460gg-3 of this title.

#### § 1271. Congressional declaration of policy

It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

(Pub. L. 90-542, § 1(b), Oct. 2, 1968, 82 Stat. 906.)

### CODIFICATION

Section consists of subsec. (b) of section 1 of Pub. L. 90-542. Subsecs. (a) and (c) of section 1 are classified to section 1272 of this title and as a note under this section, respectively.

### SHORT TITLE

Section 1(a) of Pub. L. 90-542 provided that: "This Act [enacting this chapter] may be cited as the 'Wild and Scenic Rivers Act'."

Section 1 of Pub. L. 92-560, Oct. 25, 1972, 86 Stat. 1174, provided: "That this Act [which enacted subsec. (a)(9) of section 1274 of this title and provisions set out as notes under such section] may be cited as the 'Lower Saint Croix River Act of 1972'."

### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1272, 1273 of this title.

§ 1272. Congressional declaration of purpose

The purpose of this chapter is to implement the policy set out in section 1271 of this title by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time.

(Pub. L. 90-542, § 1(c), Oct. 2, 1968, 82 Stat. 906.)

CODIFICATION

Section consists of subsec. (c) of section 1 of Pub. L. 90-542. Subsecs. (a) and (b) of section 1 are classified to section 1271 and section 1271 note, respectively.

§ 1273. National wild and scenic rivers system; Congressional authorization for inclusion; designation by State legislatures; permanent administration by States; application for inclusion by Governors; satisfaction of criteria; eligibility for inclusion; notification of Federal Energy Regulatory Commission; publication in Federal Register; expense to the United States; federally owned lands within boundaries of State rivers

(a) The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this chapter and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine; that segment of the Wolf River, Wisconsin, which flows through Langlade County; and that segment of the New River in North Carolina extending from its confluence with Dog Creek downstream approximately 26.5 miles to the Virginia State line. Upon receipt of an application under clause (ii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (ii) shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands. For purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation Act of 1965 [16 U.S.C. 4601-4 et seq.] or any other provision of law shall not be treated as an expense to the United States. Nothing in this subsection shall be construed to provide for the transfer to, or administration by, a State or local authority of any federally owned lands which are within the boundaries of any river included within the system under clause (ii).

(As amended Pub. L. 95-625, title VII, § 761, Nov. 10, 1978, 92 Stat. 3533.)

(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1271 of this title. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas—Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas—Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely primitive and shorelines largely undeveloped, but accessible in places by roads.

(3) Recreational river areas—Those rivers or sections of rivers that are readily accessible by road or railroad, that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

(Pub. L. 90-542, § 2, Oct. 2, 1968, 82 Stat. 906; Pub. L. 94-407, § 1(1), Sept. 11, 1976, 90 Stat. 1238.)

§ 1274. Component rivers and adjacent lands; establishment of boundaries; classification; development plans

(a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

\* \* \* \* \*

(19) UPPER DELAWARE RIVER, NEW YORK AND PENNSYLVANIA—The segment of the Upper Delaware River from the confluence of the East and West branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York, as depicted on the boundary map entitled "The Upper Delaware Scenic and Recreational River", dated April 1978; to be administered by the Secretary of the Interior. Subsection (b) of this section shall not apply, and the boundaries and classifications of the river shall be as specified on the map referred to in the preceding sentence, except to the extent that such boundaries or classifications are modified pursuant to section 704(c) of the National Parks and Recreation Act of 1978. Such boundaries and classifications shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. For purposes of carrying out the provisions of this chapter with respect to the river designated by this paragraph there are authorized to be appropriated such sums as may be necessary.

\* \* \* \* \*

UPPER DELAWARE SECTMENT SPECIAL PROVISIONS

Section 704(b) to (j) of Pub. L. 95-625, as amended Pub. L. 96-87, title IV, § 401(p)(2), Oct. 12, 1979, 93 Stat. 666, provided that:

"(b)(1) Notwithstanding any requirement to the contrary contained in section 6(c) of the Wild and Scenic Rivers Act [section 1277(c) of this title] within one hundred and eighty days after the date of enactment of this Act (Nov. 10, 1978), the Secretary shall publish in the Federal Register general guidelines for land and water use control measures to be developed and implemented by the appropriate officials of the States of New York and Pennsylvania (hereinafter referred to as the 'directly affected States'), by the local political subdivisions, and by the Delaware River Basin Commission (hereinafter referred to as the 'Commission'). The Secretary shall provide for participation in the development of the said general guidelines by all levels of States, county, and local government, and concerned private individuals and organizations, and also shall seek the advice of the Upper Delaware Citizens Advisory Council established in subsection (f) (hereinafter referred to as the 'Advisory Council'). In each of the directly affected States, prior to publication of such general guidelines, public hearings shall be conducted by the Secretary or his designee, in the region of the Upper Delaware River designated by subsection (a) [adding subsec. (a)(19) of this section] (hereinafter in this section referred to as the 'Upper Delaware River').

"(2) The Secretary may from time to time adopt amended or revised guidelines and shall do so in accordance with the provisions of paragraph (1) hereof.

"(c)(1) Within three years from the date of the enactment of this Act (Nov. 10, 1978), the Secretary, in cooperation with the Commission, the Advisory Council, the directly affected States and their concerned political subdivisions and other concerned Federal agencies, shall develop, approve, and submit to the Governors of the directly affected States a management plan (hereinafter in this section referred to as the 'management plan' or 'the plan') for the Upper Delaware River which shall provide for as broad a range of land and water uses and scenic and recreational activities as shall be compatible with the provisions of this section, the Wild and Scenic Rivers Act [this chapter], and the general guidelines for land and water use controls promulgated by the Secretary under the provisions of subsection (b).

"(2) The plan shall apply to the Upper Delaware River and shall set forth—

"(A) a map showing detailed final landward boundaries, and upper and lower termini of the area and the specific segments of the river classified as scenic and recreational, to be administered in accordance with such classifications;

"(B) a program for management of existing and future land and water use, including the application of available management techniques;

"(C) an analysis of the economic and environmental costs and benefits of implementing the management plan including any impact of the plan upon revenues and costs of local government;

"(D) a program providing for coordinated implementation and administration of the plan with proposed assignment of responsibilities to the appropriate governmental unit at the Federal, regional, State, and local levels; and

"(E) such other recommendations or provisions as shall be deemed appropriate to carry out the purposes of this section.

"(3) Immediately following enactment of this Act (Nov. 10, 1978), the Secretary, through the National Park Service or such other designee, shall develop and implement such interim programs as he shall deem necessary and appropriate to protect the Upper Delaware River and its environs and to protect the public health and safety. Such interim programs shall include provisions for information to river users, education and interpretation activities, and regulation of recreational use of the river.

"(4) To enable the directly affected States and their political subdivisions to develop and implement programs compatible with the management plan, the Secretary shall provide such technical assistance to the said States and their political subdivisions as he deems appropriate.

"(5) The Secretary shall promote public awareness of and participation in the development of the management plan, and shall develop and conduct a concerted program to this end. Prior to final approval of the management plan, the Secretary shall hold two or more public hearings in the Upper Delaware River region of each directly affected State.

"(6) Upon approval of the management plan by the Secretary, it shall be published in the Federal Register and shall not become effective until ninety days after it shall have been forwarded to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. The plan shall be administered by the Secretary in accordance with the provisions of this section and the Wild and Scenic Rivers Act [this chapter]. The Secretary is hereby granted such authority as may be required to implement and administer said plan.

"(d) Notwithstanding any provisions of the Wild and Scenic Rivers Act [this chapter], the Secretary may not acquire more than a total of four hundred and fifty acres of land and interests in land for access, development sites, the preservation of scenic qualities, or for any other purposes: *Provided*, That the Secretary may acquire additional land and interests in land for such purposes not in excess of one thousand acres if such additional acquisition is recommended and provided for in the management plan as finally approved by the Secretary. The limitations contained in this section shall not apply under the circumstances set forth in subsection (e)(4) of this section. Prior to acquisition of any land or interests in land which has been used for business purposes during the annual period immediately preceding the date of the enactment of this Act (Nov. 10, 1978), the Secretary shall first make such efforts as he deems reasonable to acquire easements or restrictive covenants, or to enter into any other appropriate agreements or arrangements with the owners of said land, consistent with the purposes of this section.

"(e)(1) For the purpose of protecting the integrity of the Upper Delaware River, the Secretary shall review all relevant local plans, laws, and ordinances to determine whether they substantially conform to the approved management plan provided for in subsection (c) and to the general guidelines promulgated by the Secretary pursuant to subsection (b). Additionally, the Secretary shall determine the adequacy of enforcement of such plans, laws, and ordinances, including but not limited to review of building permits and zoning variances granted by local governments, and amendments to local laws and ordinances.

"(2) The purpose of such reviews shall be to determine the degree to which actions by local governments are compatible with the purposes of this section. Following the approval of the management plan and after a reasonable period of time has elapsed, but not less than two years, upon a finding by the Secretary that such plans, laws, and ordinances are nonexistent, are otherwise not in conformance with the management plan or guidelines, or are not being enforced in such manner as will carry out the purposes of this section (as determined by the Secretary), the Secretary may exercise the authority available to him under the provisions of paragraph (4) hereof.

"(3) To facilitate administration of this section, the Secretary may contract with the directly affected States or their political subdivisions to provide, on behalf of the Secretary, professional services necessary for the review of relevant local plans, laws, and ordinances, and of amendments thereto and variances therefrom, and for the monitoring of the enforcement thereof by local governments having jurisdiction over any area in the region to which the management plan

applies. The Secretary shall notify the appropriate State or local officials as to the results of his review under this section within forty-five days from the date he receives notice of the local government action.

"(4) In those sections of the Upper Delaware River where such local plans, laws, and ordinances, or amendments thereto or variances therefrom, are found by the Secretary not to be in conformance with the guidelines or the management plan promulgated pursuant to subsections (b) and (c) of this section, respectively, or are not being enforced in such manner as will carry out the purposes of this section (as determined by the Secretary), the Secretary is hereby authorized to acquire land or interests in land in excess of the acreage provided for in subsection (d) of this section. Land and interests in land acquired pursuant to this subsection shall be restricted to the geographical area of the local governmental unit failing to conform with the said guidelines or management plan, and shall be limited to those lands clearly and directly required, in the judgment of the Secretary, for protection of the objectives of this Act [see Short Title of 1978 Amendment note set out under section 1 of this title]. The total acreage of land and interests in land acquired pursuant to this subsection shall not in any event exceed the limitations contained in section 6(a) of the Wild and Scenic Rivers Act [section 1277(a) of this title]. This subsection shall apply notwithstanding the first sentence of section 6(c) of the Wild and Scenic Rivers Act [section 1277(c) of this title]. Notwithstanding any limitation on amounts authorized to be appropriated for acquisition of land and interests in land which is contained in section 3(a)(21) of the Wild and Scenic Rivers Act [subsec. (a)(21) of this section] or in any other provision of law, there are authorized to be appropriated such sums as may be necessary to carry out this subsection.

"(f)(1) At the earliest practicable date following enactment of this Act [Nov. 10, 1978], but no later than one hundred and twenty days thereafter, there shall be established an Upper Delaware Citizens Advisory Council. The Advisory Council shall encourage maximum public involvement in the development and implementation of the plans and programs authorized by this section. It shall report to the Commission and the Secretary from time to time during preparation of the management plan. Following completion of the management plan, it shall report to the Secretary and the Governors of the directly affected States no less frequently than once each year its recommendations, if any, for improvement in the programs authorized by this Act [see Short Title of 1978 Amendment note set out under section 1 of this title], or in the programs of other agencies which may relate to land or water use in the Upper Delaware River region. The Advisory Council shall terminate ten years after the date on which it is established.

"(2) Membership on the Advisory Council shall consist of seventeen members appointed as follows: there shall be—

"(A) six members from each of the directly affected States appointed by the Secretary from nominations submitted by the legislatures of the respective counties and appointed such that two members shall be from each of Orange, Delaware, and Sullivan Counties, New York, and three members shall be from each of Wayne and Pike Counties, Pennsylvania (at least one appointee from each county shall be a permanent resident of a municipality abutting the Upper Delaware River);

"(B) two members appointed at large by each Governor of a directly affected State; and

"(C) one member appointed by the Secretary.

The Secretary shall designate one of the aforesaid members to serve as Chairperson of the Advisory Council who shall be a permanent resident of one of the aforementioned counties. Vacancies on the Advisory Council shall be filled in the same manner in which the original appointment was made. Members of the Advisory Council shall serve without compensation as such, but the Secretary is authorized to pay expenses reasonably incurred by the Advisory Council in carrying out its responsibilities under this Act [see Short

Title of 1978 Amendment note set out under section 1 of this title] on vouchers signed by the Chairman.

"(g) With respect to the land and water in areas which are not owned by the United States but which are within the boundaries of the segment of the Delaware River designated as a wild and scenic river under subsection (a) [adding subsec. (a)(19) of this section], the Secretary is authorized to enter into contracts with the appropriate State or political subdivisions thereof pursuant to which the Secretary may provide financial assistance to such State or political subdivision for purposes of—

"(1) enforcing State and local laws in such areas, and

"(2) removing solid waste from such areas and disposing of such waste.

"(h) Nothing in this section shall be construed as limiting the right to fish and hunt on any of the lands or waters within the boundaries of the Upper Delaware River in the manner provided in section 13 of the Wild and Scenic Rivers Act [section 1284 of this title].

"(i) There are hereby authorized to be appropriated to carry out the purposes of this section such sums as may be necessary.

"(j) Where any provision of the Wild and Scenic Rivers Act [this chapter] is inconsistent with any provisions of this section, the provision of this section shall govern. In applying the provisions of section 6(g)(3) of the Wild and Scenic Rivers Act [section 1277(g)(3) of this title], with regard to 'improved property', the date specified therein, shall, for purposes of the river designated in this Act [see Short Title of 1978 Amendment note set out under section 1 of this title], be the date of enactment of this Act [Nov. 10, 1978] (rather than January 1, 1967)."

\* \* \* \* \*

#### § 1277. Land acquisition

##### (a) Grant of authority to acquire; State and Indian lands; use of appropriated funds

The Secretary of the Interior and the Secretary of Agriculture are each authorized to acquire lands and interests in land within the authorized boundaries of any component of the national wild and scenic rivers system designated in section 1274 of this title, or hereafter designated for inclusion in the system by Act of Congress, which is administered by him, but he shall not acquire fee title to an average of more than 100 acres per mile on both sides of the river. Lands owned by a State may be acquired only by donation, and lands owned by an Indian tribe or a political subdivision of a State may not be acquired without the consent of the appropriate governing body thereof as long as the Indian tribe or political subdivision is following a plan for management and protection of the lands which the Secretary finds protects the land and assures its use for purposes consistent with this chapter. Money appropriated for Federal purposes from the land and water conservation fund shall, without prejudice to the use of appropriations from other sources, be available to Federal departments and agencies for the acquisition of property for the purposes of this chapter.

(b) Curtailment of condemnation power in area 50 per centum or more of which is owned by Federal or State government

If 50 per centum or more of the entire acreage within a federally administered wild, scenic or recreational river area is owned by the United States, by the State or States within which it lies, or by political subdivisions of those States, neither Secretary shall acquire fee title to any lands by condemnation under

authority of this chapter. Nothing contained in this section, however, shall preclude the use of condemnation when necessary to clear title or to acquire scenic easements or such other easements as are reasonably necessary to give the public access to the river and to permit its members to traverse the length of the area or of selected segments thereof.

(c) **Curtailment of condemnation power in urban areas covered by valid and satisfactory zoning ordinances**

Neither the Secretary of the Interior nor the Secretary of Agriculture may acquire lands by condemnation, for the purpose of including such lands in any national wild, scenic or recreational river area, if such lands are located within any incorporated city, village, or borough which has in force and applicable to such lands a duly adopted, valid zoning ordinance that conforms with the purposes of this chapter. In order to carry out the provisions of this subsection the appropriate Secretary shall issue guidelines, specifying standards for local zoning ordinances, which are consistent with the purposes of this chapter. The standards specified in such guidelines shall have the object of (A) prohibiting new commercial or industrial uses other than commercial or industrial uses which are consistent with the purposes of this chapter, and (B) the protection of the bank lands by means of acreage, frontage, and setback requirements on development.

(d) **Exchange of property**

The appropriate Secretary is authorized to accept title to non-Federal property within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 1274 of this title or hereafter designated for inclusion in the system by Act of Congress and, in exchange therefor, convey to the grantor any federally owned property which is under his jurisdiction within the State in which the component lies and which he classifies as suitable for exchange or other disposal. The values of the properties so exchanged either shall be approximately equal or, if they are not approximately equal, shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(e) **Transfer of jurisdiction over Federally owned property to appropriate Secretary**

The head of any Federal department or agency having administrative jurisdiction over any lands or interests in land within the authorized boundaries of any federally administered component of the national wild and scenic rivers system designated in section 1274 of this title or hereafter designated for inclusion in the system by Act of Congress is authorized to transfer to the appropriate secretary jurisdiction over such lands for administration in accordance with the provisions of this chapter. Lands acquired by or transferred to the Secretary of Agriculture for the purposes of this chapter within or adjacent to a national forest shall upon such acquisition or transfer become national forest lands.

(f) **Acceptance of donated land, funds, and other property**

The appropriate Secretary is authorized to accept donations of lands and interests in land,

funds, and other property for use in connection with his administration of the national wild and scenic rivers system.

(g) **Retained right of use and occupancy; termination; fair market value; improved property**

(1) Any owner or owners (hereinafter in this subsection referred to as "owner") of improved property on the date of its acquisition, may retain for themselves and their successors or assigns a right of use and occupancy of the improved property for noncommercial residential purposes for a definite term not to exceed twenty-five years or, in lieu thereof, for a term ending at the death of the owner, or the death of his spouse, or the death of either or both of them. The owner shall elect the term to be reserved. The appropriate Secretary shall pay to the owner the fair market value of the property on the date of such acquisition less the fair market value on such date of the right retained by the owner.

(2) A right of use and occupancy retained pursuant to this subsection shall be subject to termination whenever the appropriate Secretary is given reasonable cause to find that such use and occupancy is being exercised in a manner which conflicts with the purposes of this chapter. In the event of such a finding, the Secretary shall tender to the holder of that right an amount equal to the fair market value of that portion of the right which remains unexpired on the date of termination. Such right of use or occupancy shall terminate by operation of law upon tender of the fair market price.

(3) The term "improved property", as used in this chapter, means a detached, one-family dwelling (hereinafter referred to as "dwelling"), the construction of which was begun before January 1, 1967, (except where a different date is specifically provided by law with respect to any particular river) together with so much of the land on which the dwelling is situated the said land being in the same ownership as the dwelling, as the appropriate Secretary shall designate to be reasonably necessary for the enjoyment of the dwelling for the sole purpose of noncommercial residential use, together with any structures accessory to the dwelling which are situated on the land so designated.

(As amended Pub. L. 95-625, title VII, § 763(b), Nov. 10, 1978, 92 Stat. 3533.)

§ 1278. **Restrictions on water resources projects**

(a) **Construction projects licensed by Federal Power Commission**

The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), on or directly affecting any river which is designated in section 1274 of this title as a component of the national wild and scenic rivers system or which is hereafter designated for inclusion in that system, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as

determined by the Secretary charged with its administration. Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on October 2, 1968. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention so to do at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this chapter and would affect the component and the values to be protected by it under this chapter. Any license heretofore or hereafter issued by the Federal Power Commission affecting the New River of North Carolina shall continue to be effective only for that portion of the river which is not included in the National Wild and Scenic Rivers System pursuant to section 1273 of this title and no project or undertaking so licensed shall be permitted to invade, inundate or otherwise adversely affect such river segment.

**(b) Construction projects on rivers designated for potential addition to system**

The Federal Power Commission shall not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project works under the Federal Power Act, as amended [16 U.S.C. 791a et seq.], on or directly affecting any river which is listed in section 1276(a) of this title, and no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river might be designated, as determined by the Secretary responsible for its study or approval—

(i) during the ten-year period following October 2, 1968, or for a three complete fiscal year period following any Act of Congress designating any river for potential addition to the national wild and scenic rivers system, whichever is later, unless, prior to the expiration of the relevant period, the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, on the basis of study, determine that such river should not be included in the national wild and scenic rivers system and notify the Committees on Interior and Insular Affairs of the United States Congress, in writing, including a copy of the study upon which the determination was made, at least one hundred and eighty days while Congress is in session prior to publishing notice to that effect in the Federal Register: *Provided*, That if any Act designating any river or rivers for potential addi-

tion to the national wild and scenic rivers system provides a period for the study or studies which exceeds such three complete fiscal year period the period provided for in such Act shall be substituted for the three complete fiscal year period in the provisions of this clause (i); and

(ii) during such additional period thereafter as, in the case of any river the report for which is submitted to the President and the Congress, is necessary for congressional consideration thereof or, in the case of any river recommended to the Secretary of the Interior for inclusion in the national wild and scenic rivers system under section 1273(a)(ii) of this title, is necessary for the Secretary's consideration thereof, which additional period, however, shall not exceed three years in the first case and one year in the second.

Nothing contained in the foregoing sentence, however, shall preclude licensing of, or assistance to, developments below or above a potential wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or diminish the scenic, recreational, and fish and wildlife values present in the potential wild, scenic or recreational river area on the date of approval of this chapter. No department or agency of the United States shall, during the periods hereinbefore specified, recommend authorization of any water resources project on any such river or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture in writing of its intention so to do at least sixty days in advance of doing so and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this chapter and would affect the component and the values to be protected by it under this chapter.

**(c) Activities in progress affecting river of system; notice to Secretary**

The Federal Power Commission and all other Federal agencies shall, promptly upon enactment of this chapter, inform the Secretary of the Interior and, where national forest lands are involved, the Secretary of Agriculture, of any proceedings, studies, or other activities within their jurisdiction which are now in progress and which affect or may affect any of the rivers specified in section 1276(a) of this title. They shall likewise inform him of any such proceedings, studies, or other activities which are hereafter commenced or resumed before they are commenced or resumed.

**(d) Grants under Land and Water Conservation Fund Act of 1965**

Nothing in this section with respect to the making of a loan or grant shall apply to grants made under the Land and Water Conservation Fund Act of 1965 [16 U.S.C. 4601-4 et seq.].

(Pub. L. 90-542, § 7, Oct. 2, 1968, 82 Stat. 913; Pub. L. 93-279, § 1(b)(3), (4), May 10, 1974, 88 Stat. 123; Pub. L. 93-621, § 1(c), Jan. 3, 1975, 88 Stat. 2096; Pub. L. 94-407, § 1(2), Sept. 11, 1976, 90 Stat. 1238.)

#### CHANGE OF NAME

The Committee on Interior and Insular Affairs of the Senate was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, Effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

#### TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior related to compliance with system activities requiring coordination and approval under this chapter and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R., 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

The Federal Power Commission was terminated and its functions with regard to licenses and permits for dams, reservoirs, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act, section 792 et seq. of Title 16, Conservation, were transferred to the Federal Energy Regulatory Commission by sections 7172(a)(1)(A) and 7293 of Title 42, The Public Health and Welfare.

#### § 1279. Withdrawal of public lands from entry, sale, or other disposition under public land laws

(a) All public lands within the authorized boundaries of any component of the national wild and scenic rivers system which is designated in section 1274 of this title or which is designated after October 2, 1968, for inclusion in that system are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States.

(b) All public lands which constitute the bed or bank, or are within one-quarter mile of the bank, of any river which is listed in section 1276(a) of this title are hereby withdrawn from entry, sale, or other disposition under the public land laws of the United States for the periods specified in section 1278(b) of this title. Notwithstanding the foregoing provisions of this subsection or any other provision of this chapter, subject only to valid existing rights, including valid Native selection rights under the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of section 1276(a) of this title are hereby withdrawn from entry, sale, State selection or other disposition under the public land laws of the United States for the periods specified in section 1278(b) of this title.

(As amended Pub. L. 96-487, title VI, § 606(c), Dec. 2, 1980, 94 Stat. 2417.)

#### § 1280. Federal mining and mineral leasing laws

(a) Nothing in this chapter shall affect the applicability of the United States mining and mineral leasing laws within components of the national wild and scenic rivers system except that—

(i) all prospecting, mining operations, and all other activities on mining claims which, in the case of a component of the system designated in section 1274 of this title, have not heretofore been perfected or which, in the case of a component hereafter designated pursuant to this chapter or any other Act of Congress, are not perfected before its inclusion in the system and all mining operations and other activities under a mineral lease, license, or permit issued or renewed after inclusion of a component in the system shall be subject to such regulations as the Secretary of the Interior or, in the case of national forest lands, the Secretary of Agriculture may prescribe to effectuate the purposes of this chapter;

(ii) subject to valid existing rights, the perfection of, issuance of a patent to, any mining claim affecting lands within the system shall confer or convey a right or title only to the mineral deposits and such rights only to the use of the surface and the surface resources as are reasonably required to carrying on prospecting or mining operations and are consistent with such regulations as may be prescribed by the Secretary of the Interior or, in the case of national forest lands, by the Secretary of Agriculture; and

(iii) subject to valid existing rights, the minerals in Federal lands which are part of the system and constitute the bed or bank or are situated within one-quarter mile of the bank of any river designated a wild river under this chapter or any subsequent Act are hereby withdrawn from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto.

Regulations issued pursuant to paragraphs (i) and (ii) of this subsection shall, among other things, provide safeguards against pollution of the river involved and unnecessary impairment of the scenery within the component in question.

(b) The minerals in any Federal lands which constitute the bed or bank or are situated within one-quarter mile of the bank of any river which is listed in section 1276(a) of this title are hereby withdrawn from all forms of appropriation under the mining laws during the periods specified in section 1278(b) of this title. Nothing contained in this subsection shall be construed to forbid prospecting or the issuance or leases, licenses, and permits under the mineral leasing laws subject to such conditions as the Secretary of the Interior and, in the case of national forest lands, the Secretary of Agriculture find appropriate to safeguard the area in the event it is subsequently included in the system. Notwithstanding the foregoing provisions of this subsection or any other provision of this chapter, all public lands which constitute the bed or bank, or are within an area extending two miles from the bank of the river channel on both sides of the river segments referred to in paragraphs (77) through (88) of

<sup>1</sup>So in original. Probably should be "off".

section 1276(a) of this title are hereby withdrawn subject to valid existing rights, from all forms of appropriation under the mining laws and from operation of the mineral leasing laws including, in both cases, amendments thereto, during the periods specified in section 1278(b) of this title.

(As amended Pub. L. 96-487, title VI, § 606(b), Dec. 2, 1980, 94 Stat. 2416.)

#### § 1281. Administration

##### (a) Public use and enjoyment of components; protection of features; management plans

Each component of the national wild and scenic rivers system shall be administered in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith, limiting other uses that do not substantially interfere with public use and enjoyment of these values. In such administration primary emphasis shall be given to protecting its esthetic, scenic, historic, archeologic, and scientific features. Management plans for any such component may establish varying degrees of intensity for its protection and development, based on the special attributes of the area.

##### (b) Wilderness areas

Any portion of a component of the national wild and scenic rivers system that is within the national wilderness preservation system, as established by or pursuant to the Wilderness Act [16 U.S.C. 1131 et seq.], shall be subject to the provisions of both the Wilderness Act and this chapter with respect to preservation of such river and its immediate environment, and in case of conflict between the provisions of the Wilderness Act and this chapter the more restrictive provisions shall apply.

##### (c) Areas administered by National Park Service and Fish and Wildlife Service

Any component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service shall become a part of the national park system, and any such component that is administered by the Secretary through the Fish and Wildlife Service shall become a part of the national wildlife refuge system. The lands involved shall be subject to the provisions of this chapter and the Acts under which the national park system or national wildlife system, as the case may be, is administered, and in case of conflict between the provisions of this chapter and such Acts, the more restrictive provisions shall apply. The Secretary of the Interior, in his administration of any component of the national wild and scenic rivers system, may utilize such general statutory authorities relating to areas of the national park system and such general statutory authorities otherwise available to him for recreation and preservation purposes and for the conservation and management of natural resources as he deems appropriate to carry out the purposes of this chapter.

##### (d) Statutory authorities relating to national forests

The Secretary of Agriculture, in his administration of any component of the national wild

and scenic rivers system area, may utilize the general statutory authorities relating to the national forests in such manner as he deems appropriate to carry out the purposes of this chapter.

##### (e) Cooperative agreements with State and local governments

The Federal agency charged with the administration of any component of the national wild and scenic rivers system may enter into written cooperative agreements with the Governor of a State, the head of any State agency, or the appropriate official of a political subdivision of a State for State or local governmental participation in the administration of the component. The States and their political subdivisions shall be encouraged to cooperate in the planning and administration of components of the system which include or adjoin State- or county-owned lands.

(Pub. L. 90-542, § 10, Oct. 2, 1968, 82 Stat. 916.)

#### TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Interior and Secretary or other official in Department of Agriculture under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 1278 of this title.

#### § 1282. Assistance in financing State and local projects

(a) The Secretary of the Interior shall encourage and assist the States to consider, in formulating and carrying out their comprehensive statewide outdoor recreation plans and proposals for financing assistance for State and local projects submitted pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) [16 U.S.C. 4601-4 et seq.], needs and opportunities for establishing State and local wild, scenic and recreational areas. He shall also, in accordance with the authority contained in the Act of May 28, 1963 (77 Stat. 49) [16 U.S.C. 4601 et seq.], provide technical assistance and advice to, and cooperate with, States, political subdivisions, and private interests, including nonprofit organizations, with respect to establishing such wild, scenic and recreational river areas.

(b) The Secretaries of Agriculture and of Health and Human Services shall likewise, in accordance with the authority vested in them assist, advise, and cooperate with State and local agencies and private interests with respect to establishing such wild, scenic and recreational river areas.

(As amended Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

#### CHANGE OF NAME

"Secretary of Health and Human Services" was substituted for "Secretary of Health, Education, and Welfare" in subsec. (b) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

§ 1283. Management policies

(a) Action of Secretaries and heads of agencies: cooperative agreements

The Secretary of the Interior, the Secretary of Agriculture, and the head of any other Federal department or agency having jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion, in accordance with section 1273(a)(ii), 1274(a), or 1276(a) of this title, shall take such action respecting management policies, regulations, contracts, plans, affecting such lands, following November 10, 1978, as may be necessary to protect such rivers in accordance with the purposes of this chapter. Such Secretary or other department or agency head shall, where appropriate, enter into written cooperative agreements with the appropriate State or local official for the planning, administration, and management of Federal lands which are within the boundaries of any rivers for which approval has been granted under section 1273(a)(ii) of this title. Particular attention shall be given to scheduled timber harvesting, road construction, and similar activities which might be contrary to the purposes of this chapter.

(b) Existing rights, privileges, and contracts affecting Federal lands

Nothing in this section shall be construed to abrogate any existing rights, privileges, or contracts affecting Federal lands held by any private party without consent of said party.

(c) Water pollution

The head of any agency administering a component of the national wild and scenic rivers system shall cooperate with the Secretary of the Interior and with the appropriate State water pollution control agencies for the purpose of eliminating or diminishing the pollution of waters of the river.

(Pub. L. 90-542, § 12, Oct. 2, 1968, 82 Stat. 917.)

(As amended Pub. L. 95-625, title VII, § 762, Nov. 10, 1978, 92 Stat. 3533.)

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Interior and Secretary or other official in Department of Agriculture under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 1278 of this title.

§ 1284. Existing State jurisdiction and responsibilities

(a) Fish and wildlife

Nothing in this chapter shall affect the jurisdiction or responsibilities of the States with respect to fish and wildlife. Hunting and fishing shall be permitted on lands and waters administered as parts of the system under applicable State and Federal laws and regulations unless, in the case of hunting, those lands or waters are within a national park or monument. The administering Secretary may, however, designate zones where, and establish periods when, no hunting is permitted for reasons of public safety, administration, or public use and enjoy-

ment and shall issue appropriate regulations after consultation with the wildlife agency of the State or States affected.

(b) Compensation for water rights

The jurisdiction of the States and the United States over waters of any stream included in a national wild, scenic or recreation river area shall be determined by established principles of law. Under the provisions of this chapter, any taking by the United States of a water right which is vested under either State or Federal law at the time such river is included in the national wild and scenic rivers system shall entitle the owner thereof to just compensation. Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(c) Reservation of waters for other purposes or in unnecessary quantities prohibited

Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this chapter, or in quantities greater than necessary to accomplish these purposes.

(d) State jurisdiction over included streams

The jurisdiction of the States over waters of any stream included in a national wild, scenic or recreational river area shall be unaffected by this chapter to the extent that such jurisdiction may be exercised without impairing the purposes of this chapter or its administration.

(e) Interstate compacts

Nothing contained in this chapter shall be construed to alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by any States which contain any portion of the national wild and scenic rivers system.

(f) Rights of access to streams

Nothing in this chapter shall affect existing rights of any State, including the right of access, with respect to the beds of navigable streams, tributaries, or rivers (or segments thereof) located in a national wild, scenic or recreational river area.

(g) Easements and rights-of-way

The Secretary of the Interior or the Secretary of Agriculture, as the case may be, may grant easements and rights-of-way upon, over, under, across, or through any component of the national wild and scenic rivers system in accordance with the laws applicable to the national park system and the national forest system, respectively: *Provided*, That any conditions precedent to granting such easements and rights-of-way shall be related to the policy and purpose of this chapter.

(Pub. L. 90-542, § 13, Oct. 2, 1968, 82 Stat. 917.)

§ 1285. Claim and allowance of charitable deduction for contribution or gift of easement

The claim and allowance of the value of an easement as a charitable contribution under section 170 of title 26, or as a gift under section 2522 of said title shall constitute an agreement by the donor on behalf of himself, his heirs,

and assigns that, if the terms of the instrument creating the easement are violated, the donee or the United States may acquire the servient estate at its fair market value as of the time the easement was donated minus the value of the easement claimed and allowed as a charitable contribution or gift.

(Pub. L. 90-542, § 14, Oct. 2, 1968, 82 Stat. 918.)

#### § 1285a. Lease of Federal lands

##### (a) Authority of Secretary; restrictive covenants

Where appropriate in the discretion of the Secretary, he may lease federally owned land (or any interest therein) which is within the boundaries of any component of the National Wild and Scenic Rivers System and which has been acquired by the Secretary under this chapter. Such lease shall be subject to such restrictive covenants as may be necessary to carry out the purposes of this chapter.

##### (b) Offer to prior owner

Any land to be leased by the Secretary under this section shall be offered first for such lease to the person who owned such land immediately before its acquisition by the United States.

(Pub. L. 90-542, § 14A, as added Pub. L. 95-625, title VII, § 764, Nov. 10, 1978, 92 Stat. 3534.)

#### § 1285b. Establishment of boundaries for certain component rivers in Alaska; withdrawal of minerals

Notwithstanding any other provision to the contrary in sections 1274 and 1280 of this title, with respect to components of the National Wild and Scenic Rivers System in Alaska designated by paragraphs (38) through (50) of section 1274(a) of this title —

(1) the boundary of each such river shall include an average of not more than six hundred and forty acres per mile on both sides of the river. Such boundary shall not include any lands owned by the State or a political subdivision of the State nor shall such boundary extend around any private lands adjoining the river in such manner as to surround or effectively surround such private lands; and

(2) the withdrawal made by paragraph (iii) of section 1280(a) of this title shall apply to the minerals in Federal lands which constitute the bed or bank or are situated within one-half mile of the bank of any river designated a wild river by the Alaska National Interest Lands Conservation Act.

(Pub. L. 90-542, § 15, as added Pub. L. 96-487, title VI, § 606(a), Dec. 2, 1980, 94 Stat. 2416.)

#### § 1286. Definitions

As used in this chapter, the term—

(a) "River" means a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.

(b) "Free-flowing", as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other

minor structures at the time any river is proposed for inclusion in the national wild and scenic rivers system shall not automatically bar its consideration for such inclusion: *Provided*, That this shall not be construed to authorize, intend, or encourage future construction of such structures within components of the national wild and scenic rivers system.

(c) "Scenic easement" means the right to control the use of land (including the air space above such land) within the authorized boundaries of a component of the wild and scenic rivers system, for the purpose of protecting the natural qualities of a designated wild, scenic or recreational river area, but such control shall not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement.

(Pub. L. 90-542, § 15, Oct. 2, 1968, 82 Stat. 918; Pub. L. 93-279, § 1(c), May 10, 1974, 88 Stat. 123.)

(Pub. L. 90-542, § 16, formerly § 15, Oct. 2, 1968, 82 Stat. 918; Pub. L. 93-279, § 1(c), May 10, 1974, 88 Stat. 123; renumbered Pub. L. 96-487, title VI, § 606(a), Dec. 2, 1980, 94 Stat. 2416.)