Public Navigation Rights in New York State: Questions and Answers

by

John A. Humbach, Charles C. Morrison , et al.

Presented at

The 12th Annual Conference on the Adirondacks

Sponsored by

The Adirondack Research Consortium

May 25-26, 2005, Hilton Hotel, Lake Placid, N.Y.

This paper is an educational project of The Association for the Protection of the Adirondacks. It may be reproduced with the permission of the Association. Copies may be downloaded from the Association's web site or the Adirondack Research Consortium's web site.

The Association for the Protection of the Adirondacks

The Center for the Forest Preserve

897 St. David's Lane, Niskayuna, N. Y., 12309

518-377-1452

www.protectadks.org

Abstract

Public Navigation Rights in New York State: Questions and Answers

by John A. Humbach and Charles C. Morrison, et al.

The public right of navigation has existed in New York as a common law right ever since New York became a state. This right allows vessels of all kinds, including small boats and canoes, to navigate for commercial and recreational purposes on New York's freshwater rivers, streams, lakes, ponds and other waterways that are navigable-in-fact. Legally, the courts have said that the State of New York, in accordance with public trust doctrine, holds an easement on such waterways in trust for the people of the state, making them public highways for navigational purposes. The privately-owned bed and banks of such waterways are subject to this easement or servitude when used for purposes of navigation.

In order to be navigable-in-fact, a waterway must provide practical utility to the public as a means for transportation and travel. However, over the years, court decisions have further detailed and described aspects of the right. Thus, the courts have recently recognized utility for recreational use as an important factor in determining navigability.

This paper describes and explains this public right, covering such matters as the meaning of "navigable-in-fact," portaging on private land, responsibilities of landowners and paddlers, access to waterways that are navigable-in-fact, the Court of Appeals decision on the South Branch of the Moose River case, appropriate recourse for paddlers if waterways have been blocked or posted illegally, and access to remote ponds. As appendices, the paper includes (A) a brief history of recent actions taken in support of this public right, (B) draft legislation to codify this common law right in statutory law, (C) a legal memorandum by DEC on enforcement policy for the public right of navigation, and (D) a bibliography of canoeing guide books and other such publications in New York State.

Public Navigation Rights in New York State: Questions and Answers

by

John A. Humbach and Charles C. Morrison

with

John W. Caffry, Janice K. Corr, Marc S. Gerstman, Phillip H. Gitlen, Paul F. Jamieson, Robert J. Kafin, Thomas R. Kligerman, G. Oliver Koppell, Langdon Marsh, Per O. Moberg, Nancy E. Jones, Nathaniel P. Wardwell, Val Washington

About the Authors and Co-authors

John W. Caffry is a partner in the law firm of Caffry and Flower in Glens Falls, specializing in environmental and land use law. He was co-counsel, with Neil Woodworth, for the Adirondack Mountain Club in the recent landmark Moose River case.

Janice K. Corr, as General Counsel and Deputy Commissioner for Legal Affairs for the NYS Department of Environmental Conservation from 1984 to 1988 she managed DEC's legal work on public navigation rights during that period. As a Special Counsel for DEC from 1988 to 1995, she managed DEC's program for State legislation, including proposed legislation for public navigation rights.

Marc S. Gerstman, as General Counsel and Deputy Commissioner for Legal Affairs for the NYS Department of Environmental Conservation managed DEC's legal work on public navigation rights from 1988 to 1995. In 1991 he issued a policy memorandum to DEC enforcement personnel throughout the state concerning the public right of navigation. (See Appendix C, below.)

Phillip H. Gitlen is a partner in the Albany law firm of Whiteman, Osterman and Hanna (WOH) and, formerly, was General Counsel and Deputy Commissioner for Legal Affairs of the NYS Department of Environmental Conservation. He represented the Sierra Club for WOH in the Moose River case.

John A. Humbach, Professor of Law at Pace University Law School, is the author of "Public Rights in the Navigable Streams of New York," 6 Pace Law Review 461 (1989) and has specialized in property rights.

Paul F. Jamieson, Professor of English Emeritus at St. Lawrence University, is the original author, later co-author, of the well-known guidebook *Adirondack Canoe Waters-North Flow*. Long recognized as the dean of Adirondack canoeing, he is credited with re-awakening interest in the public right of navigation, beginning in the 1970s, as documented in his 1992 autobiography, *Uneven Ground.*

Nancy E. Jones is an attorney from Troy who represented all of the canoeists in the Moose River case.

Robert J. Kafin is a partner in the Proskauer, Rose LLP law firm in New York City. He represented the kayaker in the Moose River case.

Thomas R. Kligerman, canoeist and co-chairman of the Sierra Club's Adirondack Committee from 1986 to 1995, organized and led the June 15, 1991 paddle down the South Branch of the Moose River which resulted in the Adirondack League Club's lawsuit and a nine-year court case that ultimately reached the NYS Court of Appeals.

G. Oliver Koppell was a prime cosponsor of the bill that passed the NYS Assembly in 1990 to codify the public right of navigation and as Attorney General in 1994 he represented the State of New York as an intervenor on the side of the defendants in the Moose River case.

Langdon Marsh served with the NYS Department of Environmental Conservation from 1973 to 1978 first as civil counsel, then as General Counsel. Returning to DEC in 1983 he was Executive Deputy Commissioner until 1994 and Commissioner during 1994-1995. He made the major decisions that resulted in the agency's significant actions in the late 1980s and early 1990s in support of the public right of navigation.

Per O. Moberg, as co-chairman of the Sierra Club's Adirondack Committee with Tom Kligerman planned the paddle on the Moose River with him, including by running several test rivers. As a staff member of the NYS Department of Environmental Conservation, he worked on several land acquisitions involving canoeable waterways and was DEC's principal coordinator for the State's acquisition of the Bog River Flow.

Charles C. Morrison, as Director of Natural Resources Planning in the Executive Division of the NYS Department of Environmental Conservation, provided staff leadership and coordination for the agency's work on the public right of navigation during the 1980s and 1990s.

Nathaniel P. Wardwell, a member of the bars of New York and New Mexico, served for many years as an attorney for the NYS Department of Environmental Conservation. He was directly responsible for DEC's legal work on public navigation rights from 1988 to 1995.

Val Washington, as Assistant Attorney General and Deputy Bureau Chief of the Environmental Protection Bureau, represented the State of New York as an intervenor in support of the defendants in the Moose River case during the administrations of former Attorneys General Robert M. Abrams and G. Oliver Koppell, from 1991 to 1995.

Introduction

The purpose of this paper is to inform waterway recreationists, owners of land along New York's waterways, law enforcement officials and other interested parties, about the longstanding common law right of the public to travel on New York's freshwater rivers, streams, lakes and other waterways that are navigable-in-fact.

In 1998 the State's highest court, the Court of Appeals, reaffirmed this public right in a landmark case, *Adirondack League Club v. Sierra Club*. Since the authority for the right is New York State common law, not statutory law, understanding the nature of the right requires knowledge of various court decisions that have affected the right over the years. The questions and answers provided below are designed to illuminate the legal nature of this right and to provide information about the circumstances under which it may be exercised.

Appendix A contains a brief history of recent activity in support of this public right. Appendix B contains proposed legislation to codify the public right of navigation in State statutory law. Appendix C contains an enforcement policy memorandum on public navigation rights issued by the NYS Department of Environmental Conservation (DEC). A bibliography of canoeing guides covering New York waterways appears as Appendix D.

Questions and Answers

1. What is the "public right of navigation" and how was it established?

This right allows vessels of all kinds, including small boats and canoes, to navigate for commercial and recreational purposes on New York's freshwater rivers, streams, lakes, ponds and other waterways that are navigable-in-fact. The courts have said that the State of New York, in accordance with the public trust doctrine, holds an easement on such waterways in trust for the people of the state, making these waterways public highways for navigational purposes. The privately-owned bed and banks of such waterways are automatically subject to this easement or servitude when used for purposes of navigation, without need of any special judicial declaration or finding about the particular waterway. This right has existed in New York since it became a state.

2. Has this public right changed over time?

No, the basic right has remained the same: In order to be navigable-in-fact, a waterway must provide practical utility to the public as a means for transportation and travel. However, over the years, court decisions have further detailed and described aspects of the right. Thus, the courts have recognized recently that utility for log drives has become a largely anachronistic form of commercial use test for determining whether a waterway is navigable in fact, whereas recreational use has become an important contemporary factor in the determination. Water-based tourism in small boats, kayaks and canoes is a major commercial activity now and a major contributor to the State and local economies of New York State.

3. Is there any State statutory law that sets forth this common law right?

There is no State statutory law that embodies and describes the public right of navigation. A bill to enact such a law was introduced in the State Legislature in 1989, two years before the start of the *Adirondack League Club v. Sierra Club* case concerning the navigability of the South Branch of the Moose River. It passed in the Assembly in 1990 and was re-introduced in the Senate and the Assembly in 1991, but it was not enacted into law and has not been re-introduced since the Court of Appeals issued its landmark decision in 1998 on the Moose River case.

4. What does "navigable-in-fact" really mean"?

According to the Court of Appeals in the seminal case on this subject, a waterway is navigable in fact "if it is so far navigable or floatable in its natural state and its ordinary capacity, as to be of public use in the transportation of property (*Morgan v. King*. 35 N.Y. 454, 458-59; (1866)." "[T]he public claim to such use" the court added, "ought to be liberally supported." To determine whether a particular stream is navigable-in-fact requires a consideration of the conditions or facts that would make it navigable, i.e., primarily whether the water levels are high enough to support navigation for a reasonable length of time under natural conditions of flow. Also relevant is the extent to which the waterway has obstacles to passage (such as shallows, rapids or waterfalls) and, if so, whether portages are feasible so as to allow passage of vessels for commercial or recreational purposes.

For a waterway to be open to public use, it just has to be navigable-in-fact. It doesn't have to be declared navigable-in-fact by a court. In other words, if a wa-

terway is in fact navigable for a significant part of the year and for a substantial distance, it is ordinarily safe to assume that it is legally "navigable-in-fact."

5. Is there a specific length of time each year during which water levels must support navigation for a waterway to be considered navigable-in-fact?

No. As established by the Court of Appeals in *Morgan v. King,* it is not necessary "that the capacity of the stream... should be continuous" or "that its ordinary state, at all seasons of the year, should be such as to make it navigable. If it is ordinarily subject to periodic fluctuations in the volume and height of its water, attributable to natural causes, and recurring as regularly as the seasons, and if its periods of high water or navigable capacity ordinarily continue a sufficient length of time to make it useful as a highway, it is subject to the public easement "

6. Does this public right allow paddlers and other waterway travelers to portage around natural obstacles, such as falls and rapids, even if that means walking on private land?

Yes. The Court of Appeals has made clear that, "to circumvent … occasional obstacles, the right to navigate carries with it the incidental privilege to make use, when absolutely necessary, of the bed and banks, including the right to portage on riparian lands....On the other hand, any use of private river beds or banks that is not strictly incidental to the right to navigate gives rise to an action for trespass." (*Adirondack League Club v. Sierra Club.* 92 N.Y.2d 591, 706 N.E2d 1192, 684 N.Y.S.2d168 [1998]). It is, of course, a matter of interpretation as to when use of the bed and banks would be "absolutely" necessary, varying with the particular physical circumstances of the case. However, it may be observed that, when, in general, a paddler takes a boat out of water and puts it on his or her back to portage, it's because there's no other choice — and it would be common sense to conclude that it was "absolutely" necessary. Also, scouting ahead for obstacles, as necessary, usually is considered to be a part of safe boating.

In confirming the right to make use of the bed or banks of a waterway that is navigable-in-fact, the Court of Appeals did not limit such use to the area within the high water line, but rather it limited such use to that which is "strictly incidental" to the right to navigate.

7. Is this public right applicable to waterways in all parts of the state in the same way?

Yes. This right applies to freshwater waterways in every part and every region of the state in the same way, to waterways of all sizes, whether they are called rivers, streams, creeks, lakes, ponds or by some other generic name, whether they flow on public land or on private land, whether they flow through cities, towns or villages, whether they are inside or outside the boundaries of the Catskill and Adirondack Parks and whether the land on one bank is in one ownership and that on the opposite bank is in a different ownership or both banks and the underwater land between the banks are in the same ownership, as long as the waterways are navigable in fact.

As stated, this paper pertains to freshwater waterways. With regard to waters and lands affected by the ebb and flow of the tides, they are generally in public ownership up to the mean high water line and therefore publicly accessible. Also, the beds of certain large lakes, such as Lake George, are owned by the State below the mean low water line, as are the beds of the Hudson, Mohawk and St. Lawrence Rivers.

8. Does the public right of navigation allow access to remote ponds surrounded by private land via their navigable inlets or outlets?

The answer to this question varies with the facts of each specific situation. Although an inlet or outlet may be capable of providing access to the pond, this does not necessarily make the inlet or outlet stream or the pond itself, navigable-in-fact. As noted above, a waterway is navigable-in-fact if it has practical utility to the public as a means for transportation and travel. Small ponds with no significant feeder or draining streams have no such practical utility and are therefore not likely to be navigable-in-fact. However, small ponds which do have significant feeder or draining streams may be navigable-in-fact, especially if the pond and connecting streams, in turn, are part of a large system of interconnected waterways.

9. If a waterway is known to be navigable-in-fact, yet there are no formal access sites where a vessel (canoe or kayak) can be put into or taken out of the waterway, what are the options for paddlers?

The public right of navigation does not give the public the right to traverse private property in order to access waterways that are navigable-in-fact. The usual re-

course in these circumstances would be for the paddlers to try to find informal access points for putting in or taking out, such as where a bridge crosses the waterway, being certain to pull their vehicle safely off the roadway while still parking within the public right-of-way and not on private land. To reiterate, crossing private land without permission in order to access a waterway is a trespass.

Apart from issues about where to park and leave a car safely while paddling, it is generally allowable to access a waterway from any public bridge or roadway, as long as one does not trespass on adjacent private land. In situations where there is no formal or informal access site, paddlers or paddlers' organizations also should approach private landowners for permission to access the waterway through their land. If that doesn't work out, State agencies or nonprofit land trust organizations should be requested to evaluate public access needs with a view towards acquiring and developing formal public access sites, including safe off-road parking areas.

Most public fishing access sites administered by the State Department of Environmental Conservation have been purchased with public funds to meet the needs of fishermen. They are subject to the rules and regulations of the Department for that purpose. The same is true of easements purchased along the banks of streams for use by fishermen. They were not obtained to provide access for paddlers.

10. What was the Court of Appeals decision in the case involving the Adirondack League Club and the Sierra Club?

This important case began on June 15, 1991 when members of the Atlantic Chapter of the Sierra Club and a reporter, in two canoes and a kayak, paddled 27 miles on the South Branch of the Moose River, from the Moose River Plains Wild Forest to the public highway bridge on NY Route 28 at McKeever. Part of the trip included a 12-mile segment of the South Branch of the Moose River that flows through private land owned by the Adirondack League Club (ALC). For 100 years this part of the river had been posted by the Club as being "closed" to river travel. Two weeks after the canoe trip, the ALC sued each paddler, individually, and the Sierra Club, in State Supreme Court, charging civil trespass and asking for five million dollars in punitive damages. Thus began a series of arguments and motions that ultimately led to a decision by the highest court in the state and a settlement between the parties on the issue of access to the river.

The State of New York, represented by the Attorney General, intervened on behalf

of the paddlers and in support of the public right of navigation, as did the Adirondack Mountain Club.

On December 17, 1998, the Court of Appeals ruled that the usefulness of a stream for recreational travel, not just traditional commercial use, is an important factor in deciding whether the stream is "navigable-in-fact" and, therefore, open for public recreational use. The court declined, however, to issue a final ruling that the South Branch of the Moose River is "navigable-in-fact" because there were issues of fact that were required to be decided at the trial court level. (The decision is on-line at the web site for the Cornell Legal Information Institute.) Subsequently, rather than go through an expensive trial about the facts in the Supreme Court with a potentially uncertain outcome, in June, 2000, the parties settled by means of a judicially-approved agreement. Although the agreement is silent on the issue of whether the river is navigable-in-fact, it provides that the river is open for public navigation from May 1 to October 15 (or the opening of the Big Game Season, whichever is later), provided that the water level at the McKeever gauge has been at least 2.65 feet during the 24 hours prior to a canoe trip. The put-in is at the Moose River Plains launching site, where paddlers must fill out a registration form.

Although by its very existence and nature the agreement seems to recognize that the Moose River is navigable-in-fact, paddlers would be best advised (at least for the present) use the relevant segments of the river within the limitations that the agreement prescribes.

11. Does this public right allow paddlers and other waterway travelers to enter upon private land? What are paddlers' responsibilities to landowners?

Yes, but, as stated in Question 6 above, only for purposes "incidental" to navigation, such as portaging, scouting the waterway, lining or poling a vessel, and seeking temporary refuge from passing storms, and then only when "absolutely necessary." Apart from such absolutely necessary incidental uses, waterway travelers have no right to beach their vessel or to walk on or enter upon private land in any way, including the banks and bed of the stream.

Ownership of the bed and banks of a waterway is difficult to determine without a review of relevant deeds. Ownership of the beds and banks of rivers, lakes and ponds in New York varies from waterway to waterway. Most are privately owned,

but some are owned by the State of New York. Where the banks and bed of a river are in private ownership and there are different owners on each side of the navigable river, each usually owns to the centerline, although deeds may specify otherwise. With regard to lakes or ponds having multiple owners, ownership usually is to the center point of the waterbody in a pie-shaped arrangement, although deeds may again specify otherwise.

Paddlers should be respectful of the rights of private property owners at all times as they travel on a waterway that is navigable-in-fact, particularly when scouting the waterway or portaging. Care also should be taken to avoid littering, excessive noise or damaging property (private or public) and to respect the privacy of landowners in every way. Engaging in camping, picnicking, hiking or other activities on private land which are not essential to and directly related to navigation, constitute trespassing unless done with the permission of the owner.

12. What are a landowner's responsibilities to paddlers? Can landowners prevent paddlers from using waterways that are navigable in fact?

Landowners on waterways that are navigable-in-fact should recognize that they have no legal right to impede paddlers who are availing themselves of the public easement on the waterway in order to exercise their right of navigation. Such landowners acquired their property subject to the public's pre-existing right to navigate on any waterways on the property that are navigable-in-fact, much as a property owners acquire title subject to the right of the public to continue to use any pre-existing public highways which might cross their property.

A landowner's attempt to restrict the public's right of navigation on navigable-in-fact waterways would be illegal because it would constitute interference with a property right, i.e., the easement that the State holds in trust for the public for use as a public highway. Riparian landowners also should recognize that it is the State's common law, not their permission, that confers on the public the right to travel on navigable waterways. Landowners and enforcement officers who interfere with this public right or try to arrest paddlers who are lawfully exercising it, are opening themselves to the possibility of a law suit for false arrest.

If a landowner has questions about the navigability of a waterway flowing on his/her property, he or she should not attempt to make that determination alone but, rather, should seek advice and assistance from others with first hand knowledge of

such matters, particularly from paddlers' organizations.

13. If a freshwater river, pond or lake is navigable-in-fact, but has been posted with "No Trespassing" or other such signs or has been physically blocked with a cable or some other man-made obstruction, what should paddlers do?

The Court of Appeals has said that a person who "honestly believes" that he is permitted to enter another's property is not guilty of any degree of criminal trespass. (People v. Basch, 36 NY2d 154 (1975). Also, under NY Penal Law, Section 140.05, "a person is not guilty of trespass unless he knowingly enters or remains unlawfully" on the property in question.

Nevertheless, the prudent paddler, if possible, will avoid confrontation and will talk with the landowner to ascertain the reasons for "closing" the waterway. If it seems that the landowner has taken an illegal action in closing what appears to be a public right-of-way, i.e., a waterway that is navigable-in-fact, and the landowner will not reconsider his/her action, the paddler should inform local, county and State (including the district DEC ranger and Environmental Conservation Officer) enforcement authorities about the landowner's abrogation of the public's right of passage. The closing should be documented, preferably with photos, as to how travel on a public right-of-way has been impeded or prohibited, and a description of the facts of navigability should be included, including historic use of the waterway. Remedial action should be requested.

If the matter is not resolved with the landowner in due time, the Commissioner of Environmental Conservation should be informed, because that agency is responsible for management of water resources in the state, and the Attorney General also should be informed about the situation. They should be asked to defend the public's right of passage on a State-owned easement. Again, if possible, it would be beneficial to work with established paddling groups and conservation organizations, not just as an individual.

As a last resort, it may be necessary to present evidence of navigability in the proper court and request a declaratory judgment stating that the waterway is navigable-in-fact and subject to the public easement. This also is something that is best done in concert with paddling and conservation organizations rather than as an individual, because of the potential for cost sharing and the opportunity to draw

on their expert knowledge, if for no other reasons.

14. Are landowners liable for injuries suffered if paddlers have an accident while portaging on their property?

Under Section 9-103 of the State General Obligations Law, landowners are generally not liable for injuries sustained by recreational users of private property while engaging in certain recreational activities, including canoeing, unless the landowner has created some sort of unusual or purposeful hazard on the land.

15. Is fishing allowed on waterways that are navigable in fact, and if so, under what conditions?

The Court of Appeals has held that, although the public right of navigation is protected by law, private owners of stream banks and beds may have "exclusive" fishing rights in non-tidal, navigable-in-fact waterways. Although the answer to this question may depend to some extent upon the specific language of the landowner's deed and the specific facts of the situation, it appears that as a general rule fishing is not included within the public right of navigation and, therefore, fishing without the permission of the landowner is not allowed on navigable waterways that cross private property. Where the riparian land is publicly owned, fishing is allowed, of course.

16. Where can paddlers obtain a list or maps or guidebooks showing and describing waterways that are navigable in fact, including access points?

Several regional canoeing guidebooks, pamphlets and canoeing maps have been published and, together, they cover most of the state. The main ones are listed in this paper, in Appendix D. Some are out of print, but may be found through used bookstores. Paddlers should be aware that older guidebooks may have erroneous information about which rivers are "closed" and which are "open."

Numerous articles describing various canoe routes have appeared in periodicals such as Adirondack Life, Adirondack Explorer, the Adirondack Mountain Club's magazine titled Adirondac and others. The NYS Department of Environmental Conservation publishes several pamphlets/maps for Adirondack canoe routes, as listed in Appendix D. The American Whitewater Affiliation lists, on-line on their

web site, the main “runnable” rivers, by canoe or kayak, in NYS. An indication of the level of difficulty is assigned to each river in accordance with AWA’s familiar classification scheme. AWA’s web site also includes a separate page showing real-time information on water levels for each listed river. This information is also available on the U.S. Geological Survey’s web site.

APPENDICES

Appendix A: The Struggle for Public Navigation Rights, 1970 to 2000 by Charles C. Morrison 1/

The legal right of the public to travel freely on the waters of the state has existed in New York ever since it became a state in 1777. At that time, elements of the common law of the colony of New York were transferred to the new state (see Section 14 of the New York State Constitution). The courts have been consistent in upholding this right, from then to the present day. Although its fundamental nature has remained the same, the exact nature of various aspects of the right has continued to evolve through myriad cases.

One important aspect of this right concerned ownership of the land under navigable waterways. In a case in 1865 the NYS Court of Appeals opined that the land under generally navigable freshwater streams belonged to the state. But in another case in 1883, *Smith v. Rochester*, the Court reversed itself, resulting in what may have been the biggest giveaway of public land in the history of the state. And even though the court reaffirmed the public right of navigation in that same decision, by deciding that the land under navigable streams belongs to the adjoining riparian owners, the decision encouraged owners to start closing off streams, particularly in the Adirondacks where there are large land holdings and particularly where the same owner owned the land on both sides of a stream.

The State did nothing about these illegal closings despite the fact that up until that time people had traveled freely on rivers in the Adirondacks for hundreds of miles in all directions. Worse, for a century State and local law enforcement officers were ignorant of this lawful public right and almost always sided with the landowners in arresting and prosecuting presumed trespassers, people who in reality had a legitimate right to be on the rivers.

Paul Jamieson. Paul Jamieson, a retired professor of English at St. Lawrence University in Canton, is the man who started the dialogue in contemporary times about public navigation rights, persisting for a couple of decades until there was a positive result. Jamieson came to Canton in 1929 and soon began a life-long fascination with the Adirondack Park. In his autobiography, *Uneven Ground,* published privately in 1992, he tells the story of how he started writing about the Adirondacks. In 1972 he undertook preparation of *Adirondack Canoe Waters:*

North Flow for the Adirondack Mountain Club, a guidebook covering the St. Lawrence River and Lake Champlain basins. Published in 1975, 35,000 copies had been sold by 1991. In preparing the first edition, Jamieson found that 25 navigable waterways in the area covered by his guidebook had been closed illegally by riparian landowners, in effect taking property rights from the public while the State did nothing to stop it. His article, "Lapsed Paradise," in *Adirondac*, May-June, 1971, included the complete survey of the closed rivers. Many, but not all of them, are now open as a result of State land purchases in recent decades. (Also see Adirondack Life, June, 1988, for a list in Paul's article, "Rights of Passage.")

Jamieson's autobiography includes verbatim copies of many of his letters to State officials about this issue. The first letter appeared in *The Conservationist* magazine, July 7, 1969, stating that there is a widespread belief that the rivers of the state are public highways. Paul began writing to the Department of Environmental Conservation about illegally closed rivers at that time. He continued for 30 years, outlasting several DEC Commissioners and Governors before the issue was definitively settled in 1998 by the State Court of Appeals in the Moose River case. Initially, the routine response to his letters was that rights to travel on navigable rivers would have to be purchased from riparian landowners, one by one, either in full fee title or by conservation easement, in the same way that "carrys" or portage routes traditionally had been acquired. The idea that there was a universal public right of navigation on waterways that are navigable in fact was an unknown and foreign idea to those in DEC who replied to Jamieson.

In 1981, one of Jamieson's letters to DEC was given to this writer to draft a reply. At the time I was working in the Division of Lands and Forests on DEC's Wild, Scenic and Recreational Rivers program, on development of a statewide system of canoe routes and on the stream rights program for purchase of fishing access and easements. (On the canoe routes project, we were working cooperatively with a subcommittee of the Adirondack Mountain Club on that subject, which played an important part in this story, as described below.) In the course of preparing a response, we requested assistance from the Division of Legal Affairs staff in defining navigation rights. We attached Jamieson's letter to our memorandum, with an excerpt from *Adirondack Canoe Waters: North Flow* about the issue of navigation rights. However, no staff time was available to undertake the necessary analysis of court cases and no alternatives, such as contracting for legal services, were offered.

I then asked a former intern of mine, Brian McMahon, to explore the subject in a seminar paper for a law course he was taking at Syracuse University. Brian turned in a good report in the spring of 1984, but it didn't get to the heart of the issue. I also assigned an intern to the task, Bill Senif, but we both were too inexperienced with this type of research to get very far.

Several years passed during which Jamieson continued to write letters to DEC, the Governor and others about Adirondack rivers being blocked illegally. After the 1986 Environmental Bond Act passed, he recommended specific land acquisition projects involving these rivers. Meanwhile, I had moved on to other assignments in DEC as Director of Land Resources Planning. On July 26, 1988, I wrote to Jamieson and said that I was pursuing several approaches on navigation rights and that there was some interest in the Legislature. Jamieson replied that legislation would be the best solution. Some selections of his correspondence on this subject are reprinted in chapter XIX of his autobiography, pages 211 to 216 and 226.

Jamieson kept writing through the late 1980s and early 1990s while DEC was working on legislation, regulations and other initiatives for navigation rights. He was in touch with me in 1992 about changes in his guidebook for the 1994 revision. Recently, I sent him suggested changes for the next revision of the book, asking him to pass them on to Don Morris, co-author of the guidebook and Paul's successor in this endeavor. Paul Jamieson, at 103 years of age, is still actively interested in this issue. He was the first person to receive and review a draft of this present paper on "Public Navigation Rights in New York State: Questions and Answers" and to agree to become a co-author. Paul is an inspiration for all of us.

During the summer of 1988, action on this issue began to take place. I learned that there was actual activity in the Legislature in preparing legislation on navigation rights, possibly modeled after laws in Montana and Idaho. This information led to a discussion with Wally John, the Assembly Central Staff person working on it. In turn, he was working with a member of Assemblyman Roger Robach's (D-Rochester) staff who also happened to be a member of the Adirondack Mountain Club's Subcommittee on Canoe Routes. This legislative activity could be traced directly back to Paul Jamieson, who also was a member of the Canoe Routes Subcommittee.

John Humbach. John Humbach is a professor at Pace University School of Law in White Plains, where one of his specializations is property rights. We first met

while we were both working on the acquisition of Sterling Forest, a large undeveloped tract on the NY-NJ border, and on a plan to protect the NY-NJ Highlands. After practicing law on Wall Street for five years, he began his teaching career in 1971 and came to Pace in 1977. While talking with him during the summer of 1988 about navigation rights and the possibility of legislation, I described the need for a thorough analysis of the court cases pertaining to navigation rights. Without a pause, he said that he would be very interested in undertaking the work. Back in Albany I passed on this great news. In September, Humbach met with Marc Gerstman, on DEC's Legal Affairs staff, to confirm arrangements. By November, John sent me a first draft of his comprehensive report, "Public Rights in the Navigable Streams of New York." This exhaustive 100-page report was published in the Pace Environmental Law Review in the spring of 1989.

In December, he forwarded a more complete draft, which I transmitted to Langdon Marsh, DEC's Executive Deputy Commissioner. I described Humbach's positive findings and recommended that we invite him to Albany to present the results of his research to DEC staff. Also in December, Janice Corr, DEC's General Counsel and Deputy Commissioner for Legal Affairs, appointed Phil Wardwell, head of DEC's Regulatory and Corporate Affairs Bureau in Legal Affairs, to review the draft report and draft legislation, to compile staff comments on the draft legislation, prepare counterpart DEC legislation and generally coordinate from the perspective of the Division of Legal Affairs. This appointment was key to the good work that followed.

Humbach presented his findings at DEC headquarters at 50 Wolf Road during January, 1989, to a dozen DEC staff members from the Albany office and from Regions 5 and 6. He also had provided draft legislation for codifying this right in a single State statute. At the end of the meeting a decision was made to move ahead with legislation and, since it merely reaffirmed existing legal rights, it was decided to treat it as a routine clarification of the law, a "good government" bill.

Hoyt-Sheffer bill. Humbach revised the draft legislation after the meeting and, in a few days, sent it back to us for further comment. In mid-February, he told Wardwell that he was concerned that other interest groups might succeed in having bills introduced that were more extreme than his draft, which might make passage of a good bill more difficult. He noted that ADK had a proposed bill and that the American Whitewater Affiliation had been in touch with Assemblyman Bill Hoyt and Senator John Sheffer about introducing a bill.

Humbach said that he had been able to hold off these initiatives by saying that DEC had his draft under consideration. Like DEC, he wanted to have a bill that had been fully considered by affected State agencies and would be supported by the Governor's office. He was willing to make changes in his draft, including by amending the Navigation Law, which is administered by OPRHP, instead of the Environmental Conservation Law. He had taken the latter approach in the present draft. Wardwelll then gave him the bad news that the Governor's staff had said that it was too late for draft program legislation to be considered for the current legislative session and it would have to wait until next year.

At the end of March, Humbach sent me a revised draft that he said reflected all of DEC's staff comments. In April, his draft legislation got away from us. One of the interest groups, anxious to move ahead, gave it to Assemblyman Bill Hoyt. Hoyt, an avid paddler, was Chairman of the Assembly Energy Committee, where small hydro projects that often involve kayaking currently were a hot topic. The bill was introduced on May 15, 1989 as S. 5985 and A. 8334, for the 1989-1990 sessions, sponsored by Senator Sheffer and Assemblymembers Hoyt and Grannis. Senators Levy and Johnson signed on as co-sponsors. Titled "Public Rights in Navigable Waters," it was amended several times. A "D" version appeared in the Senate, but it was the Senate/Assembly uni-bill for the "C" version that ultimately moved ahead.

The claim that the Hoyt-Sheffer bill simply reaffirmed the existing common law was questioned in a November, 1989, legal memorandum in opposition to the bill, prepared by Prof. Robert J. Stern at the request of Peter K. Bertine, Edward Earl, Franklin Ely, Wendell Fenton and Ezra Prentice, members of The Association for the Protection of the Adirondacks. They were also members of the Adirondack League Club. The paper did not question the existence of the public right of navigation. It fully recognized that right. Rather, it claimed - wrongly, as it turned out - that the bill's provisions to allow recreational use of waterways that are navigable-in-fact exceeded the established common law public right of navigation to the point of being a "taking" of private property rights without just compensation.

Historically, in various cases, but notably the seminal 1866 *Morgan v. King* case, this right was said to include traditional commercial uses of navigable waterways, such as rafting of goods or floating logs. However, there is substantial evidence in more recent case law to support the idea that a waterway's capacity for recre-

ational use also is a test of its navigability. In fact, floating logs and rafting goods are archaic commercial uses. This is the position that the Court of Appeals eventually took in its Moose River case decision. Clearly, in this modern age, recreational use is big business. (John Humbach critiqued the Stern paper in a 4-page memorandum dated November 7, 1989/)

While Stern's contention that passage of a bill with "recreational use" in it was insupportable, his paper nevertheless served the purpose of causing enough confusion to give some legislators reason to pause in supporting the bill. Even some conservation groups paused. The Association for the Protection of the Adirondacks, the oldest conservation organization in the Adirondacks, had been supporting the Hoyt-Sheffer bill up to this time. The Stern paper, sponsored by some of its members, created a quandary. On November 8, 1989, the AfPA Board resolved to take a "wait-and-see" position, making it clear, however, to its credit, that it would support legislation proven to be strictly declaratory of the common law.

Of course, the 1998 Court of Appeals landmark decision in *Adirondack League Club v. Sierra Club* put the issue of the validity of a recreational use test for determining navigability to rest once and for all, thereby rendering Stern's paper moot. Not only is there no "taking" of private property as a result of recreational use of navigable waterways, but in fact it could be said that the reverse is true: Riparian landowners who block passage by paddlers on waterways that are navigable-in-fact are unlawfully "taking" property rights that are held in trust by the State of New York for use by the public.

The most significant opposition to the Hoyt-Sheffer bill came from the timber industry. They kept up pressure on Senator Stafford's office right to the end and helped to stymie the legislation. Nonetheless, by July 1991, it appeared that Senator Stafford had changed his mind about opposing the bill and was now supporting it because timber industry concerns about liability issues and other landowner concerns about protection of fisheries research projects had been satisfied. Opposition by the Trial Lawyer's Association that also centered on the liability issue subsided when amendments were made to the bill that referred to the provisions in the General Obligations Law that hold landowners harmless from liability claims by people who may be injured while engaged in certain recreational activities, including canoeing.

The history of the bill is that S. 5985-C passed the Senate Environmental Conservation Committee in 1990 and died in the Senate Rules Committee. A. 8334-C passed the Assembly and then was referred to the Senate Rules Committee where it also died. On March 4, 1991, the bill that passed the Assembly was-reintroduced for the 1991-1991 sessions and renumbered as A-4845 and S. 3212. The 1991 bill was introduced by Senators Sheffer, Hannon, Johnson, Lack, Larkin, Marchi, and Spano and by Assemblymembers Hoyt, Grannis, Koppell, Hinchey, and multi-sponsored by Assemblymembers Clark, Connelly, Gottfried, Marshall, Murtagh, Schimminger and Yevoli.

This bill was strongly supported by the conservation organizations. For example, in the May/June 1991 issue of *Adirondacc*, the magazine of the Adirondack Mountain Club, Neil Woodworth, as ADK Counsel and Conservation Director, wrote that: "ADK's campaign to restore public access to hundreds of miles of canoeable waterways across the state picked up speed as our public navigation bill was re-introduced in the legislature .... We urge Chapters and members to talk with local senators or their staffs at the district office in support of this bill." The article describes the contents of the bill and also makes note of DEC's initiatives in developing regulations for identifying navigable rivers (see below) and in issuing a legal memorandum to law enforcement officers advising them that paddlers who are on navigable rivers exercising their lawful right of public navigation should not be arrested for trespassing (see Appendix C). Woodworth supported these initiatives strongly with members of the Legislature and the Governor's staff.

Tom Kligerman, co-chairman of the Adirondack Committee for the Atlantic Chapter of the Sierra Club, produced a 28-minute video titled *A Land of Water-Navigation in the Adirondack Park* to describe the navigation rights issue. It includes interviews with Jamieson, Humbach and the present writer. He also wrote several articles, including one in the July 1990 issue of *The American Canoeist.* He said that passage of the pending legislation "would be the single greatest act for public wilderness recreation in the 20th Century." At the very least, it would have been a good way to close out the century!

The run for this bill, however, ended in June, 1991, with the beginning of *Adirondack League Club v. Sierra Club*, a court case that lasted until the Court of Appeals issued its landmark decision on December 17, 1998 and then, in June 2000, the parties reached a judicially-approved settlement establishing rules for

navigating the South Branch of the Moose River (see below). The court case was the perfect excuse that everyone needed to put the bill on hold - and there it has stayed to this day.

At present, nothing is being done by the State (by DEC and OPRHP in particular) to educate paddlers, landowners, enforcement officers and others about the nature of this right. The situation is in great danger of gradually drifting back to the point it was at before Paul Jamieson started his prolonged efforts. One might think that with the recent Moose River case still fresh in memory, this could not happen. However, the nature of this right is still obscure to most people, even to interested paddlers and landowners. Newspaper accounts about the 1998 *Adirondack League Club v. Sierra Club* decision by the Court of Appeals have not been a particularly accurate or complete source of information about the right or the 1998 decision. Even if people obtain the complete decision, without legal training they would be hard pressed to understand the results of it. People not only have trouble finding and interpreting it, but also they don't know how it relates to the court-ordered agreement between parties in 2000 and to the lower court decisions in 1992 and 1994.

A statute to affirm and clarify the basic aspects of this public right is still greatly needed to address this confusion, even though land acquisition in the Adirondacks by the State, in fee title and by conservation easement during the past two decades, has eliminated many (but not all) of the illegal waterway blockages by big landowners. Rivers in the Adirondacks and other parts of the state are still being blocked illegally by riparian landowners. While there obviously is less danger now than before that the right will be totally forgotten, as it was for most of the 20th Century, it still would be very helpful to have the right clearly described in a single State law in plain English, where paddlers, landowners, local judges and enforcement officers can easily find it.

Legislation like the Hoyt-Sheffer bill would simply codify this common law right in statutory law, neither amplifying nor changing it. If new case law changes the nature of the right in the future, the State law could be amended to reflect the new aspects. Only the basic aspects of this right should be included in a State law (see proposed legislation in Appendix B in this paper). It was a good idea in 1991 and it's a good idea today. However, care must be taken to avoid burdening such a law by including extraneous, peripheral or inconsistent subject matter that could diminish the right.

DEC legislation. Although DEC supported the Hoyt-Sheffer bill and its staff met with Senator Stafford's staff in an effort to gain passage in the Senate, DEC also felt that it would be important to introduce a bill that had been reviewed by State agencies and would have the backing of the Governor's office. Introduction of a bill sponsored by the Executive branch would also give DEC a role in the negotiations on the Hoyt-Sheffer bill. Accordingly, in October, 1989, Janice Corr submitted DEC's proposed legislation to Evan Davis, Counsel to Governor Cuomo, as DEC Legislative Proposal No. 29.

For purely legal reasons, beginning as early as December, 1988 and in consultation with OPRHP legal staff, Phil Wardwell and others in DEC's Division of Legal Affairs felt that it would be more appropriate and practical to propose a bill that would amend the Navigation Law rather than the Environmental Conservation Law. DEC's draft was circulated to OPRHP and the Department of State for review in late 1989. It was designed to be a joint DEC-OPRHP initiative. In February, 1990, Corr submitted a revised proposal to Davis, reflecting agency comments.

In May, 1990, Marsh used the occasion of the release of the report of the Commission on the Adirondack Park in the Twenty-First Century to send a note to Frank Murray, again recommending introduction of the legislation. The Commission, on page 89 of its report, in recommendation No. 226, had advocated for legislation on public navigation rights. Again the response by the Governor's staff was negative.

In fact, the Governor's staff did not want DEC's legislation introduced because the Hoyt-Sheffer bill had become so controversial. As originally had been feared, jumping the gun with introduction of the bill had "poisoned the well" for introduction of the DEC bill subsequently. To get the DEC-OPRHP bill passed would have meant a lot of horse-trading with the Senate, particularly with Senator Stafford, Chairman of the Rules Committee. There were more important priorities, such as getting the State Budget passed. So, DEC's hopes ended at this time for having its legislation introduced.

DEC regulations for navigation rights. From the beginning of his assignment to work on the navigation rights, Wardwell pursued the issue on several fronts with great competence and enthusiasm. He recognized immediately that in addition to the possibility of drafting legislation, DEC already had the authority to issue regu-

lations to facilitate administration of its existing statutory authority and that the area of water resources had potential in this instance. In other words, regulations based on existing statutory authority could be a means for clarifying and reaffirming the right of public navigation. DEC could do this alone or DEC and OPRHP could issue regulations concurrently or jointly to facilitate administration of the Navigation Law, keying off the brief definition of navigable waters that already exists in that law.

In a memorandum in December, 1988, commenting on Humbach's early draft legislation, Wardwell noted that the navigability of individual waterways can be determined in several ways, namely, in the courts or by legislative declaration or by establishing a DEC administrative process via regulations, similar to the stream classification program for water quality. The latter approach would involve field investigations, such as installation of gauges for measuring flow and holding legislative hearings as with freshwater wetlands maps. Landowners and paddlers could present evidence on both sides of the issue. Regulations would provide for an orderly process based on Commissioner's decisions, with judicial recourse by the Article 78 process, instead of being a *de novo* proceeding. It might save landowners and paddlers from expensive lawsuits.

By the spring of 1989, Wardwell began producing drafts of a regulation. In May, DEC informed the Department of Law that this rulemaking was being considered and that a court test should be expected. By December, 1989, a complete draft had been written, including definitions such as those for "navigation" and "navigable waters of the state," including a procedure for rendering advisory opinions about the navigability of waterways whose capacity for navigation was in question, including criteria for determining navigability and a list of waterways found to be navigable. (Later, DEC also considered including a list of waterways found to be non-navigable. The rule recognized, however, that if a waterway did not appear on either list, it should be not assumed to be non-navigable.) The regulation would have been adopted by DEC and OPRHP in furtherance of the Navigation Law and Article 15 of the Environmental Conservation Law concerning dredge and fill permits, which are required to be issued on navigable waterways.

In February, 1990, after review by central office and regional office staff, Wardwell sent the draft regulation, with a regulatory impact statement, regulatory flexibility analysis and negative SEQRA declaration to then-DEC Commissioner Tom Jorling and Lang Marsh, advising that the next step would be to circulate it to

interested constituent groups and to DEC's SEQRA Committee. A news release and a question and answer sheet was drafted. The draft questions and answers were similar to and consistent with those in this paper.

Meanwhile, a list of navigable waterways was being prepared by the Bureau of Preserve, Protection and Management in the Division of Lands and Forests, to go with the regulation. Garry Ives, the head of that bureau at the time, provided excellent staff support in preparing the list on a priority basis. Kurt Swartz in the bureau's cartographic unit compiled the list. The idea was to list as many waterways or waterway segments as possible, insofar as they are clearly and documentably navigable-in-fact, and then take the draft regulation and list to public hearing for review.

There were several sources of information for the list, one of the main ones being observations by DEC regional office staff in each DEC region (except NYC), of where canoeing, kayaking and other boating were actually taking place on waterways throughout the state. The other major source was the Adirondack Mountain Club's Statewide Canoe Routes Subcommittee, under the very diligent leadership of Betty Lou Bailey. Several of her committee members were the authors of canoeing guidebooks covering various parts of the state, Jamieson's and Morris's among them. She turned in very extensive, handwritten lists.

Peter Skinner of the American Whitewater Affiliation ably represented the kayaking interests by supplying lists of waterway segments with whitewater runs. It was important, however, to include only clearly navigable rivers on the list; there were some difficulties with documentation. Other sources included waterways designated in the State Wild, Scenic and Recreational Rivers System both inside and outside the Adirondack Park and the Nationwide Rivers Inventory prepared by the regional office of the National Park Service, a list of rivers potentially eligible for designation by act of Congress in the federal Wild and Scenic Rivers System.

An intermediate list was prepared, showing the recommended segments for each river, as derived from these various sources. In early 1992, DEC staff were attempting to sort out discrepancies between sources. The problem then, as it would be today, was to sort out the overlap between the segments proposed in these multiple sources, river by river, listing the starting and ending point for the longest segment, so it will encompass any shorter ones. DEC wanted to be able to justify

the list in court if necessary. That's where the work left off. At this writing in May, 2005, thirteen years later, this material is still in a file drawer in DEC's Bureau of Preserve, Protection and Management, where Kurt Swartz is ready to work on it again upon receiving instructions to do so. Ken Hamm, in DEC's Division of Legal Affairs, worked with Phil Wardwell on aspects of this matter in the early 1990s and knows the issue thoroughly. He also is still on hand to provide continuity in picking up on the earlier work if DEC chooses to do so.

In response to a positive signal from Frank Murray in March, 1990, saying that he would approve DEC's initiative pending discussions with Evan Davis, Marsh sent Murray a memorandum explaining the rationale once more for both the legislation and the regulation and why DEC and OPRHP needed approval for both. A schedule was provided for promulgating the regulation, calling for publication of a notice of rulemaking in the State Register in May, hearings in early July and other steps leading to making the rule effective by November.

In July, 1990, after the Hoyt-Sheffer bill passed the Assembly but was bottled up in the Senate, Marsh again sent a message to Murray indicating the need for discussions about the regulation with Joe Martens, on Frank's staff, and Paula Van Meter, on Evan Davis' staff. Nothing happened. In March, 1991, Bob Bendick, newly appointed as Deputy Commissioner for Natural Resources, recommended to Lang Marsh and Marc Gerstman, by then DEC's General Counsel and Deputy Commissioner for Legal Affairs, that DEC try again to move ahead with the regulations as rapidly as possible. He related that Neil Woodworth, had met with Van Meter the day before to try to open the way there. A year later, in March, 1992, I asked Marsh, by memorandum, to try once more to get approval for the draft regulation - a last gasp. But, by then it was clear that nothing was going to happen until the Moose River lawsuit was settled.

DEC navigation rights enforcement policy memorandum. On May 9, 1991, Gerstman issued a policy memorandum on enforcement of navigation rights. It was addressed to DEC Regional Directors, Regional Attorneys, Environmental Conservation Officers and Forest Rangers. A little later it was distributed to State Police and county sheriffs through their respective state associations. This memorandum appears in this paper as Appendix C. It has not been rescinded or amended and, therefore, it is still in effect. However, it needs updating relative to the Court of Appeals opinion in the Moose River case.

The memorandum describes the public right of navigation and its legal basis. It specifies that paddlers may not engage in activities that violate private property rights. Enforcement officers are advised not to issue tickets for trespass in situations involving persons who are legitimately exercising the public right of navigation. The memorandum concludes by stating:

"In particular, if an individual landowner makes a citizen's arrest for trespass in a situation involving persons exercising the public right of navigation as outlined above, and delivers that person to a Division of Law Enforcement officer, the officer is not required to take the person into custody or take any other action prescribed in sec. 140.40 of the Criminal Procedure Law ("CPL") on behalf of the landowner if it appears that the body of water is navigable. If so, there is no reasonable cause within the meaning of CPL sec. 140.40(4) to believe that the arrested person committed the offense of trespass. This is because it is an element of that offense that the accused entered or remained on premises unlawfully. However, based on the common law right of navigation as described herein, an entry on navigable waters would be lawful.

DEC may also be asked to enforce the public right of navigation on behalf of boaters against private owners attempting to prevent or hinder the exercise of this right. On this issue, the courts have held that it is a public nuisance for a landowner to obstruct, annoy, or hinder the right of passage on privately owned navigable waters; public nuisances are generally actionable only by the State absent a showing of special damages suffered by a private party. The appropriate response in this situation is to collect information about the complaint and to refer the matter through the appropriate Regional Attorney to [the appropriate person] in the Division of Legal Affairs".

Conservation organizations. In January, 1989, at its meeting to hear Humbach's presentation of his report, DEC made a decision to work closely with conservation organizations to keep them informed of its progress and to enlist their aid as events moved along. DEC held several meetings, including in September, 1990 January, 1991, with representatives of the several interested conservation organizations, including the Sierra Club, Adirondack Mountain Club, Adirondack Council, The Association for the Protection of the Adirondacks, the American Whitewater Affiliation and others, to discuss legislation, the proposed regulation and other matters..

Tom Kligerman and Per Moberg, co-chairmen of the Adirondack Committee of the Atlantic Chapter of the Sierra Club, worked particularly closely with DEC staff on a continuing basis. Not only were they strongly interested and persistent as canoeists and conservationists but Moberg, a former chairman of the Atlantic Chapter and former member of ADK's Board of Governors, had been on DEC's staff from 1970 to 1986, working in the last decade of that period on land acquisition projects.

Adirondack League Club v. Sierra Club. In 1990, Kligerman and Moberg, increasingly frustrated by the lack of action by the Governor's staff on DEC-OPRHP's proposed legislation and regulation, and by the delay in the Legislature on the Hoyt-Sheffer bill, began planning for a test case in the courts. They met with other conservation organizations in the town library in Bethlehem, south of Albany, but none of them responded positively. So, Kligerman and Moberg decided to do it alone. They were looking for the right river, one that was notoriously blocked, and the right landowner, in the Adirondacks. They made trial runs on the Middle Branch of the St. Regis River, through privately-owned Brandon Park, and on the Beaver River through the Webb estate.

On June 15, 1991, starting from State land in the Moose River Plains, Kligerman and three other Sierra Club members (Carl Anderson, Lorraine Van Hatten and Robert Wolfe) and a reporter (Jeff Jones) with *Metroland (*"Testing the Waters," June 20-26, 1991) went down a 12-mile reach of the South Branch of the Moose River through Adirondack League Club property in two canoes and a kayak. The ALC, the largest club of its kind in the Adirondacks with 350 members and 53,000 acres, had been founded 100 years earlier. The river had been blocked to public use all of that time.

The "Moose River Five," as they came to be known, had notified the ALC that they were coming and the ALC was waiting for them. As they came through, ALC staff photographed them and otherwise documented their trip. Two weeks later, as they were planning a July 13 trip with about 20 Sierra Club members through the Whitney Park property , they were notified of the lawsuit filed by the ALC that included civil trespass charges and a request for $5 million in punitive damages.

In 1990, Kligerman had approached the Sierra Club Legal Defense Fund (SCLDF) about acting as counsel should he and his companions be arrested while navigating on one of the "closed" rivers. SCLDF told Tom they would serve as advisory

counsel but a local New York attorney would have to actually file the motions and appear before the court. That's how Kligerman met Nancy Jones of Bartle, McGrane, Duffy and Jones, a Troy firm. A year later, after the "Moose River Five" were served with the civil suit, it was Nancy Jones who at first represented all 5 defendants. Also, when the lawsuit began, because of the threat of the $5 million dollar punitive award, the Sierra Club's then-president and long-time legal chair – Phillip Berry – took the position that the five individual defendants were not representing the Sierra Club on the trip.

The Sierra Club stated that it supported the public right of navigation but that it should not be held liable for the actions of what they claimed, in a written affidavit from Executive Director Carl Pope, were individuals acting without Club authorization. The Sierra Club, and the Sierra Club-Atlantic Chapter, which covers New York State but has no separate legal status of its own, were initially represented by local attorney Peter Henner but a few weeks later, Phil Gitlen of Whiteman, Osterman and Hannah was hired to represent the Sierra Club, the national organization. The team of Phillip H. Gitlen, Michael Sterthous and Carolyn Dick handled the case.

After the first two weeks of the lawsuit, the firm of Proskauer, Rose, Goetz and Mendelsohn LLP, New York City agreed to represent the lone kayaker, Bob Wolfe. Wolfe, a professional river guide, had concerns and interests that differed from the other four defendants. Robert Kafin of Proskauer, whose long history of association with Adirondack issues made him an excellent counsel for this case, agreed to serve as lead attorney for Bob Wolfe.

Stuart R. Shamberg, John S. Marwell and Adam L. Wekstein (of counsel) from the firm of Shamberg, Marwell, Cherneff, Hocherman, Davis and Hollis in Mt. Kisco represented the plaintiff, the Adirondack League Club, along with Peter K. Bertine and Frank Headly, Jr. (of counsel) from Bertine, Hufnagel, Headly and Zeltner, P.C., Bronxville.

The State of New York, represented by the Attorney General's staff, intervened immediately on the side of the defendants. Val Washington, Assistant Attorney General with the Bureau of Environmental Protection, and Peter H. Schiff and James A. Sevinsky (of counsel), did most of the initial work during the administrations of Attorneys General Robert Abrams and Oliver Koppell. William S. Helmer finished the case during the administration of Attorney General Dennis Vacco.

The Adirondack Mountain Club also intervened on behalf of the defendants, represented by Neil Woodworth, Conservation Director and Counsel of ADK and John W. Caffry, of the firm of Caffry and Flower in Glens Falls. New York Rivers United, Riverkeeper, Inc., Adirondack Landowners Association, New York Farm Bureau, American Whitewater Association, the New York Blue Line Council and the American Canoe Association were *amicus curiae.*

Adirondack League Club v. Sierra Club began on April 10, 1992, in Supreme Court in the Montgomery County courthouse before Judge James N. White. A decision, which was not published, was rendered in December, 1992. The next stop was the Appellate Division of the Supreme Court where a decision was made on August 18, 1994, and published as 201 AD2d 225, 615 N.Y.S. 2d 788 (3rd Dept. 1994).

Legally, decisions by the Court of Appeals are the final statement of the law in New York, superseding any inconsistent statements in the opinions of the lower courts. On December 17, 1998, the Court of Appeals, New York's highest court, issued its landmark decision in *Adirondack League Club v. Sierra Club.* The citation is 92 N.Y.2d 591, 706 N.E.2d 1192, 684 N.Y.S.2d 168 (1998) and the decision can be found on line at the Cornell Legal Information Institute's web site. It reaffirmed and defined the right of navigation more clearly than it had been described previously, particularly identifying recreational use as a legitimate use of the public easement on waterways that are navigable-in-fact.

River recreationists and riparian landowners alike owe the "Moose River Five" and the Adirondack League Club an everlasting debt of gratitude for seeing this case through to a definitive conclusion by the State's highest court. The decision brought a large measure of certainty and closure to what had been a very contentious and nebulous issue.

On the matter of the navigability of the South Branch of the Moose River, the Court of Appeals said that this would have to be settled through a trial in the Supreme Court, based on the facts. After the 9-year ordeal, none of the parties wanted to go through the expense of a trial. In June, 2000, an agreement was signed between the parties, ordered by the Court. It set registration requirements, water level and time of the year conditions under which paddlers can go down the river. Essentially, this reach can be paddled between May 1 and October 15 (or between May 1 and the beginning of the Big Game season, whichever comes

first), providing that the USGS gauge at McKeever has been above 2.65 feet for at least 24 hours prior to starting the trip. From mid-July to the end of August the water may be lower than that. The gauge can be checked remotely on the USGS Real Time Streamflow web site or the American Whitewater Association's web site.

Although by its very existence and nature the agreement seems to recognize that the Moose River is navigable-in-fact, paddlers would be best advised (at least for the present) to use the relevant segments of the river within the limitations that the agreement prescribes.

1/ Most of the information in this paper is based on documents in my files or in references cited in the paper. Communications can be addressed to:
CharlesCMorrison@verizon.net

Appendix B: Draft Legislation to Codify the Right of Public Navigation in State Statutory Law

Note: This draft legislation is essentially the same bill that passed the Assembly in 1990 as A. 8334 - C and was re-introduced on March 4, 1991 for the 1991-1992 legislative session as S. 3212 and A. 4845. Minor revisions have been made. The proposed legislation reflects the common law right of public navigation as it has existed since New York became a state. It does not exceed that right and it is consistent with the recent (1998) NYS Court of Appeals decision in the landmark Moose River case.

AN ACT to amend the environmental conservation law, in relation to the public right of passage upon the waterways of the state.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1, Article 15 of the environmental conservation law is amended by adding a new title 31 to read as follows:

TITLE 31
PUBLIC RIGHTS OF PASSAGE IN NAVIGABLE WATERWAYS

Section 15-3101. Statement of legislative findings and policy.
15-3103. Definitions.
15-3105. Public right of passage.
15-3107. Common law remedies preserved.
15-3109. Interpretation.
15-3111. Owners' duty of care.

Sec. 15-3101. Statement of legislative findings and policy.

1. The legislature hereby finds that the streams, lakes, bays and other waterways of the state that are sufficient in size and depth for the transportation of people or property constitute a valuable recreational and commercial resource for residents from all parts of the state and elsewhere, that such recreational and commercial

resource benefits the economy and welfare of this state, that confusion has arisen from time to time concerning the public's right of passage on such navigable waterways thus impairing their use, particularly for such recreational purposes as boating including canoeing and kayaking, that the courts of the state have declared that there is a public right of navigation over navigable waterways in New York and that clarification of such public right of passage can protect and enhance the recreational and commercial use thereof while preserving and ensuring the legally recognized property rights of the riparian owners.

2. The legislature hereby further finds that the proprietary interest of the owners of the beds and banks of all waterways that are navigable in fact, as defined by the common law, is subordinate to a public right of passage which is held in trust by the state for all of the people of the state.

3. The legislature declares its intent to restrict passage in particular waterways in order to protect scientific research and to provide direction to the department in regulating the use of navigable waterways.

4. It is hereby declared to be the policy of this state to protect and enhance the recreational and commercial uses of all waterways in the state that are navigable in fact, as defined by the common law, and to preserve and protect the public right of passage upon such waterways, consistent with the legally recognized property rights of the riparian owners.

5. Notwithstanding the provisions of this section no finding or policy stated herein, or any other provision of this title shall be construed to impede or interfere with, or establish any preference regarding, the development or operation of a hydroelectric facility.

Sec. 15-3103. Definitions.

The following terms when used in this title shall be deemed to mean and include:

1. "Waterway" shall mean any waterbody that would be considered to be navigable in fact under the common law including, without limitation, any waterbody which is used or would be susceptible for use, in its natural state and ordinary volume of water, to transport people or goods for commerce or recreation. The general character of a stream that is navigable in fact is not affected by the pres-

ence of occasional obstructions or portages, nor is it necessary that navigation be possible at all seasons of the year.

2. “Commerce” shall mean any remunerative activity including, without limitation, use of a waterway for the transport of goods in watercraft of any kind or size, floating logs to mills or market and transporting or guiding people for hire in boats, including canoes, kayaks or rafts.

3. “Recreation” shall mean any activity which is not commerce, as herein defined, including personal travel or transport of goods over a waterway as a means of access to a primary or secondary residence

4. “Passage” shall include incidental activities which are, under the circumstances, an inseparable part of safe passage itself, including scraping or pushing off the bottom, poling, lining, portaging and scouting.

5. “Lining” shall mean regulating the passage of a boat, including a canoe or kayak along an obstructed stream segment by means of lines controlled from the margin of the stream, provided that use of the margin of a stream for such purpose shall be to the minimum and least intrusive extent that is reasonably necessary to accomplish safe passage itself.

6. “Portaging” shall mean transporting or carrying a boat or vessel, including a canoe or kayak, upon the margin of an obstructed stream segment, provided that use of the margin of a stream for such purposes shall be to the minimum and least intrusive extent that is reasonably necessary to accomplish safe passage itself.

7. “Scouting” shall mean inspection of rapids or other potential obstructions in order to determine whether and by what route safe passage is possible, provided that use of the margin of a stream for such purpose shall be to the minimum and least intrusive extent that is reasonably necessary to accomplish safe passage itself.

8. “Poling” means propelling a vessel by using a pole to push off the bed or banks of a waterway.

9. “Self registration system” shall mean a method of registration located at designated public access points to navigable waterways, which may require a person entering the waterway to list his or her name, address, number in party, expected

destination, duration of stay and motor vehicle license plate if a vehicle is being left at the point of entry.

Sec. 15-3105. Public right of passage.

1. The public has a right of passage for any lawful purpose, including commerce and recreation, on all waterways of the state that are navigable in fact whether or not the bed and banks of the waterway is in private ownership.

2. a. In fresh, non-tidal waters, the public right of passage includes incidental use of the bed, banks and margins of the waterways only to the minimum and least intrusive extent that is reasonably necessary to accomplish safe passage itself. The public right of passage does not include any right to traverse privately owned land in order to gain access to or egress from any waterway. This subdivision shall not be construed to alter or limit any common law rights of the public to use or gain access to the foreshore of or lands beneath tidal waters and state owned lands beneath fresh waters.

b. The commissioner is authorized to promulgate rules and regulations pursuant to which the commissioner may designate and define locations on the margins of streams for such incidental uses as are deemed by the commissioner to be, under the circumstances, an inseparable part of safe passage itself, as defined in section 15-3103 of this title; provided that such locations shall be designated and defined to the minimum and least intrusive extent that is reasonably necessary to permit passage. Until such a location shall have been designated and defined by the commissioner at any particular point along a stream, the owner or possessor of the stream margin at such point may, by posting signs, provisionally designate and define a location for such incidental uses, which location shall be reasonably adequate to permit safe passage. At any point along the margin of a stream where such a location shall have been designated and defined, either by the commissioners or provisionally by the owner or possessor, such incidental use of the stream margins at that point shall be limited to such defined location.

3. The public right of passage is subject to all other applicable provisions of law, or of any rule or regulation thereunder, which regulates or limits the use of boats including canoes or kayaks either within the state generally or with respect to particular waterways or classes of waterways of the state.

4. The commissioner is authorized to promulgate rules and regulations in furtherance of public safety and/or the protection of natural resources, pursuant to which the commissioner may in his discretion, designate waterways for which a self registration user system shall be established.

5. The public right of passage on certain ponds, lakes or tributaries, which are connected to the west or middle branches of the St. Regis river, the south branch of the Moose river or West Canada creek may be restricted for the purposes of scientific studies of fish species conducted by a statutory college of the state university of New York, provided that such public right of passage is restricted to the minimum extent necessary in area and length of time to protect such scientific study and such restriction shall not interfere with the public right of passage on the west or middle branches of the St. Regis river, the south branch of the Moose river or West Canada creek.

Sec. 15-3107. Common law remedies preserved.

Nothing in this title shall be construed to limit any remedy available in common law, statute or rule for obstructing hindering, harassing or otherwise interfering with the public right of passage or with persons lawfully exercising such right on any of the waterways of the state. Warning of a dangerous condition shall not in itself be deemed obstructing. . Any owner, lessee or occupant of premises who knowingly engages in such obstruction shall not be relieved of a duty of care pursuant to section 15-3111 of this title, concerning any injury incurred on a portion of passageway subject to such obstruction

Sec. 15-3109. Interpretation.

This title shall be interpreted to preserve and protect, and not to limit, the rights of the public to use the navigable waterways of this state consistently with the property rights of the riparian owners, as such rights are recognized and defined by the common law.

Section 15-3111. Owners' duty of care.

An owner, lessee or occupant of premises, whether or not posted as provided in section 11-2111 of this chapter, owes no duty to keep the premises safe for entry or use by others for exercising the public right of passage as defined in this title; provided that this section does not supersede any exemptions provided under section 9-103 of the general obligations law, and provided that this section does not limit the liability which would otherwise exist:

1. for willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity; or

2. for injury suffered in any case where permission to use any facilities associated with river passage was granted for consideration other than the consideration, if any, paid to said landowner by the state or federal government; or

3. for injury caused by acts of persons to whom permission to use any facilities associated with river passage was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owed a duty to keep the premises safe or to warn of danger

Sec. 2: The provisions of this act shall be severable, and if any clause, sentence, paragraph, subdivision, section of part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Sec. 3. This act shall take effect on the first of November next succeeding the date on which it shall have become law.

Appendix C: DEC Memorandum on Enforcement Policy for Public Navigation Rights

Note: This DEC enforcement policy memorandum has not been modified or rescinded since being issued in 1991. While updating would be desirable to reference the Court of Appeals' decision in the Moose River case, the memorandum is no less pertinent or valid than it was in 1991 and it remains in effect. In addition to being distributed to DEC enforcement staff throughout the state in 1991, a copy of this memorandum also was sent at that time to the State Police Association and the County Sheriffs Association.

C O P Y

MEMORANDUM FROM
MARC GERSTMAN
Deputy Commissioner and General Counsel
New York State
Department of Environmental Conservation

May 9, 1991

To: Distribution
Subject: Public Right of Navigation – Enforcement Guidance

At the request of the Department, Professor John A. Humbach, Associate Dean of Pace University School of Law, completed a significant and comprehensive legal research effort into New York judicial decisions concerning a public right of passage on navigable water known as the public right of navigation. This memorandum, based on Professor Humbach's research and research performed by this office, summarizes the extent and nature of this public right and identifies enforcement issues of concern to DEC. Except as noted, case law citations are omitted in the interest of brevity, but are available on request.

The public right of navigation is rooted in the English common law, and has frequently been recognized by New York courts. The right is often described by the courts as an easement or right of way for travel or passage "as on a public highway."

An early and landmark decision by the New York Court of Appeals, Morgan v. King, 35 NY 453 (1866), expressed the common law right in the following terms:

> The true rule is, that the public have a right of way in every stream which is capable, in its natural state and its ordinary volume of water, of transporting, in a condition fit for market, the products of the forests or mines, or of the tillings of the soil upon its banks.
>
> 35 N.Y.2d at 459.

The court held that if a body of water would float to market even "single logs or sticks of timber" it was navigable. As this suggests, specific factual determinations for individual bodies of water are necessary.

Further guidance on the characteristics of navigable waters was provided by the Court of Appeals in the Morgan decision:

> Nor is it necessary, that the stream should be capable of being thus navigated, against its current, as well as in the direction of its current. If it is so far navigable or floatable, in its natural state and its ordinary capacity, as to be of public use in the transportation of property, the public claim to such use ought to be liberally supported.
>
> Nor is it essential to the easement, that the capacity of the stream, as above defined, should be continuous, or in other words, that its ordinary state, at all seasons of the year, should be such as to make it navigable. If it is ordinarily subject to periodical fluctuations in the volume and height of its water, attributable to natural causes, and recurring as regularly as the seasons, and if its periods of high waster or navigable capacity, ordinarily, continue a sufficient length of time to make it useful as a highway, it is subject to the public easement.
>
> (Emphasis added.)

Thus, waters which are navigable for more than a brief period during the year under normal weather conditions are likely to be subject to the public right of navigation.

Also, it should be noted that the Court treated navigable waters as a highway. Thus, even if the land under the water and adjacent to this water is privately owned, the public has a right of way or easement of passage on the water as on a highway.

Generally, a legal right of use includes all incidental uses that are reasonably necessary in order to enjoy the right. As to waters which are navigable in fact, these incidental uses would include poling or lining through rapids and otherwise touching the streambed incident to navigation, walking ahead to scout rapids, and carrying or portaging the vessel on the shore or margin of the waterway to the minimum extent necessary to go around or avoid obstacles. In connection with the latter, the fact that some portions of a stream are non-navigable does not preclude a determination that the stream is navigable as a whole.

There is also authority that the public has a right to fish from a boat in navigable waters, even if the bed of the stream is in private ownership, subject to applicable DEC fishing regulations. However, no cases have held that this includes a right to get out of the boat to wade around to fish, or a right to fish from the bank.

The public right of navigation does not include a right to camp or picnic on privately owned lands, nor to cross privately-owned land to gain access to or egress from navigable waters.

At present, many landowners appear to be unaware of, or choose not to recognize, the nature and extent of the public right of navigation; however, given the clear common law authority previously discussed, Division of Law Enforcement staff and Forest Rangers are advised not to issue tickets for trespass in situations involving persons exercising the public right of navigation.

In particular, if an individual landowner makes a citizen's arrest for trespass in a situation involving persons exercising the public right of navigation as outlined above, and delivers that person to a Division of Law Enforcement officer, the officer is not required to take the person into custody or take any other action prescribed in sec. 140.40 of the Criminal Procedure Law ("CPL") on behalf of the landowner if it appears that the body of water is navigable. If so, there is no reasonable cause within the meaning of CPL sec. 140.40(4) to believe that the arrested person committed the offense of trespass. This is because it is an element

of that offense that the accused entered or remained on premises unlawfully. However, based on the common law right of navigation as described herein, an entry on navigable waters would be lawful.

DEC may also be asked to enforce the public right of navigation on behalf of boaters against private owners attempting to prevent or hinder the exercise of this right. On this issue, the courts have held that it is a public nuisance for a landowner to obstruct, annoy, or hinder the right of passage on privately owned navigable waters; public nuisances are generally actionable only by the State absent a showing of special damages suffered by a private party. The appropriate response in this situation is to collect information about the complaint and to refer the matter through the appropriate Regional Attorney to [the appropriate staff member] in the Division of Legal Affairs.

I am available to discuss any comments or questions concerning this issue.

(signed) Marc S. Gerstman

Distribution:

Environmental Conservation Officers
Forest Rangers
Regional Directors
Regional Attorneys

Appendix D: Bibliography of Canoeing Guidebooks

Note: This bibliography lists the main guidebooks, maps brochures and booklets for paddling in New York State. Much other information of this kind is available in articles in various periodicals. Paddlers should be aware that some guidebooks may contain outdated or legally incorrect information about the public right of navigation and about whether or not particular waterways are navigable-in-fact. Current information should be obtained when possible.

Adirondack Paddler's Map (waterproof). 1:50,000 scale, full color, shaded relief. Cartography by John Barge and Meg Van Dyck-Holmes. Paddlesports Press, P.O. Box 797, Saranac Lake, N.Y., 12983-0797. 2003.

Adirondack Canoe Map (paper). 1:62,500 (1:31,680 insets). Plinth, Quoin & Cornice Associates, Keene Valley, New York, 12943. 1987.

Adirondack Canoe Waters-North Flow. By Paul Jamieson and Donald Morris. Adirondack Mountain Club. 1994. 368 pp.

Adirondack Canoe Waters-South and West Flow. By Alec C. Proskine. Adirondack Mountain Club (out of print). 1993. 176 pp.

Adirondack Waterways (free). Adirondack Regional Tourism Council, Box 2149, Plattsburgh, NY, 12901; phone 518-846-8016; www.adirondacks.org. 21 pp.

AMC River Guide-Massachussetts, Connecticut, Rhode Island. Includes Hoosic, Wallomsac rivers in NY. Appalachian Mountain Club. 2000. 256 pp.

AMC River Guide-New Hampshire and Vermont. Includes Batten Kill in NY. Appalachian Mountain Club. 2002. 320 pp.

AMC Classic Northeastern Whitewater Guide. By Bruce Lessels. Appalachian Mountain Club. 1998. 448 pp.

AMC Quiet Water Canoe Guide: New York. By John Hayes and Alex Wilson. Appalachian Mountain Club. 386 pp.

Appalachian Waters (3 vols.): (1) The Delaware and Its Tributaries, (2) The

Hudson River and Its Tributaries, (3) The Susquehanna River and Its Tributaries (all out of print). By Walter F. Burmeister. Appalachian Books, Oakton, VA. 1974.

Beaver River Canoe Route. Brochure includes sketch map. (Brochure on other recreation company facilities also available.) Published by Brascan Power-New York (successor to Niagara Mohawk Power Corp.). 225 Greenfield Parkway, Suite 201, Liverpool, N. Y. 13088 . 1-877-856-7466.

Canoe Guide to Western and Central New York State. Edited by Mark Freeman. Adirondack Mountain Club. 2003. 239 pp.

Canoe and Kayak Guide: East-Central New York State. Edited by Kathie Armstrong and Chet Harvey. Adirondack Mountain Club. 2003. 256 pp.

Canoeing Central New York. By William P. Ehling, PhD. Backcountry Publications, Inc., Box 175, Woodstock, VT, 05091. 1993. 171pp.

Canoe Franklin County (pamphlet/map). Franklin County Department of Tourism, 63 West Main St., Box 5, Malone, NY, 12953; phone 518-483-6788

Canoeable Waterways of New York State and Vicinity (out of print). Map foldout. By Lawrence I. Grinnell. Pageant Press, Inc. NY. 1956. 349 pp.

Delaware River (10 sectional maps, Hancock to Trenton). Delaware River Basin Commission. Box 7360, West Trenton, NJ, 08628; phone 608-883-9500.

New York Exposed: The Whitewater State. Vol. I, covering 67 “steep creeks.” 218 pp. 2002. Vol. II, 93 runs. 272 pp. 2004. By Dennis Squires.

Northern Forest Canoe Trail (2 maps). Adirondack North Country (West - Fulton Chain of Lakes to Long Lake; Central - Long Lake to Saranac River). The Mountaineers Books. Available from NFCT, Inc., Box 565, Waitsfield, Vt. 05673; 802-496-2285; www.northernforestcanoetrail.org.

No Two Rivers Alike: 50 Canoeable Rivers in New York and Pennsylvania. (out of print). By Alec C. Proskine. The Crossing Press. Trumansburg.N.Y., 14886. 1980. 221 pp.

NYS Department of Environmental Conservation (pamphlets with maps). Division of Lands and Forests, 625 Broadway, Albany, 12233-4250; phone: 518-402-9405.
Adirondack Canoe Routes (Fulton Chain)
Bog River Flow
William C. Whitney Wilderness
Cranberry Lake
Stillwater Reservoir
Lake George Islands
St. Regis Canoe Area and the Saranac Lakes Wild Forest
Upper Saranac Lake
Stillwater Reservoir
Croghan Tract/Northern Flow River Area
Santa Clara Tract/Northern Flow River Area
Tooley Pond Tract/Northern Flow River Area

Paddling Down the River. Cattaraugus County Planning Board (pamphlet/map). 303 Court St., Little Valley, NY 14755; phone 716-938-9111. 1984.

Upper Delaware Scenic and Recreational River, Visitor Information Map and Guide. Upper Delaware Council. 211 Bridge St., Box 192, Narrowsburg, NY 12764-0192; phone 645-252-3022.