

SACANDAGA PROTECTION COMMITTEE



“United by common sense . . .”

P.O. Box 86.
Mavfield, N.Y. 12117

www.lovetheSacandaga.com
spc02@live.com

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Dear Friend of the Great Sacandaga Lake,

As we begin the New Year we would like to take an opportunity to provide you with an update from the Sacandaga Protection Committee. Through the generous support of the lake community we have raised approximately \$320,000 since our organization was formed in 2009. We are a volunteer group and 100% of this money is used to protect the rights of the permit holders and lake community. Here is an update on a few of the issues we are working on:

Niagara Mohawk / National Grid Lawsuits – Threat to exclusive use permit system

Niagara Mohawk has filed over 20 lawsuits against the HRBRRD, in both Federal and State Court, challenging millions of dollars of past assessments. Within these lawsuits, one of the arguments that Niagara Mohawk makes is that the Permit System is illegal and should be abolished. After reviewing these lawsuits with our attorneys, the SPC determined that there was a viable threat to the Permit System and made the decision to “intervene”.

The SPC successfully applied for and received intervener status in the Federal Court case. As an intervener, the SPC filed legal arguments opposing the lawsuit and potential abolishment of the Permit System. Chief District Court Judge Norman A. Mordue of the United States District Court for the Northern District of New York granted the SPC and HRBRRD request for summary judgment and dismissed NiMo’s lawsuit. In his dismissal of the case, the judge specifically noted the important legal contributions of the SPC as interveners representing the interests of both front lot and back lot property owners as well as business and recreational users of the Great Sacandaga Lake.

Niagara Mohawk appealed the Federal Court decision and on December 2, 2011, attorneys for the SPC argued to preserve the Great Sacandaga Lake Permit System during oral arguments before a three judge panel of the United States Court of Appeals for the Second Circuit in New York City. In the case, titled Niagara Mohawk Power Corporation v. Hudson River – Black River Regulating District, the plaintiff power company sought a refund of more than \$5 million in assessments paid to the regulating district plus interest. In addition to the refund request, Niagara Mohawk argued that the Federal Power Act preempts virtually all of the regulating district’s activities, including operation of the Great Sacandaga Lake Permit System, maintenance of the watershed, and even flood control.

Niagara Mohawk asserted that SPC constituents should pay greater costs to the Regulating District as a beneficiary. The SPC was represented at oral arguments by its attorneys from Hodgson Russ LLP, with Benjamin K. Ahlstrom joining attorneys for the Regulating District in arguing against Niagara Mohawk’s claim. The SPC, with the Regulating District, had earlier prevailed before the Federal District Court in a decision by US District Court Judge Norman A. Mordue. We expect an answer from the Appeals Court this spring.

In addition to the case in Federal Court, Niagara Mohawk has filed similar lawsuits in State Court. We continue to be involved in both the State and Federal lawsuits to be sure the interests of the Permit Holders are protected.

HRBRRD Funding Issues – Threat to local communities and permit fees

As you are likely aware, the HRBRRD is in the midst of a funding crisis, the result of downstream power producers who have refused to pay annual charges by the HRBRRD. Although the power producers funded more than 90% of the original dam construction and have historically paid operation and maintenance charges by the HRBRRD, a recent change in regulations has allowed the power producers to avoid these charges.

The HRBRRD funding crisis puts a strain on local municipalities and school districts who have relied on annual taxes paid by the HRBRRD since the reservoir was formed. The HRBRRD is the single largest taxpayer in many of the school districts around the lake. Through internal borrowing, the HRBRRD was recently able to pay overdue school taxes from the 2010 / 2011 school year; however, the 2011 / 2012 taxes remain unpaid.

The HRBRRD has been forced to shift their funding burden from the power producers to downstream counties in the form of a flood control benefit. The five downstream counties of Albany, Saratoga, Rensselaer, Warren and Washington have always been assessed a flood control benefit; however, these

assessments are now significantly higher as they are a larger source of HRBRRD revenue. The five downstream counties fought the higher HRBRRD flood control assessments in Court. The counties lost the initial lawsuit and have appealed.

Ultimately, funding of the HRBRRD will be likely decided through completion of a beneficiaries study identifying beneficiaries of the Conklingville Dam and proportional assessments. The beneficiaries' study, being performed by Oakridge National Laboratory, was expected to be completed in 2011; we await completion of this study and will monitor any developments that impact our local communities and permit holders.

Relationship with the HRBRRD

Since the proposed rule changes of 2009, the makeup of the HRBRRD has changed dramatically. The entire seven-member board of directors has turned over with five new members appointed since 2009 and two empty seats waiting for appointments. In addition the former Executive Director, Glenn LaFave, retired in 2010 amidst an investigation by the Attorney General's office. Mike Clark replaced Mr. LaFave as the Executive Director; with Mr. Clark's appointment and turnover of the Board of Directors there has been renewed communication and cooperation with the HRBRRD.

Thanks to the efforts of the Great Sacandaga Lake Association, the HRBRRD has agreed to establish a lake wide advisory group that will provide a form of official contact between the lake community and the HRBRRD on important issues. The advisory group will include members from various organizations around the lake including the SPC.

Exclusive Use – Threat to exclusive use of permit areas

The issue of exclusive use of the permit area remains our highest priority. We understand that this is extremely important to all permit holders and without exclusive use, property values around the lake would fall dramatically. The SPC successfully convinced HRBRRD to reinstate the "Exclusive Use" terminology on the permit signs and yearly permit renewals. We continue to be engaged in active threats to exclusive use (i.e., Niagara Mohawk lawsuits) and monitor the activities of the Department of Environmental Conservation (DEC) and others who would potentially threaten exclusive use.

One such issue that we are monitoring is a recent DEC enforcement action related to access to the community of Beaver River along the Stillwater Reservoir. Road access to the small community of Beaver River was cut off in 1924 when the state built a dam on the Beaver River to control flooding and generate power. Since that time access to the roughly 120 properties of the Beaver River community has been via boat in the summer and snowmobile during the winter. A local family in the community operates a barge service capable of transporting several vehicles at a time and essential larger equipment from the mainland to the isolated community. The DEC has recently pursued enforcement actions to stop the barge service from operating citing the fact that the boat launch is on state-owned Forest Preserve land where most commercial activities are forbidden.

While this particular issue is specific to Beaver River, the DEC's actions related to the use of state-owned land may have a direct impact on commercial activities surrounding the Sacandaga Lake.

Goals and Funding for 2012

We anticipate our fundraising need to be approximately \$60,000 for 2012. With this level of funding we will be able to continue our active legal participation in the ongoing Niagara Mohawk / National Grid lawsuits with a modest reserve that will allow us to react to developments related to the other issues that we continue to monitor.

We depend on the generous contributions from those with the common interest of protecting our way of life and property values around the Great Sacandaga Lake. We thank those who have supported us in the past and look forward to your continued support. Contributions may be made via our [website](#) or mailed to SPC, PO Box 86, Mayfield, NY 12117, please include your email address with your contribution. We encourage you to [contact us](#) with any questions, comments, or concerns via our [website](#).

Sincerely,

Joe Sullivan, Co-chair, SPC

Travis Mitchell, Co-chair, SP

Please complete the information below and return with your donation. To help us reduce mailing costs, please be sure to include your email address.

Name: _____

email: _____

Home Address: _____

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