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Subject: : Paflyfish General Forum

Topic: : Waterway Rights info on PA streams

Re: Waterway Rights info on PA streams

Author: : pcray1231

Date: : 2013/10/11 11:10:07

URL:

Yeah, the DCNR put out a list and map of streams it holds to be "navigable". Of course, they are not the final say, a court is. And only 10 or so have been determined to be navigable in court, while the DCNR's list had literally hundreds, meaning most of them remain legally undecided on the question of navigability.

i.e. if the DCNR has your stream on its list, yet there is posted land. Then the only way you can settle it is to trespass, get caught AND prosecuted, go to court claiming navigability as your defense, have the losing side appeal a number of times, till finally it see's a higher court who will make the determination. When that happens, if the landowner loses, they have no penalty, other than court fees. If you lose, you have court fees PLUS the trespassing fine. But hey, the DCNR will be on your side, so, there's that.

The courts look for historical evidence of commerce. That's all that matters. What "commerce" entails is up for debate. Does it include a regular raft route to transport goods? Probably. How bout if somebody did it just once? What if goods weren't on a raft, but they floated logs or barrels of oil downstream? What about a small stream where they built a splash dam in the logging heyday?

The DCNR list is based on historical PA legislature "Declarations of Public Highway". Most are from the 1800's when water was the primary mode of travel and commerce, and the PA legislature made the declarations to protect a commerce route as a favor to someone or other. As it turns out, these declarations do not, on their own, hold legal water to show a stream as navigable, but they might be pretty good evidence to use in your favor should you want to put yourself in front of a judge, especially if you can dig up WHY they were declared public highways by the state congress.

There have been, as I said, about 10 cases over time. In every instance where this has seen a court, the stream has indeed been declared navigable. Private interests have never won in PA. That said, the 10 that have seen their day are the clearest, most straightforward examples. Delaware, Lehigh, big and little J's, Allegheny, etc. I can't imagine anyone trying to claim they AREN'T navigable. But some of these smaller streams, like, say, Pine and Elk Creeks (tributaries to Penns), are both indeed on the DCNR's list, but probably a much tougher sell to a judge.