

The DEC Versus the Adirondack Forest Preserve

This spring, New York's Court of Appeals will decide if the 'Forever Wild' clause governs the Department of Environmental Conservation – or the reverse.

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The DEC's plans to cut snowmobile trails through Forest Preserve lands to connect Adirondack communities risks undermining the integrity of the wilderness.

The main threat to the Adirondack Forest Preserve, the late conservationist David L. Newhouse once wrote, comes not from any overt pressure to overturn Article XIV, the state constitution's "Forever Wild" clause, but, rather, from a thousand ill-considered decisions that dilute and degrade the wilderness experience. "The Department of Environmental Conservation," he wrote in 1970 to David Sive, an old friend and the nation's pre-

eminent environmental attorney, "is constructing a definition of 'forever wild' in which there is little wildness and less wilderness." The DEC, and its predecessor, the Conservation Department, allowed "snowmobiles, trail bikes, littering, motor boats, bulldozing, road maintenance, etc" into the Forest Preserve without considering – or caring – whether those activities and practices were consistent with Article XIV. Through indifference, in fits of mental absence or perhaps "as a natural result of pressures and bureaucratic processes... an erosion of the Forever Wild clause" had taken place under the department's watch.

Not long after Newhouse wrote to Sive, he discovered the DEC had cut at least 125 trees deep within the Forest Preserve to create a snowmobile trail.

In Sive's view, that action violated the rule that wild forest recreation is permitted (short of constitutional amendments) only if "no material degree of timber" is removed, as the Court of Appeals held in 1932. In that landmark case, Judge Judge Harold J. Hinman blocked the cutting of 2,500 trees for the construction of a bobsled run for the 1932 Winter Olympics on the grounds that it would violate Article XIV.

According to David Gibson, a managing partner of the group, Adirondack Wild: Friends of the Forest Preserve and something of a protégé of Newhouse's, this information – and this perspective – was brought to the DEC's new commissioner, Henry Diamond, from whom Newhouse expected a fair hearing, especially since Diamond was once a member of Governor Nelson Rockefeller's Temporary Study Commission on the Future of the Adirondacks.

Somehow, the original intent of the "Forever Wild" clause had to be reaffirmed and wildness restored to the Adirondack wilderness. In 1970, Newhouse believed the Temporary Study Commission was in the best position to do this.

"The Commission could accomplish this by re-enforcing the meaning of Forever Wild, using the words of Judge Harold J. Hinman," wrote Newhouse.

(In 1932, Judge Hinman wrote "We must preserve the Adirondack Forest Preserve in its wild state, its trees, its rocks, its streams. It must always retain the character of wilderness.")

When the Temporary Study Commission released its recommendations in January 1971, it did reaffirm the significance of wilderness and of the wilderness experience.

“No better method exists to assure continued resource protection than Article XIV,” the Commission stated. “In this age of environmental concern, what could be more appropriate than a reaffirmation of New York’s unparalleled conservation tradition?”

As George Davis, who would later win a MacArthur ‘genius’ grant for his work on behalf of environmental protection, wrote in an essay for Commission members: “as originally conceived... the Adirondack Park was a planned scheme to prevent the loss of some quality of wildness, a thing of big trees, bears, beavers, hermit thrushes and scarlet tanagers as opposed to slashings, lawns and English sparrows.”

When Newhouse wrote Sive in September, 1970, he was unaware the Commission was discussing a proposal to create a regional land use agency, one that would have authority not only over private lands but over the public, state-owned Forest Preserve as well.

That authority could, at least in theory, protect the Adirondack wilderness from the DEC’s goals and policies far more effectively than an affirmation of the values of the Forever Wild clause.

As David Gibson points out, Newhouse’s conversations with Henry Diamond may well have contributed to the limits placed on motorized uses and snowmobile trails in the APA’s State Land Master Plan, which was adopted in 1972.

The New York legislature, however, gave the DEC and the APA shared responsibility for managing public lands.

Under the the terms of the Environmental Conservation Law, the APA determines whether land-use activities comply with Unit Management Plans drafted by the DEC, while the “care, custody and control” of the Forest Preserve is left within the hands of the DEC.

As a recent history of the early years of the APA puts it, the decision to allow both agencies to share power over public lands was “destined, or perhaps designed, to create debate.”

It certainly did not establish unassailable checks on the DEC’s custodial powers, as people like David Newhouse hoped it would and as we discovered in 2013, when the APA was unable to prevent the DEC from

cutting 25,000 trees to make 27 miles of community-connector snowmobile trails.

According to the DEC, its plans were consistent with the State Land Master Plan and Article XIV.

Protect the Adirondacks, the advocacy group led by Peter Bauer, disagreed, arguing that even slender trees are important to forest ecology.

"The constitution does not provide protections to some trees but not to others. It provides protections to all trees," said Bauer.

Protect the Adirondacks then launched a lawsuit to force the DEC to bring its trail work to a halt, and thus far, the environmental protection group has prevailed.

In the summer of 2019, the Appellate Division, Third Department, decided in favor of Protect, ruling the trail cutting to be an unconstitutional destruction of the Adirondack Forest Preserve.

Stated the court, "the framers of the state constitution's 'Forever Wild' clause did not limit protections against substantial tree cutting to only large, merchantable 'timber.' The use of the word 'timber' in its historic context included all trees regardless of size." Thus, "the construction of these trails resulted in, or would result in, an unconstitutional destruction of timber in the Forest Preserve."

Rather than modify its tree-cutting plan after losing in Appellate court, New York State and the DEC chose to appeal the decision. The state's highest court, the Court of Appeals, is scheduled to hear final arguments March 23.

The Adirondack Council, Adirondack Wild and the Sierra Club have sought permission from the Court of Appeals to file briefs in support of Bauer's group.

"New York State and the DEC are seeking to weaken the Constitution's 'forever wild' clause," said Willie Janeway, the Adirondack Council's executive director. "The state's stance threatens the wild forest character of the Adirondack Forest Preserve, including the headwaters of the Hudson River and five other major waterways."

The Open Space Institute, the Nature Conservancy and the Adirondack Mountain Club (ADK), on the other hand, support the DEC, arguing that if

the Court of Appeals upholds the Appellate court's ruling "trail creation and maintenance within the Adirondack Park would be severely limited."

"Boiled down, they say this case is all about stopping recreational uses of the Forest Preserve. Wrong," says David Gibson.

David L. Newhouse, by the way, served as ADK's president twice and chairman of its Conservation Committee for a quarter century. In fact, ADK's highest award is named in his honor. It is, therefore, somewhat ironic that ADK is taking a position antithetical to the one espoused by Newhouse for much of his life.

Newhouse died in 2006. He was among the group of General Electric engineers who fell under the sway of Lake George's John Apperson, becoming life-long defenders of the Adirondack Forest Preserve and the "Forever Wild" clause.

Apperson waged many battles, on many fronts, in defense of wilderness, from preserving Dome Island in its natural state to removing squatters' cottages from Forest Preserve lands, from fighting the use of Lake George "as a mill pond" by an electrical utility to blocking Robert Moses efforts to construct a highway along the lake's shore.

For Apperson, as well as for Newhouse, wilderness is not constructed from discrete, disconnected fragments. It is a unified whole. It is not experienced in one encounter, but in a lifetime of encounters repeated across time and space. The destruction of one piece, whether it be a 27 mile snow highway through the woods or a dam at the foot of Lake George, not only precedes the destruction of other pieces, it undermines both the meaning of wilderness ("where the earth and its community of life are untrammelled by man") and the purpose of Article XIV: to keep "forever as wild forest...the lands constituting the Forest Preserve. "

What is at risk in "Protect the Adirondacks! Inc. v. New York State Department of Environmental Conservation (DEC) et al." is not 25,000 trees. To be sure, to protect the Forest Preserve, Article XIV states, "the timber thereon shall not be sold, removed or destroyed." But the framers adopted that language to ensure that "lands constituting the forest preserve... shall be forever kept as wild forest..." What is at stake here is the wild character of the Adirondack Park. It remains to be seen if the Court of Appeals chooses to uphold it.