JUDGES' LEGAL CONTORTIONS PROVIDE FAVORABLE OUTCOMES FOR THE STATE
3/30/99

This is the third in a series on how "We the People" interpret the Bill of Rights, the last sentence in Article V being the most abused: "Nor shall private property be taken for public use, without just compensation."

The framers obviously did not expect those words to be interpreted by proponents of such verbiage as "It all depends on what your meaning of the word 'is' is." They also never expected today's social engineers to totally ignore them in their quest to provide more playgrounds for the masses.

Why use dollars needed for vote-buying social schemes to pay for something you can steal? They run roughshod over the oldest of our civil rights with innovative machinations to usurp property rights. The effective use of private property for public use has been accomplished and landowners are forced to maintain and continue use of same in the public interest. Further salt is rubbed their wounds if they choose to defend their rights under Article V.

We have several well-organized and affluent groups of these social programmers in New York State. They have openly formed cabals with state agencies eager to expand their empires. As one who has worked with and within State agencies for many years, I have come to know they have one thing in common: They are all empire builders, constantly searching for ways to expand their power and authority.

Many DEC Unit Management Plans are routinely reviewed by these private organizations. Their structure and function are then tailored to meet the needs and goals of that specific group.

This same State agency has been only to eager to suggest other avenues where both parties may expand their respective scopes without resorting to condemnation. The two recent landmark river navigation controversies are classic examples.

Private groups were encouraged to challenge long-held riparian rights. When they were challenged, the Attorney General's Office stepped in and bore the brunt of legal costs with taxpayer dollars.

Enter the old cliché “you can’t fight City Hall.” The state’s highest court ruled in December 1998, in a manner that lends credence to the above.

In 1866, the Common Law right-of-way was expressed as follows: “The true rule is that the public have a right-of-way in every stream which is capable, in its natural state and it’s ordinary volume of water, of transporting, in a condition fit for market, the products of the forests or mines, or of the tillage of the soil upon its banks.”

You, the reader, will be left to judge whether the waterway in question is navigable under the above guidelines. Several dams were constructed on the tributaries and at least two on the river as well. Water from the impoundments was released simultaneously on a daily basis in time of high flow to float logs downriver to the mill. In addition, over 1,000 large boulders were dynamited from the bed. The landowners had been paid on a yearly basis for its use, an issue that had been settled by an earlier court ruling in the landowners favor. Does that suggest by the wildest stretch of the imagination its use was made in “its natural state and ordinary volume of water”?

Knowing the case was “dead in the water,” based on the existing rule of law, the court made the following determination. Seven honorable dispensers of jurisprudence who receive checks twice a month with New York State stamped all over them, expanded the definition of what makes a river a public waterway.

“We only hold that such transport need not be limited to moving goods in commerce, but can include some recreational uses."” The camel’s head is in the tent.

To make a long story short, this was a classic case of judges making law instead of ruling on it and another way of getting around Article V and trammeling property owners’ civil rights.