

THE DISTRICT DISPATCH

The Cuba Lake District Board of Commissioners Information Letter

April 2005

State Negotiations with the Seneca Nation of Indians – Agreement Documents Have Been Made Available

This month the mailing of the *DISPATCH* includes a letter from the Board of Commissioners covering the details of the agreements between the Seneca Nation of Indians and the State of New York. Agreement documents and maps can be accessed at the District's web site www.cubalake.org or copies are available upon request to the Lake Manager. The .pdf files available on the web site include "Bookmarks" to assist you in working through documents. Should you have any questions on, or comments to the documents contact the Board of Commissioners using the contact information at the end of the *DISPATCH*.

Note: When using the "bookmarks" to navigate through the documents, point to the desired bookmark, right click with the mouse and select "Go to Bookmark" (left click). Left-handed users may have to reverse the "click" instructions.

Spillway Damage:

We reported in January that the draw-down of the lake in November revealed significant and unexpected damage to the spillway structure since last year. As reported in the Olean Times Herald, there was some hold up of the start of work on the repairs. However this was amicably resolved; work was started and is progressing as shown by the pictures below. It is anticipated that the work will be completed in time for the ice melt which signals it's time to "drop the logs" and fill the lake for the summer season.



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Management Agreement Budget – Year 2005-2006

The Management Budget for the years 2005 – 2006 was approved by the Commissioners at the March meeting, for submittal to the State for final approval. The total of this budget is \$164,000 of which \$100,000 is designated for Lake and spillway maintenance as well as special projects for improvement of water quality and weed control. Some funding to support improvement projects necessitated by high water and flood conditions will be requested from FEMA (Federal Emergency Management Association).

2005 Garbage Collection

B & S Disposal Service, 9 North Main Street, Delevan, NY 14042 will continue with the second year of a two year contract established in 2004.

Collection of household garbage and of recyclables will be made weekly on each Monday of the week. **The first collection will be May 2, 2005, and the last collection will be on October 31, 2005.** It is strongly recommended that you place your garbage at the roadside by 7:00 a.m. on the morning of pickup.

It is required that any garbage or refuse placed along the side of the road be placed in a hard container with a cover otherwise known as a garbage can. This requirement supports the effort to prevent dogs, other animals or the wind from spreading the garbage along the road and on to adjacent properties.

THE DATES FOR LARGE REFUSE TYPE MATERIALS COLLECTION ARE

- **MONDAY, JUNE 6, 2005 AND**
- **MONDAY, AUGUST 29, 2005.**

NOTE: RECYCLABLES WILL NOT BE PICKED UP ON THE DATES OF LARGE REFUSE PICKUP.

All garbage and refuse for collection must be placed at the roadside. Pickup will be made along county roads or access lanes used for multiple residents where possible. Covers will be replaced on garbage cans after collection. Reasonable care will be taken to prevent damage to cans and to keep the amount of noise during collection to a minimum.

If you have any problems with service, please first contact **B & S Disposal Service @ 716-492-2853**. As a last resort, contact Lynn Sweet, Chairperson, Cuba Lake District Board of Commissioners, at 585-968-1735.

The Commissioners solicit your cooperation in meeting all the regulations and requirements of this collection service. **If you rent your cottage to others, please be sure to notify your tenants about these regulations and requirements.**

GUIDELINES AND PROCEDURES FOR RECYCLING

The following materials are recyclable and are accepted by B & S Disposal Service when prepared in the following manner:

- | | |
|------------------------------|--|
| <u>GLASS BOTTLES:</u> | Rinsed and dry. Metal and plastic caps/rings must be removed. |
| <u>GLASS JARS:</u> | Rinsed and dry. Lids must be removed. May be mixed with glass bottles. |
| <u>ALUMINUM CANS:</u> | Beverage cans (beer and pop). Rinsed and dry. |

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TIN CANS:

Rinsed and dry. NO rusty cans will be accepted. Metal lids must be disposed of with regular garbage unless secured in can and flattened.

PLASTIC BOTTLES:

Includes: milk jugs, pop bottles, bleach and liquid soap bottles (laundry). Each must be rinsed and dry and caps removed.
NO oil or anti-freeze bottles accepted.

NEWSPAPERS:

Must be clean, dry and tied in bundles.
NO shiny pages or magazines will be accepted.

CARDBOARD:

Only corrugated types. All must be clean, dry and broken down in bundles. A corrugated box be used as a recycling container for other recyclables listed above.

Commissioners: E-mail - commissioners@cubalake.org

Lynnford J. Sweet, Chairman (585)968-1735

Erick J. Laine, Deputy Chairman (585)968-1279 or (716)372-7952

Jerry Collins, (585)968-0112 or (716)373-1000

Jeff Bradley, (585)968-3949

Dave Shemeld, (716)968-3928

Web site - www.cubalake.org

Lake Manager: E-mail - cubalakedistrict@yahoo.com

Dave Bosworth, (585) 968-0500;

Address: Cuba Lake District, PO Box 201, Cuba, NY 14727

Location: Cuba Lake District Office, 15 W. Main St, Cuba, NY

Other officials:

Jack Hart, Counsel (716)373-1600

Andrew Lindquist, Treasurer (585)968-3269

Pamela Konieczka, Secretary (716)372-4775

Meetings - District office; 2nd Thursday of each month; beginning at 7:00 PM

Enclosure: Board of Commissioners' letter of April 4, 2005 to the Cuba Lake Cottage Owners.

CUBA LAKE COMMISSION

15 East Main Street

P.O. Box 201

Cuba, NY 14727

April 4, 2005

Cuba Lake Cottage Owners

Dear Cottage Owners:

There have been developments in the lawsuit brought by the Seneca Nation of Indians and the United States of America against the State of New York. The mediation process, which was ordered by the Federal Court, has resulted in a proposed agreement pending review by Judge John T. Curtin. This agreement has been forwarded to the Cuba Lake Commission and we are making it available on the Cuba Lake District website at www.cubalake.org. Copies are also available at the Cuba Lake Office from Dave Bosworth or from any of the Cuba Lake Commissioners.

The objective of this letter is to provide a factual overview of the settlement as reflected in the mediation documents. However, we are sensitive to the reality that the recently reported events which took place at the spillway could possibly affect the proposed settlement. Before the settlement is finalized we expect those tribal issues as they relate to the negotiated agreement will be clarified. In the mean time we felt it prudent to bring the cottage owners up-to-date with the results of the negotiations.

Background: The Seneca Nation of Indians commenced a lawsuit in 1985 alleging that in the 1850's Congress did not approve New York State's condemnation of some lands used for construction of Cuba Lake that were part of the Seneca Nation's Oil Springs Reservation. A trial resulted in a final decision in 1999 by Judge Curtin that New York's actions long ago were improper. However, the Court did not decide on the legal consequence arising from the improper taking of Indian Lands. This question instead was referred to mediation to see if the parties could agree on some arrangement. The mediation occurred behind closed doors between the State of New York, the Seneca Nation of Indians, and the United States of America. The Cuba Lake District, despite its repeated request to be part of the dialogue, was not permitted by the Judge to participate in the mediation. Similarly, the leaseholders of the 19 affected cottages on the Nation's Lands were also not permitted to be part of the mediation. Late last year all of those cottage owners fully in the claim area, sold their cottages to the State of New York.

During the mediation, the Federal Court imposed a gag order so that no party participating in the mediation negotiations could openly communicate concerning the matters that were under discussion. The Cuba Lake Commission, however, was consulted on some of the matters under discussion since proper management of the Lake needed to be assured and the District has been managing the Lake for decades. The Cuba Lake Commissioners, however, are seeing the language of the documents for the first time as well.

The Settlement- The proposed Settlement provides that New York State is to return the claim area to the Seneca Nation and, in addition, New York State will pay the Seneca Nation \$500,000. The arrangement further provides that the State will have an easement to operate the Spillway and contains agreements for the long-term operation and management of the shared interest in the Lake.

The Documents-The mediation process has resulted in several written documents between the State of New York and the Seneca Nation of Indians. These documents are:

- I. Quit Claim Deeds from the State of New York to the Seneca Nation of Indians.**
- II. An Easement Agreement.**
- III. Cooperative Management Agreement**
- IV. Consent Decree and Final Judgment**

These documents, in summary, provide as follows:

I. Quit Claim Deeds- Two Quit Claim deeds were delivered to the Seneca Nation of Indians on October 29, 2004, and December 8, 2004 which transferred title to the Lands upon which were the 19 leased Cottages acquired by the State of New York.

There is also another deed to be delivered to the Seneca's if the mediated settlement of the litigation is approved by the Court. This Quit Claim Deed will transfer from the State of New York to the Seneca Nation all title to remaining lands in the claim area including the lands under water.

II. Easement- The essential terms of the Easement Agreement says that the Spillway is to be operated and maintained by the State of New York with full authority to replace, rebuild and modify and repair the spillway as may be deemed appropriate from time to time. This assures that the State shall have the power and full authority to raise and lower the water level and deal with the maintenance of the Spillway indefinitely, so long as the Lake continues to exist.

III. Cooperative Management Agreement- This Agreement sets the ground rules for the relationship between the State of New York and the Seneca Nation of Indians concerning Cuba Lake. The following provides an overview of the key provisions in the Agreement:

- While the parties to the Cooperative Management Agreement are the State of New York and the Seneca Nation of Indians, the rights and responsibilities can be delegated by the State to the Cuba Lake District. Since this is the intention, much of the agreement addresses how the relationship with the District will work. Currently, the State of New York and the District's relationship is defined by the 1981 Statute creating Cuba Lake District and by the 2001 Management Agreement.
- The parties agree that the Lake will be maintained at its historical levels so that the character and the integrity of the lake can be maintained.

- The Agreement contains numerous provisions which are intended to promote dialogue, cooperation, and communication between all parties in interest, including the Cuba Lake District. It is apparent that the goal and intent of the Cooperative Management Agreement is that all parties will collaborate for the benefit of the Lake.
- The management of Cuba Lake by the District as provided in the 2001 Management Agreement (which was authorized in the New York State Finance Law) is integral to the arrangement. The Agreement encourages liaison between the District and the Seneca Nation of Indians and permits the Seneca Nation of Indians to have prior comment on the District's Annual Budget, as well as the District's Annual Management Agreement budget. The Seneca Nation of Indians does not have any veto authority over either budget nor is it required to contribute to either budget.
- Operation and Maintenance of the Spillway by the State which is permitted by the Easement Agreement, and elaborated on the Cooperative Management Agreement, provides for general consultation and the liaison between the District and the Seneca Nation concerning routine matters concerning Spillway operations. It also provides for authority for the District to react without consultation, should emergency situations arise.
- The State has the authority to continue to maintain the roads, including ditches, bridges, signage, guidelines, and culverts subject to Transportation Agreements that the State and the Nation have or later enter into. The important thing is that the Lake's roadways will remain open for all users and the State will control and maintain them.
- Public access to the Lake is assured in the Agreement; however, the public access point(s) will be off the Oil Springs Reservation. This places increasing importance on the Taylor Farm and its development as a boat-launch facility.
- Fishing in the Lake is authorized by anyone having a valid Seneca Nation of Indian Fishing License or New York State License.
- The Seneca Nation will enforce its laws or the laws of the State of New York with respect to water quality, whichever is the more protective of the Lake.
- The Agreement provides for a dispute resolution procedure that begins with a consultation between the parties followed by mediation, followed by possible court proceedings for matters in the Court's jurisdiction, defaulting to, if necessary, arbitration.

IV Consent Decree and Final Judgment – This is the court order that is drafted for consideration by the Federal Judge who has the power to finalize and confirm the mediated proposals so that they become the final ruling on the matter.

It is our understanding that the Federal Court Judge may provide an opportunity to comment on the settlement, either in writing or in person. Should that happen, we would encourage any interested party to participate.

It is apparent that considerable effort went into development of these documents. While the Cuba Lake Commission has for years strongly argued for and supported a different outcome from what has occurred, our focus has now necessarily shifted. The Seneca Nation and the State of New York have selected the path resulting in the return of the improperly taken lands to the Nation. The State of New York desires and is actively pursuing policies so that the transition at the Lake will be a positive one and our experience with the government of the Seneca Nation of Indians in recent months has been productive and wholly constructive. This is as it should be since Cuba Lake is an extraordinary jewel. It is in the interest of all of us to find the ways that once the settlement has been finalized it will be an event that will permit the on-going improvement of the lake, its water, its surrounding properties, and general environment.

Very truly yours,

Cuba Lake Commissioners,

Lynn J. Sweet, Chairman
Erick J. Laine, Deputy Chairman
Jerry Collins
Jeff Bradley
Dave Shemeld

lirtocottageowners