

New York State Department of Environmental Conservation

Assistant Commissioner

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Alexander B. Grannis
Commissioner

September 24, 2010

Dennis Phillips, Esq.
McPhillips, Fitzgerald & Cullum LLP
288 Glen Street
P.O. Box 299
Glens Falls, NY 12801-0299

Re: **Shingle Shanty Brook**

Dear *Dennis* Mr. Phillips:

Thank you for your letter dated September 3, 2010 regarding the ongoing dispute concerning the public's right to navigate the portion of Shingle Shanty Brook that traverses property owned and managed by your clients, Friends of Thayer Lake and the Brandreth Park Association (collectively, "the Association"). The Department is very disappointed that the Association has chosen to reject the Department's proposal for a cooperative, amicable resolution of this issue, and has instead chosen to insist that there is no public right to navigation on the subject waters. As you know, the Department's proposal would have not have required the Association to concede that such a right exists and would have, in fact, expressly preserved the Association's legal rights and remedies. We therefore continue to be perplexed by the Association's refusal to consider the Department's proposal for a trial period of public access, which would have included, among other things, regular patrols by DEC personnel to protect the Association's property from vandalism, littering, or other unlawful acts.

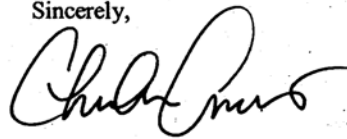
As you know, the Department does not agree with the legal analysis set forth in your September 3 letter and in your prior communications. The Department has carefully reviewed the facts and history pertinent to the Shingle Shanty Brook situation and the applicable case law concerning the legal standard for establishing public navigability. Based on that review, the Department has concluded that Mud Pond, Mud Pond Outlet and Shingle Shanty Brook are subject to a public right of navigation, and that members of the public are therefore legally entitled to travel on those waters and to make use, when absolutely necessary, of the bed and banks of those waters, including the right to portage on riparian lands bordering those waters. Consequently, we respectfully decline your request that the Department ticket, arrest and prosecute persons attempting to exercise their right to navigate those waters.

Moreover, in light of our conclusion that Mud Pond, Mud Pond Outlet and Shingle Shanty Brook are subject to a public right of navigation, the Department considers the Association's actions to impede or prevent such navigation to be unlawful. Accordingly, the Department hereby requests that the Association immediately discontinue all efforts to interfere with, impede or prevent public navigation of those waters. In particular, the Department requests that the Association cease obstructing the subject waters by cables or any other means; remove

all "No Trespassing" signs from those waters; remove all cameras placed along the banks; and refrain from any other actions that interfere with, impede or prevent the public from navigating those waters or from using, when absolutely necessary, the bed and banks of those waters, including portaging on riparian lands bordering those waters. In the event that the Association fails to comply with this request, the Department will evaluate its options, including referring this matter to the Attorney General's office for legal action.

Again, we truly regret that this matter could not be resolved through negotiation. As always, the Department remains ready to discuss a mutually agreeable resolution of this matter, and we hope that the Association reconsiders its decision to reject our proposal. In the meantime, however, the Department is unwilling to acquiesce in the Association's continuing interference with the public's right to navigate Mud Pond, Mud Pond Outlet, and Shingle Shanty Brook.

Sincerely,



Christopher A. Amato

cc: A. Crocker
R. Davies
K. Hamm
L. Burianek