Croton Watershed Clean Water Coalition

CWCWC

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OUR WATER OUR FUTURE

IMPACT FEES IMPLEMENTATION

By Fay Muir, President

Impact fees are rarely used in New York State even though it is perfectly legal to impose them. Developers should be responsible to pay the costs associated with the comparable service increases on municipalities resulting from building projects.

Fay Muir

Why Is It Necessary? [1]

The value of impact fees becomes evident when it is realized that growth automatically increases need for infrastructure and services (Nicholas 1987). The increased general funds to meet these needs often mean increased taxes without a corresponding increase in services. Therefore, an attempt to recover some of the capitalized costs which also result from growth seems politically and economically reasonable (Bauman and Ethier 1987). Besides, due to legal restrictions, impact fees rarely cover all of the costs associated with growth. Thus, most localities view impact fees as a supplement to their financial alternatives (Leithe and Montavon 1990). Impact fees are a viable means, beyond traditional exactions, to finance the variety of service needs created by growth. Off-site facilities such as fire stations, libraries, parks, and city halls can be financed, in part, by impact fees. Additionally, impact fees, unlike many other exactions, can be levied on land which has previously been platted *(a period of time during which active development is not continued)*. This distinction became important in Florida, for example, when a mandatory park dedication ordinance proved ineffective because large tracts of land had been platted for more than 20 years prior to the ordinance. Development proceeded on these tracts without the dedication of parkland, since the plats had been approved earlier.

Legal Considerations [2]

• First, the fees must meet a substantive due-process test, where the local government has the authority to assess, collect, and spend impact fees for a determined public facility. General home-rule authority by which municipalities may govern themselves without specific authorization from the state legislature seems to include the power to enact impact fees. The manner of assessment, collection, and expenditure must clearly qualify the payment as a fee and not a tax. The fee must substantially advance a legitimate state or local interest, and the fee must be roughly proportional to the added service cost.

- Second is the equal protection test -- the fees must be applied to all parties on the same basis. All new development that imposes an impact must be assessed the same kind of fees, although fees may vary by the magnitude of impacts and must be rationally related to the public purpose. Courts have considered whether imposing a fee on new but not pre-existing residences violates the equal protection clause of the 14th Amendment to the U.S. Constitution. The general conclusion has been that municipalities have a legitimate governmental purpose in classifying properties for levying fees, and impact fees have been upheld.
- Finally, the takings test must assure that the local objective is sufficiently close to the method chosen to accomplish that objective and that property is not taken without just compensation.

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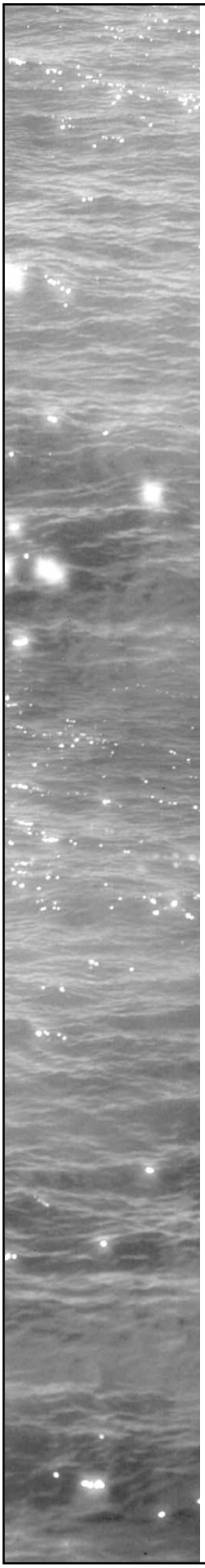

IMPACT FEES *(cont'd from page 1)*

Development impact fees acknowledge that new development frequently creates infrastructure costs greater than the revenue generated for the municipality providing the service.

Practical Issues [3]

Where no state statutes exist to guide local adoption of impact fees, courts have used the concept of implied authority to uphold the fees. The fees can be seen as a valid regulatory exercise of police powers to regulate development for public health, safety, and welfare (Morgan 1987). They can also be considered the exercise of home rule charter which grants a locality broad powers to enact the various ordinances and regulations necessary for effective governance. Therefore, lack of a state statute is not necessarily a legal barrier to impact fee adoption. The reasonableness and constitutionality of the fee is a more important test.

Most courts determine if a rational nexus exists between the impact fee and the infrastructure need by asking questions such as the following:

- Is the fee excessive?
- Are the funds kept in separate special accounts or funds to ensure that they are expended in the appropriate projects?
- Are the funds spent within a specific geographic zone to ensure that the appropriate people benefit, or can they be spent anywhere in the community?
- If the funds are not spent within a reasonable time period, are there provisions for refund?

The fiscal barometers of cities across the nation indicate a continuous need for creative new methods of financing infrastructure while existing methods are fine-tuned as they undergo legal and political tests.

Impact fees demonstrate haw cities can innovatively fund infrastructure needs created by growth. Impact fees have successfully withstood fiery legal and political tests and have, as a result, become a highly popular method of financing infrastructure.

Information Needed to Calculate Impact Fees [4]

Before beginning the impact-fee calculation process, there are information sources that must exist or be generated. The essential data consists of reliable information on what the community will look like in the future (20 or more years) or at theoretical build-out.

The list of projects to be financed with impact fees should be derived from the following information sources:

- General plans or comprehensive plans, including updates.
- Zoning maps.
- Master plans.
- Master facilities plans.
- Capital improvement plans.

Planning statistics on the future population, ultimate land use, undeveloped parcels, and sizes of parcels will be used to determine the amount of growth to be anticipated. Existing land-use and zoning data will provide a basis for evaluating the current situation. Master facilities plans that address the methods of providing service to future residents will provide the foundation for constructing a capital improvement plan (CIP). The master facility plan should ideally extend to the ultimate build-out condition of the community.

Each project included in the CIP should be clearly identified by a descriptive title or supplemental description. The projects should contain a cost estimate, schedule, and location. An allocation of the relative benefit between existing users and future users should also be prepared for each project.

What Qualifies as an Impact Fee? [5]

Common terms used to refer to impact fees include “capacity fees,” “facility fees,” “system development charges" and "capital recovery fees.” Their common characteristics are that

(1) they are charged only to new development,
(2) they are standardized fees as opposed to ad hoc, negotiated payments and
(3) they are designed and used to fund capital improvements needed to serve growth.

Utility Connection Fees. Water and wastewater connection fees that are used to fund growth-related capital improvements should beclassified as impact fees. However, connection fees often mix impact fee components with

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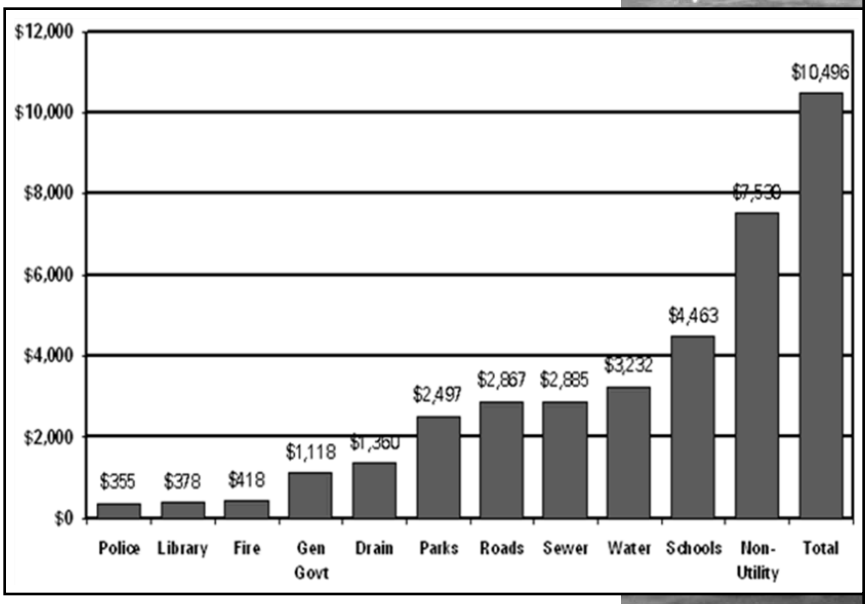
IMPACT FEES *(cont'd from page 2)*

service fees that cover other types of costs, such as the purchase of a water meter, the inspection of the connection, or the administrative cost of establishing a new customer account. This presents the researcher with a problem. Counting only clearly-labeled water and wastewater impact fees is likely to under-represent them, but seldom are there sufficient resources to interview local officials to determine what portion of a connection fee is actually an impact fee. As a general rule, a single-family connection fee in excess of $1,000 for either water or wastewater is likely to be an impact fees, they are often less controversial than other types of impact fees. For these reasons, it is often useful to look at "non-utility" impact fees separately from total impact fees.

Fees-in-Lieu. Fees charged in-lieu of land dedication for parks and schools are conceptually very similar to impact fees, and should also be counted in an impact fee. Essentially, they function much like an impact fee for the land component of the facility. Indeed, some communities use an impact fee for the construction cost component, and combine that with a land dedication/fee-in-lieu requirement for the land component. In California, park fees in-lieu of land dedication are known as "Quimby fees," after the name of the 1966 state act authorizing such fees. Because they are not labeled as impact fees, land dedication fees-in-lieu are often overlooked in impact fees.

Development Taxes. Another class of fee that is functionally very similar to an impact fee is the development tax, which is sometimes also referred to as a development excise tax, privilege tax or facilities tax. This is a tax that only applies to new development, often on a per square foot basis, and is earmarked for capital improvements. For example, Boulder, Colorado hired consultants to conduct a nexus study and adopted an ordinance that had all of the trappings of an impact fee ordinance, including earmarking of funds for specific types of capital facilities and providing credit against the charges for developer-constructed improvements, but instead of adopting them as impact fees adopted them as development taxes.

Average impact fees per single-family detached dwelling by type of facility are graphically illustrated in Figure 1. The total amount of impact fees charged by jurisdictions surveyed averages about $10,500. Excluding utility fees, the average total fee is about $7,500. School impact fees, although not charged in many states, are by far the highest, followed by water, wastewater, road and park impact fees. Police, fire and library fees, on the other hand, tend to be relatively low. General government facility impact fees and stormwater drainage impact fees are relatively uncommonly charged-general government fees are not authorized in most states, and drainage fees are difficult to implement because they generally must be based on a comprehensive drainage master plan.



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IMPACT FEES *(cont'd from page 3)*

NATIONAL AVERAGE FEES PER SINGLE-FAMILY UNIT, 2007

IMPLICATIONS

Native Fish and Wildlife Habitats and Populations

Wildlife populations on public lands-especially threatened and endangered species-can be at heightened risk from several factors associated with increased housing development on nearby private rural lands (Bass and Beamish 2006, Danielson et al. 1997, Deem et al. 2001, Ewing et al. 2005, Lepczyk et al. 2003, Manolis et al. 2002, Radeloff et al. 2005a, Riitters et al. 2002, Riley et al. 2003, Servheen 2006, Singleton et al. 2002). For example, wildlife may be excluded from usable habitats outside the national forest or grassland boundary or be otherwise affected by the fragmentation (Butler et al. 2004, Plantinga et al. 2007), degradation, or loss of those habitats. Wildlife also may suffer higher levels of mortality or displacement from increased traffic on both national forest and public roads (Jacobson 2006). They may experience disturbance or changes in behavior caused by the presence of people, roads, noise, or light; and they may be preyed upon by pets or other predators attracted to newly opened forest edges. Housing developments and associated roads may prevent wildlife from migrating or moving through areas outside forest boundaries and thus affect species that rely on a variety of ecosystems or large areas to survive. Migratory fish that spawn in National Forest System streams also can be affected by changes in water quality associated with development

Invasive Plant Species

The health of national forest and grassland ecosystems can be affected by invasive plant species, which can find new points of entry into National Forest System lands through adjacent fragmented lands, new roads, and recreation trails (Dickens et al. 2005, Holway 2005, Sieg et al. 2005, Yates et al. 2004). Invasives can compete with and replace native plants, reduce plant diversity, and cause other disruptions to ecosystem function. Diseases and insects can be introduced into wildland protected areas by nursery plants used in nearby landscaping; for example, widely used rhododendron (Rhododendron spp.) and camellia (Camellia spp.) plants can be hosts to the pathogen that causes sudden oak death in native oak (Quercus spp.) trees (Koch and Coulston, in press).

Recreation Access and Management

Access for the general public to national forests and grasslands is a growing concern. In 1999 it was reported that about 14 percent of National Forest System land had limited public access and that managers were seeing significant reductions in access on many national forests (Peterson and Williams 1999). Housing development may lead to additional decreases in access to public lands, especially national forests, for recreation and other uses if roads on or across adjacent private lands are closed to the general public when new residents move in.

Such restrictions may shift recreational use to other locations on National Forest System lands that do not have adequate infrastructure for increased recreation. Alternatively, increased housing development near National Forest System lands could lead to proliferating entry points, easier access, and increased usage of recreation services on National Forest System lands (Johnson and Stewart 2007), with accompanying challenges for effective recreation management. Unmanaged recreation has been cited by the Chief of the Forest Service as one of the top four threats to the Nation's forests (USDA Forest Service 2006b).

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IMPACT FEES *(cont'd from page 4)*

Fire Management
Potential for wildland fires is higher along the boundaries of forests where the human population has grown significantly (GAO 1999). Increased numbers of houses and people can be associated with more frequent ignitions (Cardille et al. 2001; Prestemon and Butry, in press; Radeloff et al. 2005b), especially in the Eastern United States, where nearly three-quarters of the area burned in wildland fires in federal forests from 1986 to 1996 were caused by human-related ignition sources (Prestemon and Butry, in press). Increased housing density can also be accompanied by an increase in air pollution, which has been shown to increase susceptibility of a forest to wildfire (Grulke et al., in press). A proliferation of houses increases the number of structures needing protection, complicates public land fire management and suppression, and drives up management costs (DellaSala et al. 2004, Grace and Wade 2000, Heuberger and Putz 2003, Podur et

Social and Economic Considerations
The presence of increased housing development near National Forest System lands can reduce open space and alter aesthetic qualities that contribute to recreation experiences (Clark and Stankey 1979). Increased human populations have been associated with an increase in crime on public lands, such as vandalism, drug activity, assaults, and illegal garbage dumping (Tynon and Chavez 2006, Whittaker 2006). Increased public access and activities on public lands could also create heightened concerns and higher costs for management of cultural resources. Most fishing and hunting occurs on public lands, bringing important economic benefits to local communities (U.S. Fish and Wildlife Service and U.S. Census Bureau 2001, as cited in Sonoran Institute 2006).

Impacts on Water Quality and Hydrology
Water bodies and shorelines are among the sensitive areas likely to experience more environmental stress with increased human activity (Johnson and Beale 2002). Development along rivers and streams can cause excessive and unnecessary damage to banks, beds, and riparian vegetation and waterways; degrade water quality; interrupt hydrologic cycles; and affect watershed function upstream or downstream from the development activity (Schweitzer 2006).

The Role of Impact Fees in NYS
As suitable land for development becomes scarce and unsuitable land is used, the expense of maintaining the necessary numerous and complex stormwater devices increase accordingly. Impact fees have been promoted as a way for growth to "pay its own way" by charging for infrastructure and facilities maintenance needed by new development. Impact fees provide one way to help ensure that existing residents will not bear the cost of new facilities and their maintenance necessitated by the new development.
Some New York state town planners are misinformed in their claim that impact fees are not legal in NYS. Only traffic impact fees cannot be assessed and charged to the developer. The Guilderland case *(Albany Area Builders Association v. Town of Guilderland NY 1989)* determined only that traffic impact fees may not be imposed by local governments because the court found that financing of transportation facilities is preempted by state law. However, for the extensive roads and

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IMPACT FEES *(cont'd from page 5)*

stormwater devices needed for Brewster Highlands, the Town of Southeast applied to the NYS Department of Transportation for designation as a Transportation Improvement District and the developer paid part of the costs

Even though NYS has not passed impact fees enabling legislation, the State has never passed a law prohibiting them. The State would not have the right to do so, particularly in view of NYS being a strong proponent of Home Rule. Although it has not been litigated, municipalities are not prohibited from imposing fees other than traffic fees. Several NYS lawyers suggest that under SEQRA, lead agencies may impose conditions on specific developments in order to mitigate their provable adverse impacts on the environment. In their opinion, a lead agency can require a developer to pay money to cover that developer's share of mitigation measures that are to be funded by the town, but those fees must be in proportion to the impact of the particular development.

Some states have adopted school impact fees. This makes sense when we consider our already high school taxes and a 100 single-family home development can over-burden local school facilities. Who is to pay for extra teachers, classrooms and, in some cases, new buildings?

Recreational impact fees are specifically authorized under NYS statute if a local government follows the formula spelled out by the statutory provisions. Many towns in Westchester apply this formula and have large quantities of sports fields. **Rather than this emphasis solely on sports fields, why not place more focus on preserving water sufficiency and quality, preserving trees and wetlands, and open space acquisition** with passive walking trails. In Pima County, Arizona, new growth policies were adopted last year that raise impact fees for infrastructure to around $15,000 on new houses on Southwest Side. It would appear that it is past due for towns in Putnam and Westchester counties, NY to instigate impact fees to reduce the property tax load on their residents.

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1 Jerry Kolo and Todd J. Dicker State and Local Government Review Vol.25, No.3 (Fall 1993)
2 Ohio State University Extension Fact Sheet
3 Kolo and Todd J. Dicker, ibid
4 Impact Fees: Practical Guide For Calculation And Implementation by Dennis H. Ross, Fellow, ASCE, and Scott Ian Thorpe, RCS Principal
5 National Impact Fee Survey 2007, Duncan & Associates, Austin, TX
6 USDA Forest Service "National Forests On the Edge"

FLY FISHING IN THE CROTON WATERSHED

By Bob Wesolwski, President
Croton Watershed Chapter, Trout Unlimited

I didn't join Trout Unlimited with the idea that I would get involved with stream conservation. Like most of our members, I joined because I wanted to learn fly fishing. That's as true today with newer members, like me, as it was 35 years ago when our chapter started as a fishing club, a place where the guys could meet once a month to tell tall tales and plan their next adventures. In those days, catch and fry was the name of the game, not catch and release.

Unlike some of our members, who have been active in the sport for 50 years or more, I'm a relative newcomer. I've lived in Westchester less than 10 years and been a fly fisher for only seven or eight. I only became the TU chapter president last May.

When Marian Rose asked me to write this article, she offered some ideas. First, she likened trout to canaries in the coal mine, the early warning system. She also noted that our members are the eyes and ears of the watershed; there are so many of us out there all the time. And while CWCWC was founded in 1997, the Croton Watershed chapter of TU goes back to 1972 so she thought we could offer some perspective.

While some things have changed for the better, others haven't changed all that much. Let's start with the good news.

Good trout fishing relies on good aquatic insect life and both the trout and the bugs rely on good water. In this area, things have been very stable. For almost 20 years our members have been monitoring conditions on the Amawalk Outlet, the East Branch of the Croton River and the West Branch of the Croton River. About once a month volunteers measure PH, conductivity, salinity, oxygenation and temperature. Sure, there are occasional spikes but, for the most part, the results have been surprisingly consistent.

Members also report better monitoring and enforcement from DEP and DEC since 9/11. Our former president, John Genovesi, went fishing the day after 9/11, in search of some peace and tranquility. John was soon approached by a DEP officer who told him to get out of the stream until they could sort out what to do. As john later noted, "it took a few months but the DEP developed some new procedures and fortified certain areas to prevent large vehicles from trespassing. Unfortunately, there are still too few DEP police to provide adequate surveillance for terror threats let alone day-to-day security against things like illegal dumping and other improper use of watershed lands and water".

Traditionally, our members have always been very generous with their time. We can always count on 10 to 20 volunteers whenever we schedule a clean-up in conjunction with DEP. Members eagerly volunteer for stream stocking projects, too. And members will call the police when they spot poachers.

Finally, the areas around many streams are much cleaner. For example, two years ago our Chapter participated in a cleanup of the East Branch of the Croton River in the Village of Brewster. Over several hours, a 10 cubic yard dumpster was filled to overflowing with all sorts of debris, including tires, aluminum lawn furniture, liquor and beer bottles, mattresses and other assorted trash. DEP later calculated the weight at 5.8 tons! This past November we went back to the same area and removed less than one-third of what was there two years ago. That's progress!

But for all of the good news, I think our members miss a lot, too.

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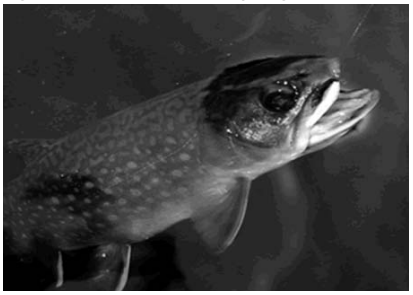
FLY FISHING *(cont'd from page 7)*

Many TU chapters have a group of Rock Rollers, members who help create better fish habitat by shoring up eroding banks, deepening shallow streams and creating natural fish holding lies. The holding lies are particularly important because they are often deeper areas that offer the trout protection from predators while also giving them easy access to food carried down stream by the current. Our group has largely disbanded due primarily to a changed legal and regulatory environment. As was the case with so many things years ago, work could often get done with a handshake or a phone call. Handshakes and phone calls have now been replaced with applications, permits and delays. Some of our guys didn't think the rules should apply to us so we have stopped their Rock Roller activities.

During a recent board meeting, one of our members spoke with great pride of the chapter's history of stream testing and monitoring. He noted the consistent results shown in our logs year after year and argued that established buffers were having the desired effect. All is well, he argued.

After the meeting I asked him to reconcile his results with new state laws for stormwater runoff. If things are so good, I asked, why are the new rules necessary? I'm not certain I got a good answer.



Part of the problem has to do with perceptions. Although our watershed is large, fly fishing is limited to just a few streams: the East Branch, the West Branch, the Amawalk and a few other spots. Fishing in all of these spots remains good. Unfortunately, I believe there are very few members who are willing to walk a bit to find the out of the way places. If they did, I suspect they would find less silting and fewer trampled stream banks since the silting always occurs where impermeable surfaces like roads and parking lots are found. By seeing conditions so far in, they would come to realize how silted some of the more popular streams have become.

We also hear from some members that the insect hatches aren't as intense as they once were and that each hatch brings more "cripples", deformed insects that can't develop into fully formed adults. It's hard to say if this is perception or reality but things like silting certainly destroy aquatic insect life.

Even though our sport requires lots of cold, pure water, it's shocking that some of the "experts" don't talk about it. For example, when I attended a 3-day Orvis fly fishing school six or seven years ago in Sandanona, NY, we never discussed water quality. Many of the instructors were TU members from Putnam County, too. For those who are not familiar with Orvis, it's one of the oldest fly fishing outfitters in the country. Our TU chapter, on the other hand, has operated its own fly fishing school for more than 20 years. Water quality and stream conservation have always been essential components.

So where does this leave us? To begin, our older members, many in their 70's and 80's, are being replaced by members in their 30's and 40's. Yes, the new guys' primary interest is still fly fishing, but in some ways they have more environmental sensitivity. It's something they were raised with so it's easier to get them engaged in the topic. While meeting attendance does suffer if we offer a steady diet of environmental news, we will continue to make it an important part of what we present. We also envision a closer collaboration with groups like CWCWC because there certainly is strength in numbers.

Finally, our chapter continues to be a proud participant in TU's Trout in the Classroom (TIC) program. TIC is a full-year project where students in area middle schools and high schools raise trout from fertilized eggs in their classrooms with equipment donated by our chapter; 14 schools now participate in our chapter's program. Students in each school "stock" their tanks in October with about 100 eggs from state hatcheries. They track development through the winter and, if they are careful and a bit lucky, they release the fingerlings into area streams in April and May. The objective is to demonstrate the fragility of water chemistry on the trout and the importance of observing conservation rules and regulations.

The kids learn, too. One of my sons reported that the kids in his science class were crushed when the first few fish died; they knew they were responsible. They also took great pride when they were able to successfully release most of their fingerlings the following May.

There are also times, like this past January, when four of the schools lost everything because of small changes in water chemistry. We believe that results like this make a lasting impression.

CLIMATE CHANGE

By Paul Moskowitz, Board Member

Paul Moskowitz

2007 was tied for the second warmest year, the last decade was the warmest in recorded history, and global temperature rise shows no evidence of slowing down. The IPCC, Intergovernmental Panel on Climate Change (see the web site ipcc.ch), has stated in their summary report that most of the temperature increases seen by the world are most likely caused by anthropogenic greenhouse gas, GHG, emissions.

According to the IPCC there is high confidence that semi-arid regions including the western United States will suffer a decrease in water resources due to climate change. By contrast, the eastern United States is expected to experience increased rainfall. We have already seen the evidence for these predictions. Our New York rainfall which historically averages about 50 inches per year has been around 60 inches for the past few years. The Scripps Institution of Oceanography has recently reported that Lake Mead has a fifty percent chance of going dry by 2021. Las Vegas may be the next US city to be devastated by climate change as its source of water and electricity disappears.

I believe that we are not helpless bystanders. What technology has created, it can also cure. Yes, it is difficult to get individuals let alone nations to protect a shared resource, the Earth's atmosphere. This is the "tragedy of the commons" often referred to in the context of overgrazing of shared public land. However, we have used concerted public and national action to address the problems of acid rain and depletion of the Earth's protecting ozone layer. The ozone problem is a good example because it shows that international cooperation can work. The CFC gases used in our refrigerators and air conditioners that were the agents of ozone depletion have been replaced by a new set of coolants. We still have air conditioning, but now the ozone hole is being repaired.

We can indeed reduce carbon dioxide emissions. The town board and supervisor of Yorktown have recently endorsed the US Mayors Agreement on Climate Protection which calls for reductions of greenhouse gas emissions. Yorktown has taken actions that make our use of energy more efficient by replacing low mpg vehicles with high mpg vehicles, by using efficient lighting systems, and by improving our building heating and cooling infrastructure, and much more. All of this allows Yorktown to decrease spending on energy while continuing to deliver a high level of quality services to Yorktown residents.

We have formed GreenYorktown, a group concerned about climate change. We are acting on a local level, but expect results world wide. If we are wrong about our ability to affect climate change, then the worst that we will have done will be to improve our infrastructure and save some money. On a national level, by using our scientific resources to develop non-polluting energy technologies, we will make the United States a leader and provide more jobs here and products that we can sell abroad. By increasing our energy efficiency, we can reduce our dependence on fossil fuels. Perhaps we can make our air and water cleaner at the same time.

The Croton Watershed Clean Water Coalition strives to protect and improve the waters of New York City's Croton Watershed, a critical component of the water supply for over half the population of New York State. We are an alliance of individuals and groups who believe that safe, clean and affordable drinking water is a basic human right.

Send in your membership and receive membership mailings and a subscription to CWCWC newsletter "Our Water, Our Future." Most importantly, your membership will help you get involved with the preservation of one of our most precious resources, our water.

Croton Watershed Clean Water Coalition Membership Application

Name:_____

Address:_____

City:_____State:_____Zip:_____

Email:_____

☐ Group/Coalition Membership	$50/year	☐ Students/Seniors	$10/year
☐ Family Membership	$25/year	☐ Other	$_____
☐ Individual Membership	$20/year	☐ Additional Contribution	$_____
☐ Renewal		☐ New Membership	

Make checks payable to Croton Watershed Clean Water Coalition, Inc. and mail along with your membership form to:

Treasurer, CWCWC, Inc., PO Box 484, Bedford NY 10506

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