

The Clary Lake Clarion

Volume 7 Issue 1

The Newsletter of the Clary Lake Association

Spring/Summer 2016

Message from the President

I'm pleased to be sending this, my first message as President, to our loyal and supportive membership. Elsewhere in this Newsletter you'll find a time-line that summarizes (I'd hate to say, "highlights," since "lowlights" might be more accurate!) events related to the ongoing struggle over the ownership and repair of the dam. The Association has maintained its strong position in this matter due primarily to the Board's continuing diligent attention on your behalf. We have made repeated, very substantive offers to the owner of the dam; these have unfortunately been just as repeatedly rebuffed. Thanks to our attorney, Ron Kreisman, we have established a close relationship with the Office of the Attorney General as they continue to pursue enforcement action on the long-standing Lake Level Order. A separate lawsuit by lake owners Bob Rubin and Cheryl Ayer seems likely to increase the pressure on the dam and mill owners. Finally, our State legislators, Senator Chris Johnson and Representative Deb Sanderson have been strong advocates for us, as have the Whitefield Select Board. When I took office last August, I hoped that this year would bring about a final resolution. While I'm disappointed that this has not turned out to be the case, I firmly believe that we will ultimately succeed. I also know that this belief provides no comfort at all to each of us who is still unable fully to use and enjoy our lakeside property.

Our Membership has been exceptionally generous in responding to our requests for funds to support CLA's legal expenses. The Board has been very careful in spending these funds only when we felt, after careful discussion, that we needed to do so. We appreciate so much the funds you have donated, and we promise to maintain our close attention to minimizing expenditures. The best way you each can help maintain our financial position is to encourage friends and neighbors, whether lake shore owners or not to become members of the Association! The Membership voted last year to allow membership to anyone who is interested in the work of the CLA, and who supports its efforts and as a result, membership is up. I would urge you to conduct your own "CLA Membership Drive" between now and the Annual Meeting on August 6. I want publically to offer my profound thanks to the Board, and especially to the Secretary, George Fergusson, for their care and attention, including many hours of volunteer effort, to the work of the Association. We have a great team of committed Board members who stand with all of us to protect Clary Lake. I look forward to greeting each of you at the Annual Meeting.

Respectfully, Malcolm Burson, President.



Immature Bald Eagle, Spring 2016

Annual Meeting Notice

This year's Annual Meeting will be on Saturday, August 6th at 2:00 PM, held at the home of Erin Grimshaw and Christina Bishop located at 739 Gardiner Road (i.e., Route 126) in Jefferson. Their home is located about 1/3 of a mile west of the intersection of Route 126 and 215. You'll know the place: this is the house at the foot of the old MacDonald hay field overlooking Clary Lake, and at the end of a loooooong driveway. Andy Goss built it a few years ago; Erin and Christina have owned it since 2013. The rain-date is the next day, Sunday, same time and same place but unless it's actually pouring out (or snowing), plan on meeting anyway because there is a large 2-bay garage available to hunker down in if the clouds open up. Coffee and water (both hot and cold varieties) will be provided. As usual there will be a pot luck supper at the conclusion of the meeting so plan (*continued on page 4*)

The Year In Review

So much has happened in the year since the last Annual Meeting that trying to write a complete summary that fits within the confines of this newsletter would be impossible. Just trying to convey a "big picture" of what has transpired is a daunting task, and so much would have to be left out as to make it hardly worth reading. Therefore I have decided to simply prepare a chronological timeline of events with a little explanation about what happened. Fortunately, pretty much everything worth knowing has already been written about on the Clary Lake Association website and if you've been reading the website on a regular basis, then the following timeline should serve to refresh your memory. If you have not been staying current with what's been going on or if you simply want to know more about a particular issue, chances are you'll find that additional information on... (*Continued on Page 2*)

(Continued from Page 1) the CLA News page. Point your browser at: <http://www.clarylake.org/wordpress/news/> and use the dates from the following timeline to search through the postings, or use the Monthly archive links on the righthand sidebar. OK. Ready? Here we go!

• **August 26, 2015:** A Town Hall Meeting was organized through the efforts of the CLA, Representative Deb Sanderson, and Senator Christopher Johnson. It was held at the Whitefield Fire Station on the evening of the 26th to hear concerns of Clary Lake shore owners and town officials. The meeting was well attended (by everyone except Jefferson Town officials, none of whom showed up). This meeting resulted in a letter to DEP written jointly by Representative Sanderson and Senator Johnson urging DEP to take enforcement action.

• **September 1, 2015:** In a move that suprised everyone, DEP Commissioner Patricia Aho abruptly resigned and was replaced by acting Commissioner Avery Day.

• **Early September 2015:** Representative Sanderson and Senator Johnson met privately in an unpublicized meeting with dam owner Paul Kelley to discuss possible settlement arrangements. While the meeting itself appears not to have accomplished anything, Mr. Kelley did make it known he'd be willing to meet with CLA representatives. This information was subsequently communicated to the Board.

• **September 28, 2015:** DEP files a Notice of Violation. Long awaited, much anticipated. The NOV was retroactive to October 1, 2014 and cited numerous violations of the Clary Lake Water Level Order.

• **Fall 2015:** Following the September meeting between Representative Sanderson, Senator Johnson, and Paul Kelley, CLA agrees to meet with Kelley and Smith in settlement talks; work starts on a mutually-acceptable non-disclosure agreement. The agreement is signed just prior to the first meeting on December 3rd.

November 30, 2015: Paul Kelley attends a pre-application meeting with members of the US Army Corps of Engineers and DEP staff to discuss proposed plans for modifications to the Clary Lake dam. Mr. Kelley's application was rejected however and the meeting canceled because the company named on the application, Pleasant Pond Mill LLC, no longer exists.

• **December 3, 2015:** CLA representatives Malcolm Burson and Mary Antognoni, accompanied by CLA counsel Ron Kreisman, meet for the first time with Kelley and Smith who are also represented by counsel. The meeting took place in Augusta and is subject to an NDA (non-disclosure agreement).

• **December 18, 2015:** CLA President Malcolm Burson sends out a fund-raising letter soliciting donations to continue our legal representation.

• **January 1, 2016:** During a routine check of the Lincoln County Registry of Deeds and amidst ongoing settlement discussion with Paul Kelley and Richard Smith, CLA learns of the Enos mortgage assignment to Medius L3C (the assignment was dated July 24, 2015 and recorded on December 23, 2015).

• **January 5, 2016:** For the second year in a row, Whitefield Selectmen vote at their regularly scheduled Tuesday night Board meeting to waive automatic foreclosure on the Clary Lake dam property for unpaid back taxes. This fact was not reported on the CLA website. An oversight.

• **January 5, 2016:** Medius L3C files notice of foreclosure auction. This notice first appeared in the Kennebec Journal on January 5. A second notice appeared 2 days later revising the auction date to January 29.

• **January 11, 2016:** Robert Rubin and Cheryl Ayer file suit against Kelley and Smith in Lincoln County Superior Court (Docket #LIN-CV-16-0002) claiming damages for the adverse impact of low water on their Clary Lake property. The complaint was amended on March 30, 2016 with an additional count. Paul Kelley appears to be representing himself in this matter.

• **January 20, 2016:** The Governor's nominee for Commissioner of the Maine Department of Environmental Protection, Paul Mercer, is confirmed by the Maine State Senate. He had previously been confirmed by the Environment and Natural Resources Committee on January 11th.

• **January 20, 2016:** After concluding further effort was a waste of time (and money), the CLA Board withdraws from settlement discussions with Kelley and Smith. Also on this day, DEP notifies Medius L3C by letter to their then-registered agent Merritt Carey that a transfer of the dam will require DEP approval.

• **January 25, 2016:** Superior Court issues Order granting State's "Motion to Dismiss" thereby removing Paul Kelley and Pleasant Pond Mill LLC from the proceedings on the basis that PPM was administratively dissolved on August 18, 2014. The court gave Aquafortis Associates 21 days to file an amended petition.

• **January 27, 2016:** Medius L3C changes their Registered Agent from Merritt Carey, Esq. to Public Information Resource, Inc. Ms. Carey had been the Registered Agent since October 2015.

• **January 29, 2016:** Medius L3C holds a public "Power of Sale" foreclosure auction of the Clary Lake dam property on the steps of the Lincoln County Courthouse. Only 1 bid is submitted, by Frederick "Butch" Duncan. This attempt to foreclose on the dam property appears to have been unsuccessful. As of this writing, Paul Kelley (PPM) is still the record owner.

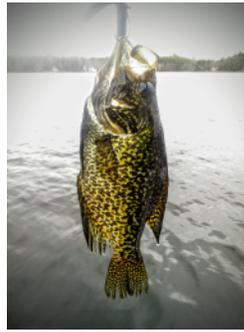
• **February 16, 2016:** PretiFlaherty appeals the recent Court Order to the Law Court. *(continued on next page)*



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Giffords Ice cream
& the Best
Vanilla Soft Serve
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- **February 17, 2016:** Medius L3C changes the Registered Agent from Public Information Resource, Inc. to William W. Logan, Esq.
- **February 29, 2016:** PretiFlaherty files a Motion to Stay Proceedings in both courts until March 26, 2016 to give them time to work on a proposal to repair the dam and implement the Water Level Order;
- **March 1, 2016:** Law Court dismisses appeal on the basis it is interlocutory (a provisional ruling by the lower court).
- **March 28, 2016:** PretiFlaherty files an amended appeal in Lincoln County Superior Court.
- **April 13, 2016:** State files a request for Status Conference (the conference was subsequently scheduled for June 7, 2016).
- **April 14, 2016:** PretiFlaherty files a Motion for Stay of Proceedings until June 1, 2016 to give them the time to continue working on a proposal to repair the dam and implement the Water Level Order.
- **April 16, 2016:** With the Rubin/Ayer lawsuit heating up, CLA Board Member Cheryl Ayer decided to resign from the Board to avoid the appearance of a conflict of interest. She had one year left to go. The Board appointed Jack Holland to complete her term.
- **April 19, 2016:** Robert Rubin and Cheryl Ayer file Notice of Discovery; according to the Standard Scheduling Order issued by the Court on April 11, 2016, discovery is supposed to be completed no later than 8 months from the date of the order at which time the case will proceed.
- **April 25, 2016:** In a lengthy and revealing filing, the State agrees to Motion to Stay proceedings until June 1.
- **April 25, 2016:** Court Orders Stay until June 1.
- **June 1, 2016:** All we know at this time with the deadline having come and gone is that no plan or proposal has yet been made and as this newsletter goes to print we are still awaiting word from the Attorney General about how DEP intends to address the fact that the last 4 months of stays, delays, and extensions apparently have resulted in nothing being accomplished. What also didn't happen on June 1st? Medius L3C failed to file their Annual Report with the Secretary of State's office. This comes as no surprise. This pretty much brings us up to date.

To say we are disappointed with where things now stand after all this time would be an understatement, yet we remain resolute and deeply committed to seeing this crisis through to its inevitable satisfactory conclusion. Next up on the calendar is the June 7th Superior Court Status Conference; be sure to keep an eye on the CLA website for more about this next important step in the legal process. There is a lot that in the interest of brevity I've left out as well as matters surrounding last winter's negotiations which remain confidential. People are encouraged to visit the CLA website and peruse the news archives. I'll also be happy to answer your questions if I can, if you want to write me or give me a call. My email address is gfergusson@clarylake.org and my home phone is 207-549-5991. Respectfully Submitted,
George Fergusson, Secretary



Black Crappies in Clary Lake!

By George Fergusson

There have been reports of Black Crappie being caught in Clary over the past few years, and in last summer's newsletter I wrote about one such incident. I had not caught one myself however until early this spring when I hooked the 11"

specimen pictured at left. That there is now a healthy breeding population of Black Crappies in Clary Lake is no longer in question.

The Black Crappie (*Pomoxis Nigromaculatus*) aka Calico Bass (known as "Sac-a-Lait" in Louisiana) is a popular and prevalent fish in much of the country where they are generally considered to be an excellent pan fish. They are however non-native to Maine and Clary Lake. The Maine Department of Inland Fisheries & Wildlife considers them an invasive species. Black Crappie are very prolific and tend to do quite well in smaller, warm water bodies like Clary Lake. Someone either intentionally introduced them into Clary Lake to "improve" the fishery or they may have been dumped in by an ice fisherman releasing unused bait. IF&W Fisheries Biologist Jason Seiders' primary concern is that the Black Crappie will out-compete the Small Mouth Bass population which was introduced into Clary Lake in the 1960's. Jason's advice to Clary anglers: "Don't be afraid to keep all you catch." I ate the one I caught, and it was quite good. If we're going to have an invasive fish species, it might as well be good eating.



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(Annual Meeting, continued from page 1) accordingly. There is plenty of parking available; some seating will be provided but you might want to bring a lawn chair or two. You'll find a membership form on the last page of this newsletter and we encourage everyone to fill it out and send it in with your membership dues early. We know a lot of you for your own reasons like to wait to renew at the meeting. That is fine, but in that case please plan to arrive early to sign in and still have some time to get your voting card and settle in before the meeting starts. We'll have the registration desk setup and ready to go at 1:00 PM. We will start the business meeting at 2:00 PM sharp. Our membership year runs from the beginning of one annual meeting to the beginning of the next annual meeting so in order to be able to participate in and vote at the meeting, you have to be a paid-up member for the coming year. Annual dues are (still only!) \$25 per family which entitles you to one vote; additional family members if they wish can also pay dues and be counted as a voting member. You can add multiple members on a single form, or if you need additional membership forms there is a printable form on the Association website (look under the "Membership" main menu heading). You can also sign up or renew your membership online using our secure PayPal payment processing system. Notice that we no longer ask for separate Summer and Winter addresses (though we still keep multiple addresses on file where appropriate) as they have been an endless source of confusion over the years about which address to use when sending out a mailing. Therefore please provide your **primary mailing address** and also **please** include email addresses for you and your family if you can as they make contacting you fast, free, and easy!

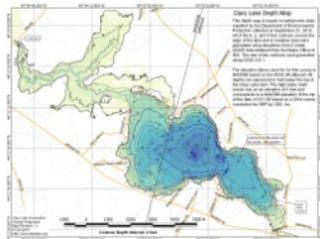
A final reminder: with the revisions to our Bylaws approved at last year's Annual Meeting, full membership in the Association is now open to *"all persons who support the purpose of the Association as stated in the bylaws and who pay annual dues to the Corporation."* In these trying times, we need all the community support we can get. There is strength in numbers. We encourage you to invite your neighbors and friends of Clary Lake to come to the meeting and join the Clary Lake Association. See you at the Annual Meeting!

Bylaws Committee

The Bylaws Committee is recommending several minor changes be made to our Bylaws, to be voted on at the upcoming Annual Meeting. The most important change is intended to clarify an unintended consequence of changes we made to include Officers on the Board of Directors at last year's Annual Meeting.

Like the President and Vice President, members of the Board of Directors are limited to serving 2 consecutive terms in office and may be reelected after taking a year off. These term limits however were never intended to apply to the Secretary and Treasurer but this is not clear after the recent changes. The Secretary and Treasurer are very important positions and can be hard to fill. It makes little sense to impose term limits on them and as a result, they have historically been held by the same person for as long as they want. For example, Linda Gallion served as Treasurer for 10 consecutive years and David Hodsdon served as Secretary for 6 years. The Bylaws Committee has recommended language to specifically exempt the Secretary and Treasurer from these Board term limits. The other change simply involves removing the current restriction on who can be members of the Nominating Committee. Currently, our Bylaws state that the Committee shall consist of 3 people appointed by the Board to 2 year terms, who are members of the Association and are not Officers of the Corporation. Specifically, the President, Vice President, Secretary, and Treasurer are not allowed to be members of the Nominating Committee. The Bylaws Committee sees no reason why Officers shouldn't be allowed to serve on the Nominating committee if they wish seeing as how the Membership has the final voice on who gets elected. Our Bylaws may be amended by a majority vote of the current Membership which is everyone who has paid dues for the 2016/2017 Membership year. Please plan on coming to the Annual Meeting to discuss and vote on these changes. If you can't make the meeting, consider giving your proxy to someone who will be attending. If enough current Members show up, getting these revisions passed shouldn't be a problem. The Committee debated sending out proxy ballots prior to the Annual Meeting but decided that the proposed changes were simple enough that it wasn't worth spending the \$100 or so in printing and postage costs. Respectfully, the Bylaws Committee.

Items For Sale



We've set up a new PayPal-based Shopping Cart system on the CLA website of the sort you are no doubt already familiar with, and we are offering a limited selection of Clary Lake related items for

sale. These include the 8.5" x 11" and 11" x 14" laminated Clary Lake depth maps that we had at last year's Annual meeting, as well as what remains of our stock of Clary Lake sweatshirts. You'll find a new **"For Sale"** heading on the main menu of the website. Stop by and check it out!

Shop at AmazonSmile
and Amazon will make
a donation to:

Clary Lake Association

Get started

amazon smile

A quick reminder that if you do your online shopping at Amazon Smile you can designate the Clary Lake Association as a preferred non-profit and Amazon will donate 0.5% of the amount of your purchases to us. This is a great way to show your support for the Association! You'll find more information about this on the CLA website.

2015/2016 Member List

John & Barbara Ahern	Glenn Bruce MacDonald
William and Valerie Albert	Sean McGowan
Patty Althenn	Bill & Sue McKeen
Charlene Andersen	Jean McWilliams
Andrea Antognoni	Dennis Morgan
Mary Antognoni	Frances Moulton
Cheryl Ayer	Howard P. & Lisa M. Nickerson
Barry & Jennifer Birkey	Stephen & Janet Nickerson
Daniel & Dorothy Burns	Lucy & Don Norman
Malcolm C. Burson	George L. Page
M. Jane Chase	Melissa Palmer-Karas
Debora A. Connell-Duncan	Ellis Percy
Steve & Julie Cowles	Patricia H. Petry
Thurlow E. Crummett	Elnora Pike
Genie & James Dailey	Gail Potter Pratt
Beverly D'Urbano	Larry & Sandra Prescott
Bill and Janet Donovan	Ezelda Prescott
Dan & Susan Erlandson	Kenneth & Freida Rapp
Colin S. Fergusson	Bruce & Audrey Relyea
George & Margaret Fergusson	Greg & June Relyea
Jeffrey French	Steven & Adrienne Relyea
Linda & Rick Gallion	Vanessa L. Reynolds
Daniel H. Gatz	Timothy & Brenda Robbins
Roberta Giampetruzzi	Robert Rubin
Roger Gilbert	Rob Rowland
Baxter Gillette	Kate & David Seba
Christopher & Leslie Gillette	Mary Gingrow-Shaw
Thomas & Delph Gillette	Ernie Shaw
Eleanor Goldberg	April St Pierre
Dee Ann Grazioso	Carol and Peter Stark
Tim & Trish Harkins	Joann Tribby
Maynard and Gladys Hewett	Thomas & Linda Vigue
Trudi Hodgkins	Ned & Brenda Vitalis
Frances Hodsdon	Stephen Viti
David and Janette Hodsdon	Stanley Whittier
Jack & Ann Holland	Rev. John S. Williams
Jaclyn Holland	Warner & Rebekah Wilson
Jeff Howe	Arleen & Randy Wing
David Knight	Stan York
Gayle Knight	

Nominating Committee

This year there are 2 Board positions opening up. Mary Antognoni's term on the Board is ending and she's decided not to stay on for a second term. We greatly appreciate her service these last 3 long and very difficult years and have valued the fair and balanced perspective she brought to the table. We're sorry to see her go and hope she chooses to serve the Association again in the future. Jane Chase is also completing her first term on the Board and has agreed to sign on for another 3 year term. Jane brings a unique point of view to the Board and we're glad to have her stay on for another term. Also Board Member Cheryl Ayer resigned her Board position this past April to avoid the appearance of a conflict of interest resulting from her role in a lawsuit brought against the dam and mill owners by her and her husband Bob Rubin. The Board offered Jack Holland an interim appointment to complete the remaining year of this vacant seat, and he accepted. The Board will be asking the Membership to confirm Jack's appointment. The nominees will be presented to the Membership to vote on at the upcoming Annual Meeting. Other nominations may be made from the floor at the meeting.

The Clary Lake Association is a 501C(3) non-profit corporation duly registered in the State of Maine dedicated to preserving, protecting, and enhancing the natural beauty and quality of Clary Lake and its watershed. Membership in the Association is open to anyone and costs \$25 per year per person. Donations to the Association are tax deductible.

Current Association Officers:

President: Malcolm Burson	president@clarylake.org
Vice President: David Knight	vicepresident@clarylake.org
Treasurer: Mary Gingrow-Shaw	treasurer@clarylake.org
Secretary: George Fergusson	secretary@clarylake.org
Newsletter Ed: George Fergusson	editor@clarylake.org
Association Board Address:	board@clarylake.org

Current Board Members are: Jane Chase, Jack Holland, Mary Hornecker, Steve Relyea, and Ellis Percy

Clary Lake Association, P.O. Box 127, Whitefield Maine 04353

2016/2017 Membership Dues \$25.00 per member

of Memberships @ \$25 each: _____

(We do not share your contact information with any other groups or individuals.)

Additional Contribution: _____

Total Amount enclosed: _____

Membership year: 2016 Annual Meeting to 2017 Annual Meeting. Make checks payable to Clary Lake Association

Preferred Mailing Address (include an alternate/summer address on back if you have one):

Name(s) _____

Street _____

City _____ State _____ Zip _____

Phone Number (____)-_____ Email _____

Entangled in Strength

By Margaret Fergusson

Clutching with talons of iron
amid the intricacies of human waste...

Subtleties of Nature's benevolence
ever embedded in the life force on the vine.

The cycle of seasons nor the drainspout for reason
cannot diminish the flight to come...

Airborne to where the vista is unmarred
the path a finely delineated journey.

No power of humanity can bear the scar
so deep as what it has laid upon the land...

And in so trying in its quick little life
shall perish in the rush of winged resolve.