

# INDIAN PONDS ASSOCIATION

Mystic Lake, Middle Pond, and Hamblin Pond

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October 2001

Newsletter

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## IPA ENDORSES AND SUPPORTS TWO-PRONGED ACTION

At two recent meetings of the IPA Board (September 6 and 27), discussion centered around two separate actions to oppose the July 10 decision by the Town Conservation Commission to permit the lowering of the Middle Pond herring run/ladder by 1.6 ft. These actions, which were initiated by different groups of concerned citizens, some of whom are Board members, have the full endorsement and support of the Board and the Association. The first of these actions is the appeal submitted to the Massachusetts Department of Environment Protection by Emory Anderson and others to overturn the Conservation Commission's decision. The second action is a request to the Barnstable Superior Court by Edward Schwarm and others to issue an injunction to quash the Commission's decision to allow the lowering of the herring run/ladder by 1.6 ft. The Board has agreed to cover all costs associated with these two actions. Further details are found elsewhere in this newsletter.

**MASS. DEP ON-SITE INSPECTION AUGUST 30** — A hearing and inspection was convened on August 30 at the site of the Middle Pond herring ladder/run by Ms. Lenore White from the Mass. DEP's Southeast Regional Office in Lakeville. The purpose of the hearing/inspection, which lasted about 1½ hrs, was to give Ms. White a first-hand examination of the facility and to hear statements and arguments from both the proponents and the opponents regarding the proposed lowering of the ladder by 1.6 ft. About 50 people attended the hearing, with the vast majority being in opposition to lowering the ladder and in support of the appeal filed by Emory Anderson and others. Representatives from the Town and the Mass. Division of Marine Fisheries explained their proposed project, but many people spoke in opposition to their plan. Bob Frazee, President of the Wheeler Road Association, read an excellent letter from that association which supported the appeal. Two professional hydrogeologists, Mark Nelson, a partner in Horsley & Witten, Inc. in Sandwich, and Thomas Schwarm, President of Acadia Environmental Technology in Portland, ME, offered very compelling arguments questioning the wisdom of lowering the ladder in the face of little or no scientific data on the water budget of the ponds or the volume of water required to operate the run. Ms. White thanked all who attended the hearing and indicated that it would be 3-4 months before the DEP rendered its decision. She noted that written statements should be submitted to her office over the subsequent month, and stressed that copies of any written statements needed to be provided to all parties to the appeal.

**LETTERS IN SUPPORT OF APPEAL TO MASS. DEP** — Subsequent to the August 30 on-site hearing, numerous letters in support of the appeal have been submitted to the Mass. DEP. Letters known to have been submitted include those from the IPA, Wheeler Road Association, Whistleberry Association, Thomas Schwarm, Mark Nelson, Edward Schwarm, John Hansen, Ted Elliott, Joe Brown, Curtis and Barbara Clayman, Geraldine Anderson, and Emory Anderson. The common theme of these letters was to emphasize the adverse impacts to the health and environmental quality of the ponds and their living resources that are likely to occur if the herring run and ladder are lowered, as proposed. In addition, the letters all proposed the need for a multi-year period during which the ladder, as presently structured, should be operated and carefully monitored using an opening and closing schedule similar to that used so successfully for many years by the Town Natural Resources Division under the direction of Taisto Ranta. Furthermore, many of the letters advocated the need for a careful study of the water budget of the ponds to determine the impact on water levels of the herring run and to ascertain the optimal amount of water required to operate the run.

**INJUNCTION REQUEST FILED IN SUPERIOR COURT** — Mike Stusse, our lawyer handling the suit for an injunction in Superior Court to stay the project to lower the herring ladder invert, and potentially Mystic Lake and Middle Pond by up to 1.6 feet, continues to develop our case. This injunction would allow further evaluation of the environmental damage which logically could occur and, in particular, give time to establish techniques for water conservation and efficient operation of the herring ladder without lowering the ponds below the present legal limit. In Mike's discussion with the Department of Environmental Protection (DEP), we find that there are some technical areas of the effects of the herring ladder lowering which are not clear to them. As you may already know, we have had the services of an excellent environmental corporation. Tom Schwarm is president of Acadia Environmental Technology, Inc. based on Portland, Maine. Tom is a licensed geologist and groundwater hydrologist who provided an excellent technical report in support of our appeal to the DEP. He has agreed to continue his active participation by working directly with the DEP personnel in further clarifying our concerns. It is our primary desire to make sure that the herring ladder operates successfully with a minimum of negative environmental impact. This occurred under Town management until about 15 years ago.

Recent lack of management has been a significant cause of the present low water situation. With proper management, there would be no reason for lowering the invert. What we need is a sound, enforceable management plan based on efficient and conservative use of the very limited and precious water supply. We do not need to lower the ladder invert to accomplish this. The environmental threat of this proposed project to the health and water quality of the two lakes is very serious. Lowered lake levels translate into diminished water quality as algae, toxins, and nitrates become a larger proportionate part of the whole.

**SOURCE OF MARSTONS MILLS RIVER NOW CLEAR** — There is conflicting information and opinion as to the specific source of the Marstons Mills River. Information, maps, personal knowledge of some long-time area residents, and perhaps most importantly the current low water levels in the three ponds provide convincing evidence that the River does not originate in Middle Pond, but rather in the cranberry bogs and surrounding drainage area northwest of Middle Pond and Mystic Lake. The present outflow from Middle Pond, which leads to the herring ladder and run, is often referred to on maps as the start of the Marstons Mills River. This is the case on the drawings for the lowering of the herring ladder/run prepared by the Town of Barnstable DPW Engineering Division and shows the River flowing from the Pond through the flume (located directly upstream from the ladder, into and through the cranberry bogs. Even a map by the Town's GIS Unit clearly indicates a stream flowing out of Middle Pond and continuing downstream until it enters Mill Pond, and from there to Prince Cove. Ed Cyrjals of the Mass. Dept. of Agriculture – Mosquito Control is quite sure that the headwaters of the Marstons Mills River are located in the cranberry bogs. John Hamblin, owner of the bogs, is extremely knowledgeable about the underground waters in that area and he too feels that the springs and streams in and around the bogs are the actual headwaters of the River. A USGS map entitled "Delineation of Ground-Water Recharge Areas, Western Cape Cod, Massachusetts" by John P. Masterson and Donald A. Walter, dated 2000, indicates that the source of the Marstons Mills River is the streams that originate in the bog area. The most convincing evidence, however, indicating that the source of the River is in the bog area and not in Middle Pond is that, since late July, 1) the water level of Middle Pond has dropped to the point where no water is leaving the lake through the outlet, 2) the herring run has been completely dry, and yet 3) the Marstons Mills River continues to flow. According to John Hamblin, water has only been diverted into the cranberry bogs through the flume once in all the years that he has owned and operated the bogs. His usual means of withdrawing water from the ponds has been via a pumping station at the southwest end of Mystic Lake. It is uncertain when the outlet from Middle Pond was created; the herring run itself was excavated in the 1880s. Prior to that, it is unclear whether the herring only moved upstream as far as the bogs to spawn or whether an opening had been dug by then to give them access to the ponds. As indicated above, there is very strong evidence that Middle Pond is not the source of the Marstons Mills River. It appears that, historically, Middle Pond never had an outlet, but that its water level fluctuated with the aquifer, as we see it happening today. Consequently, the current outlet via the herring run is unnatural and, if not carefully controlled to prevent the excessive release of water, could have a disastrous impact on the ponds.

**IPA BOARD MEMBERS MEET WITH TOWN OFFICIALS** — Since the August 30 on-site hearing, several members of the IPA have, on three occasions, met with Town employees regarding the herring ladder and run. These meetings have been with Stephen Seymour of the Town DPW Engineering Division, whose office prepared the plans for rebuilding and lowering the ladder, and Douglas Kalweit of the Town Natural Resources Division, who is responsible for managing and operating the ladder/run. The purpose of the meetings was to gain a better understanding of the rationale for the proposed lowering of the herring ladder, obtain copies of the plan and associated maps for study, acquire data, if available, on pond water levels and herring run flow requirements, and generally engage in dialogue to explore options for improving the recent operation and management of the herring ladder and run in order to ensure the well-being of the herring resource while not jeopardizing the health and integrity of the ponds and their ecosystems. These meetings have been positive and cordial. Since those meetings, new boards have been installed in the ladder, and new signs have been posted indicating that the run is closed for the taking of herring and warning that the taking of herring is prohibited.

**IPA SEEKS WATER BUDGET STUDY AND TAX-FREE STATUS** — The IPA is gathering information about grants that are available to fund studies such as on the water budgets of the ponds and the surrounding areas and possibly on the herring which migrate into and out of the ponds, as well as possible future projects to repair or upgrade the existing herring ladder/run, if necessary. Patti Kellogg, the Cape and Islands Watershed Team Leader for the Executive Office of Environmental Affairs (EOEA) located in Waquoit, has identified funding sources that are available through her office. Numerous other sources of grant funds are available from local, state, and Federal agencies and organizations. The IPA currently has 501(C)4 status with the Internal Revenue Service, which provides an exemption from income taxes on amounts up to \$25,000. We are currently working to obtain 501(C)3 status, which would enable members (as well as any individuals or organizations) to make tax deductible contributions to the IPA. This status would also permit the IPA to receive matching funds from donor organizations. Any such funds contributed to the IPA would be used for educational and scientific work.

**BRIEF HISTORY OF IPA** — The Association was formed in 1958 by property owners in Marstons Mills surrounding the so-called Indian Ponds: Mystic Lake, Middle Pond, and Hamblin Pond. These people recognized at an early stage the threat of overpopulation and exploitation of the fragile ecology in this area. In 1961, the Association convinced the Town of Barnstable that larger lot sizes were essential to prevent contamination of the lakes, and the first one-acre zoning on Cape Cod was established. In 1963, the Association was active in researching and supporting the existing roadway width in the area. In 1967, the Association proposed and was successful in establishing a 1200 acre conservation area by the Town of Barnstable. In the early 1970s, the Association researched and successfully opposed the commercialization of the natural resources. In 1975, the Association proposed and was successful in establishing a Town of Barnstable By-Law pertaining to the 10 HP maximum motor size on the freshwater lakes in order to minimize ecological damage. In 1981, the Association succeeded in convincing developers to refrain from draining lake water to supply man-made ponds. In so doing, the Association acquired a restriction that land at the end of Middle Pond be undeveloped and left in a natural state, with permanent rights to oversee this. In 1983, a letter to Selectmen influenced a revision in the Lozanno & White consultants' planning recommendations which gave greater emphasis to water quality as a top priority issue. Also, petitions sent to Selectmen (125 signatures) protesting the Rte 149 and Osterville - West Barnstable Road development had considerable impact in influencing the Town's subsequent acquisition of the area for conservation. In 1984, a letter sent to members, and distributed even more widely, helped marshal public opinion to vote down in referendum the proposed sixty-acre Services and Distribution area proposal in Marstons Mills. During the years, the Association has become a vigilant and concerned participant in matters of local zoning and conservation, actively supporting measures which would protect the environment and maintain the water quality of the three lakes involved.

**THANK YOU** — The Board of Directors is very appreciative of those members who have sent donations in addition to their dues to the Association.

### INDIAN PONDS ASSOCIATION BOARD MEMBERS: 2001-2002

President: Kevin Kavanagh

Vice President: Ted Elliott

Secretary-Treasurer: Carolyn Garbutt

Board of Directors: Emory Anderson, Joe Brown, Robert Frazee, John Hansen,  
John Kayajan, Bruce McHenry, Sheila Place, and Edward Schwarm

### JOIN THE INDIAN PONDS ASSOCIATION

#### IPA membership is open to

- all property owners whose land abuts any of the three ponds (Middle Pond, Mystic Lake, and Hamblin Pond)
- or is close enough to be affected by happenings thereon,
- ***but*** not exceeding one lot depth across the bounding highways from the lake area district (***starting at Race Lane east to Route 149, south to Lovells Lane, west to River Road, northwest to Bog Road, north to Old Mill Road, and ending again at Race Lane***).
- To join the IPA, fill out the application form above and send it with a \$10.00 check made out to **Indian Ponds Association, P.O. Box 873, Marstons Mills, MA 02648.**

### APPLICATION FORM

Name\_\_\_\_\_

IPA Property Address\_\_\_\_\_

Mailing Address\_\_\_\_\_

Telephone Number\_\_\_\_\_E-mail Address\_\_\_\_\_

\_\_\_\_ Please find enclosed check for \$10.00 for a one-year family membership in IPA.

Signature\_\_\_\_\_

**IPA BOARD MEMBERS HONORED** — The Barnstable Land Trust (BLT), at its October 12 Annual Meeting in Osterville, presented Bruce McHenry with its BLT Founder's Award, established in 2000 and presented to individuals, organizations, or government agencies “for having the vision to empower the people of Barnstable to preserve the essence of Cape Cod – its open spaces and natural resources, wetlands, woodlands and wildlife.” Bruce was on the Town Conservation Commission during 1983 and 1984 when Barnstable's first Comprehensive Open Space Plan was created that led to the creation of the Barnstable Conservation Foundation (now known as the Barnstable Land Trust). He donated two acres of land between Hamblin and Middle Ponds. Like his father before him, Bruce was a ranger with the National Park Service, as is his daughter. During the 1980s, he was a member of the Sandy Neck Governing Board. His many contributions to the local environment include the completion of the Sandy Neck Management Plan and trail guide.

On September 9, 2001, the Marstons Mills Village Association held its 20<sup>th</sup> Annual Meeting and honored its founding members. Among those recognized was Carolyn Garbutt, IPA Secretary-Treasurer. Carolyn was also a member of the group that founded the Indian Ponds Association in 1958 (see “A Brief History”, page 3 of this newsletter).

**CHECK OUR WEBSITE AT:**

**<http://www.indianponds.org>**

**Indian Ponds Association**  
P.O. Box 873  
Marstons Mills, MA 02648

**First Class**  
**Mail**