

Little River Chapter Newsletter

Editor
Joe Hatton



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www.lrctu.org

Next Meeting

The next meeting is on the fourth Thursday October the 25th, 7:00 P.M. This meeting will be upstairs in the far right corner seminar room of the

**Bass Pro Shops Outdoor World
Hwy 66 Kodak Tn.**

Program

Matt Kulp will give an informative and exciting presentation on the current condition and the future of our Trout Fishery in the Great Smokey Mountains National Park

Stream work

November 17-18 Bi-Monthly Acid Deposition

Fishing Report

It is October already. I can't believe it. This will be a year all anglers will remember here in Tennessee and throughout the Southeast. The year of the drought. The Smokies are still suffering from the lack of water and now the towns downstream on the Little River are feeling the pinch at their water intake sites. The site in Maryville reported 32 cfs yesterday.

The lakes are low. The tailwaters have been fishing well in some cases and not so well in others depending on where or when you were wanting to fish. The South Holston, Cumberland River in Kentucky, Watauga and Caney Fork have been fishing well. This has

been a good year on the Hiwassee though it seems to have cooled off lately. The Clinch River has been off and on. It's been a strange year. The smallmouth anglers did well in the lower elevation rivers.

Actually if you don't mind using low water tactics the Park is fishing well right now. You can catch trout on dry flies or nymphs and the trout seem healthy and active. Sampling using electroshocking show good healthy trout in the Little River, Abrams Creek and North River. The numbers are probably low this year but I bet we won't notice it next year unless this drought lingers on.

The brown trout and brookies are going to start their spawning activities soon. We need rain, but not too much to have a successful spawn. Many of the spawning areas in the rivers are dry right now.

It's official. TWRA stocked brook trout in the Clinch River. They dumped 100,000 in this Spring and people are catching them. I bet the big browns and stripers are happy about this too.

And, speaking of the Clinch, the Tennessee Wildlife Resources Commission will vote October 24th or 25th on the proposed slot limit. The meeting will be held in Gatlinburg at the Convention Center starting at 1:00 pm on Wednesday the 24th. The slot limit will most likely be the first order of business. If you would like to comment to them about the new regulation you should

send an e-mail to: twra.comment@state.tn.us. Your written correspondence is very important. Commissioner Gary Kimsey would also like you to copy him: gkkimsey@aol.com. If you can plan to attend the meeting. I've been to several and they are very interesting. I'll be there supporting the slot limit and TWRA.

The folks at TWRA who work in the Trout Program are great scientists and managers. We are lucky to have them. Have a great month and enjoy your fall fishing.

Byron Begley

Who owns our Rivers

What you are about to read is my opinion, and not the views of the Little River Chapter of Trout Unlimited or Trout Unlimited National.

Tennessee essentially recognizes three categories of navigable waters. First are the navigable streams in the legal sense, the waters that are "essentially valuable" to commerce. These are considered legally navigable and cannot be privately owned. Examples include the Great Lakes and the Mississippi River. *Id.* at 476 n.3. Log floatage is not enough to make a river commercially navigable.

However, navigability for commerce "serves only to determine ownership in the land underneath the water," not to determine public rights.

Second is navigable streams in the common or ordinary sense, "a body of water which is navigable but not necessary for commerce". These "may be privately owned, subject to a right of access in the public."

Third is "[a] lake or stream which is considered unnavigable and may be privately owned and controlled."

First lets look at a navigable stream in the legal sense. "Under Tennessee law title to

the bed of a navigable stream, to the low-water mark is publicly held and belongs to the State." The public has rights of navigation, fishing, fowling, hunting, and "everything of value incident to the right of soil." Very few streams in Tennessee fall in to this category mainly because the question of navigability of a stream is one of fact (for title purpose) which must be determined by a jury, or have been deemed navigable at the time of Statehood.

Second, is a navigable stream in the common or ordinary sense. The bed of the stream belongs to the riparian proprietor (the land owner) still it is equally well settled that the public have a right to the free and uninterrupted use and enjoyment of such stream for all the purposes of transportation and navigation to which it is naturally adapted.

Third is a lake or stream which is considered unnavigable which may be privately owned and controlled.

From all that I have read the Little River falls in to the second category, navigable stream in common or ordinary sense. To start it is listed in the Army Corps of Engineer list of Navigable waters of the Nashville District. "Little River (TRM 635.6) Mouth to Mile 50.5 (At Elkmont, Tennessee)" Even though there has not been a court case to determine the Little River's navigability. The Army Corps list usually stands up in court for navigable in the common or ordinary sense. Plus the River is being used for commerce. River John's canoe rentals and the Tube and kayak businesses in Townsend are definitely making money. I do not think property owners can stop people from using canoes, kayaks and tubes to float the river. But we as wade fishermen have a different problem. If the land owner owns the river bed and both banks by the act of wading (standing on the soil) we can be charged for trespassing. It has been established that the public has right of fishing

and hunting in streams where the water and lands thereunder are publicly owned. But there has not been a court case in Tennessee that has dealt with recreational fishing of nonpublic but navigable rivers. In Townsend trout fishing inside of the city is one of the main reasons a lot of the tourist vacation here. Landowners calling the police on someone fishing in the river is not good for Townsend's tourist business. The town can not afford to be seen as unfriendly to visitors. What can we do as fisherman if a landowner on any stocked trout stream ask you not to fish on his property? First be nice, getting mad will not help. Then find out where his property line is and move up to the next property. Next I would let TWRA know that the property owner (make sure to get his name and address) is blocking fishing access. In TWRA Trout Management Plan its states that anglers are expected to obtain permission to fish and landowners are generally expected to grant permission. If landowners routinely deny permission, then that location can be removed from the stocking list. Lack of access is the typical reason for removing a stream from the stocking list. There are no natural reproductions in the Little River outside the Park without the state stocking there would not be any trout in Townsend. Also if you are staying in a motel be sure to let them know you where denied access to fishing.

As more and more people move to East Tennessee river access will become even more of a problem. We need to know what our rights are and how to deal effectively with problems has they arise. But I feel that ultimately help will have to come from pressure being exerted on the state from businesses that benefit from the presence of fishermen and their families to change the existing laws to allow recreational fishing on all of our navigable rivers. If you are interested in reading about

navigable streams law or the Public Trust Doctrine. I will have several links on the Newsletter web-page.

Fly of the Month

Rainbow Deer's Fish

Hook: TMC5262 #8

Thread: dark brown

Tail: cream rabbit

Rib: gold tinsel

Body: dubbing, rear half green, front half red

Wing: badger hackle

Overwing: rainbow flashabou, sparse

Head: deer hair

Eyes: foil eyes



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The Little River Chapter of Trout Unlimited is a nonprofit volunteer organization that is committed to Protecting & Restoring Cold Water Resources and Watersheds in and around the Great Smoky Mountains National Park

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