

UPPER DELAWARE COUNCIL MEETING MINUTES June 4, 2009

The Upper Delaware Council held its monthly meeting on Thursday, June 4, 2009 at the Council office on Bridge Street in Narrowsburg, NY. Chairperson George J. Fluhr called the meeting to order at 7:39 p.m. A motion by Wieland seconded by Chase to approve the May 7 meeting minutes was carried. There was no public comment on the agenda.

In attendance: Town of Hancock-Fred Peckham, Town of Fremont-Jack Niflot, Damascus Township-Dolores Keesler, Town of Cochection-Larry Richardson, Town of Tusten-Charles Wieland, Town of Highland-John C. Sundholm, Town of Lumberland-Jay Shafer, Town of Deerpark-Phil Chase, Shohola Township-George J. Fluhr, Delaware River Basin Commission-Robert Tudor, and National Park Service-Vidal Martinez. Also in attendance: Town of Fremont Alternate-Jim Rodgers. Members absent: Town of Delaware, Berlin Township, Lackawaxen Township, Westfall Township, State of New York, and Commonwealth of Pennsylvania.

Committee Reports: The committee reports were provided based on the meeting minutes. They were: May 19 Water Use/Resource Management by Wieland; May 26 Operations by Fluhr; and May 26 Project Review by Shafer.

Status Reports

Delaware River Basin Commission: Bob Tudor, Deputy Exec. Dir. of DRBC, referenced the handouts provided. The New York City Delaware River Basin combined reservoir storage as of May 29 was at 100.3%. NYC wants their reservoirs to be full by June 1 and they are. The flow regime is close to normal for this time of year. Chase asked Tudor to let him know when the reservoirs were completed and filled. He thought the Cannonsville date was too early.

According to the news releases handed out, it was reported that in a continuing effort to improve the habitat downstream of the New York City Delaware Basin reservoirs, New York State, Pennsylvania, New Jersey, Delaware and the City of New York (Decree Parties) announced on June 1 two agreements to revise reservoir operations based upon the amended Dec. 10, 2008 Flexible Flow Management Plan (FFMP).

The first agreement, "Temporary IERQ Extraordinary Needs Bank Releases Program for Summer 2009", in effect through May 2010 only, is designed to provide additional habitat for trout in the West Branch Delaware by increasing cold water releases from NYC's Cannonsville Reservoir during the summer 2009 period from June 1 through Aug. 31. The additional cold water will also benefit the Upper Delaware River main stem. Cold water released from the bottom of the reservoir will help the renowned trout fishery by reducing thermal stress caused by the summer's warmer temperatures. Absent prolonged drought conditions, the agreement increases the base Cannonsville release by up to 25% to 325 cfs for most of the summer. It also reserves a quantity of water in an Extraordinary Needs Bank to be available to be used by the Decree Parties for unforeseen needs. The agreement resulted from the recommendations of state fishery experts and a review of the 2008 operations of the FFMP.

The second agreement, "Revised FFMP Language to Address Storage Zone Bouncing", will serve to reduce storage zone bouncing, an effect that results in rapid increases and decreases in the reservoir discharge mitigation release rates (known as the yo-yo effect) by allowing NYC operational flexibilities to better manage release rate transitions during rapidly fluctuating reservoir storage levels. In the spring and fall, changes in releases are more substantial and rapid fluctuations are generally something that fishery experts would prefer to avoid as they can be detrimental to river habitat. NYC will work with NYS DEC to modify releases to avoid unreasonable fluctuations in releases. The FFMP is an adaptive and collaborative

approach by the five Decree Parties and enables them to make adjustments as new information is presented, scientific understanding improves, or meteorological or environmental conditions warrant. The FFMP and its associated agreements may be accessed at the U.S. Geological Survey Office of the Delaware River Master website, <http://water.usgs.gov/osw/odrm/>.

Wieland asked if there was water temperature gauges in the River. Peckham noted there was one on the West Branch and at Lordville. Tudor added that they monitor water temperature at certain locations and he'll obtain and provide that information to Wieland. He noted that the focus is the habitat needs study of the endangered dwarf wedgemussel and the Callicoon gauge looms large in that discussion. Peckham wondered if the "bank" release will count against later releases for NYC. Tudor indicated there was some bank leftover. The lower basin states are trying to get a steadier flow at higher rates; it's the same water but released at a different protocol. They are also working with various agencies on the flood model and that will go to the Commissioners and then there will be public hearings. Chase inquired if the Delaware Aqueduct was worked on this year. Tudor said he wasn't sure; they're redoing the studies on it. Chase also asked when the water is not being released to the City, can we get that during the summer. Tudor explained they received a request from the attorney for the flood victims involving that question. We've asked the victims to come to a Regulated Flows Advisory Committee (RFAC) meeting to give a presentation and they will be doing that on June 17.

Tudor went on to natural gas drilling and the DRBC's regulatory oversight. He said UDC had requested that DRBC send a representative to this Council meeting to review the gas well application process and regulations. However, he wanted the members to know that DRBC usually attends the Council meetings about every other month when staff are available.

He began by explaining that the DRBC was legislatively created by the four basin states and Congress to manage the River on policy. The DRBC has powers to plan, manage and regulate. It regulates based on thresholds that trigger permits. We have something in common with the UDC, in that we're all managing the Wild and Scenic Rivers Act. The Delaware River (upper, middle, and lower) is pristine river. The DRBC statistically measured the water quality in the River and then passed the Special Protection Waters regulations to keep it pristine. Control points along the River were set up to monitor water quality. Since the price of energy has gone up, we have natural gas resources being explored and utilized since the technology is now available to tap into this resource in a more cost effective way. DRBC's interest is regulating water withdrawals, wastewater, and surface water. There are provisions in the DRBC regulations that if there is potential to significantly harm the River the Executive Director can reduce thresholds. On May 19 the DRBC Executive Director issued a Determination and news release (members had previously received a copy) that put the natural gas extraction project sponsors on notice that they may not commence any natural gas extraction project located in shale formations within the drainage area of Special Protection Waters (map provided to the members) without first applying for and obtaining Commission approval. The DRBC will regulate in partnership with the basin states. So far, DRBC has five gas drilling permit applications—two for surface water and three for gas wells.

The Special Protection Waters regulations give the DRBC authority to review these projects. Impacts to the Delaware River tributaries would eventually impact the main stem River. The Marcellus Shale gas play is under 36% of the Basin. DRBC has requested the states to consider the Upper Delaware River Basin as a critical area that involves the Special Protection Waters regulations and the National Wild and Scenic Rivers Act. For DRBC's purpose, a project encompasses the drilling pad upon which a well intended for eventual production is located, all appurtenant facilities and activities related thereto and all locations of water withdrawals used or to be used to supply water to the project. Wells intended solely for exploratory purposes are not covered by the Executive Director's Determination.

Tudor mentioned he heard that people thought we were stonewalling with this Determination. DRBC will come up with approval by rule for wells. Regarding withdrawals of water, NYS and PA don't have laws for the industry so DRBC covers this for them. As to the wastewater, once used in drilling it is brine and you have to treat that water at a special wastewater treatment plant. Wastewater going out of our Basin to another that doesn't find its way back, we call that "depleted use", and we try to regulate that. There is nothing here that says you cannot drill. DRBC won't stop that but will see that it is done in an environmentally friendly way.

Keesler asked who monitored all this, and Tudor responded the DRBC and the states do that together. For example, if the states do well casing oversight, then we won't do that. Peckham mentioned that NYS has casing laws, spacing unit laws, and erosion and soil control regulations. He wondered why DRBC is so slow and Tudor explained that they're working with four states and the federal government to

get agreement. Peckham asked if the DRBC has talked to the Susquehanna River Basin Commission regarding gas drilling and Tudor said they had. Susquehanna only regulates water. Hamilton of the NPS noted that the Susquehanna River Basin Commission doesn't have water quality standards like here. Richardson queried will DRBC override having open pits if the state allows them. Tudor said in our permit by rule those pits in the floodplain are more critical. Shafer commented we're concerned with flash floods and the impacts on open pits holding the used fracking fluid.

Tudor indicated that because of the flooding, the basin state governors wanted a report about mitigating floods. Our committee is finishing work now to make recommendations. One item is that the National Flood Insurance "floor" is too low now and has to be raised.

Peckham mentioned that Chesapeake in Hancock will have pits for drilling water, but fracking fluid will be in tanks. Chase asked what the difference was between Special Protection Waters in the river basin and the tributaries. Tudor said the tribs were protected by the states. DRBC regs use boundary control points. We built a model for wastewater loads and can see impacts. DRBC will be the entity to do the modeling if stuff in the tribs will impact the River. DRBC will review direct discharge to the tribs.

Martinez offered that it disturbed him about gas permits within the River corridor. Peckham asked Tudor for the timeframe from DRBC application to siting, and Tudor said three to four months usually unless gas company changes the location in the application. Peckham asked if the gas companies could take water from the Delaware basin to the Susquehanna basin. Tudor noted that was considered an out-of-basin transfer and we'll look at how to replace that water. Chase asked if the state regs for the tribs were as good as DRBC's. Tudor said that depended on the individual state regulations. We have to look at each case.

Fluhr commented it was nice to see the coldwater releases as we've been advocating for that.

NYS Dept. of Environmental Conservation: Rudge could not attend. Handouts were provided. The members reviewed the NYS DEC's news release on the FFMP agreements as discussed by Tudor earlier in the meeting.

Also handed out was a news release announcing the Great River Day Flotilla that will be launched June 6. Historic vessels and modern-day boats will travel the Hudson River from New York Harbor to Albany for River Day to celebrate the voyage of Henry Hudson 400 years ago. Also provided was copy of a news article from the *Times Herald-Record* covering the official opening May 20 of the NYS DEC Region 3's remodeled New Paltz office, the agency's first building to meet U.S. Green Building Council standards.

PA Dept. of Conservation and Natural Resources: No Report, Dennis DeMara could not attend. Martinez noted that he understood that Pennsylvania was closing 35 state parks due to budget issues. Fluhr offered that was not finalized as yet. It passed the Senate but not the House. The PA state budget isn't passed either.

National Park Service-Upper Delaware: Martinez noted the seasonal employees are on staff and training will take place this month. As a result of the Upper Delaware Safety Committee meeting, the canoe liveries had requested NPS to station their staff in areas where fatalities on the river have occurred. This is being done. NPS has asked the liveries to be more vocal about customers wearing life jackets while on the river.

Martinez and Schultz had a conference call with natural resource staff in the NPS Northeast Region and they showcased the issues in the Upper Delaware. NPS is reviewing the Wild and Scenic Rivers Act relative to protections for the resources concerning gas drilling activities. They will work closely with the DRBC and UDC to make sure NPS can keep doing what they're charged to do. They don't want to stop gas exploration but want balance in the process so we don't risk the resources.

NYS DEC has provided a go-ahead for NPS to temporarily use the DEC access at the Mongaup on NYS Rt. 97 for an Upper Delaware River corridor visitors center using mobile trailer facilities. The Barryville Delaware River access issues are being handled by the Town of Highland. The NPS Upper Delaware natural resource staff is conducting water quality monitoring.

NPS is struggling with the Pond Eddy Bridge issue. The Wild and Scenic Rivers Act offers protection of resources and a free flowing river. However, adding an extra bridge in that area will impede the River and another alternative is needed. Tudor commented that regarding the two-bridge issue, when we had the floods Yardley, PA experienced flooding but due to the railroad bridge and another bridge

having too many abutments in the river, there ensued worse flooding. Fluhr asked if the NPS was opposing removal of the Pond Eddy Bridge. Martinez mentioned that our historical people say keep and our natural resource people say look at impact to the River. Fluhr commented that his township has a problem with the current bridge as it's not safe. Peckham added they took down the old Lordville Bridge and we were without a bridge for six or seven years before getting a new one. The old bridge was a "Roebbling" built bridge so there is precedent that an historical bridge was removed.

UDC Executive Director's Report: Bill Douglass announced that Bill Manner, who had attended the UDC meetings for PA DEP, telephoned the Council office today and reported that he would be retiring tomorrow. Manner wanted the Council to know that it had been a pleasure working with everyone.

Douglass and Martinez mentioned that U.S. Dept. of Interior Secretary Ken Salazar has announced the three "free summer weekends" promotion at 147 parks with the entry fees waived June 20-21, July 18-19, and Aug. 15-16.

Douglass announced that on July 14 Penn State Cooperative Extension is holding a seminar on understanding gas exploration and leasing from 7 to 9 p.m. at the Wallenpaupack High School. The fee is \$10. The state of Pennsylvania is planning a Gas Summit for Nov. 16-17-18 at State College, PA.

Old Business

Natural gas exploration/drilling: Peckham wanted clarification if UDC had taken a position on gas yet. It was explained that the incompatible use comment made was included in a staff comment letter to the NYS DEC on its scoping document for a supplemental GEIS (generic environmental impact statement) that would be produced regarding gas drilling/exploration. Soete also had provided the members with a listing of where in the River Management Plan there was mention of "gas, oil and pipelines". Soete also provided to the members a "draft" UDC position paper that has not been reviewed as yet. Wieland commented that he was for drilling, but not at the cost of messing up other people's wells. Fluhr noted there was no "official" UDC position. New things are being learned every day. Tudor offered that there was gas drilling applications on the DRBC docket for the next DRBC meeting that the UDC could offer comments about if it wished.

New Business

Wayne Co. resident Email inquiry, gas drilling items: Members were provided with copy of email correspondence from L. Giffone regarding issues involving natural gas drilling and testing private water supplies. Giffone had a number of questions: who is going to pay for the high cost of private water testing; is the county financially prepared to assist people with water testing bills; are the gas companies going to pay for this; and if an accident happens and a person's well water is contaminated who is going to assist the private owner in paying to clean up the water if that's even possible. This initiated discussion among the members even though technical answers needed further research. At the present time, it seems it is the property owners' responsibility for baseline water testing. However, there may be some cases where the state, county or local municipality might be of some assistance. It was also mentioned that the gas companies usually test water within 1,000 feet of a water source in order to have their own baseline data on hand if there are any problems. The Council chairperson felt that additional information could be provided through the Delaware River Basin Commission. Tudor said he would be happy to respond to Giffone. Fluhr asked Coney to respond to the inquiry and note that DRBC would be responding as well.

Public Comment

(There were groups of people in the audience that offered comment on gas drilling/exploration. Some remarks are covered here.)

- Sue Sullivan, Tusten resident: Is DRBC supporting open or closed containers for the fracking fluid wastewater? Peckham mentioned that the open pits generally have drilling waste; the frac fluid is pumped into containers and shipped offsite within 45 days. Tudor said as to the question, that is not determined yet but we'll be doing regulations on that.

- Larry Richardson, UDC member: At NYS DEC meetings, they said it's not a policy of DEC to have fracking fluid contained.

- Sandy Schultz, NPS-Upper Delaware: Drilling mud has brine? Tudor responded, yes. Peckham added the drilling water is left to evaporate to salt and sometimes that salt is reused to treat roads.
- Marian Schweighofer, Northern Wayne Property Owners Alliance: PA Farm Bureau has information on drill water, and drill water should not be land applied. The gas companies make blocks out of it and bury on property.
- Jim Barth, Damascus Citizens for Sustainability: Everything you're saying is speculation and meaningless. This type of drilling has only been going on 15 years and no studies have been done on the water. Collier of the DRBC said there can be impacts on a cumulative and individual basis. In 1980, Texaco was drilling in Lake Peshaw and hit a salt mound and a draining effect happened impacting the lake and the surrounding area. When they bore a well, not all the water comes back. Thinking there cannot be any problem if they drill 5,000 feet down is not accurate.
- Gentlemen: What's in the fracking liquid? Answer - no one knows. Sue Sullivan explained they discussed this at the gas task force meeting. The gas company can tell NYS DEC what's in the liquid, and then DEC can explain to a hospital if they are treating someone. This happened in 2003 in Colorado. A nurse was taken ill after treating a worker that handled the fluid. The gas company had to be sued before they would release the liquid's composition so that the nurse could be treated properly at the hospital. Peckham asked if DRBC will ask the gas company what's in the fluid. Tudor said yes, and the gas company will list the stuff that is not proprietary. Barth commented that's before it goes into hole; what's in it when water comes out and how will it be treated.
- Buck Moorehead, Building Consensus for Sustainability: Moorehead thanked the DRBC for what it was doing now. As to the River Management Plan, this hydro-fracking method was not invented when the RMP was finalized. There's over 300,000 people in this area. It's important that the communities have some say on what's happening in the quarter-mile by the River. I realize it's private property and they have rights and I respect that, however all the voices need to be heard on this matter. I recommend that this community discuss this. If you had rewritten the River Management Plan two years ago, you'd have had a discussion to put gas drilling/exploration in the Plan.
- Marian Schweighofer: I was on the Revision Committee for the original Plan. We're the ones that own the land in the corridor. We're an integral part of the River community. We have a vested interest in protecting this resource. We should look for common ground in our discussions. As farmers, we recharge the water aquifer and that's why it's high quality water. We created the UDC because we wanted home rule. Years ago there was a movement to de-authorize the River Management Plan, but that didn't happen. We should work together. I have a petition for DRBC. I usually don't do petitions but the New York and Pennsylvania people have a vested interest in this matter. Before we became landowner groups for the gas drilling, we researched the science on this. Moorehead wanted to know the source of the science. Schweighofer continued we have 80,000 acres available for lease. We've been called irresponsible. We're not. She passed the petition around and one member of the audience said he'd sign.
- Laurie Stuart, Upper Delaware River Roundtable: Years ago we thought it was okay to just dump stuff on the land. Now we know that's not responsible living. It's stewardship of the earth and we haven't been good stewards. I agree gas drilling may not be something to be stopped but we need to be good stewards.
- Buck Moorehead: DRBC has made clear they have applications for drilling. UDC has to take a position now.
- Jim Barth: I don't agree with Marian regarding the science. Show me the science research you've done. There have been no studies done by the states or on a national level on this new technology. The oil and gas industry has been given exemptions from certain laws, why. NYS DEC is saying gas drilling has been around for 50 years, but this new technology hasn't been around that long.
- Sandy Schultz: A list of the chemicals used in fracking is available. Marian noted that PA DEP did that this year, not sure if NYS DEC has done. We'll provide UDC with our information.
- Vidal Martinez, National Park Service-Upper Delaware: We listened in to a broadcast today from Washington, D. C. The House Subcommittee on Energy and Mineral Resources Oversight held a hearing on "Unconventional Fuels, Part 1: Shale Gas Potential" that included discussion on the fracking fluid. The gas companies were asked if they'd support the provisions of the Clean Water Act if their exemption was taken away, and the gas companies represented said they wouldn't support losing their exemption.

Adjourn A motion by Wieland seconded by Richardson to adjourn the meeting at 9:47 p.m. was carried.
Carol Coney, Office Manager