

Upper Delaware Council  
**WATER USE/RESOURCE MANAGEMENT COMM. MEETING MINUTES**  
May 19, 2009

Committee Members Present: Wieland, Bowers, Serio, Chase, Sundholm, McKay, Shafer, Keesler  
Committee Members Absent: Fluhr, Flaherty  
Advisory Members: None  
NPS Partner: Martinez  
Staff: Douglass, Soete, Coney, Ramie  
Guests: K. Hattala, A. Kahnle, S. Schultz, D. Hamilton

The committee chairperson Charles Wieland called the meeting to order at 7:06 p.m. A motion by Bowers seconded by Sundholm to approve the April 21 meeting minutes was carried. There was no public comment on the agenda.

**Presentation by Andy Kahnle & Kathy Hattala, NYS DEC, proposed change in shad regs:** Kahnle reviewed the handout provided to the committee that dealt with proposed New York State Angling Regulations for Delaware River American Shad. NYS is looking at reducing the shad creel limit from 6 to 3.

Pennsylvania is proposing to reduce its creel limit for shad from 6 to 3. The Delaware River is border water and there is a need to maintain similar regulations. In addition, there is a shad stock decline in the Delaware River. Since the 1880s, the harvest and abundance of shad is greatly reduced. The recent abundance of spawning fish was highest from mid 1960s through the mid 1980s. Abundance has declined since the early 1990s. The catch per haul in the Lewis haul seine fishery at Lambertville, NJ shows rates up in the 1980s and down in the 1990s. The recreational catch and harvest of shad in the Delaware River was up in the early 1990s and then went down. The abundance indices for Delaware River shad spawning stock also showed a decline.

The causes of the decline are excessive mortality, probable high ocean harvest from mid 1980s through 1990s, and possible predation by striped bass and other predators in the River and Bay. The actions taken were to close directed ocean harvest in January of 2005, and Pennsylvania plans to reduce creel limit from 6 to 3 fish/day in January of 2010. There is a need to further reduce losses to directed fisheries, and identify and reduce losses of shad taken unintentionally in other fisheries (bycatch).

Martinez inquired what other organizations have oversight of the situation. Kahnle responded the Atlantic States Marine Fisheries Commission (ASMFC) develops interstate management plans for the states. They'll develop a management plan on shad down the line. ASMFC is working on the bycatch issue. Shad stocks are down along the eastern coast. The Potomac River and Roanoke River had decent shad stock but now those stocks are declining as well. There is controversy as to whether striped bass is the total predation issue. DEC isn't finding lots of shad in bass stomachs so shad is not a focus food. The coastline assessment looked at abundance of shad and bass and found that when the shad was down the bass were down, also up the same. Bowers noted that sounded like a predator/prey scenario. Kahnle commented however bass don't just eat shad.

Serio inquired was there still commercial river harvests and Kahnle responded there were. Angler harvest was a couple of thousand. In the Delaware Bay, there's 10-15,000 shad taken per year. We've lobbied Delaware and New Jersey to reduce that harvest. In New Jersey, you cannot sell striped bass so fishers move away from those areas, but in Delaware you can sell bass. The affect of reducing the creel limit would be about a couple of hundred shad. There would be a bigger impact if they reduce the harvest in the Bay. But, even with the minor impact with reduction of the creel limit as proposed, it's at least something we can do upriver in NYS and PA. Martinez noted that Virginia had a moratorium on shad when he was there awhile ago and he wondered if that was something that could be put in place with this shad issue. Kahnle commented that ASMFC Amendment III for shad is coming down the pike. Options they're discussing are shutting down the fishery, or reducing the fishery, among others.

Chase offered that he'd like to see a reduction in the size of bass caught. We're at 26-28 inches now; could go to 18 inches like the Hudson River. Kahnle noted that they'll be going with some sort of a slot limit on the Hudson. We can move that way on the Upper Delaware also. Chase added the long nets on the high seas bycatch of small fish were ground up for pet food, is that the same? Kahnle said that Virginia, Maryland, New Jersey and Delaware did have long nets. That was shut down in Jan. 2005. They still sell Atlantic herring for pet food. The State of Maine has looked at the coastline from Maine to New Jersey so we know where the fish are being taken. Once we know where most of the shad are taken, we can shut that area down.

Kahnle mentioned that all the coastal states in ASMFC come together to agree on requirements, they then can go back to ASMFC to petition for exemptions. Interstate discussions go back and forth. New Jersey and Delaware are resistant to change, but they can be lobbied to make changes. Kahnle asked the committee if lots of

shad are still being caught up here. The committee indicated the shad run up here is not what it used to be, but some shad are being caught. Serio mentioned that during a study they did find striped bass in the headwaters and that never happened before.

Soete asked if they were still doing hydro-acoustic studies, and Kahnle replied the funding has dried up. Soete asked if shad eggs were still being taken out of the Delaware for future stocking in the Susquehanna, and Kahnle said that was stopped five years ago. The shad stock in the Susquehanna River has been down also. There was also an impact to the fishery as a result of the past flooding events in the region. He said that New Jersey samples for young of the year from Port Jervis to the Delaware Water Gap and the Delaware Memorial Bridge to Trenton for striped bass. The shad stock has expanded more downriver. New Jersey has a size limit on bass of 28 inches.

Kahnle offered that when Amendment III comes out for comment that would be the time to offer your comments on this issue. Hamilton asked what percentage of shad spawned here come back, and Kahnle noted about 40% on certain sections of the Delaware River. Hamilton asked if shad survived how many years could they spawn. Hattala said they had one on the Hudson 14 years old that spawned nine times. Hamilton noted that DEC and NPS received funding for a study to determine the age of the shad population in the Delaware River. He wondered if there was a specific flow needed to benefit the shad. Kahnle noted what was here before the dams were in.

Kahnle noted that DEC will give a similar presentation to this one in Hancock. The committee also suggested a meeting be held in Port Jervis. Wieland asked for committee input on the presentation. Chase said cut the bass to 18 inches up here. Serio said eliminate the commercial fishery in the lower River. Bowers had no objection to the 3 creel limit. Hattala noted that during the summer they'd write up the proposed regulations and that would go on the DEC website. They'll get public comment. The regs are proposed to become effective in October 2010.

**River Safety Committee Meeting follow-up, eel weir issues:** NPS Superintendent Martinez spoke to an issue that was discussed at the April 29 Upper Delaware River Safety Committee meeting, that of eel weirs and River navigation. NYS DEC fisheries manager Michael Flaherty was at the Safety Committee meeting and would be researching the eel weir operations on the Upper Delaware. There have been some serious injuries with river users getting trapped in the eel weirs. There appears to be eel weir operators that are widening their eel racks. Pennsylvania has no regulations in place for eel weirs. They did have at one time. The eel weir operators on the Upper Delaware come under New York State regulations. The eel weir operators, some, do not remove their weirs over winter as regulated. River users don't see warning signs on the River early enough to move their vessel out of the way of the eel weirs or are not experienced enough to do so in time to avoid problems. Some eel weir operators are reinforcing their weirs with rebar, a non-forgiving material. One river user got caught on the rebar and lost a finger. The issue is the checks and balances on the eel weir operators to run their business properly. In the past, there had been meetings held with the eel weir operators to deal with issues of concerns and compromises were accomplished.

Kahnle noted that the Delaware River is the last holdout for eel population. Eels are down world-wide. Most states have restricted eel fishing. The NYS DEC will most likely look at this issue.

**Natural Gas Drilling/Exploration Update on Activities:** ♦The committee was provided with a news release issued by PA Dept. of Environmental Protection on May 4 that announced DEP has determined that Schreiner Oil and Gas Company has affected at least seven water supplies along Hedgehog Lane in Bradford Township, McKean County, and has notified the company of its responsibilities to those residents. Two of the water supplies were affected by methane and five supplies have iron and manganese above established drinking water standards. Schreiner has been actively drilling combination oil and gas wells in the area since last fall and did not establish background water quality in the area prior to drilling. Therefore, Schreiner is presumed responsible for restoring water supplies within 1,000 feet of the drill sites.

♦The committee was provided with a news release issued by the Delaware River Basin Commission on May 19. The DRBC release stated in part: "DRBC Executive Director today announced that she has issued a determination notifying natural gas extraction project sponsors that they may not commence any natural gas extraction project located in shale formations within the drainage area of the basin's Special Protection Waters without first applying for and obtaining commission approval. The commissioners intend to adopt regulations pertaining to the subject matter contained in this determination after public notice and a full opportunity for public comment, but this rulemaking process can be lengthy. In the meantime, DRBC will apply this determination in combination with its existing regulations. In taking this action, Collier considered and determined that as a result of water withdrawals, wastewater disposal, and other activities, natural gas extraction projects in shale formations may

individually or cumulatively affect the water quality of Special Protection Waters by altering their physical, biological, chemical or hydrological characteristics. The intent behind this executive director determination is to provide directional signals, not put up roadblocks. Wells intended solely for exploratory purposes are not covered by this determination. Exploratory wells are subject to state regulation. The DRBC recognizes that each natural gas extraction project also will be subject to the review of the environmental agency of the state in which the project is located and, in some cases, subject to federal agency review.”

◆The committee was provided with a news release issued by Congressman Hinchey on May 19 that announced Hinchey asked U.S. Environmental Protection Agency Administrator Lisa Jackson to conduct a review of her agency’s policy on the risk that fracturing poses to drinking water supplies, and Jackson told Hinchey that she believed her agency should review the risk that fracturing poses to drinking water in light of various cases across the country that raise questions about its safety. The Energy Policy Act of 2005 that Congress passed exempted hydraulic fracturing from the Safe Drinking Water Act, which was designed to protect people’s water supply from contamination from toxic materials. Hydraulic fracturing, also known as fracking, involves injecting fluids into a well at extremely high pressure to crack open an underground formation and to prop open the new fractures in order to facilitate the flow of oil and gas out of the well. More than 1,000 cases of contamination have been documented by courts and state and local governments in New Mexico, Alabama, Ohio, Texas, Pennsylvania, and Colorado.

### Old Business

**Communities Against Regional Interconnect Update:** Douglass reported that the CARI organization still exists. It is collecting outstanding monies due from the county members that were the result of the legalities involved opposing the New York Regional Interconnect’s proposed power line in the Upper Delaware River corridor and beyond.

**NPS Regional Director’s Response to UDC letter to U.S. DOI Secretary Salazar:** The committee was provided with copy of the May 7 letter issued by NPS Northeast Region Regional Director Dennis Reidenbach sent to UDC Chairperson George J. Fluhr. The letter was in response to the UDC letter issued to U.S. Dept. of Interior Secretary Salazar. The Reidenbach response letter stated in part: “Thank you for your letter of April 2, 2009 to Secretary of the Interior Ken Salazar concerning potential conflicts of the 1968 Wild and Scenic Rivers Act and the National Energy Policy Act of 2005. I appreciate your description of the history of the Upper Delaware Scenic and Recreational River as it relates to the placement of major transmission lines along the river corridor. We have requested assistance from our solicitors to gain a better understanding of potential issues associated with these two laws.”

Martinez noted that NPS is looking at the Wild and Scenic Rivers Act and what legislative authority NPS and UDC have, including gas drilling/exploration. Douglass noted that a recent teleconference with NPS and UDC staff on this issue involved 25-30 people and he felt the issue was moving in the right direction. Martinez offered that a white paper could be put together to address the issues. Hamilton noted that when the River Management Plan for the Upper Delaware was produced over 20 years ago, it didn’t envision gas fracking on the scale of today. Even New York State is updating its 20-year-old regulations with a supplemental GEIS (Generic Environmental Impact Statement).

**FERC Response to Cong. Hinchey and Cong. Waxman regarding Energy Policy Act back-stop and 4<sup>th</sup> Circuit Court Decision Appeal:** The committee was provided with copy of FERC letters dated April 14 to Henry Waxman, Chairman Committee on Energy and Commerce of the U.S. House of Representatives, and letter dated April 27 to Congressman Maurice Hinchey. The Waxman letter stated in part: “NYRI withdrew its application to the New York PSC before that agency acted on it, and it is my understanding that the withdrawal occurred within a year of a complete application being filed with the New York PSC. Given these facts, it would not appear that the New York PSC withheld or conditioned approval in such a way as to preclude a significant reduction of transmission congestion or to make the project economically infeasible. In these circumstances, based on the information before me, I am not aware of a basis for the Commission to exercise jurisdiction over the NYRI project.”

The Hinchey letter stated in part: “I am writing in response to your April 9 letter, in which you ask that the Commission reconsider and withdraw its April 2, 2009 petition asking the United States Court of Appeals for the Fourth Circuit for rehearing *en banc* of the panel decision in *Piedmont Environmental Council v. FERC*, Nos. 07-1651, et al., 2009 U.S. App. LEXIS 2944 (4<sup>th</sup> Cir. Feb. 18, 2009). That decision dealt with the interpretation by the Federal Energy Regulatory Commission (Commission) of section 216 of the Federal Power Act (FPA), enacted by

Congress as part of the Energy Policy Act of 2005. A majority of the Commission concluded that the term ‘withheld approval’ included not only the failure to issue a decision within one year, but also the denial of an application. The majority of the Fourth Circuit panel (one Fourth Circuit Judge and a district court judge sitting by designation) held the only reasonable reading of section 216 was that ‘withheld approval’ did not encompass the denial of an application, while the dissent reached the opposite conclusion, stating that the only reasonable reading of the section was that it did include denial. In light of this split decision, and its conclusion that ‘withheld approval’ does include denials, the Commission elected to seek rehearing before the entire Fourth Circuit.”

**Delaware Co. Electric Cooperative news stories:** The committee was provided with copy of two *Walton Reporter* articles dated May 6 and May 13. The first article indicated that the Delaware Co. Electric Cooperative was terminating its efforts to develop hydroelectric plants at four New York City-owned reservoirs (Cannonsville-Pepacton-Schoharie-Neversink) that would have utilized water released by the city from the reservoirs to comply with release obligations and flood control to provide power to its customers throughout portions of Delaware, Schoharie, Otsego and Chenango Counties. The project was known as the Western Catskills Hydro Project and was introduced in 2008 by DCEC in an application for a permit to the Federal Energy Regulatory Commission (FERC).

The second news article indicated the project might not be dead after the FERC rejected DCEC’s application for a permit and, instead, awarded a permit to New York City. Officials of New York City DEP contacted DCEC and asked them to a meeting with FERC officials in Washington, DC. That meeting was scheduled to take place May 13. The outcome of that meeting is unknown at this time.

**Pike County Dispatch May 7 letter to the editor, “Floodplain Regulations Questioned”:** The committee was provided with copy of *Pike County Dispatch* May 7 Letter to the Editor article questioning floodplain regulations. The letter stated in part: “The Group of Thirteen expresses concerns to the public about possible new regulations that may be implemented throughout the floodplain of the Delaware River Basin. Made up of citizen advocates who were adversely affected by flooding on the Delaware River and led by Subcommittee representative Mick Drustrup, The Group of Thirteen is concerned that the Floodplain Regulations Evaluation Subcommittee of the Delaware River Basin Commission is recommending one-size-fits-all regulations that may be imposed upon every community throughout the floodplain. Unfortunately, a rule that is effective in New Hope or Trenton may be detrimental for Upper Mount Bethel or Shawnee on Delaware. One solution to the current regulatory debate is to achieve compliance by vigilantly enforcing existing FEMA regulations. If the current FEMA standards were properly enforced, it is possible that more restrictive regulations would be unnecessary.”

**Delaware River Sojourn Update:** Ramie provided an update on the planning for the Delaware River Sojourn. The committee was provided with a news release that announced early-bird savings were available for participants registering by June 1 for the 15<sup>th</sup> Annual Delaware River Sojourn taking place June 21-27, 2009. Additional information, including registration details, is available on the sojourn web site [www.delawariversojourn.org](http://www.delawariversojourn.org). Over 65 miles of the main stem Delaware River will be paddled in 2009, split into daily trips ranging from five to thirteen miles. The Upper Delaware section of the sojourn will be held June 21—Pond Eddy to Staircase Rapids; June 22—Staircase Rapids to Kittatinny’s River Beach Campground. The Sojourn Steering Committee will have two more meetings before the 2009 event launches.

**Upper Delaware Scenic Byway Update:** Ramie reported the Upper Delaware Scenic Byway group held their annual meeting and election of officers on April 27. The new officers are Chairperson-Edward M. Boyer, Vice-Chairperson-Rosie DeCristofaro, and Secretary/Treasurer-Larry Richardson. The quarterly website report was provided and indicated that from April 2008 to April 2009 there were 14,551 visitors to the Byway website making the total 16,863 visits from 68 countries and viewing 75,794 pages. A resident from Barryville has tendered his interest in applying for the independent contractor position to secure business memberships for the Byway group. The Marketing Subcommittee will conduct an interview with this one and only applicant. The \$25,000 proposed grant to the NPS for the Mongaup Visitors Center was approved contingent on the Byway securing a bridge loan. Congressman Maurice Hinchey has included a \$200,000 appropriation request in the 2010 federal budget for the Byway’s visitor center. The Byway met with Fountains Spatial, Inc. who will create a digital base map that can be used on the Byway website, placemats project, and signage. The map will contain static database layers that a trained GIS person could update. The Byway was notified by NYS DOT Region 8 that DOT recently adopted a policy to cease use of self-weathering rustic steel for highway guide railing and barriers on all state highways, including scenic roads and byways. The steel has not resisted corrosion and has deteriorated significantly faster than

anticipated. The Route 97 landscape survey project is awaiting a signed contract from New York State. The next Byway group meeting is June 1 at the UDC office. This was re-scheduled from May 25 due to the holiday.

**New Business**

**“CALs News” Spring 2009 article:** The committee received copy of an article from “CALs News” provided by committee member John C. Sundholm. The magazine is published by Cornell University. Sundholm pointed out two parts of the article of interest: addressing watershed management issues in the New York City watershed, and designer ditches for stormwater management. He mentioned that they’re studying drainage clearing patterns along roads, and that New York City is sharing more of its water with downstream communities. The article was for the committee’s information.

**NYS DEC news release, “New York Applauds Obama Administration....”:** The committee was provided with copy of NYS DEC’s April 30 news release, “New York Applauds Obama Administration for Revoking Rule That Would Further Threaten Endangered Species Protections.” The article stated, in part: “...applauded the U.S. Department of Commerce and Interior for their decision to reverse a rule that would have severely compromised the protection of endangered and threatened species in New York and nationwide. (The rule) would have eliminated the requirement that federal agencies consult with wildlife biologists at the U.S. Fish and Wildlife Service and the National Marine Fisheries Service before undertaking, funding, or approving projects that may impact endangered species.”

**Daily Star May 14 article, “Study: NYC is bad for county”:** The committee was provided with copy of a May 14 *Daily Star* article, “Study: NYC is bad for county.” The article stated, in part: “The results of a \$250,000 study to determine the effects of New York City’s land-acquisition program were presented at the Delaware County (NY) Board of Supervisors meeting. Delaware County commissioned the analysis to prepare for the State Environmental Quality Review of the land program. The proposed purchases could leave the city in control of up to 50 percent of watershed land. The study found the economic effects, if the program were undertaken, include the loss of natural-resource-based industries, an impact on future growth potential and an artificial increase in land values. Also, local landowners would be priced out of the land market, and there would be a higher probability of NYC tax assessment challenges, a shift of the tax burden to other landowners and a shift in community character. The county will use the report to address issues during the SEQRA permitting process, which the city must undergo to continue acquiring land after 2012.”

**NPS Report:** Martinez announced that NPS-Upper Delaware’s Chief of Protection, Al Henry, will be retiring after 32 years of service. There will be a luncheon for Al on Thursday and UDC staff has been invited. Joe Nicholson will be taking the reins in June when Al leaves.

NPS is in the process of hiring a consultant to update the Zane Grey Museum’s historical designation.

There is more construction planned for the Roebling Bridge and the towpath trail. They’re waiting for the dwarf wedgemussel study in the River to be completed.

As a point of information, PennDOT is doing repair work on the center pier of the Pond Eddy Bridge

**Public Comment** None

**Adjourn** A motion by McKay seconded by Bowers to adjourn the meeting at 9:10 p.m. was carried.

Carol Coney, Office Manager