

UPPER DELAWARE COUNCIL MEETING MINUTES Nov. 6, 2008

The Upper Delaware Council held its monthly meeting on Thursday, Nov. 6, 2008 at the Council office on Bridge Street in Narrowsburg, NY. Chairperson Alan Bowers called the meeting to order at 7:34 p.m. A motion by Roeder seconded by Shafer to approve the Oct. 2 meeting minutes was carried. There was no public comment on the agenda.

In attendance: Town of Hancock-Jim Serio, Town of Fremont-Jack Niflot, Town of Delaware- Harold Roeder Jr., Town of Cohecton-Larry Richardson, Damascus Township-Bob Gross, Town of Tusten-Charles Wieland, Town of Highland-John C. Sundholm, Town of Lumberland-Jay Shafer, Town of Deepark-Phil Chase, Lackawaxen Township-John McKay, Shohola Township-George J. Fluhr, Westfall Township-Alan Bowers, State of New York-Bill Rudge, Delaware River Basin Commission-Carol Collier, and National Park Service-Vidal Martinez. Also in attendance: Town of Hancock Alternate-Fred Peckham; NYS DEC Region 3 Regional Director-Willie Janeway, and Damascus Township Supervisor-Jeff Dexter. Members absent: Commonwealth of Pennsylvania.

Committee Reports: The only committee that met in October was the Water Use/Resource Management Committee. The committee chairperson, Charles Wieland, provided a report. The October Operations and Project Review Committees saw a cancellation of their meetings due to inclement weather.

Status Reports

Delaware River Basin Commission: DRBC Executive Director Carol Collier reported that the DRBC has received its first permit application from Chesapeake Energy Corp. for a water withdrawal at the East Branch by Peas Eddy for a maximum withdrawal of 999,999 gallons a day. The application was received the end of October and gas well sites were not mentioned. DRBC will work with New York State on this permit. The DRBC is still continuing its discussions with Stone Energy, which are positive, regarding a drill site permit situation that may include fines.

The Delaware River Flow and Storage Data as of Oct. 30 indicate the combined NYC Delaware River Basin reservoir storage is at 69% with Cannonsville at 57.5%, Pepacton at 76.1%, Neversink at 71.5% and Rondout at 89.8%. The flows at Montague spiked on Oct. 29 to 12,400 cfs due to the snow storm precipitation.

A press release from the NYC Dept. of Environmental Protection (DEP) was handed out. DEP announced a program to temporarily increase the amount of water available for release from its Delaware Basin Reservoirs as part of the Flexible Flow Management Plan (FFMP). The program that has been in effect since October 1 allows for increased release rates in preparation for the temporary suspension of diversions from Cannonsville, Pepacton, and Neversink Reservoirs. The suspension of diversions from the City's three Delaware Basin reservoirs will allow for upcoming maintenance work on the Rondout-West Branch Tunnel to proceed. This program is expected to be in effect until the end of April 2009. The City will take the Delaware Aqueduct temporarily out of service as New York City continues along the path of complete rehabilitation of its water infrastructure. NYC DEP has already started the process of repairing the Delaware Aqueduct, with a project to upgrade equipment at Shaft 6, the entry point that will allow all future work.

Collier referenced a USGS handout relative to the temporary releases. The handout provided charts showing the combined and individual storage of reservoirs and the L1 Shutdown curves. In order to perform necessary dive work on an unwatering shaft, the Rondout to West Branch Tunnel is tentatively scheduled to be shutdown in the fall of 2008. In accordance with Section 17 of the FFMP, the NYC DEP is authorized to implement a temporary release program for the duration of the work as indicated on the graphs provided. Wieland asked if the higher releases would need to be paid back to NYC and Collier responded no, releases will go through April and May 1 we're back to the regular curves.

Collier continued that relative to the FFMP, a meeting was held last Thursday but no decision was made if action on the FFMP at the Dec. 10 DRBC meeting would take place or if they would move forward with another schedule. The studies work group is doing a reassessment study on the Montague flow target, salinity, and other topics.

A flood model for the 15 basin reservoirs is being done pertaining to storms and flows and crest inundation mapping and should be ready by the end of January 2009.

The U.S. Army Corps of Engineers is doing the OASIS extension adding years for comparison and it should be done in April.

The U.S. Fish & Wildlife Service is continuing its dwarf wedgemussel study and that should be completed in April.

The salt line study is also ongoing and information should be ready by June or July.

The recommendations of the Interstate Flood Task Force were provided to the Council awhile ago. One issue recommended was management of the floodplain. As a result of that, a new subcommittee will be meeting Nov. 12 at DRBC with the mission to review and evaluate floodplain regulations in the Basin and make recommendations to the Flood Advisory Committee within nine months. There are 20 individuals on the subcommittee from every Basin state, FEMA, USCOE, environmental groups, property owners, builders, farm bureaus, chambers of commerce, and local municipalities. The subcommittee meetings are open to the public.

Collier referenced a handout produced by the DRBC General Counsel, "Statement on the Flexible Flow Management Program, Adapted from Remarks of Kenneth J. Warren, General Counsel, DRBC Public Meeting of September 24, 2008, West Trenton, New Jersey". The statement reviews the legal needs of why FFMP is not official until amended into the DRBC Water Code. The document summary stated, "In summary, the following aspects of a Flexible Flow Management Program are currently in effect, in progress or anticipated: *In effect* – The Decree Parties' Agreement of September 2007 for a Flexible Flow Management Program is posted on the website of the Delaware River Master. This program is being implemented by the Decree Parties. *In progress* – The Commission has deferred consideration of the Water Code amendments proposed formally on December 3, 2007. *Anticipated* – Because river management is an adaptive process, the Commissioners will never have perfect science. Nevertheless, there will be a point in time when based on available data and modeling and after consideration of all of the public comments on the proposed regulations, the Commissioners will make a scientifically sound, objective determination as to which Water Code modifications to adopt. As I have noted, the Water Code amendments address how the reservoirs are to be operated until May of 2011, not how they are to be operated permanently. The amendments are not the stone tablets brought down from the mountain. *Anticipated* – Once the Commissioners and Decree Parties approve an interim set of regulations, they will be able to devote their full attention to developing an improved plan to go into effect on or around May of 2011."

Serio commented that Warren's statement document is good and informative. Serio noted that with the temporary release program, today's release same as would have been under the regular FFMP. The only thing different from FFMP is when reservoir storage is between the green and maroon curve on the L1. That is going from 80 cfs to 120 cfs on West Branch. It provides some small benefit. He asked Collier what's the usable storage percentage on the red and yellow lines on Figure 2 of the chart showing usable individual storage. Collier said she would get that information and provide it to Serio. Serio pointed out that for Cannonsville the L2 release is 80 cfs in winter. If above maroon line it goes into the L1-c release which is 120 cfs. If go to the yellow line it goes into the L1-b release. This is negligible flood mitigation, but good for the River. Collier indicated that the PA Fish & Boat Commission is reaching out to stakeholders to look at this.

NYS Dept. of Environmental Conservation: Natural Resources Supervisor for Region 3, Bill Rudge, reported that the aquatic invasive species Hydrilla has been found in a small pond in Chester, Orange County, NY. DEC will treat for complete eradication. Hydrilla threatens native species and takes over the water body. Infestation makes boating difficult as well.

Rudge referenced the DEC press releases handed out. The spiny water flea, an aquatic invasive species, has been confirmed as present in the Great Sacandaga Lake in the southern Adirondacks. Previously, it had been identified in the Great Lakes. This is the first time the spiny water flea has been confirmed in an "inland" body of water. Spiny water fleas are crustaceans that can have a huge impact on aquatic life in lakes and ponds due to their rapid reproduction rates. In warmer water temperatures, these water fleas can hatch, grow to maturity, and lay eggs in as few as two weeks. Sometimes, its eggs can remain in a dormant state for years before hatching, making tracking it and limiting its spread very difficult. The spiny water flea feeds on tiny crustaceans and other zooplankton putting them in direct competition with fish and other native aquatic organisms for this important food source. The tail spines of the flea hook

on fishing lines and foul fishing gear. Preventing the spread of the flea is the only way to limit their impact. Cleaning all fishing and boating gear and disinfecting it must be followed practices to limit the migration of the spiny water flea.

NYS DEC will hold its Fall CleanSweepNY program in the lower Hudson Valley the week of Nov. 3-7. CleanSweepNY is administered by the DEC, which collaborates with NYS DOT to provide sites for the collection and disposal of unwanted and/or obsolete pesticides and chemicals, including elemental mercury, to help provide a healthy and sustainable New York. November's CleanSweepNY effort is focused on seven counties including Orange and Sullivan. It is directed at agricultural and non-agricultural professional pesticide applicators, schools and business users such as golf courses, cemeteries, and marinas. Pre-registration is required and the collection site closest to the River Valley is the NYS DOT in Middletown. For further information go to the DEC website, www.dec.ny.gov.

Rudge reminded that the public meetings for comment on the Draft Scoping Document DEC produced to gather input on the environmental issues that should be addressed in the updated supplemental GEIS relative to gas drilling includes a meeting on Dec. 4 at the Sullivan County Community College. The doors open at 4:30 p.m.

NYS DEC Region 3 Regional Director Willie Janeway addressed the Council. He mentioned that the aquatic invasive species are one of many threats that NYS is dealing with. He relayed NYS DEC Commissioner Pete Grannis' appreciation to the Council for its role in protecting against threats and other issues such as gas drilling environmental issues and the way the UDC is protecting the natural resources. Janeway commented that he attended an Upper Delaware Roundtable meeting in the afternoon where the Marcellus Shale and gas drilling was discussed by various stakeholders from both NY and PA. He encouraged the Council members to attend the DEC Dec. 4 meeting and provide comment. He enumerated four commitments that DEC would take on the gas drilling: full environmental review; learning the composition of the fracturing fluid to review impacts; safe storage of used fracturing fluid; and proper disposal of used fracturing fluid.

Janeway also mentioned that given the budget issues in New York State, they are under a hiring freeze at the moment. DEC will be using its partnerships with various entities to take care of resource protection and UDC is a natural partner for this task.

Janeway recognized and thanked the UDC Representative from the DEC, Bill Rudge, for his dedicated work with natural resources and providing support to the Council.

Following Janeway's remarks, there was a question and answer section. Wieland noted that if there's a 70 percent return of the fracturing fluid from the drill, he heard some companies are cleaning and reusing that fluid on site. Janeway didn't know how viable that method would be but there are people in the state qualified to look at that. The primary focus on wastewater is to make sure the driller is in compliance with any state regulations. Gross thought that the used fracturing fluid was to be treated. Janeway said it's whether they store the used fracturing fluid in lined pit or steel tanks that's an issue. Rudge noted there are options on the table to deal with this. Fluhr mentioned there is a shortage of DEC staff and money, and Pennsylvania is dealing with the same type of resource issues, therefore he wondered if New York State had a good working relationship with PA in this matter. Janeway indicated the Commissioner met with the PA people. There is communication but there are different regulations between the states in this matter so it's hard to coordinate things. Chase mentioned that PA turned down wastewater from a gas company. Janeway explained that the wastewater is considered industrial waste and can only be brought to a facility that has the credentials to handle it. That's a question DEC will ask the gas company up-front when they're applying for a drilling permit, where are they bringing the wastewater for disposal, and it has to be answered or no permit. Chase said we cannot get answers to what's in the fracturing fluid, can the state? Janeway said yes. Gross mentioned that state inspectors are an issue; there are not enough of them. PA is talking about having the townships have the inspectors. What is New York State doing regarding inspectors? Janeway indicated that the timeline to process permits will be slowed down if not enough staff. Soete asked if there was any place in NYS that DEC would not allow drilling. Janeway mentioned the Catskill Park probably. He noted that western NYS had more drilling experience than the east. Richardson commented there would be impacts to the local town roads and the towns want legislation to force the gas companies to pay for road impacts. Janeway said that was a good comment for the Dec. 4 public meeting. There are procedures in place in western NYS to get bonding.

PA Dept. of Conservation and Natural Resources: No report.

National Park Service-Upper Delaware: Superintendent Vidal Martinez reported that Don Jacobs of Pennsylvania Outdoor Life was up here doing television interviews with NPS staff relative to the 30th Anniversary events. The EXPO held on Oct. 25 was well attended including the Birds of Prey program among others. Many partners also provided exhibits for the day. A newspaper clip on the event was handed out. The recycled commemorative tote bags provided to the UDC members were part of the EXPO handouts. The members thanked the NPS for the bags. Martinez thanked the UDC staff for all their time and effort in planning the EXPO event with NPS.

Martinez continued that NPS is working with the Town of Lumberland on the Upper Delaware Visitors Center site and the mobile units that will be the visitors' center, as well as with the design contractor on how to situate the mobile units to make best use of the site space.

The NPS provided a statement at the Oct. 29 public meetings held by the NYS Public Service Commission in Sullivan County relative to the proposed power line application from the New York Regional Interconnect. The Sullivan County meetings were two of many held by the PSC throughout the proposed route of the power line.

Martinez invited again all the Council members to attend the Nov. 8 30th Anniversary Retrospective being held at Central House in Beach Lake. Both NPS and UDC staff have been working hard on this event. It will give an overview of where we've been, where we are now, and what's next for our future. It should prove to be very informative. The event will run from 8 a.m. to 5 p.m.

UDC Executive Director's Report: Referring to Janeway's remarks, UDC Executive Director Bill Douglass noted that the Council has been fortunate to have "good people" working with it from the NYS DEC, like Bruce MacMillan and Fred Gerty, and now Bill Rudge.

Douglass offered his comments on the EXPO and felt it provided excellent programs and information. There were also lots of children in attendance which was good to see. There were 30 partner groups that provided displays, including the UDC. As to the Retrospective, Council member George J. Fluhr will be part of the speakers for the day. Douglass asked that the Council cover the registration costs for Council members and staff that would be attending the event. Any speakers would not have to incur registration costs. A motion by Wieland seconded by McKay approving the costs (\$25 each) for attendance was carried.

The UDC staff attended the Oct. 29 PSC public hearings in Sullivan County. In Callicoon there were 24 testimonies including Congressman Hinchey, with about 200 in attendance. In Lake Huntington, about 150 there and NYS Senator Bonacic make remarks along with many others. On Nov. 5, the Hancock hearing had 14 testimonies including the Council's and a copy of Douglass' testimony was provided to the Council members.

Douglass reminded the New York member towns that under NYS grant M080103, they needed to provide the Council with their project proposals by the deadline of Dec. 12. This grant allows for \$8,125 to each town.

The Sullivan County Division of Planning and Environmental Management received word that its grant application for local waterfront revitalization had been approved. The UDC has pledged to work with the County on this endeavor that includes areas along the Upper Delaware River.

The Upper Delaware Scenic Byway model interpretive signs located in Narrowsburg have been erected. There is one, two-sided panel in front of the Council office. A small unveiling ceremony is being planned for this completed project.

The Council's new oil burner has been installed.

Old Business

River flows: Chase reported that he spoke to the Delaware River Master regarding the drop in flows in the West Branch and Upper Delaware. The Montague flow target is 1750 cfs and the River Master indicated that with the heavy rain that was expected, releases were made. It wasn't the River Master's goal to consider environment, just the flow target. Chase felt that in today's climate, the environment is very important. He wondered if an environmental target could be worked in with the flow target. He asked Collier if the Supreme Court needed to rule on this. Collier mentioned that DRBC has discussed this in-house about other targets and how to accomplish that. It's very water supply oriented now and we'd like to get environment looked at too. Bowers wondered who determines you have to err on the side of caution

with the Montague flow target. Collier indicated that the River Master defines conservation as conserving the water in the reservoirs. Serio asked Collier that once the FFMP is in place and in the Water Code, can other issues be worked on more closely, and Collier responded yes.

New Business

UDC Testimony at the Nov. 5 NYS PSC public hearing on NYRI application: As mentioned in Douglass' report, a copy of the UDC testimony provided at the Nov. 5 NYS Public Service Commission's public hearing in Hancock, NY on Case 06-T-0650: NYRI Transmission Line Proceeding was handed out for the members' information.

Gas Pipeline work shuts down Rt. 84: Fluhr reported that apparently there was a gas leak that shutdown parts of Interstate 84. He didn't know if it was the Millennium or Tennessee gas pipeline. There were numerous fire companies called to the scene and a bad smell of gas occurred for miles. Fluhr said he didn't know why Rt. 84 was shutdown. He felt with the new gas lines going in around the valley we have to look at getting the local fire departments more involved and provide them with more information from the pipeline companies. Sundholm said the Middletown newspaper said there was no explosion. They were working on the line so they closed Rt. 84 as a precaution. Sundholm noted the Town of Highland met with the gas company and they answered all the questions the town had and answered the fire department questions.

Nominating Committee Appointed: Chairperson Bowers appointed the following members to the Nominating Committee to come up with a slate of officers for the 2009 calendar year: Harold Roeder Jr. (chair); Jack Niflot, George J. Fluhr. Roeder called a meeting of the committee before the Nov. 25 Operations Committee meeting. The slate of officers needs to be presented at the December UDC meeting followed by elections at the January UDC annual meeting.

Public Comment

Sandy Long of *The River Reporter* asked Collier if the gas application the DRBC received mentioned any use of the water. Collier said yes, but the application does not discuss specific well sites. It should, that's why staff is looking at this more closely. The Supplemental GEIS in NYS is not completed as yet. Peckham noted that Chesapeake wants to drill in the Town of Hancock.

Adjourn A motion by Roeder seconded by Richardson to adjourn the meeting at 8:56 p.m. was carried.

Carol Coney, Office Manager