

UPPER DELAWARE COUNCIL MEETING MINUTES April 7, 2011

The Upper Delaware Council held its monthly meeting on Thursday, April 7, 2011 at the Council office in Narrowsburg, NY. Vice-Chairperson Nadia Rajsz called the meeting to order at 7:35 p.m. A motion by Rando seconded by McKay to approve the March 3 meeting minutes was carried. There was no public comment on the agenda.

Rajsz introduced and welcomed the new Town of Delaware Alternate to the UDC, Robert Fisher. This position had been vacant. Rajsz thanked and the board applauded the services of Dolores Keesler, former Damascus Township Representative, who had been serving as the UDC chairperson for 2011 as well as the Operations Committee chairperson.

Boyar inquired if a written notice about Keesler's removal as Representative had been received from Damascus Township and he was informed a notice was not received. Keesler said she had received a letter addressed to her from the township that she had been relieved from the position. Richardson felt the Council should ask the township for a formal letter on the removal. Dexter, UDC Alternate and township supervisors' chair, responded that a letter should have been sent to the Council already and he would see to it immediately.

Rajsz announced that following the UDC meeting, there should be an emergency meeting of the Operations Committee, the focus of which would be a possible federal government shutdown on April 8 and impacts to the UDC. The Council agreed that meeting should take place.

In attendance: Town of Hancock-Fred Peckham, Town of Fremont-Jack Niflot, Town of Delaware-Harold Roeder Jr., Damascus Township-Jeff Dexter, Town of Cohecton-Larry Richardson, Town of Tusten-Tony Ritter, Berlin Township-Lillian Russell, Town of Highland-Andy Boyar, Town of Lumberland-Nadia Rajsz, Town of Deerpark-Phil Chase, Lackawaxen Township-John McKay, Shohola Township-Scott Rando, State of New York-Bill Rudge, Commonwealth of Pennsylvania-Dennis DeMara, Delaware River Basin Commission-Ken Najjar, and National Park Service-Sean McGuinness. Absent: Westfall Township. Other Council Members: Town of Delaware Alternate-Robert Fisher; Town of Highland Alternate-Debbie Conway.

Committee Reports: The committee reports were provided based on the meeting minutes. They were: March 15 Water Use/Resource Management by Ritter; March 22 Operations by Rando; and March 22 Project Review by Peckham.

Status Reports

Delaware River Basin Commission: Ken Najjar referenced the Delaware River flow and storage data handed out for the month of March and up to April 1. He noted we've had variable conditions this year. We went up in March since it was a wet month. The river is running high. The combined New York City Delaware River Basin reservoir storage is 98.2% as of April 1. The flows in March were two to three times above normal and the salt line was pushed down to River Mile 54 from River Mile 74 placement on March 1.

The DRBC partnered with the U.S. EPA on sponsoring a drinking water forum, a multi-location webcast, including a viewing site at Sullivan County Community College in Loch Sheldrake, NY. UDC staffer Dave Soete had participated in this webcast and provided reports to the committees. Najjar noted they had good attendance that included many water system operators. Also discussed were runoff, Marcellus shale, private wells, and public water supplies. The forum had the full cooperation of the agencies in the Basin. They are looking forward to further collaboration with the participants.

Najjar noted the comment period was extended to April 15 regarding DRBC's draft Natural Gas Extraction Regulations, Article 7 of Part III of Basin Regulations. Comments are being handled electronically and in hard copy. They've had 6,000 comments to date including 14,000 comment "topics". These are rough figures as they change every minute. DRBC will compile and respond to comments after April 15. He noted the DRBC received the UDC comment letter beginning of March. Richardson asked if they were using the postmark of written comments, and Najjar said no, the comments have to be in by close of business that day at 5 p.m. Electronic comments would be open to 2 a.m. on April 16 since the receiving system is based on Mountain Standard Time. Rajsaz asked how long it would take to review the comments and get a response document out, and Najjar said they've hired a consultant who is familiar with the NPS receiving system in order to sift through and tabulate the comments. DRBC is hoping it will be a fairly short time.

Najjar mentioned the FFMP (Flexible Flow Management Program) with the Decree Parties was developed to provide a more adaptive means than the previous operating regime for managing the Cannonsville, Pepacton, and Neversink reservoirs for competing uses, including: water supply; drought management; flood mitigation; protection of the tailwaters fishery; a diverse array of habitat needs in the main stem river, estuary, and bay; recreation; and salinity repulsion. The program in place is to expire May 31, 2011. Najjar noted that the Decree Parties (New York City, New Jersey, New York, Pennsylvania, and Delaware) have announced (news release handed out) an agreement on a framework for a new interim flow program for the Delaware River. The plan allows for releasing more water from New York City's reservoirs to the East Branch Delaware, West Branch Delaware, and Neversink River, which will improve protection of downstream habitats and help cushion local storm impacts, while still ensuring a reliable supply of high quality drinking water. New York City DEP developed an Operations Support Tool (OST) that allows better prediction of reservoir-specific water storage levels, quality, and inflows, which gives DEP a level of certainty that was not previously possible to help determine when it is safe to release water without unnecessarily depleting the water supply for nine million New Yorkers.

Under the new framework: DEP will adjust water releases from its Delaware reservoirs to push back the salt water front that moves up the Delaware River from the Atlantic Ocean; the City will create a higher potential to create a 10% void in its Delaware reservoirs; a subcommittee of the Decree Parties will be established of cold water fisheries staff from each state to ensure that water releases provide maximum ecological benefits downstream; and New Jersey will divert an average of 100 mgd out of the basin via the Delaware & Raritan Canal, except in drought emergencies. The interim framework will lead to a more detailed plan and criteria in the coming months.

NYS Dept. of Environmental Conservation: Bill Rudge called attention to the news releases handed out. "NY drilling regulations may take all summer" – Rudge noted that DEC Commissioner Martens takes seriously the completion of an environmental impact statement for gas drilling that addresses issues raised in the 13,000 comments received on the first draft completed in September 2009. He's hopeful rules will be in place by summer's end to address all the potential impacts. Rudge noted there will be a public comment period on the second draft.

"Freshwater Fishing Season Kicks off with April 1 Trout and Salmon Opener" – Unlike last year, opening day trout anglers will see high, cold stream conditions as a result of this winter's heavy snows. Unfortunately, a good part of the state remains covered with snow, which may restrict access to streams and cause very high stream flows making early season angling difficult.

"DEC Advises Public on the Potential for 'Winterkills' on Area Waters" – As the ice melts across the state, DEC expects to get increasing reports of fish kills in small ponds. Reports of fish mortalities have already been received from some small waters in the southeastern portions of the state. Fish kills that become obvious when the ice melts can be attributed to "winterkill", a natural phenomenon that occurs when waters rich in nutrients, algae, and other aquatic plants are covered with ice and snow for long periods of time.

"State Ban on Brush Burning March 16 – May 14" – All residential brush burning is prohibited during the state's historically high fire risk period beginning March 16 through May 14. Since the open burning regulation passed in 2009, we've already seen fewer number of fires reported in NYS this time of year. Open burning is the largest single cause of wildfires in New York State.

PA Dept. of Conservation & Natural Resources: Dennis DeMara reported that Governor Corbett has nominated Richard J. Allan as Secretary of DCNR. The Common Waters Fund through the Pinchot Institute will initially provide \$1 million to private landowners and some conservation and forestry professionals to implement forest management and conservation projects in the Upper Delaware River watershed. There is a May 1, 2011 application deadline.

DCNR has announced federal grants are available to help Pennsylvania's rural communities better guard against the threat of fires in forested, undeveloped and unprotected areas. The maximum grant request that will be considered from any fire company in 2011 is \$7,500. Local firefighting forces in rural areas or communities with fewer than 10,000 residents qualify for the aid, which is used for training and equipment purchases directly related to fighting brush and forest fires. The Bureau of Forestry began accepting grant applications February 28. All applications must be received at the Bureau in Harrisburg by 4 p.m. Thursday, May 19. Applicants should visit www.dcnr.state.pa.us, click on "apply for grants", then Online Grant Applications and DCNR Volunteer Fire Assistance.

The PA Fish and Boat Commission established the Boating Facility Grant Program in 2005 to provide grants to county and municipal governments for the planning, acquisition, development, expansion and rehabilitation of public boating facilities located on the waters of the Commonwealth. Boating Facility Grant Funds are available to county and municipal governments, nonprofit (501c3) land trusts, conservancies and watershed associations and DCNR designated State Heritage Areas that have or will have the capability to provide boat access facilities that are open and available for general public use. The deadline for consideration of an application for the following fiscal year is May 31. However, the Commission encourages prospective co-operators to submit applications anytime. For information email RA-BoatGrants@state.pa.us.

The state outdoor recreation plan inspired a number of projects and initiatives in the first year since its release. Last year the updated five-year plan was issued and DCNR took a look at what transpired over the first year. A newly posted 14-page report outlines a number of success stories related to the four goals of the plan. DeMara mentioned that a partnership of DCNR, the Fish and Boat Commission, PA Environmental Council and others made great strides in advancing the plan's recommendations for improving and expanding water trails in the state. They're also looking at increasing river access points. For information go to www.paoutdoorrecplan.com.

National Park Service-Upper Delaware: Supt. Sean McGuinness reported he met with the Boy Scouts and learned they are not considering selling land in the area but they would be open to an easement in the Town of Tusten.

On April 21, NPS met with the river guides in Hancock to discuss mutual issues and working together. This is the first time they're talking just guide issues.

NPS has issued permits for the Pond Eddy Bridge repair project. This summer construction will cause some river closings.

If there is a government shutdown on April 8, four Rangers will be the only staff covering the NPS facilities. He spoke with Bill Douglass on the impacts to the UDC. April funds for UDC have been appropriated.

UDC Executive Director's Report: Bill Douglass announced that the meeting with Congresswoman Nan Hayworth and the Government Officials Liaison Subcommittee has been changed from April 29 to April 20 at her Goshen office. Any UDC board member who wishes to attend this meeting should contact Douglass. The Council's Spring/Summer newsletter issue was mailed March 31 and posted on the Council's website. He reminded everyone the reservation deadline for the UDC's awards ceremony is April 8. So far, 74 have registered for this event.

Old Business

Flow Target at Montague: Chase asked Najjar about the 1750 cfs at Montague. Najjar noted you can always go above 1750. There will be more releases made when conditions are much hotter under the new release agreement.

Code of Ethics Information-NYS Assn. of Towns: Boyar noted that in the past there have been conflict of interest discussions. He said he checked with the NYS Association of Towns. A packet of information including case law was provided to the members by Boyar.

NPS Nonfederal Oil and Gas Regulations at 36 CFR, Part 9, Subpart B (“9B regulations”) in December 1978, excerpt: Peckham provided a handout of his personal summary of the 9B regulations. He noted this information is the current regs; they’re updating them now. This is quoted from the “introductions” and he didn’t think the introductions would change but that the regs will. He read aloud an excerpt from the handout: “Nonfederal oil and gas rights consist of those held by individuals, companies, nonprofit organizations, state and local governments. Although these property rights fall under the protection of the 5th Amendment of the U.S. Constitution, the NPS nonetheless has the authority to regulate these rights.” Additionally, “Under these regulations the NPS can regulate but not prohibit the development of oil and gas resources within the corridor of the UDSRR without just compensation under the 5th Amendment of the U.S. Constitution.”

Rajsz asked how this would affect the river corridor. McGuinness said for the most part it isn’t going to apply to this NPS unit since these regulations control all activities within any unit of the National Park System in the exercise of rights to oil and gas not owned by the United States where access is on, across or through federally owned or controlled lands or waters. Rajsz wondered if these regulations would supersede the River Management Plan (RMP). Peckham offered that you still have the 5th Amendment and private property rights. Be careful on letters you’re putting out. Rajsz mentioned that the RMP is pretty clear. Peckham said there’s a difference of interpretation. McGuinness added that provisions in Title 36 of the CFR do not apply to private lands in the Upper Delaware River corridor, as mentioned in the River Management Plan. Peckham inquired then state regs oversee this area; McGuinness said yes. Richardson asked that McGuinness give the UDC a written response of what he verbally interpreted and mentioned here.

New Business

UDC 2nd Draft Comment Letter to DRBC-Delaware River Water Release Plan: The members received this letter prior to the meeting for review. A motion by Boyar seconded by Richardson to approve the letter was carried. Boyar commented that we have a wild trout population here and it brings in multi-million dollars to the economy from Callicoon to Hancock. It’s important to send this letter to get the NY-PA white paper recommendations included.

The letter stated in part: “As stated in our December 2, 2010 letter, we believe that the ‘White Paper’s’ suggested release policy would be a significant next step in improving releases on the Delaware. It suggests several elements that are strongly supported by the UDC: 1) Its increased summer releases improve the protection of cold water fisheries and habitat on the upper rivers. 2) Its increased winter releases protect river bottoms from dewatering or freezing, thus protecting macroinvertebrates and developing fish larva. 3) Its increased releases produce larger end of summer reservoir voids, thus providing increases in modest flood protection entering hurricane season. Two notable inclusions should be a habitat bank of water to be used for unforeseen circumstances, particularly during summer months. The second feature that should be included in the new release plan is a simple set of minimum flow targets on the upper rivers.”

UDC Draft Comment Letter to EBI Consulting-Proposed Telecommunications Facility Town of Fremont: The members reviewed a letter to EBI Consulting regarding a cell tower project which is just outside of the river corridor. Peckham noted there were concerns with the tower being seen from the river and a balloon test should be done. He felt the importance of having the cell tower there outweighed a little part of the top of the pole showing. Rajsz commented that nothing in the letter is saying don’t put it up. A motion by Richardson seconded by Niflot to approve the letter was carried. The letter offered eight comments on the project.

UDC Draft Comment Letter to PA Fish & Boat Commission-Draft Delaware River Management Plan: The members reviewed the letter to the PA Fish and Boat Commission regarding its draft Delaware River Management Plan. A motion by Boyar seconded by Rando to approve the letter was carried with one abstention. The letter states in part: “The draft Plan nicely complements the Upper Delaware Scenic and

Recreational River Management Plan, and the goals and objectives of the UDC.” The letter offered some edits to the Plan.

UDC Draft Comment Letter to Damascus Township-Proposed Zoning Ordinance Amendment Pertaining to Oil and Gas Wells and Pads: The members reviewed the draft letter to Damascus Township on its Zoning Ordinance amendment. A motion by Rando seconded by Boyar to approve. There was discussion. Jeff Dexter, alternate to UDC and Damascus Supervisors’ Chairperson, noted that the township prohibits wells in the River District. At the time the river district was created, the township had no GIS map so the actual district and the river corridor are a little different. The township’s is 1500 feet from River Road. Outside of the river district, it’s a conditional use. In Pennsylvania, we have to follow the state regulations. The setbacks come from a court case. We can extend the setbacks but cannot create a new setback. If we put in 500 feet, we could wind up in Court again. We cannot create an un-standard setback. Boyar said he’d like to send the letter in order to get a written response. Richardson noted that the UDC letter contains our suggestions for the record. If the township can incorporate any of our suggestions, that would be good. A vote was taken, the motion passed with 3 abstentions and 1 nay.

The letter offered five suggestions relative to the amendment. It does mention that the UDC believed the proposed amendment “substantially conforms” with the Land and Water Use Guidelines in the 1986 River Management Plan, as the oil and gas well pads will not be allowed in the river district, and are a conditional use in the rural residential district, a small portion of which is located in the designated Upper Delaware Scenic and Recreational River corridor.

Nominating Committee to Select Candidates for UDC Chairperson to fill the vacancy: The Nominating Committee was tasked by Rajsz with seeking candidates to fill the Chairperson vacancy and to provide its report at the May UDC meeting so that a Council vote could be taken.

Public Comment

~ Barbara Arrindell – asked Najjar if get comments on the same topic is it considered “one” comment? Najjar said we go through each comment and all are counted. We’ll put all comments under one topic as that applies. This is not weighted voting.

~ Jim Serio reported he attended the RFAC meeting today and he could answer any questions the group had. Boyar wondered if they were incorporating the NY-PA white paper items. Serio said NY and PA will be working with the group doing the regulation details. At today’s meeting, there were 125 questions sent in for answers. The next RFAC meeting is May 5 at 10 a.m. to answer the balance of the questions. The highest flow plan table would be implemented 70-80% of the time; that’s a huge step forward. Boyar said he wanted to acknowledge Serio for a lot of work he’s put in on this issue and he thanked him for that.

~ Bernie Handler – thanked Dolores Keesler for her work on the UDC and felt she did a job that was fair to everyone. Her township dismissal from the UDC had the fallacy that she didn’t represent the entire township. She didn’t go beyond the River Management Plan. Peckham remarked that it’s in the UDC Bylaws that the UDC appointment is at the will of the town or township that made the appointment.

~ Marian Schweighofer – said she was concerned when definitions in the RMP were changed through interpretation. This UDC’s job is to make sure they follow the RMP. None of you would want this group coming into your town and telling you what to do. It’s a slippery slope when you gang up on one township, and the words you use were clear and direct threat and that involves condemnation. Look out guys.

~ Bob Fisher – brought up a matter as his role as administrator of the Callicoon hospital. He requested support from the UDC with the NYS DOT and PennDOT is providing hospital signage to alert people (tourists) that there is a hospital nearby in this rural area so they don’t have to drive too far away if they need immediate care. Rajsz said she agreed that it’s needed. McGuinness said he’d look into this. That information could be included on the corridor map and guides. Richardson asked Fisher to send a request in writing to the UDC and the Byway group for support letters.

Adjournment A motion by Peckham seconded by Roeder to adjourn the meeting at 9:40 p.m. was carried.