

UPPER DELAWARE COUNCIL MEETING MINUTES Aug. 5, 2010

The Upper Delaware Council held its monthly meeting on Thursday, Aug. 5, 2010 at the Council office on Bridge Street in Narrowsburg, NY. A motion by Rando seconded by Rajsz to approve the July 1 meeting minutes was carried. There was no public comment on the agenda.

In attendance: Town of Hancock-Fred Peckham, Town of Fremont-Jack Niflot, Town of Delaware-Harold Roeder Jr., Damascus Township-Dolores Keesler, Town of Cohecton-Larry Richardson, Town of Tusten-Sue Sullivan, Town of Lumberland-Nadia Rajsz, Town of Deepark-Phil Chase, Lackawaxen Township-John McKay, Shohola Township-Scott Rando, Westfall Township-Peter Kenny, Commonwealth of Pennsylvania-Dennis DeMara, Delaware River Basin Commission-Carol Collier, and National Park Service-Sean McGuinness. Also in attendance: Town of Tusten Alternate-Tony Ritter; Damascus Township Alternate-Jeff Dexter. Not present: Berlin Township, Town of Highland, and State of New York.

Committee Reports: The committee reports were provided from the committee meeting minutes. They were July 20 Water Use/Resource Management by Douglass; July 27 Operations by Roeder; and July 27 Project Review by Peckham.

Following the WU/RM report, Chase made the comment that the main stem upper Delaware River is in worse shape now and the lower part of the West Branch is doing badly even under the FFMP (Flexible Flow Management Program). In the 1970s and 1980s, then President Carter fished the main stem but now there's not enough cold water in the main stem. We were getting releases even during drought. The flood people are upset about the reservoirs being so high. Something has to be done about the environment. The past few days we were getting higher releases as Lackawaxen River was not releasing. We need more cold water for trout fishery.

McGuinness noted that he's asked about releases but locals have told him we cannot fight New York City's grip over the reservoirs. However, McGuinness felt we should continue to address this issue and look at impacts for all species. NPS is also concerned and we'll work with the UDC on it. Peckham commented that the white suckers are being impacted also and usually they're not bothered in these conditions.

In reference to reports from the committees, McGuinness apologized for not getting his May 26, 2010 comment letter to DRBC about natural gas exploration to the Council sooner. He noted this was a new role for him up here. I was brought up the ranks to protect rivers, etc. There was an opportunity to send the letter to DRBC as the regional letter would be sent later and McGuinness saw the DRBC Determination as possibly allowing some dockets regarding gas exploration approved that had gone through the state process prior to the June 14 date. He noted that UDC has been neutral on the gas but that he could not be. He has to protect the resource. He said NPS-Upper Delaware will send copies of letters earlier in the future and we'll discuss our position with UDC before letters are issued. McGuinness said his number one job was to protect the park unit.

Kenny asked if the UDC was neutral on this issue. Roeder responded we have no position as yet. We have two things to do, protect land rights and protect the river corridor. The Council members are anti and pro gas drilling and we have to come to a compromise on the issues. Kenny asked how long would the neutral position last and Roeder indicated as long as the River Management Plan (RMP) was in force.

Richardson commented that the Town of Cohecton took a neutral position as well. Since 1989 when he came on the Council no letters from NPS were sent to the UDC for approval, however, there has been a lot of communication between NPS and the UDC and UDC is well aware of the gist of NPS's position. Peckham said that's where the landowners come in. Private property rights are a big issue here. McGuinness commented but private property is included in the River corridor which we are mandated to protect. Roeder said he was proud of the UDC in that we are able to discuss things and come to a compromise.

McGuinness said going through the RMP it says I should be consulting with the UDC. There are many things the UDC is not doing and I'll be bringing these items up to you and we'll work together on it.

Status Reports

Delaware River Basin Commission: DRBC Exec. Dir. Carol Collier referenced the Delaware River Flow and Storage Data that was handed out. The storage is 12 bg below the long-term median and 41 bg below the level of one year ago. The Delaware River Master has reported that there has been 13.6 bg released into the river since January of this year. We're following the same summer program (FFMP) from June 1 through August. Special thermal releases were done in July. The New York City Delaware River Basin combined reservoir storage is at 80% now.

As to drought issues, we're creeping into drought. The forecast looking forward to October shows no significant precipitation in the reservoir area. Only this afternoon five counties in northeast New Jersey went into drought watch.

Collier said an article she wrote for the "Estuary News" summer issue was handed out entitled, "Fracking Delayed to Ensure Clean Water." She reviewed the DRBC's timeline regarding natural gas. The Commissioners directed DRBC staff to not do well permit reviews until DRBC regulations were formulated, but that water withdrawals should go forward. The question was what about test wells. My Executive Director's Determination one year ago was all wells to be reviewed except test wells. The issue of test wells came up because they are deep and the industry is doing well pads for future activity and there will be changes in the landscape such as forest fragmentation, river setbacks and such. On June 14 I issued a supplemental to my Determination that test wells will also be reviewed by DRBC except those that had gone through the state process and had permits issued by DEP prior to June 14. After internal review, we allowed five wells to go forward. After that, a letter from Hess was received. Two wells had erosion and sedimentation control approval by Pennsylvania and a positive construction control and Hess wanted an okay for these two wells. On July 1, we agreed on allowing the two wells. At the July 14 DRBC meeting, over 600 people attended and offered public comment. At that meeting we approved the Stone Energy water withdrawal on the Lackawaxen and approved requests for hearing from various groups on a number of issues. The Commissioners have directed staff to combine the public hearings on these requests to one and to hold the hearing in northeast Pennsylvania. A hearing officer has been chosen. We'll start in early September with all the parties. The hearing officer will hear testimony, make decisions, and report those decisions to the Commissioners.

The DRBC staff has been working on the gas drilling/exploration draft regulations. The beginning of July the draft went to the Commissioners and the Commissioners have returned the draft with comments. A meeting will be held with the states involved. We hope to have the draft regs out in September and will have public hearings – one upriver and one downriver. The DRBC looks at water requirements like a three-legged stool – wastewater requirements, well and well pad review, and looking at the operational issues and not duplicating Pennsylvania's reviews. New York State does not have updated regulations yet. If certain conditions are met, the DRBC will do an approval-by-rule and there will be no need to go to a DRBC meeting for the Docket approval. We are looking at doing comprehensive drilling plans where the gas companies work with us on sensitive areas where they can and cannot drill. If that plan is done on large acreage, we'll probably go to approval-by-rule. We want to be pro-active and also allow for a level playing field for the gas industry. We're also developing GIS tracking tools, where wells are and where wastewater is going. The development of regulations sets bounds. The problems with gas so far has been human and technical errors. We also have to look at "what ifs" and be prepared for emergencies and such.

The next Delaware River Basin Commission meeting will be Sept. 15.

Chase noted that there are only a few places able to handle gas drilling wastewater for treatment, two in PA and none in NYS. He asked are we going to lose that Delaware River water used for gas drilling

water withdrawals. Collier said it was all consumptive use. Water either stays in ground or goes out of the area to be treated at commercial facility. It will be out of basin water.

Chase mentioned that about two years ago we lost excess release credits. He also asked Collier when did we lose the 100 cfs and how did we lose it. Collier noted summer fishery releases from Cannonsville increased 25%. She would explain the process to Chase after the meeting.

Peckham noted that Abbott and Range Resources are using the water over again. He asked if DRBC has talked to these companies. Collier responded yes, we encourage re-use of water to cut back. We looked at acid mine drainage in Susquehanna that can be used and maybe bring up here to use. McGuinness asked if regs require NEPA or state regs. Collier responded not NEPA, that's for federal projects. NYS is working on its SGEIS on gas regs now. McGuinness wondered if DRBC was doing an environmental impact review, and Collier noted not at this time.

Richardson asked if DRBC looks at impacts on site, such as truck traffic, etc. Collier noted there are regulations in Special Protection Waters areas for control of erosion and sedimentation. Peckham noted PA has those. Just use them so DRBC doesn't duplicate efforts. Collier agreed but added that DRBC will need a post-site plan.

Chase asked Collier if New York State had been attending the DRBC meetings. Collier noted that the NYS representative couldn't come as a state budget had not been passed and certain travel is restricted. Richardson made a motion seconded by Rajsz that a letter should be sent to the NYS Governor that state representation is needed at DRBC and UDC meetings; motion carried.

NYS Dept. of Environmental Conservation: Informational handouts were provided as no one could attend the meeting from DEC. Rajsz asked that another letter be issued to DEC Region 3 asking the status of the Unit Management Plan for the Mongaup Valley Wildlife Management Area. Soete reported Coney provided him with an email from Bill Rudge regarding a revised NYS Stormwater Management Design Manual that was posted on the DEC's website. The 2010 manual is now in effect, however, there's a six-month transition period for use of the new standards. Soete said he'd check out the revisions. Roeder called attention to the informational handouts provided that included information on DEC's Mapping Gateway Google Earth offerings; Emerald Ash Borer detected in Steuben and Ulster counties; and Notice of Proposed Rulemaking pertaining to endangered and threatened species of fish and wildlife and species of special concern. Further information at the DEC's website: www.dec.ny.gov.

PA Dept. of Conservation and Natural Resources: Dennis DeMara reported that the Bureau of Recreation and Conservation grant round closed in April. They've reviewed the applications. Northeast PA was very strong area for applications received. They'll announce the grantees in the fall. We have \$20 million statewide.

SmartWood, an organization accredited to offer independent, third-party certification of environmentally responsible forest-management practices, is inviting the public to submit comments in August during its review of Pennsylvania's 2.2 million-acre state forest system. The assessment will evaluate the ecological, economic and social performance of the Bureau of Forestry according to forest management guidelines established by the Forest Stewardship Council. Information on SmartWood can be accessed at www.smartwood.org.

The Bureau of Forestry's website includes reports on Natural Gas Exploration on State Forest Lands. A new report was just posted, "Impact of Leasing Additional State Forest Land." The reports can be accessed at www.dcnr.state.pa.us/forestry/marcellus/index.html.

The Bureau of State Parks has announced that the annual Civilian Conservation Corps (CCC) reunion will be held on Aug. 21 at Promised Land State Park in Pike County. This is the 77th Anniversary of the establishment of the CCC camp S-139 at Promised Land. It's a celebration of the efforts of former members of "Camp Pocono" as CCC boys from around the United States gather for a day of activities.

There will be a workshop in March 2011, "Connecting Nature and Commerce" to help communities on the edges of public lands.

Pennsylvania has completed its state comprehensive outdoor recreation plan. There is lots of interest in trails and DCNR has had meetings with the trails people in Scranton. Lots of new trails being done were opened this year.

On Oct. 19 at Marywood University the third Sustainable Landscapes Conference will be held focusing on managing landscapes in a healthier, more environmentally friendly way while saving money.

To register go online to:

www.dcnr.state.pa.us/Calendar/view_event.asp?CalendarID=16540&Location=List.

National Park Service-Upper Delaware: Sean McGuinness announced that Wayne County is taking final comments on its comprehensive plan. He inquired if UDC was commenting on this regarding River Management Plan items. DeMara offered it was an excellent idea to send comments. A motion by Richardson seconded by Roeder that the Council's Water Use/Resource Management Committee review the comp plan and prepare comments was carried. McGuinness noted that NPS will also be making comments.

As promised, the NPS has reprinted the river valley's "Design Handbook" and it's now available. The UDC will upload this document to its website for the municipalities in the River corridor to use as a technical assistance guide in zoning and planning issues. McGuinness provided a hard copy to the Town of Lumberland Supervisor at her request.

McGuinness met with the NPS Regional Director regarding the River Management Plan 20-year review (now late) regarding funding. The Regional Director made a point of indicating that he wanted the folks in the Upper Delaware to be comfortable with the fact that it will take money for the review and that this project is seated low on the competitive funding list but he will look into moving it up in priority. McGuinness requested a letter from the UDC supporting this project.

McGuinness reported that it looked like the appropriations bill for FY11 might go passed the deadline and therefore operations would be handled under a continuing resolution. Under this scenario, it's possible monies could come in on a percentage basis using last year's budget as a base. He said he will continue monitoring this situation. Coney offered her concern this scenario would impact the UDC's operating budget.

NPS is continuing with the Data Sonde equipment readings for water quality monitoring in the River. Four more are planned. Peckham inquired if the information on the water quality was available; McGuinness said yes and he'd provide a source.

McGuinness mentioned that he would provide UDC with the Bridge Safety Plan given to the contractor. He also mentioned that the NPS-Upper Delaware is sending a representative to participate in the Delaware River Water Trail signage project meetings.

Rajsz commented that the river rescue recently had to be done during the night and that it was a difficult rescue. She lauded the rescue team's efforts. She suggested to NPS that the canoe liveries should have a curfew and a method of keeping tabs on people that have not come off the river at the specified times in case there is a problem. Cell phones do not work in the valley and getting help if you're stranded on the river is very difficult. Rando commented that any maps dealing with the Upper Delaware River should include access points and where on the river a person is located. This information should be included in the liveries' safety talks. Most river users don't know their exact location on the River. Points of reference should be on a map as well.

Niflot asked if McGuinness knew when there would be a replacement bridge done at Callicoon. McGuinness said both states fund the interstate bridges and that it's a matter of funding cuts impacting projects.

UDC Executive Director's Report: No report at this time.

Old Business

EPA Public Meeting Aug. 12 Hydraulic Fracturing Research Study: Sullivan inquired if the UDC would be making comments at the Aug. 12 EPA public meeting in Binghamton on the EPA study scope for the hydraulic fracturing research study they'd be conducting. She felt the UDC should offer its concerns. Roeder said that letter would have to go through committee and then back to the UDC. There wasn't time. But he asked staff to look into putting together a comment letter.

Upper Delaware Scenic Byway: Rajsz noted that the grant project for establishing scenic vistas along NYS Rt. 97 through the Upper Delaware Scenic Byway, Inc. has begun as of Aug. 2. The work started in the Pond Eddy area. It should be completed in about two weeks. The Council provides staff time and facility space to this state Byway group.

New Business

UDC 2nd draft comment letter to Town of Cochection-Zoning Law Amendments natural gas drilling:

Members reviewed the draft comment letter prepared for the Town of Cochection's proposed zoning law amendments that came through committee. The letter stated in part: "We note that most of the Upper Delaware Scenic and Recreational River corridor in the Town of Cochection is comprised of the AC and RU Districts. The UDC has not yet taken an official position on natural gas drilling in the river corridor, although we are following the issue closely and have started work on a position paper. The River Management Plan does have specific references to the words oil, gas, and pipeline, but we do not believe that it ever envisioned horizontal drilling or hydraulic fracturing. Selected references in the River Management Plan including the following (list given). We hope that the Town Zoning Law would incorporate the River Management Plan's Land and Water Use Guidelines when considering Special Use applications for natural gas drilling activities. We expect that the NYS DEC will continue to protect and conserve the outstanding natural resources and special qualities for which the Upper Delaware was designated by the United States Congress in 1978 as a unit of the National Wild and Scenic Rivers System. The Upper Delaware Council is very concerned over how the environmental effect of natural gas exploration and associated facilities might affect the river corridor and the entire watershed. Much of the river corridor is comprised of forested steep slopes and lowland areas which are susceptible to flooding. Clearing for well pads, access roads, and pipelines, and other facilities could have an impact on the character of the area and pose significant threats to the natural resources, particularly water quality, for which the Upper Delaware Scenic and Recreational River corridor was designated. We previously expressed concerns in the UDC's November 5, 2009 letter to the NYS DEC regarding the Draft SGEIS, and although many issues have been addressed, we believe that others need further scrutiny. They include (list of 28 items given). We expect that there will be an adequate increase in the number of state inspectors to monitor and enforce the relevant regulations."

A motion by Peckham seconded by Kenny to approve the letter as amended was carried, with one abstention.

Executive Session Proposed: Roeder announced that there would be an executive session following public comment regarding personnel policies.

Public Comment

~ The Council heard from twelve individuals regarding their concerns with natural gas drilling/exploration and oversight regulations. Among the topics of concern – DRBC, Pennsylvania, and New York State gas regulations and oversight and strength of overall regulations; monitoring of private property water well sites and adjacent streams by well pads; moratorium on gas drilling until regs and/or studies are completed; impacts to individuals with "environmentally sensitive" health concerns; landowner rights of those individuals that have not signed a gas lease; air quality detrimental impacts; impacts to human health especially children; amount of water withdrawals needed per well pad; impacts to streams and river; pass-by flow requirements; water withdrawals and reservoir releases; cumulative impact studies needed; and water withdrawal impacts to aquatic habitat.

Executive Session

A motion by Kenny seconded by Rando to go into executive session at 10 p.m. was carried. A motion by Rajsasz seconded by Rando to come out of executive session at 10:55 p.m. was carried. Douglass was to review with staff results of the meeting.

A motion by Richardson seconded by Rajsasz approving Douglass and Soete attending the Aug. 12 EPA public meeting without use of comp time was carried.

Adjournment A motion by Rajsasz seconded by Richardson to adjourn the meeting at 10:59 p.m. was carried.