

Upper Delaware Council  
**WATER USE/RESOURCE MANAGEMENT COMM. MEETING MINUTES**  
Feb. 15, 2011

Committee Members Present: Ritter, Chase, Boyar, McKay, Shafer, Keesler, Rando  
NPS Partner: Hamilton  
Advisory Council: None  
Staff: Douglass, Soete, Coney, Ramie  
Guests: L. Grover, D. Mitchell

Committee Vice-Chairperson Phil Chase called the meeting to order at 7:04 p.m. Coney amended the November meeting minutes to reflect correct spelling of Reichart; that FUDR meet at the Delaware River Club; and Chase wanted to clarify his statement "Chase mentioned the Rand Study where the Supreme Court in 1931 allowed 440 mgd be diverted from the Delaware watershed to the Hudson watershed (NYC) and this increased in 1954 to 800 mgd." A motion by Rando seconded by Keesler to approve the Nov. 16, 2010 meeting minutes as amended was carried. (The committee had no quorum in December and the January meeting had a weather cancellation.) There was no public comment on the agenda.

**Election of Committee Chairperson and Vice-Chairperson for 2011:** Boyar nominated Tony Ritter for chairperson. No other nominations. Ritter was elected chairperson by voice vote. Boyar nominated Phil Chase to continue as vice-chairperson. No other nominations. Chase was elected by voice vote. Ritter conducted the remainder of the meeting. He commented it was an honor to serve, he loved the river, and he would do his best to preserve it.

**Presentation – Changes in Erosion & Sediment Control Regulations, by Len Grover and Dave Mitchell of the Wayne Conservation District (PA):** Grover explained that the PA DEP on Nov. 19, 2010 released revised regulations for erosion and sediment control. The revisions to Chapter 102 of the Pennsylvania Code took effect in November and require permits for construction activities that disturb a specified amount of land. They also set standards for riparian buffers along exceptional-value or high-quality waters. DEP revised the regulations to reflect a 2002 change to the National Pollution Discharge Elimination System (NPDES) rules, which lowered the threshold for earth disturbance activities that require a permit from five acres to one acre.

Under the revised regulations, anyone, including a township, planning a project that disturbs one acre or more of earth must obtain a NPDES permit for stormwater discharges associated with construction activities.

These earth disturbance activities can include land clearing and grubbing; grading; excavations; embankments; land development; agricultural plowing or tilling; operation of animal heavy-use areas; timber harvesting, road maintenance, and oil and gas activities; well drilling; mineral extraction; and moving, depositing, stockpiling, or storing soil, rock, or other natural materials. A permit is also required for any component of a larger development plan that disturbs one or more acres of earth over the project's life. Road maintenance activities, as defined in the regulations, are exempt from the permit requirement as long as they remain within the existing road cross section. The exemption does not apply if the maintenance activity on the existing cross-section disturbs 25 acres or more.

In situations where a township is not sure what it might be getting into as far as the scope of a project and whether it requires a permit, they should consult with the county conservation district.

The regulations also require any township that must obtain a Chapter 102 permit for a construction or maintenance activity to develop, implement, operate, and maintain a written post-construction stormwater management plan. This is defined in the regulations as a site-specific plan consisting of drawings and a narrative that identifies the best-management practices that will be used to handle changes in stormwater runoff volume, rate, and water quality once the project is finished and the site is permanently stabilized.

The revised regulations also prohibit a township from issuing any permit or approval to anyone proposing activities that require a Chapter 102 permit until it receives proof that the applicant has such a permit. Local stormwater approvals or authorizations are exempt, however. In every county but Philadelphia, DEP has delegated the administration and enforcement of the Chapter 102 regulations to the county conservation district.

Anyone proposing earth disturbance activities that require a Chapter 102 permit may not perform that work within 150 feet of exceptional-value or high-quality waterways and must protect any existing riparian buffer. Affected resources include rivers, creeks, streams, lakes, ponds, and reservoirs but not wetlands. If an exceptional-value or high-quality watershed has impaired water and the construction activity is performed along or within 150

feet of a waterway, the person proposing the activity must do one of the following: ~Protect an existing riparian forest buffer ~Convert an existing riparian buffer to a forest buffer, or ~Establish a new riparian forest buffer.

Grover mentioned that the conservation district would also like to make contractors from New York State aware of these regulations since they might not know about the required permits in Pennsylvania. Mitchell added that engineers working in both NYS and PA need to know the differences in the states' regulations. For example, wetland disturbance is different in each state. They instructed that further information could be obtained on their website, [www.wayneconservation.org](http://www.wayneconservation.org) or anyone could telephone their office.

### **Old Business**

**DRBC Chairperson's response to UDC Dec. 2, 2010 letter on FFMP:** The committee was provided with copy of the Jan. 31, 2011 response letter from Gov. Jack Markell, chair of the Delaware River Basin Commissioners regarding a Council letter issued on the Flexible Flow Management Plan (FFMP). The Markell letter states in part: "Understandably, addressing all related water resource issues such as drinking water supplies, flooding, fishery needs and salinity repulsion is an extremely challenging endeavor because the uses may be diametrically opposed. Still, the parties to the 1954 Supreme Court decree are tasked with addressing most of these multiple objectives and with revising the FFMP accordingly. One of the most important tasks for the parties is to conduct a reassessment study for an independent expert look at the reservoir operations. The Regulated Flow Advisory Committee of the DRBC met on December 14, 2010. At that meeting, DRBC's federal representative announced that the U.S. Army Corps of Engineers secured funds in support of the reassessment study that requires local matching contributions. Timing prevents reassessment study results from being integrated into an update of the current FFMP, but the findings eventually will be a valuable product for future water management in the basin. I will continue to support the conduct of this study."

Boyar wondered if the UDC needed to reiterate and strengthen its comments with another letter since the current FFMP is expiring in May 2011 and a revised plan needs to be done. Boyar said he'd discuss this issue later in the agenda.

**Pond Eddy Bridge Update:** Ramie reported PennDOT's project team for the Pond Eddy Bridge held a teleconference today. She and Douglass participated. The current bridge condition includes a down posting in weight limit and emergency repairs are to be done to the stringers on the bridge deck. A contract was awarded but PennDOT needs a plan of how the company will do the rigging for PennDOT approval. Once the plan is approved, the bridge will be closed for repairs 9 a.m. to Noon and 1 to 4 p.m. on weekdays. Rando asked if there was provision for emergency vehicles, and Ramie said they'd make that happen if tonnage can get over the bridge. There's hope now that the NYSHPO will re-establish consultation as part of the MOA. The DOTs are working on Section 106 process and will present findings to the NYSHPO. If the MOA is approved, PennDOT could start the design committee process. An environmental clearance has to be done on this project as well.

**Upper Delaware Scenic Byway Update:** Ramie reported at the Jan. 24 meeting of the Byway group, the delegates debated if the Byway should take a stand on natural gas development. Comments would pertain to aesthetics only. The Byway will take no pro or con position on gas drilling. They are concerned with visual impact and truck traffic. A draft resolution is currently being reviewed by the members. If approved, it would be issued to state elected representatives and the media.

As to the interpretive signage project, they are waiting agreement from all the municipalities to erect signs and approve sign content. The Byway is advertising for proposals for graphic design services. An RFQ is out for printing services for the Japanese knotweed brochure. Ads are appearing in the local print media for a Marketing and Sales Associate to develop a marketing plan and solicit website listings for the Byway business membership program. All 125,000 Byway marketing placemats ordered are distributed and the group will get cost quotes to redo the placemats.

Since there's a balance of monies left in the landscape survey project, solicitations have been issued to the municipalities to submit project ideas by March 31. This particular grant expires on Aug. 31, 2011. Ramie in response to a question noted the money was leftover as only five properties were selected and bids came in lower than expected in the first grant round. The next meeting of the Byway is Feb. 28.

**D & H Transportation Heritage Council:** Ramie attended the D & H quarterly meeting on Jan. 26 in Barryville at the NPS office. There was a conference call with NYSHPO about putting the D & H linear corridor on the National Register. There's multiple properties in NY and PA and it would be a challenge. This conference call was a

preliminary step in the process. D & H will be re-vamping its website and the domain name has been secured. Election of officers was held and the roster remains the same with Kristen Porter the chairperson, Cliff Robertson Jr. as vice-chairperson, Sally Talaga as secretary and Jane Varcoe as Treasurer.

**Other:** Chase said he attended the RFAC meeting in December. The NYC rep also spoke at the Neversink and RFAC meetings. Most of us do not know what's going on in the Croton watershed. Joe Miri said NYC has not used the Croton reservoir for the last 10 years. Chase said he asked the City what was the output of the Croton and they replied 290 mgd. It will cost \$2 billion for a filtration plant for the Croton but it doesn't seem the City will use that reservoir unless there's an emergency because the water would have to be pumped, so most likely they'll use the gravity-fed Delaware River water. NYC uses just over 500 mgd, but just before November they were taking 690 mgd. That's not hurting us any now. The reservoirs are 85% full. The City usually does drawdown based on the snowpack. It looks like NYC is going to take advantage of our water. The Rand Corp. study had said that perhaps some day in the future the 800 mgd will be reduced that NYC is allowed to take. However, it seems that NYC is going to get as much water as they can to keep the 800 mgd in force that they can use.

Boyar said he heard the actual NYC usage was 550 mgd and that NYC is using less water now because of conservation methods they've initiated. Chase noted that in the 1970s we got 100 cfs excess credits. We met with Deputy River Master Harkness in the late 1990s and he said the 100 cfs should always remain. RFAC is having another meeting in March and something has to be done or we'll go back to REV 1. It all looks like NYC has money and lawyers to keep taking water. The 525 mgd NYC takes probably includes water from the Ashokan.

### **New Business**

**Sullivan Co. Planning Local Waterfront Revitalization Plan Launch Meeting Jan. 28:** Ramie reported that Sullivan County Planning received a state grant to put a waterfront plan together for the river corridor. The funding is to put an action plan in place. They'll examine all existing plans, such as the River Management Plan, Byway concept plan, etc. Once the action plan is in place, additional funding could be sought. The focus of the plan is tourism, river access, ecology, and river recreation. There will be divisional committees installed under this project. The kick-off meeting was Jan. 28 at the UDC office. Douglass is participating on this project. The four key goals of the LWRP are: Developing an inter-municipal vision for the riverside communities; protecting river ecology; enhancing public access to and from the river; and developing the area's tourism and recreational potential.

**Model Letter - Modification of Current FFMP to Incorporate Joint Fisheries Release Proposal:** Andy Boyar had provided to the committee a model letter regarding concerns about the replacement rules for the FFMP that will expire in May of 2011. Boyar explained that the Dec. 2, 2010 UDC letter to the DRBC Commissioners' Chairperson was comprehensive and touched on good suggestions. The stakeholder groups dealing with the FFMP are jelling around the NY-PA white paper suggestions. The white paper has broad support. The model letter is targeted toward their decision on the FFMP. Ritter offered he wasn't sure at this point what all the stakeholder groups are backing. He suggested that the model letter could be used as a foundation for letters to the numerous environmental organizations to see if they'll join us. Boyar noted that last April Trout Unlimited—New York, Pennsylvania and national—accepted the white paper. We have to do something between now and May to support and verify the white paper.

Chase felt everything Boyar was saying was good. Dan Plummer ran a meeting with all these groups. He offered to contact Plummer to find out the latest news. Ritter said the model letter could be revisited then. Boyar felt the model letter should be revisited in March since the Council would need to take action on the letter at its April meeting. Ritter said we could ask Plummer to come to a WU/RM meeting. Plummer is the president of FUDR (Friends of the Upper Delaware). McKay mentioned ask Plummer for his opinion. Boyar commented the white paper is used as a basis for a plan to implement the white paper. Ritter said he understood that with the white paper we'll get more cold water in the summer, but I also heard that some want to go back to REV 1. We need to compromise here to get a better deal.

Boyar explained this plan won't impinge on NYC's water supply. Soete asked if there was a plan based on the white paper. Boyar said, yes and that Serio and Kolesar have a plan. They've added some enhancements. Ritter said he felt the main stem Delaware deserves the most care, but some disagree.

Ritter requested the committee read Boyar's draft letter again and provide comments. Keesler and Ritter felt that the committee needed more information on this topic. Boyar said he would get the PowerPoint of the plan and any organizational endorsements to Soete tomorrow.

**UDC Draft Comment Letter to DRBC – Draft Natural Gas Regulations, committee input:** Soete explained that he provided the committee with a very preliminary draft comment letter to DRBC on their natural gas draft regulations. The draft letter would also be reviewed at the Project Review Committee meeting next week. He asked the committee if they had any input to the letter.

As to open pit centralized wastewater storage facilities, there were comments that instead of evaporation the gas company should either reuse the wastewater or transport it off site. The open pits could also be considered a hazard to the bird populations and on-ground animals; also run-off problems. It was suggested a closed-loop system could be an alternative. Keesler noted the tracking of wastewater from well site to treatment facility will be tracked by the gas company and reports made to the DRBC. There was concern with leaks of the wastewater during truck transport. A question was is the wastewater a regulated substance. If so, the trucker needed to secure a hazard sticker. The gas company should disclose material in the fracking fluid to emergency first responders. There are methods to mitigate spill before a hazmat team arrives. It was mentioned that people on the ground were needed to track this transport. Other items discussed was heavy industrial use definition, approval by rule, tracers specific to individual natural gas wells or natural gas drilling companies should also be used for discharges and spills, no surface mining in river corridor, the bonding requirements are too low, among others.

Boyar suggested maybe the full Council could vote on each bullet point in the draft letter; if it passes leave in letter; if not, leave out. The individual towns and townships can also issue their own comment letters. Ritter indicated that some towns have done comment letters that are based on the River Management Plan. The UDC representatives will need to obtain guidance from their respective towns and townships on the UDC comment letter. The towns could also provide a copy of their letter to the UDC. Ritter said he emailed a video connection of the Feb. 10 work session with DRBC to everyone and it would be good to review that online. Soete felt any board member that wanted to attend the Project Review meeting next week should; the committee agreed. Soete said he would include some of the WU/RM Committee input and provide a second draft to the Project Review Committee and the Water Use/Resource Management Committee.

Ritter reminded everyone that the Project Review Committee would meet next Wednesday, Feb. 23. This is a date change for that meeting.

**Informational Handouts:** The committee received informational handouts for their review regarding the FFMP, Mongaup System reservoirs title transfer, the Lake Wallenpaupack planned drawdown in the fall, and public meeting notice from PA Fish & Boat Commission about the Draft River Management Plans that included the Delaware River.

**Re-send letter to DRBC on the 100 cfs extra release credit:** Chase explained that the Council had issued a letter to DRBC Executive Director Collier regarding the status of the 100 cfs extra release credit. At the January Council meeting, when questioned, Collier said she thought that letter had been answered, but that she would inform her staff to follow up. Chase said to date, we have not received an answer and he would like another letter sent. A motion by Chase seconded by Shafer to issue another request letter from staff was carried unanimously.

**Public Comment** None

**Adjournment** Ritter asked those in favor of adjourning say aye; aye unanimous. The meeting adjourned at 10 p.m.

Carol Coney, Office Manager