

Upper Delaware Council  
**WATER USE/RESOURCE MANAGEMENT COMMITTEE MEETING MINUTES**  
Sept. 21, 2010

Committee Members Present: Serio, Chase, Boyar, Keesler, Rando, Ritter  
Committee Members Absent: McKay, Shafer  
NPS Partner: Hamilton  
Advisory Council Members: None  
Staff: Douglass, Soete, Coney, Ramie  
Guests: E. Reichart, A. Willard

The UDC's Water Use/Resource Management Committee held its monthly meeting on Tuesday, Sept. 21, 2010 at the Council office in Narrowsburg, NY. Committee chairperson Jim Serio opened the meeting at 7:14 p.m. A motion by Boyar seconded by Rando to approve the Aug. 17 meeting minutes was carried. There was no public comment on the agenda.

**Presentation:** *Different Perspective – Issues Concerning Management of the NYC Reservoirs and the Delaware River*, Elaine Reichart, Aquatic Conservation Unlimited: Reichart handed out a printout of the PowerPoint presentation which was not presented due to technical difficulties. Additionally, a rack card chart, Score Card, showing "Delaware River Reservoir and River Management Plan Options, Variables Safe Yield & Demand (NYC's Total System)".

Reichart explained that Aquatic Conservation Unlimited was formed in June 2007 following the three major flood events in the watershed. The 501 (c) 3 non-profit organization is dedicated to the protection of waterways, specifically in this case, the Delaware River. However, the group's bylaws do not restrict their activities to the Delaware River watershed only.

What the ACU members found after researching the topic was there's a lot more at stake than just flooding — it's water supply, river ecology and drought. Take a step back and ask the questions what's the best thing for the Delaware River Basin and what can we do to regain lost equity in the River.

The DRBC will be voting shortly on what plan they want to have — either renew the FFMP (Flexible Flow Management Plan); use what's in the Water Code which is Revision 1; or go back (which is what we're arguing) and reset to the Supreme Court Decree. The only good thing in the FFMP is that it promises there will be no L1 discharges within 48 hours of certain threshold flood limits at Hale Eddy, Fishs Eddy and Bridgeville. The FFMP is like Rev 1 on steroids if you look at it. The inherent problems with FFMP start at Rev 1. They both assume a fictitious 800 mgd continuous diversion, they have no seasonal variation of demand; there are obsolete design assumptions; and it's overdraft based. Trout Unlimited national and tri-state issued a white paper a couple of weeks ago. They have fully condemned the FFMP and have done a bottom-up analysis that New York City is holding way too much water and not releasing it, and it's causing all sorts of ecological flooding and drought problems on the river. The NJ DEP report is coming out this week and is a top-down analysis and it comes to the same conclusion as TU's report. Reichart referenced the rack card chart that showed the differences in Rev 1, FFMP, and the Supreme Court Decree. For example, they are using a drought rule curve under both which is unrealistic; they are not using their whole system conjunctively which would help them be more efficient. The sad thing is this—because capacity levels trigger release levels, NYC can manipulate anything they want at any time they want. They could throw the basin into an artificial drought just by concentrating on overdrafting from three reservoirs and not using the rest of their system. That would lower the capacity of the three reservoirs and we would fall into drought warning or emergency and there would be no drought.

We had equity at one time with the Supreme Court Decree. The Decree came up with a formula and contained within that formula is the number 800 mgd diversion and the safe yield of 1665 mgd. The formula is based on total system safe yield minus expected demand, and 83% of the difference between those two is what NYC is to send down the river. Through negotiations Pennsylvania, New Jersey and Delaware kept giving NYC more and more. Yes, NYC had runaway demand in the 80s, and yes they didn't manage their systems properly and yes they didn't have metering and there were other problems where the demand was so much greater than it is today. The other mistake was the Decree Parties gave away all the water concessions on a permanent basis to NYC, not foreseeing the day that that would change and that NYC demand would go down and we could get our water back.

The FFMP renewal would need a unanimous vote of the Decree Parties to pass, and if New Jersey does not vote to renew, we might revert back to Rev 1. While Rev 1 is probably okay, it might be better if the Decree Parties and DRBC found a way to reset back to the Supreme Court Decree. Why should we give up our water if NYC mismanages its water supply?

If you look at the formula there's two thresholds, and the 800 mgd number is mentioned. If New York City's need was so great, they could take up to 800 mgd and no more. It's a provisional thing; if you need it you can take it. It's not an absolute number. The other threshold is 70 bg. When you work the formula out, and have the 83%, that 83% is capped at 70 billion. If it's more than that, we don't get it; New York City gets to keep it. What does this do for us? You wouldn't need OASIS, you wouldn't need design assumptions; you wouldn't need OST (which is going to be a replacement for OASIS); you don't need DSS or a drought rule curve. It's the Supreme Court Decree that hands the formula to NYC and says this is what you get and how you use it is up to you.

There are two provisions in the Supreme Court Decree that no one talks about. This clause says that NYC should not be given credit for any of the releases from Lake Wallenpaupack. In the Supreme Court Decree stipulations still in effect, under number 3 in the handout, it states "Releases to be Continued in Spite of Interference. In the event that any works hereafter constructed by public or private interests in the watershed of the Delaware River outside of the State of New York shall prevent the proper operation of the U. S. G. S. gaging station at Montague or interfere with the effective operation of the above release requirements by diverting water past the station or by intercepting the natural flow and storing it in reservoirs with an aggregate storage capacity in excess of 25 billion gallons, the City of New York shall continue to make the releases above specified which would be required in the absence of such interference, and appropriate gaging stations shall be established for that purpose." Reichart said she interprets this, after speaking to the law professor at Villanova that NYC is on the hook if any of the gas drilling companies takes large amounts of water out of the river to still meet the flow targets.

Hamilton noted that PPL's license pre-dates the Supreme Court Decree. Reichart said that's true and it should have been addressed in the FERC re-licensing. The correct interpretation of the Supreme Court Decree would be any additional or incremental releases by PPL through their FERC relicensing should not be counted towards the Montague target and New York City should be responsible for adding that like amount to their releases to maintain the target.

Reichart returned to number 4 in the Decree that states "Inspection Permitted. The states of New Jersey and Delaware and the Commonwealth of Pennsylvania, through accredited representatives, and the River Master, shall at all reasonable times have the right to inspect the dams, reservoirs and other works constructed by the City of New York, to inspect the diversion areas and the inflow, outflow and diverted flow of such areas, to inspect the meters and other apparatus installed by the City of New York and to inspect all records pertaining to inflow, outflow and diverted flow."

Reichart noted referencing documents for the committee's review at: [www.state.nj.us/drbc/regula.htm#decree](http://www.state.nj.us/drbc/regula.htm#decree) – for Good Faith recommendations; Dockets D-77-20 CP and D-77-20 CP Rev 1; and the Supreme Court Decree. Also, <http://water.usgs.gov/osw/odrm> - for the FFMP (Flexible Flow Management Plan).

Reichart noted that New Jersey is coming out with an updated safe yields report and it will be posted on the Aquatic Conservation website, [www.aquacon.org](http://www.aquacon.org). New Jersey is saying more water is really available. If New York City doesn't negotiate in good faith, the states could go back to re-open the Supreme Court Decree. If you look at the Montague target cutback during drought, upriver is at more of a disadvantage. The Decree parties have developed a release schedule without taking us into consideration. We're thinking of doing a Delaware River Basin Bill of Rights and proposing a Delaware River Basin Water Resources Council that can be created by DRBC/Decree Parties, concurrent legislation, or judicially through the Supreme Court. The mission would be to determine how and when the reservoir releases will take place. It could be made up of political and non-government council members. Each member would have one vote and majority rules. We'd like to get our equity back with this river.

In response to a question, Reichart noted that two reports on use of voids in the reservoirs for flooding, one by the DRBC and one by Dr. Roger Ruggles, a hydrologist at Lafayette College. Ruggles report indicates that 5 to 6 feet of flood waters in Easton was caused by contributing reservoir spill. Reichart said she'd send the Council the Lafayette report as well as the others on the subject.

Chase commented that NYC has a plan to get to the 800 mgd using the tunnels. We have to find out if NYC can co-mingle Catskill and Delaware waters to reach the 800 mgd. If they can do this, the Delaware River will be hurting. Reichart said NYC has an OST model which is proprietary and no one

knows what NYC is doing with the model. We want DRBC to get our water equity back and drop FFMP as we don't feel it is a good plan. Serio asked for a definition of overdraft and safe yield. Reichart noted that overdraft is taking more water than your actual safe yield will allow. Safe yield is a design parameter of calculating how much water you can take from reservoirs without depleting the system. They've calculated it on a daily basis and other methods. Serio wondered if the safe yield changed if we're in drought, and Reichart said the safe yield number does in fact change because of the other factors such as the Montague target changing in a drought declaration. She noted that NYC uses different criteria to declare drought. Hamilton asked if any other reservoirs were run by the points Reichart was making to prove it's better. Reichart said Dr. Dellapenna of Villanova could answer that. We on the eastern U.S. have better and different water rights than the western states have. Serio commented you're saying the Supreme Court Decree gives more water than FFMP; what's the mechanism to do that. Reichart said that Rev 1 was based on false analysis and it wasn't known until 20 years later.

Serio offered that he did disagree with Reichart's presentation. He said he felt the crux of the problem was how to get more water released. It's simple to add that to the current FFMP. He agreed there needed to be a way to get more water for the river. If we go back to Rev 1 it'll be a disaster. The FFMP transferred about 22% of spill into useful water usage. If you add more levels in the formula, you could better use the 70 bg of water. Reichart said she thought FFMP was toxic because of its performance. She pointed out that Serio was using the wrong numbers for Rev 1 of today, hence the rack "Score Card" with the correct numbers that shows Rev 1 today would have more water flowing down the river than the Rev 1 from 27 years ago. Additionally, she disagreed with Serio's assertion of 22% and that that number was not accurate; the FFMP exasperates flooding and does not prevent it. There are better ways to do it. The premise of the matrix is how much water does NYC need. We need to ask our representatives at the federal, state, and DRBC level to go back to the Supreme Court Decree. The committee thanked Reichart for providing them with her presentation.

### **Old Business**

**Status Damascus Township Zoning Amendment, UDC Comment Letter Tabled:** Keesler provided the committee with an update on the Damascus Township zoning amendment process. Although the letter concerning the amendment was tabled at the UDC meeting, the UDC jumped the gun by not calling the township before the letter was presented. The township's substantial conformance review by NPS was done before the township joined the UDC. Hamilton asked if any substantial conformance review was done when the township became members. Keesler said no, and that should have been done. The township's zoning was done before the River Management Plan was finalized. There was no resolution on the map issue at the township meeting. The Planning Commission was reviewing. Hamilton noted that there are differences between the township's river district and the corridor boundary. Keesler mentioned that at the township meeting, Shepstone commented that there's only a 24% difference on the township map and he didn't feel that was a major issue. Soete explained that after the UDC meeting staff discussed the issue with the township and Wayne County Planning. Hamilton mentioned that having that township buffer in the river district helps protect the resource. He noted that the corridor boundary had been revised before the RMP was out. NPS had reviewed the township for substantial conformance in 1990.

Ritter asked if Damascus Township was saying no drilling in the river corridor, and Keesler confirmed they were. Soete noted his concern was the special exemption in the rural residential district that was changing to general use in what was technically the designated river corridor. Douglass commented the township will work with its solicitor and planning commission to address this issue.

**Pond Eddy Bridge Update:** Ramie reported the PennDOT Project Team for the Pond Eddy Bridge project held a teleconference on Sept. 7. The Federal Highway Administration was in the process of responding to the Advisory Council on Historic Preservation's (ACHP) letter with the requested additional information and clarification. The team heard that comment letters from the Friends of the Pond Eddy Bridge and the Upper Delaware Preservation Coalition had been received but contained no further new information and they continued encouraging ACHP to promote the Bridge Rehabilitation Alternate.

**Upper Delaware Scenic Byway, Inc. Update:** Ramie reported the Byway held a special meeting on Aug. 18 to hear from Studio d'ARC architects regarding the visitors center feasibility study. The group also approved a resolution to change the location of the visitors center to Fort Delaware in Narrowsburg, NY

from the Cochection Train Station site. The County of Sullivan has also approved the visitors center move to this county-owned property. Studio d'ARC was also approved for the feasibility study project.

**Delaware River Sojourn Update:** Ramie reported she did attend the recent wrap-up meeting for the 2010 Delaware River Sojourn event that was held in June. They reviewed the participation levels and costs and responses to the participants' survey. Preliminary planning for the 2011 event has started. Ramie said she informed the Sojourn Steering Committee that due to budget constraints and work loads, the UDC would not be participating in the 2011 Sojourn.

**Other:** Serio mentioned that at the last meeting Chase had indicated that the 1970s was great for the rainbow trout with the excess releases. Serio said he researched the records and the releases at USGS gauges and it didn't look good. The release before June 15 was 45 cfs at Cannonsville. There were terrible swings in flows. Chase added that the excess release credit went down to 100 cfs after that decade. Serio commented that the system wasn't better in the 1970s. All reports said low flow events were devastating back then. He said he also read VanPut's statement and it didn't seem to back up the statement Chase had made regarding the 70s flow and trout habitat. Chase clarified that VanPut did a study when he was employed by the NYS DEC and it was used to show trout increases.

### **New Business**

**NPS Report:** Don Hamilton reviewed his report that was handed out. The NPS-Upper Delaware received funding from the regional office to purchase and install a number of continuous water quality monitors (datasondes) to better monitor water in the river and tributaries with the advent of natural gas development here. These datasondes measure and record dissolved oxygen, pH, conductivity, temperature, turbidity, and depth, and can be programmed to collect data at specified time intervals and left out for 3-4 weeks between data downloads and periodic maintenance/cleaning. Changes in water quality parameters can serve as indicators and early warning signs of pollution.

A USGS-NPS research proposal has been funded. This project addresses globally-identified research needs for the nuisance alga didymo, which has emerged as an organism with extraordinary capacity to negatively impact stream ecosystems, and which has been documented in and around the Upper Delaware waters since 2007.

USGS researchers from Ft. Collins, CO and Wellsboro, PA were working on/in the river Aug. 10 through 17. They will return to complete their fieldwork Sept. 27 through Oct. 14, measuring river bathymetry and developing cross sectional profiles at several locations in order to better understand river habitat resulting from different flow regimes.

**Flow & Release Presentation and Discussion for Delaware River, Next Steps:** Serio informed the committee that at the next committee meeting on Oct. 19, they should discuss the connections New York City is trying to make between the Catskill and Delaware watersheds. NYC said they'd use the tunnel to better balance their system. They'll probably use Delaware River water to keep the system wet.

Serio added he hoped to have a draft comment letter on the flow and release regimes for the committee to review. Hamilton asked if Serio could get someone from the NYC DEP to come up to the meeting to talk about the tunnel, and Serio said he would try to get someone.

**Informational Handouts:** The committee was provided with informational handouts for their use that included the topics of: NYS DEC's proposed Strategic Plan for State Forest Management; Flood Warning User Forums announcement (Sept. 28 one to be held in Narrowsburg); River Road sliding toward the Delaware; and EPA request to gas companies about chemicals used in natural gas extraction.

**Public Comment** None

**Adjournment** A motion by Keesler seconded by Chase to adjourn the meeting at 9:32 p.m. was carried.

Carol Coney, Office Manager