



# Upper Delaware Council

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## UPPER DELAWARE COUNCIL MEETING MINUTES November 4, 2021

The Upper Delaware Council held its monthly meeting on Thursday, November 4, 2021. Chairperson Dexter called the meeting to order at 7:00 p.m. and roll call followed.

In attendance: Town of Hancock- Fred Peckham (Zoom), Town of Fremont- Jim Greier, Town of Cochecton- Larry Richardson (Zoom), Town of Tusten- Susan Sullivan, Town of Highland- Andy Boyar, Town of Lumberland- Nadia Rajsz, Town of Deerpark- Ginny Dudko, Damascus Township- Jeff Dexter, Berlin Township- Alan Henry, Westfall Township- Michael Barth, Shohola Township- Aaron Robinson, State of New York- Bill Rudge (Zoom), Commonwealth of Pennsylvania- Tim Dugan, National Park Service- Superintendent- Joe Salvatore. Staff in attendance: Executive Director- Laurie Ramie, Secretary- Ashley Hall-Bagdonas. Absent: Town of Delaware- Thomas Dent, Lackawaxen Township- Doug Case, Delaware River Basin Commission- Kristen Bowman Kavanagh. Guests: Cody Hendrix- NPS Community & Land Use Planner, Don Hamilton- NPS Natural Resources Chief (Zoom), Evan Padua (Zoom)-Town of Tusten Alternate, Kerry Engelhardt. Media: Liam Mayo- River Reporter, Peter Becker- Tri-County Independent (Zoom).

**Virtual Presentation: “Delaware River Basin Commission’s Microplastics Study” by Jake Bransky, aquatic biologist at the DRBC:** Bransky was unavailable due to illness; the presentation will be rescheduled.

**Approval of October 7<sup>th</sup> Meeting Minutes:** A motion by Rajsz seconded by Boyar, to approve the October 7<sup>th</sup>, 2021 meeting minutes carried with an abstention by Dugan.

**Public Comment on the Agenda:** None.

**Committee Reports:** There were no questions regarding the following meetings: Oct. 19<sup>th</sup> Water Use/Resource Management, Oct. 26<sup>th</sup> Project Review, and Oct. 26<sup>th</sup> Operations.

### Status Reports

**Delaware River Basin Commission:** Ramie said Kristen Bowman Kavanagh had a conflict tonight and provided a press release on “Peak Water Demands in the Delaware River Basin Have Likely Occurred”. The 11/1 Hydrologic Conditions Report was also provided in the meeting packet.

**NYS Dept. of Environmental Conservation:** Rudge provided a 11/4 news release “DEC Announces 11/20 Start for Regular Firearms Season for Deer and Bear Hunting in New York’s Southern Zone”. He provided a brief report on the Epizootic Hemorrhagic Disease (EHD) that’s affecting white-tailed deer. It’s not affecting the Delaware River Corridor so much as the significant impact on the Hudson Valley. EHD is a viral disease of white-tailed deer transmitted by a biting midge that affects deer but is not infectious to humans. Once the deer come down with symptoms, they usually die within 36-hours. There’s been very little incidence of the disease in Orange and Sullivan Counties and none in Delaware County. In Ulster County they’ve had over 500 deer confirmed to succumb to EHD. Statewide they have a record of about 2,000 dead deer reported as of 10/22. There’s no way to treat deer from EHD once they get it. The outbreak ends when frost kills the midges. Most of the region has had a significant frost so they don’t expect the problem to continue for the rest of the year. EHD is a very common problem in the South. Deer have, to some degree, evolved with the disease so some deer are resistant in the South. In our region that’s not the

case. Rudge said it is a significant concern and DEC is monitoring it. Richardson asked if it's obvious to tell if a deer is sick? Rudge said it depends on what stage but they tend to be myopic. They found that most of the infected deer migrate towards streams or lakes to die. Peckham asked about transporting deer between states. Rudge said that's more for Chronic Wasting Disease than EHD.

DEC has begun reassessing the restocking of shad in the Delaware River and they've found that the Delaware River stock is experiencing an unsustainable mortality. The new updated Sustainable Fishing Plan for the Delaware River Basin needs to reduce that mortality. Significant issues for the plan to address include both the decline of harvest of shad in Delaware and New Jersey, and the harvest of Hudson stocked shad in the Delaware Bay. The Fish and Wildlife Cooperative which is the basin states, U.S. Fish and Wildlife Service and the National Marine Fisheries Service, are actively working on updating the plan which expires in 2022.

**PA Department of Conservation & Natural Resources:** Dugan reported that it is DCNR grant season right now. There was a grant workshop held this morning. If you are planning on applying for a grant, there are virtual workshops that are available online.

We have entered the life jacket winter season that runs 11/1 through 4/30. A life jacket is mandatory if you are on any boat less than 16 feet in length all canoers, kayakers, and paddleboarders. This is to prevent winter and cold season fatalities and has been in place for many years. We are currently in archery season; after Thanksgiving will be the start of the firearms season for deer. This year it is a combined season, antler and antlerless throughout the Commonwealth. In this area it will be a combination with bear season for the extended bear season. Dugan recommended referencing the PA Game Commission since they have been making changes every year <https://www.pgc.pa.gov/HuntTrap/Law/Pages/SeasonsandBagLimits.aspx>. There are four Sundays this year that you can hunt on and they have added small game. Make sure what orange requirements are needed with the overlapping seasons and new changes before going out. DCNR is seeing a good turnout with hunters this season going out hunting any nice day of the week that works for them instead of being bottlenecked to a few days that the season is open. Dugan said they have seen a lot of people out enjoying the forest. With that, the fall colors were pretty good this year and we are at the tail end of peak in this region. Oaks are turning and leaves will be falling soon. We got a real good crop of acorns which will be a good mass crop through the entirety of summer. White Oak and Chestnut Oak are the leaders right now; not a lot of Red Oak but it's anticipated there will be a mass crop of Red Oak next year.

Recently PA Fish and Boat Commission (PFBC) released a Delaware River Access grant which Hendrix shared earlier this week and had been circulated by the UDC to member townships. Dugan said they moved to a single trout opener in 2022. It will be statewide 4/2. Dugan said another move like PA Game Commission where they are trying to get synchronicity across the entire state.

Dugan noted in the 10/7 UDC meeting minutes during Rudge's report discussing the catch and release season, Henry asked if this was a closed season for PA as well or NY only. Peckham asked if the border waters were included. Dugan said doing a quick look he couldn't find a press release for it and it may just be on the NY-side. Boyar said he thinks there should be coordination between the PA Fish and Boat Commission and the NY DEC. Dugan said there usually is.

**National Park Service-Upper Delaware:** Superintendent Salvatore said he had a meeting with PFBC Executive Director Tim Shaeffer. Salvatore said they share similar interests and may be able to partner with them and share resources. They received a grant from National Parks Foundation for Lenape youth students to talk about the history of Lenape fishing. As Salvatore was interviewing a lot of his seasonal employees, he found a lot of them expressed that they weren't getting enough swift water safety training. PFBC has a good training program and he is going to try sidling up with that. We had five drownings in the Upper Delaware and anything we can do to prevent that is paramount. PFBC has a marketing campaign focusing on the same demographic we have been losing lives at on the river which is men on the river not wearing life jacket, ages 18-35, vacationing from the city. He is seeing how he can piggyback on that messaging to continue to push that message of safety on the Upper Delaware. He spoke with Shaeffer about their grant program which is a 50/50 match. Hendrix said their grant program is for any Township in

the Delaware River Watershed. Hendrix said this would be a good option for a Township if they wanted to apply for a river access because PFBC is looking to encourage more river boating activity. Salvatore said he has no updates for Ten Mile River access but has a meeting lined up in the next week. He hopes to provide updates at the next full council about the future of TMR.

He referenced New Business item “11/3 Letter from Superintendent Salvatore, NPS, re: Definition of Substantial Conformance”. Salvatore said UDC passed a Resolution in April 2021 on what the council defined as substantial conformance. He said he had been here for 3 months. A few months later he brought the resolution up to Region and he admitted that he was confused when he read the definition of substantial conformance. Region told him they need to run the resolution by the Solicitor’s Office, stating that the UDC is talking about essentially changing legislation. He said the Solicitor’s Office came back saying the River Management Plan (RMP) is a law and a piece of legislation we are bound by, meaning it is interpreted by lawmakers. Ramie provided the 11/3 letter from the Department of the Interior in the meeting packet. Salvatore said you can’t change a law without going through a process and they are pretty complex steps. He asked the committee to review the document, saying the letter contains a lot of the solicitor’s language. He acknowledged since being Superintendent here, there hasn’t been an issue with substantial conformance. The UDC and NPS have been on the same page. Salvatore said discussing the 2022 Technical Assistance Grant (TAG), UDC and NPS were able to sit down and answer questions that were raised. The letter states: The LWUG defines ‘substantial conformance’ as Conformance with respect to the list of compatible, conditional, and incompatible Land Uses set out in these guidelines and with the substance of each of the principles and objectives set out in these guidelines so as to carry out the intent of the Upper Delaware legislation.” Salvatore said he doesn’t have much more to say but will open it up for questions and that he does what the lawyers tell him to do. Dexter said this became an issue because Salvatore’s predecessor, Superintendent Kris Heister, unilaterally declared that “substantial” meant 100%. Robinson said it’s not like UDC circumvents meeting any standard; it’s that the UDC just looks at reviews with broader vision than with tunnel vision. Salvatore said there is flexibility in how a town/ship views substantial conformance. Hendrix said in the Project Review Workbook it clearly defines the principles and objectives and what needs to be met for a project to substantially conform, and he and previous UDC Project and Land Use Specialist Shannon Cilento would often refer to the Workbook as a reference. Dudko said she thinks the problem was personality because the RMP and this partnership is cooperative and Heister was not looking at it cooperatively. Dudko said you can look in any dictionary and the word “substantial” does not mean absolute. Dexter said Merriam-Webster defines substantial as largely but not wholly that which is specified.

Henry said what prompted this was when the Project Review Workbook video went out, previous NPS Community & Land Use Planner Jennifer Claster mentioned in the video you needed absolute conformance. Henry said that should have been corrected before the video went out. He said that Salvatore keeps referring to the RMP as a law; it’s not, it’s a plan. Sullivan gave the example of Hotel Darby that is across the bridge. It was a vacant building and seen as a hazard. A firm with a big reputation comes in and wants to make it into a hotel. Sullivan said in the book the category it comes from says 12 rooms but they wanted to put in 20 rooms. They held meetings and found several reasons why it should be approved. Sullivan said she felt that UDC as a group should review each project on its own merits. You have to have that flexibility to do things on a case-by-case basis. Dexter said in the end NPS said that Hotel Darby makes so much sense for the river corridor. He said Narrowsburg probably benefits more from the hotel now. Salvatore said this is where we have to come together collectively and justify a project collectively. Greier said after reading the letter he didn’t think that Salvatore composed it and that doesn’t matter but the tone that it set does. He said he lived through forming the RMP and the LWUG and there are about four pages in it that talk about substantial conformance. Greier said Salvatore mentioned laws. You can’t find a law in the RMP. They are found in the Town/ships Comprehensive Plans, etc. The RMP is guidelines. He felt the letter was composed by someone sitting behind a desk that doesn’t like the verbiage in the RMP. He said it took several years to come up with a RMP that would be accepted by everyone. They took a year on substantial conformance and couldn’t agree and that’s why the verbiage is in the RMP because the laws are in each Town/ship and no two Town/ship codes are the same, PA and NY aren’t the same. What works for the Town of Deerpark may not work for the Town of Hancock. He said the RMP has worked for 33 years but NPS keeps pushing. Boyar said reviewing the NPS letter, he doesn’t want it to go without a challenge or imply that this letter is acceptable. He felt the letter was unacceptable both in tone and lack of clarity because it didn’t shed any light on the issue. Boyar said the Town/ships in this room have the principal home rule. He said it seems we are going off in different directions, whether it’s a matter of semantics or not he’s not sure.

He asked how can these differences of opinion be resolved? Boyar read from the UDC mission statement: "The Council is to be the driving force behind the River Management Plan. It must maintain an active presence in the river valley; and it must be the primary entity through which local, state, and federal agencies resolve their differences and agree upon joint actions affecting the river valley." He said he feels UDC should follow the directives of Congress. Rajsz said she understands that Salvatore wants to work with UDC but what happens if there is a new Superintendent in a year or a few years down the road and they review this letter and it reads 100% conformance? She read from the letter, "The UDC does not have the authority to amend the LWUG by resolution". The UDC didn't change anything. She feels someone is misinterpreting the Resolution or there is a line being drawn in the sand. A Motion by Henry seconded by Dudko to continue this topic at the 11/23 Project Review Committee meeting and provide it to planning consultant Tom Shepstone for an opinion carried unanimously.

**UDC Executive Director's Report:** Ramie asked Rudge for an update on the DEC's response to Narrowsburg Access flooding damage. Rudge reported that staff went out to assess the damage and thanked Ramie for supplying a photo that was sent to staff. He said that was helpful. They found some significant damage they will need to address. They are waiting for the water levels to recede so they can retrieve some of the infrastructure at the access.

Ramie said that Rajsz mentioned to her that she had a phone call with NYS Governor Hochul's Regional Representative Pavan Naidu. Rajsz said she spoke with Naidu and he is making his way around Towns and she asked him to contact Ramie to set up a meeting and discuss the budget for the coming year. She said he seemed receptive when she mentioned the budget but he needs to come to the UDC and have a conversation and see who we are.

Ramie continued that 10/15 was Shannon Cilento's last day of work. Our application deadline for the Resources and Land Use Specialist position closed on 10/25 after about three weeks of advertising through many channels. The Personnel Subcommittee vetted the applicants expeditiously. Before this meeting closes, they have requested an executive session to report to the rest of the board, then we will reopen to take votes on any proposed actions.

Earlier today Ramie sent a reminder of the petition campaign UDC has endorsed seeking a New York State investment in the value of the Upper Delaware River on behalf of the Alliance for the Upper Delaware Watershed. The deadline has been extended to 11/19 and there were approximately 875 signatures to date when she last looked.

Packets include a two-page summary of a 115-page new report by the National Parks Conservation Association (NPCA) called "Sustaining and Growing Delaware River Communities – A Sourcebook of Tools and Tips for Protecting Nature and History". This is intended to be an online, dynamic document that can be found at [www.npca.org/sourcebook](http://www.npca.org/sourcebook). As noted, the goal is to serve as a resource to assist gateway communities "to preserve community character, promote pride and community health, and stimulate local economies surrounding 10 national park units in the Delaware River corridor...for the benefit of residents and visitors." Ramie vaguely recalls being asked to proofread the sections it includes on the UDC and the Upper Delaware Scenic Byway. One indication of how long it has been in the works is that it credits a few people like Carla Hahn from NPS Upper Delaware who retired two years ago or have moved on from their jobs.

Ramie asked all to please take a look at our updated November calendar, with a December preview. Everyone is invited to the 11/16 WU/RM Committee meeting here at 7 p.m. or by Zoom at which we'll hear about conservation funding opportunities through the American Rescue Plan Act. Then we'll have two presentations at the Dec. 2 UDC meeting on the topics of the invasive Northern Snakehead fish and our consultant's summary of the UDC Long-Term Fiscal Sustainability Plan.

### **New Business**

**11/3 Letter from Superintendent Salvatore, NPS, re: Definition of Substantial Conformance:** Discussed under NPS Report.

**2<sup>nd</sup> Draft UDC Letter to Amit Bose, Deputy Administrator, Federal Railroad Administration:** A Motion by Henry seconded by Rajsz to approve the draft letter to the Federal Railroad Administration carried. It concerns the correspondence that UDC sent to Central New York Railroad on 6/16 and 8/19 about a potentially damaged culvert pipe under the tracks in Hankins which were not acknowledged and inquiries on policies to replace railroad ties.

**DRBC Publishes Proposed Regulations Addressing Importation and Exportation of Water and the Discharge of Wastewater from High Volume Hydraulic Fracturing; Sets Public Hearings:** Based on the 10/28 DRBC press release, Ramie will draft a comment letter for the 11/16 WU/RM meeting stating the UDC's position on the DRBC's proposed regulations for importation and exportation of water and wastewater discharge from High Volume Hydraulic Fracturing, which will be vetted and forwarded to the 12/2 UDC meeting for action.

**Other:** Barth said he worked for a canoe livery and he knows that two of the drownings this year happened after they had gotten done with their canoes and the life jackets were returned. He said it may be of benefit if UDC contacts the local liveries to have life jacket loaner stations for people that are just swimming at the river. Salvatore said NPS offers several stations at key access points.

#### Old Business

**National Weather Service Flood Stage Assessment for Delaware River at Lordville:** Ramie provided in the meeting packets 10/14 response from the National Weather Service on proposed flood categories for the Delaware River Gage at Lordville, NY. Peckham had brought up at a WU/RM committee meeting that the flood stages were not provided for Lordville on the website. Service Hydrologist/Meteorologist Jim Brewster provided a preliminary assessment and asked for its review to help fine tune the document. It provides preliminary flood statements and impacts for the Delaware River at Lordville. Ramie had requested feedback so she may forward it to Brewster by today and will share the collected feedback in a letter.

**Cochecton, NY-Damascus, PA Bridge Rehabilitation Update:** Ramie said we had asked at the 10/19 WU/RM meeting for an update on the Cochecton-Damascus Bridge because Padua heard they were going to stop work on 11/19. They answered us back on 10/21 that they had planned to shutdown possibly by 10/30, partially due to the upcoming weather and bald eagle restrictions, but mainly because of steel repairs and delivery times. On 10/27, NYDOT issued a letter with details on the construction schedule that is included in the packet.

**Other:** Peckham offered a comment from having seen the Emergency Action Plan for the Cannonsville Reservoir, but Dexter advised that his Zoom signal was cutting out and to send his statement in writing instead for follow-up.

**Public Comment:** None.

**Executive Session:** A Motion by Greier seconded by Henry to go into Executive Session carried at 8:20 p.m. A Motion by Dudko seconded by Henry to come out of Executive session at 8:45 p.m. carried. A Motion by Dudko seconded by Henry to approve the salary increase discussed in Executive Session carried. Dudko said there was a recommendation by the Personnel Subcommittee for the vacancy of the Resource and Land Use Specialist position to be filled. A Motion by Dudko seconded Rajszyk to accept the Personnel Subcommittee's recommendation to hire Kerry Engelhardt carried unanimously. Ramie will provide the details of the offer to Engelhardt.

**Adjournment:** A motion by Henry, seconded by Sullivan, to adjourn the meeting at 8:45 p.m. was carried.

*Minutes prepared by Ashley Hall-Bagdonas 11-15-2021*