

Upper Delaware Council  
**WATER USE/RESOURCE MANAGEMENT COMM. MEETING MINUTES**  
**March 21, 2017**

Committee Members Present: Fred Peckham, Pat Jeffer, Al Henry, Doug Case, Debra Conway, Andy Boyar, Jim Greier  
Committee Members Absent: Tony Ritter  
NPS Partner: Kris Heister, Don Hamilton  
Staff: Laurie Ramie, Pete Golod  
Guests: Peter Kolesar, Jim Serio, Margaret Bruetsch, Meg McGuire, Bob Jeffer, Evan Padua

The UDC's Water Use/Resource Management Committee held its monthly meeting on Tuesday, March 21, 2017 at the Council office in Narrowsburg, NY. Chairperson Peckham called the meeting to order at 7:00 p.m.

A motion by Henry seconded by Conway to approve the February 21 meeting minutes was carried. There was no public comment on the agenda.

**Dr. Peter J. Kolesar, Professor Emeritus, Columbia University: Expiration of the Flexible Flows Management Program and the Implications to the Upper Delaware River:** Peckham introduced Dr. Peter J. Kolesar who showed a PowerPoint to members which began with the disclaimer, "The views expressed herein are my own and do not necessarily reflect those of others, including organizations with which I am affiliated." Kolesar noted that there has been for the last decade a "serious stalemate" among the Decree Parties (New York, New Jersey, Pennsylvania, Delaware, and New York City) with regard to allocation of water to the river. Kolesar said he is here tonight to try and persuade the Upper Delaware Council to get active on this issue as he sees it as a serious threat. The core of the dispute is between New Jersey and New York City. Kolesar noted that at the February 16<sup>th</sup> Regulated Flow Advisory Committee meeting, the New Jersey delegate took everybody by surprise by stating that because they were frustrated with the stalemate, they were not going to commit to a one-year extension of the current Flexible Flows Management Program (FFMP). If the five Decree Parties are unable to reach unanimous agreement on a new plan or another one-year extension of an unchanged plan by May 31, the water management plan automatically reverts back to a 1980's reservoir management approach called "Revision 1". Kolesar said this could have a negative, possibly devastating impact on the ecology of the Upper Delaware. He said we in the Upper Delaware will be the hardest hit by a return to Revision 1. He noted the dispute is not likely to be easily resolved and listed the reasons being: the economic stakes for N.J. and N.Y.C. are potentially enormous, both of whom are under fiscal constraints; N.J.'s threat is toothless against N.Y.C., its main opponent; the dispute involves the highly technical issue of how much water is now and will be in the future actually available in the multistate region; the dispute involves the highly subjective concept of what is "equitable apportionment" of the water available; and the legal complexities and barriers for N.J. to return to the Supreme Court are formidable. Kolesar showed a slide depicting the Delaware River and Basin with photos of the Upper Delaware region and the industrial seaport region of the Basin. He noted that the interests of all four states are at times in conflict. With a focus on New York City, Kolesar noted that they are out of the basin, but has what he refers to as a "water imperialism". The New York City Water System is a complicated one, Kolesar stated. The Delaware System offers the best quality water, on average meeting roughly 50% of the City's usage. The Catskill System is of lower quality, often running turbid and muddy after storms. The Croton System, which is the oldest system was recently re-engineered for quality via filtration and is the most expensive to operate. NYC relies on the Delaware System to keep their water clean which is important to them economically as they are on the "razor's edge" of having to filter their water which could cost them \$10 billion or more in capital expenditures.

Kolesar noted that in 2007 the Decree Parties engaged in a collaborative effort to balance the multiple, sometimes competing uses of NYC's water supply reservoirs while recognizing the rights established by the 1954 Decree. This effort resulted in a "Flexible Flow Management Program" (FFMP) unanimously agreed to by the five Decree Parties which was implemented through May 2011. The Decree Parties signed an agreement for a new interim FFMP, which was initially in effect June 1, 2011 through May 31, 2012, and one-year renewals of this reservoir operating plan were announced in May 2012, May

2013, May 2014, May 2015, and May 2016. The current version FFMP will expire May 31, 2017. He reiterated that unless an extension or modification is unanimously agreed to, the Delaware reverts to the last “permanent” release rule, Revision 1 of 1983. Kolesar said New Jersey is doing this as, since 2011, they have requested that its water allocation of 100 million gallons/day (mgd) be guaranteed even in drought when their allocation should drop to 65 mgd. New Jersey has been pressuring the other Decree Parties to hold them harmless in the face of a drought. New Jersey has succeeded in getting the other Decree Parties to temporarily allocate to them 100 mgd even in drought. The other Decree Parties are not willing to extend that permanently for a number of reasons. The longer term issue is that New Jersey feels shortchanged by the 1954 Supreme Court Decree and subsequent Delaware water allocation agreements. They want more water, Kolesar stated. They are also asking for a re-evaluation of water needs and supplies of New York City.

Kolesar stated that the current FFMP is, in large part, the result of decades of activism by the Upper Delaware fishing community. Although it is far from perfect, he said, it is a substantial improvement on previous policies. If a return is made to Revision 1, Kolesar said his estimates of what will happen include: conservation releases (base minimum releases required to keep the fishery healthy) in to the Delaware River will be reduced to between 38 and 24% of those under the FFMP; over the long term, trout habitat (places where the water is cold and deep enough for trout to thrive) will decline by about 33%; the spill (flood) mitigation program of FFMP will be abandoned as it is not included in Revision 1 and over the long term, reservoir spilling will increase by about 67%; over the long term there will be about a 4% reduction in average summer flows at Callicoon; and implementation of anti-yo-yo releases and trout thermal relief programs will continue to be blocked by New Jersey. Kolesar explained that his numbers came from the definitions of release policies in the defining FFMP and Revision 1 documents, by monitoring the NYC DEP data postings on the River Master’s website and NYC DEP reservoir operations data, and from simulations of these policies in the DRBC’s OASIS (modeling tool that allows the public to test water management scenarios and compare their outcomes) Delaware River computer model and in the USGS trout habitat estimation model compiled by himself and Jim Serio.

Kolesar provided a graphical view of the potential fishery problem focusing on the conservation releases, as they are, calling them the “basics of what happens on the river”. He showed graphs that compared “Normal” conservation releases into the Delaware under the current FFMP rule and Revision 1. Under Revision 1 there would be a very substantial drop in the conservation releases. The second graph he showed compared the “Drought” conservation releases into the Delaware under the current FFMP rule and Revision 1. He stated that if the Delaware falls into drought, the situation becomes truly critical under Revision 1. A third graph compared “Drought” conservation releases into the West Branch of the Delaware under the current FFMP rule and Revision 1. He stated that for the West Branch, under Revision 1, a drought would be a total disaster. Kolesar noted that these are not groundless concerns and showed a picture of the river at Lordville in July of 2005 when the reservoirs stood at 89% capacity yet releases from Cannonsville were only 125 cfs. The picture depicts what he fears could happen again under Revision 1. Low flow impacts would be felt by the fish, insects, and recreational users.

Kolesar said that New Jersey intends to pressure New York City by reverting back to Revision 1, but the irony is that Revision 1 would actually benefit the City. He figures that should this reversion happen average NYC reservoir storage levels over the long term will increase slightly by about 5%; the probability of full reservoirs at the start of the June 1 water year will increase by about 10%, and drought risk to the City over the long term will decrease by about 16%. Kolesar does not feel that New York City is worried about this “threat”. For New Jersey, a reversion to Revision 1, would be like “shooting itself in the foot” as the Revision 1 rule does not include holding them harmless in the event of a drought so they would see a reduction in their diversions from 100 mgd to 80 mgd.

Kolesar offered his opinion on New Jersey’s perspective. The 1954 Supreme Court Decree granted N.J. a 100 mgd diversion of Delaware water, but no more unless it further developed its water infrastructure. Current Governor Christie has a political philosophy of “no new taxes” so N.J. cannot fund new water infrastructure and does not have a current water plan. Kolesar said that N.J. feels that NYC has violated the ‘equitable apportionment’ spirit of the 1954 Decree by “overdrafting” Delaware water. New Jersey wants more water now Kolesar stated, especially during droughts and clearly wants more water in the future, and they are demanding an overall re-assessment of New York City’s water needs and supplies, essentially re-opening the 1954 Decree and subsequent agreements.

Kolesar offered his opinion on the New York City perspective. The 1954 Supreme Court Decree granted NYC the right to divert 800 mgd. They are currently using only about 500 mgd, but envision

increasing demand over the future. He noted that on occasion, after storms, the City uses mostly Delaware water when its Catskill system runs muddy. He said they are close to violating their federal government "Filtration Avoidance Determination" and have invested much money on a control system, its Operation Support Tool (OST), in order to avoid spending "really big bucks" in the future on a filtration system. Kolesar said it is his opinion that NYC is content with the status quo. Current NYC Mayor De Blasio has cancelled significant water infrastructure projects.

Kolesar said that a reversion to Revision 1 will hurt the Upper Delaware particularly during drought. We have persuaded NYC to release more water than it originally wanted to for the fish through the FFMP to some extent.

Kolesar noted that New Jersey claims that although NYC follows the letter of the 1954 Supreme Court Decree, they 'overdraft' the Delaware reservoirs, taking an "inequitable amount of Delaware water". The exact amount is not defined and is in dispute. 'Overdrafting' should be a concern in the Upper Delaware, he added and provided his reasoning. He said in 2001 NYC drew down the Delaware reservoirs to drought levels and severely reduced river releases and flows, yet it did not institute mandatory water restrictions in the City and kept its Catskill reservoirs at higher storage levels. Kolesar noted that there is nothing in the current FFMP rules or in Revision 1 to prevent this from happening again.

Kolesar said we need to advocate and agitate for action. He said that Delaware River advocacy works. He noted that the river cannot speak for itself and needs the Upper Delaware Council and others to speak for it.

Peckham spoke of his frustration with the water being released from Lake Wallenpaupack counted in meeting the flow target at Montague. He stated that because it is being counted, we are not getting the flows in the Upper Delaware.

Boyar stated we're merely one advocacy group for our liveries and other recreation based businesses to fulfill the mission of enhancing the scenic and recreational river. He said it is our responsibility and suggested that our allies such as fisheries managers, business owners, state agencies and elected officials need to be encouraged to join us. He asked if the UDC could be a catalyst to educate and encourage these allies to join in this advocacy.

Kolesar stated that the move by New Jersey which would result in going back to Revision 1 does no good for anybody, it harms mostly the Upper Delaware and the "flood victim community." He feels that it cannot accelerate the process of resolution of the fundamental dispute. This needs to be pointed out, he said, and he does not hear any movement in the political circle. One of our roles could be to point this out to people who have responsibility. An example is the New York State Department of Environmental Conservation which has a responsibility to the fishery.

Jim Serio said he feels that one of the problems is that the Decree Parties have "always hid behind a closed door". He suggested the UDC could request or demand some sort of public meeting with the Decree Parties to explain their positions and eliminate the lack of transparency.

Henry said that the information needs to get out to the media and suggested sending Kolesar's PowerPoint to them. Henry said this is a very important issue, but very few people know about it at this point. Peckham stated that the issue is a complex one. Henry agreed, but suggested not dwelling on the complexities, but letting people know of the concerns that will affect the Upper Delaware.

Don Hamilton thinks it is a good point to encourage a public meeting with the Decree Parties.

Kolesar stated that what is clear is going back to Revision 1 is going to hurt the Upper Delaware River. He noted that the reduction of releases and the elimination of the spill mitigation ought to be enough to get people agitated. This should also be called to the attention of the governors of New Jersey, Pennsylvania and New York as they may not be aware that this move will take away spill mitigation.

Evan Padua commented that a meeting of the Decree Parties would be beneficial and noted that in addition to the health of the fishery, emphasis should be put on the flood potential.

Conway said that an emphasis needs to be put on the economic impacts as well.

Greier suggested getting the support of allies is important. He suggested that sports clubs in all four states should be made aware of the situation and the impacts it could have. Obtaining the support of the governors of all four states is necessary, he stated, and added that there is strength in numbers.

Boyar noted that time is of the essence as the current FFMP expires at the end of May. He made a motion that two letters be drafted for action at the April 6 full Council meeting. One letter will be to the Decree Parties and DRBC's Regulated Flow Advisory Committee requesting a public meeting to explain their positions and the status of negotiations for the May 31 pending expiration of the Flexible Flows Management Plan. A second letter to the Governors of the basin states will inform them of the

consequences to the Upper Delaware River if the FFMP is not renewed by the deadline. That motion was seconded by Henry. A vote was taken and the motion passed. Peckham thanked Kolesar for his very informative presentation.

**Old Business:**

**NPS February 22 Meeting with Upper Delaware Liveries: Commercial Use Authorization Permit**

**Condition Changes:** Heister noted that this is the beginning of a new permit cycle and this year there is a new application and a new set of conditions from the NPS Washington office with some changes locally. She said that the liveries wanted to discuss the changes so a meeting was held with them on February 22<sup>nd</sup>. As a result of the meeting, all of the issues have been successfully resolved, except for one, Heister reported. Henry asked if a list of the issues could be shared with committee members. Heister said she will provide the Excel file documenting the outcomes. She provided some details of the meeting. Greier asked about fee increases. Heister said the fee increase announcement took place in December. CUA monitoring fees will be based on a 5-tiered structure instead of a 3-tiered structure to better represent the wide range in the number of visitors served by different commercial activities and establish a cost structure that is representative of NPS effort to monitor different commercial activities. As a result, some fees did increase significantly. The fee increases were not discussed at the February meeting.

**Sullivan County Trail Committee February 22 Meeting Update:** Ramie said that at the next meeting, April 12 at 3 p.m. at the Sullivan County Government Center in Monticello, the focus will be on trails in the river valley towns of Sullivan County and the opportunities, needs, development of new trails, promotion of existing trails, and improvements. Ramie said she attends these meetings which are open to the public to advocate for our area.

**DRBC Water Management Advisory Committee February 23 Meeting Update:** Golod said he attended this meeting via teleconference. A topic under Water Conservation was an update of the Water Utility Auditing in the Delaware River Basin. The program tracks how efficiently water is moved from its source to the customer within a public water supply system and ensures that systems are accountable for water losses. Total public water supply withdrawals within the Delaware River Basin average 850 million gallons per day.

Golod said that a presentation on the EPA WaterSense Program was given. The goal is to protect the future of the U.S. water supply by promoting and enhancing the market for water efficient products and services. The program is a voluntary one where the EPA develop specifications for water efficient products.

DRBC Executive Director Steve Tambini spoke about the DRBC's long-range planning on climate change. Tambini said the DRBC is just starting work on this issue using science-based scenarios to look at changes to hydrology and changes to sea level rise with some preliminary results, which are subject to change.

**Upper Delaware Scenic Byway February 27 Meeting Minutes:** Ramie referred members to their printed copy of the February 27 meeting minutes provided in their packets and covered some of the highlights of the meeting. She reported that a Nominating Committee was named to develop a slate of officers for the Byway's April annual meeting election.

Ramie said a summary of the February 3 meeting with New York State DOT was given. The DOT was seeking input on a Route 97 shoulder repair project. She provided details of the discussion. Also discussed was how to advocate for Scenic Byways on the state level. They learned that roads do not receive attention because of a Scenic Byway designation, but rather receive allocations based on their pavement conditions and traffic volume. The Byway has decided to write a letter to Governor Cuomo and state representatives asking for consideration of dedicated funding through a special stream to maintain and improve scenic byways. Discussion also took place about seeking a grant to do an engineering study to prepare for the next solicitation of federal transportation grants.

Ramie reported that the replacement of a Route 97 bridge over the Shingle Kill in the Town of Deerpark will require a full closure of Route 97 and a detour starting March 23. The detour will use Route 42 and Bolton Basin Road. Erosion control, bridge removal and reconstruction will take place between March and June 2017.

Ramie said that Heather Jacksy of Sullivan County Planning gave a presentation on the Local Waterfront Revitalization Plan Signage Program. It is an ideal goal of the Byway to use familiar symbols and colors and design schemes to unify the Byway. Ramie said that the DOT has initiated a project to install more attraction signs along Route 97 and are focusing in, as a pilot project, on a section in the Town of Highland. More details on this project will be shared at the March Byway meeting, she added.

Ramie said the Byway has decided to move forward with the application to copyright the UD SB logo and explained the process.

Ramie reported that the Byway will sell the Pollinator Plant Seed Packets on the new mobile responsive website which is expected to be ready to launch by the end of March.

Ramie noted that Delaware County has adopted a new accommodation tax of which funding will be diverted to tourism. She noted that the Byway plans to apply for a grant for 2017.

The next meeting of the Byway is scheduled for March 27<sup>th</sup>.

### **Pennsylvania Statewide Conference for Watershed Organizations March 5 & 6 Conference Report:**

Golod said the report will be delivered next month as he still awaits some additional information.

**Scenic Wild Delaware River Geotourism Stewardship Council March 20 Call Update:** Ramie noted that the grant to support this initiative is running out, but the William Penn Foundation has invited the National Parks Conservation Association to apply for a renewal of the grant which would last for two years. Funding is also being sought from the nine counties encompassed by this initiative, Ramie added.

Ramie said the MapGuide has undergone some changes to keep the content fresh. She provided some details of those changes. The site now contains a "Local Celebrities" section, she added. Ramie reported that 63% of the referrals to the Scenic Wild Delaware River website came from Facebook or Twitter. The Pocono Mountains Visitors Bureau Center accounted for 5.2% of the referrals with the Upper Delaware Scenic Byway and Delaware River Sojourn websites each accounting for 1% of referrals.

Ramie noted that there are currently 679 MapGuide listings, but 220 of them do not contain any content.

Interviews for the replacement of John Beljean, the National Parks Conservation Association's Delaware River Field Representative, have begun. The new title will be "program manager for the Middle and Upper Delaware River". Local input on the position will be sought, Ramie added.

The next meeting of the Geotourism Stewardship Council will be an in-person one which will take place on April 24<sup>th</sup> at the Settler's Inn in Hawley, PA. There is talk of a fall conference taking place possibly sometime in September, Ramie said.

**Other:** Henry asked if discussion of any next steps to consider based on the NPS response to the UDC's March 2<sup>nd</sup> Recommendations for River Height Signage on Bridges letter can be put on the April 6 full Council meeting agenda. Peckham noted that the Park Service has made it clear that they don't want to do anything about such signage. Henry suggested it could be accomplished through contracts with the companies building the bridges. He would like to have it on the agenda so that different strategies could be discussed. He asked that the NPS March 6 response be provided to members. Ramie said it can be included in the April 6 meeting packets.

Conway asked Heister what the status is of the Oral History tapes. Heister said she will check with NPS Museum Technician Lauren Hauptman and get back to her.

Ramie announced some upcoming meetings. They included a meeting on the engineering phase for the Highland River Access improvement on March 29<sup>th</sup> at 3 p.m. at the Highland Town Hall in Eldred, NY; Delaware County Stream Corridor Management Plan public outreach meetings by the Upper Delaware River Tailwaters Coalition to be held on Wednesday, April 5 and Wednesday, May 3 from 6 – 7:30 p.m. at the Hancock Town Hall; and the annual meeting of the New York-Pennsylvania Joint Interstate Bridge Commission on May 10<sup>th</sup> at 10:00 a.m. at the PennDOT District 4 headquarters in Dunmore, PA. Ramie referred to a flyer containing information on the Delaware River Sojourn provided in members' packets. The Sojourn will take place from June 17 through the 23<sup>rd</sup>. Information on the Sojourn including Upper Delaware dates and activities can be found at [www.delawareriversojourn.org](http://www.delawareriversojourn.org).

### **New Business**

**Delaware River Flow and Storage Report:** A copy of the March 20<sup>th</sup> NYC Current Reservoir Levels was provided in members' packets. Total combined storage was at 90.5%. Normal for the same date is 93.2%. A brief discussion about snow pack took place. Hamilton reported that we received 2.33 inches of water equivalent out of the March 15<sup>th</sup> snowstorm.

**Other:** Heister referred to a handout she passed around containing drowning statistics and reported that NPS staff members were presenters at a webinar today about drowning prevention. The NPS has been asked to give the same presentation to the full Council at the April 6 meeting. That has not yet been determined.

Peckham noted the Council has received a response from Paul Rush of NYC DEP regarding our last correspondence on the public emergency notification system for the reservoirs.

**Public Comment:** None

**Adjournment:** A motion by Boyar, seconded by Jeffer to adjourn the meeting at 8:38 p.m. was carried.

*Minutes prepared by Cindy Odell, 3/30/17*