

UPPER DELAWARE COUNCIL MEETING MINUTES Nov. 5, 2009

The Upper Delaware Council held its monthly meeting on Thursday, Nov. 5, 2009 at the Council office in Narrowsburg, NY beginning at 7:35 p.m. A motion by Wieland seconded by Bowers to approve the Oct. 1 meeting minutes was carried. Chairperson Fluhr welcomed new Town of Tusten Alternate Susan Sullivan to the meeting. 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 Cocheton-Larry Richardson, Town of Tusten-Charles Wieland, Berlin Township-Lillian Russell, Town of Lumberland-Jay Shafer, Town of Deepark-Phil Chase, Lackawaxen Township-John McKay, Shohola Township-George J. Fluhr, Westfall Township-Alan Bowers, Delaware River Basin Commission-Robert Tudor, and National Park Service-Sandra Schultz; also, Town of Fremont Alternate-Jim Rodgers; Town of Tusten Alternate-Sue Sullivan. Absent: Town of Highland; State of New York; Commonwealth of Pennsylvania.

Committee Reports: The committee reports were provided by the committee chairpersons based on the meeting minutes. They included: Oct. 20 Water Use/Resource Management by Wieland; Oct. 27 Operations by Fluhr; and Oct. 27 Project Review by Roeder.

Status Reports

Delaware River Basin Commission: DRBC Deputy Exec. Dir. Bob Tudor reported that the New York City Delaware River Basin combined reservoir storage as of Nov. 5 was 90% of capacity which is 86 bg above the long term median. The flows at Montague are above normal. Tudor announced that NYC DEP has notified the Commission that they have shut down the Rondout-West Branch tunnel of its aqueduct system to fix Shaft No. 6 and prepare for other long-term repairs. The Decree Parties supplemental release program had been put in place earlier. NYC will not be taking its regular water withdrawals during this repair work so more water will be in the reservoirs. Cannonsville was already at its highest release rate so if no diversions are made by NYC, Cannonsville will probably fill up quick.

Tudor reported that the DRBC has three active natural gas permit applications on file as announced previously with none ready to go to public hearing.

He noted that between September 2004 and June 2006, three major floods caused devastation along the main stem Delaware River. In July 2007, at the request of the Basin States governors, the Delaware River Basin Interstate Flood Mitigation Task Force issued a report identifying six priority management areas and a total of 45 consensus recommendations for a more proactive, sustainable, and systematic approach to flood damage reduction in the Basin. One of the six priority management areas identified by the Task Force was floodplain regulations. In November 2008 the Flood Advisory Committee (FAC) of the DRBC formed the Floodplain Regulations Evaluation Subcommittee (FRES) to address floodplain regulations. The FRES was charged with reviewing and evaluating the similarities and differences in floodplain regulations throughout the Delaware River Basin, and to develop and present recommendations on the potential for more effective floodplain management throughout the Basin to the FAC. In May 2009 the FRES presented its findings to the FAC. Following deliberation and some modification, the FAC presented its recommendations to the Commission in October 2009 for more effective floodplain regulations: *Recommendations of the DRBC Flood Advisory Committee (FAC) For More Effective Floodplain Regulations in the Delaware River Basin, October 2009*. This report was provided to the members of the UDC by Tudor.

In most cases, the FAC is proposing that in order to be more effective, floodplain regulations need to be applied on a broader, watershed basis and not adhere to state jurisdictional boundaries. Flood damage

potential is a function of human development in floodplains. Development in flood-prone areas needs to be discouraged and new and substantially improved structures must be constructed in ways that minimize or prevent future flood damage. The twelve recommended topics include: Regulatory Floodplain Definition; Floodway Definition; Development/Fill in the Flood Fringe; Development/Fill in the Floodway; Stream/Riparian Corridors and Vegetation Disturbance; Adopted Building Code; Standards for the Lowest Habitable Floor of Structures (Freeboard); Enclosed Areas Below Flood Elevation; Substantial Damage/Improvement to Structures; Dams and Flood Damage Risk; Bridge/Culvert Construction or Reconstruction and Flood Damage Risk; and Stormwater Regulations-New and Redevelopment. The Interstate Flood Mitigation Task Force will meet on Dec. 15 to look at the FAC report, look at flood model data, and look at upgrading the flood warning system. The report can be accessed at the DRBC website, www.drbc.net.

Wieland asked Tudor if the DRBC has a position about drawing water for gas drilling from the Lackawaxen River. For example, is DRBC going to say the gas drillers cannot withdraw water during low flows? Bowers noted that they've mentioned withdrawing water from above the reservoir. Tudor indicated that the DRBC would allow for pass-by flows as it did in the Chesapeake Docket. Chesapeake has withdrawn that application and saying they won't drill in the New York City reservoir watershed. Tudor noted the question is what measurement should be used on the pass-by; the 7Q10 low flow is one threshold (The 7Q10 is the minimum running average flow over seven consecutive days, which would be expected to occur, on average, once every 10 years.) The DRBC will rely on the IFIM (Instream Flow Incremental Methodology) and other scientific data to decide the measurement threshold. There is also the feeling that when you get to 30% of river flows on water withdrawals, no more should be withdrawn.

Wieland said his solution was to draw water out of Lake Wallenpaupack. Tudor said they'll be looking at a more holistic approach when considering withdrawals. Peckham asked that if the gas drillers make holding ponds, would that be under the DRBC's regulations, and Tudor responded it would, but no one so far has applied for that.

NYS Dept. of Environmental Conservation: Bill Rudge was absent but he had provided news release hand outs for the members. On Nov. 4, the NYS DEC announced it has extended the public comment period on the draft Supplemental Generic Environmental Impact Statement (dSGEIS) governing potential natural gas drilling activities in the Marcellus Shale formation from Nov. 30 to Dec. 31. The Council was glad to hear of this extension to enable those wishing to make comments enough time to read the 809-page document published by the DEC.

Also handed out was a news release pertaining to new DEC regulations on Open Burning in the state that took effect Oct. 14. The open burning of residential waste will be prohibited in all communities statewide, regardless of population, with exceptions for burning tree limbs and branches at limited times and other certain circumstances. Previously, the ban applied only in towns with populations of 20,000 or more. A complete outline of common questions and answers on the new regulation is available on the DEC website, www.dec.ny.gov.

PA Dept. of Conservation and Natural Resources: No Report

National Park Service-Upper Delaware: Sandy Schultz, Acting Superintendent, reported there was a farewell luncheon for NPS Superintendent Vidal Martinez on Oct. 23, and she passed around photographs of the event. UDC members and staff were in attendance.

Schultz also passed around photographs of the upgrading work being done at the Zane Grey Museum exhibit space. A grand re-opening will be held next spring. Also passed around was an enlarged map printout produced by UDC staffer Dave Soete showing the locations of the Dept. of Interior facilities and the Marcellus Shale under same in reference to areas that may be impacted by gas drilling. The map included the Upper Delaware watershed. The NPS has been discussing this issue. Most likely any comment would be issued by the U.S. Dept. of Interior after consultation with affected Park System units. Schultz noted that she did attend the NYS DEC's public comment hearing held Oct. 28 at the Sullivan County Community College pertaining to its draft SGEIS. The hearing ran from 7 p.m. to midnight and had a capacity crowd. UDC staff also attended.

UDC Executive Director's Report: Bill Douglass announced that the Lackawaxen River is being considered as a finalist in the annual Pennsylvania River of the Year designation. The "Lac" is a tributary

of the Upper Delaware River. The PA Dept. of Conservation and Natural Resources selects a Pennsylvania River of the Year to highlight its particular conservation needs. In years past it has typically been a larger river such as the Delaware or Susquehanna. Starting for 2010, criteria have been expanded to include a wider range of water bodies. The field has been narrowed down to six rivers, among them the Lackawaxen. The Lackawaxen River Conservancy, as lead organization in the Lac watershed, cited the wide range of recreational opportunities the river offers, as well as the myriad challenges it faces due to such pressures as population growth as well as the agricultural, industrial and hydro-electric generation activities which the watershed supports.

Old Business None

New Business

UDC Comment Letter to NYS DEC - draft SGEIS, gas drilling: The members were provided with copy of the second draft of a UDC comment letter that would be issued to the NYS DEC relative to its recently released draft SGEIS regarding gas drilling in the Marcellus Shale. The comment letter was reviewed and amended by the UDC committees. Following a short discussion, a motion by Wieland seconded by Peckham approving the letter was carried unanimously.

The letter references that NYS Governor Paterson has signed off on the continuation of a NYS Executive Order that “all state agencies shall act consistently with the *River Management Plan* to the extent permitted by applicable law. The Department of Environmental Conservation shall provide to other State agencies such technical information and assistance as they may require in order to comply with this Order.” The NYS DEC is currently represented on the UDC membership. The letter goes on to outline the selected references in the *River Management Plan* that relates to oil, gas, and pipeline activity. It also lists 28 areas of concern that was mentioned in a Dec. 15, 2008 letter to DEC from staff regarding the dSGEIS scoping document as issued by DEC. The Nov. 5, 2009 letter states the UDC “is very concerned over how the cumulative 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 low-land 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 as a unit of the National Park Service System by Congress in 1978. We expect that there will be an adequate increase in the number of state inspectors to monitor and enforce the relevant regulations. In the interest of protecting the river corridor, we request that the Upper Delaware Council be notified of any applications for natural gas drilling-related activities which could impact the Upper Delaware Scenic and Recreational River corridor. We further recommend that local officials be notified of any permits applied for within their towns.”

UDC Nominating Committee Appointment: Chairperson Fluhr appointed the following members to the Nominating Committee: Jack Niflot (Town of Fremont); Alan Bowers (Westfall Township); and Larry Richardson (Town of Cochection). The Nominating Committee will provide a 2010 slate of officers to the members at the December Council meeting and elections will be held in January at the Council’s annual meeting. Fluhr asked members to provide the committee with suggestions for officers.

Public Comment

~ Bernard Handler of Damascus Township asked Tudor if Chesapeake withdrew its West Branch application, and Tudor said it did. Handler asked Tudor if DRBC would be apprised of the chemicals in the fracking fluid, and Tudor indicated they would require that information from gas companies seeking a permit application through DRBC. Handler mentioned that regarding the comments to DEC on the draft SGEIS, if DEC doesn’t address these comments properly, they can be held liable for not addressing.

~ Sandy Schultz mentioned that as a Council we have talked about hazmat training for local responders in conjunction with railroad incidents. The gas companies should be made to hold training sessions with the local emergency services responders relative to responding to gas drilling/exploration incidents. Fluhr thought that would be a good comment to make to the NYS DEC in a separate letter that might have more impact. Roeder offered that DEC is looking for comments on “specific” issues and another letter could be made more specific. Fluhr referred the matter to the UDC committees and requested

it be brought up again at the December UDC meeting. Peckham noted that Pennsylvania has hazmat units on call but he didn't know if New York State was set up the same way. This training should be offered free to the local municipalities. Maryellen Rodgers in the audience noted that after 9-11, the county emergency management agencies, including Sullivan County, held bio hazard training session through FEMA.

~ Fluhr requested that Bill Douglass follow up again on the request from the UDC to Central New York Railroad about hazmat training and updating the emergency response guide for the River corridor. He referred the matter to the Water Use/Resource Management Committee for follow-up discussion.

~ Sandy Long of the *River Reporter* noted that since PA DCNR was absent, she wanted to mention that in this week's edition of the newspaper there was an article about an award the Pennsylvania State Park system received. Pennsylvania outshone finalists from Georgia, Michigan, and North Carolina to receive the prestigious National Gold Medal Award for Excellence in Park and Recreation Management. The award is given by the American Academy of Park and Recreation Management, in partnership with the National Recreation and Park Association. It honors excellence in long-range planning, resource management, volunteerism, environmental stewardship, program development and professional development. The acting Secretary of the PA DCNR has said "on behalf of the men and women working in our state park system, we are very proud to receive this award in recognition of our skills at managing our state parks and for our innovative approaches that have drawn people into our parks in new ways and connected them to nature through outdoor recreation." It was also noted in the article that due to state budget issues, the PA DCNR is taking a 15% cut in its funding.

Adjournment A motion by Wieland seconded by Shafer to adjourn the meeting at 8:48 p.m. was carried.

Carol Coney, Office Manager