

UPPER DELAWARE COUNCIL MEETING MINUTES

Jan. 6, 2011

(Annual Meeting)

The Upper Delaware Council held its monthly (annual) meeting on Thursday, Jan. 6, 2011 at the Council office in Narrowsburg, NY. Chairperson Harold Roeder Jr. called the meeting to order at 7:39 p.m. A motion by Rando seconded by Boyar to approve the Dec. 2, 2010 meeting minutes was carried. 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 Tusten-Sue Sullivan, Berlin Township-Lillian Russell, Town of Highland-Andy Boyar, Town of Lumberland-Nadia Rajs, Town of Deerpark-Phil Chase, Lackawaxen Township-John McKay, Shohola Township-Scott Rando, Westfall Township-Peter Kenny, State of New York-Bill Rudge, Commonwealth of Pennsylvania-Dennis DeMara, Delaware River Basin Commission-Carol Collier, and National Park Service-Sean McGuinness. Also in attendance: Tony Ritter-Town of Tusten Alternate, Debra Conway-Town of Highland Alternate, Jim Rodgers-Town of Fremont Alternate. Absent: Town of Cochection

Election of 2011 UDC Officers: Ballots were handed out for election of officers as presented by the Nominating Committee. Candidates were: Chairperson – Dolores A. Keesler (Damascus Township); Vice-Chairperson – Nadia Rajs (Town of Lumberland); and John B. (Jack) Niflot (Town of Fremont). Roeder asked for nominations from the floor; there were none. All candidates were elected by ballot as presented. The new officers took the oath of office and were sworn in by the Rev. Jean Blackie.

During the passing of the chairperson's gavel, Roeder offered a few remarks. He said that a year ago when then chairperson George J. Fluhr passed the gavel to him, he had said the Council has the obligation to preserve the Upper Delaware River and protect the environment along with private property rights. Roeder felt it was a privilege to sit on the board with Fluhr. He said he's been thinking about where we came from, where we are, and where are we going. We came from people fighting over the feds and the river. Finally, we all sat down to talk, and the River Management Plan was born. That's why we're here. We have the trust of the people to protect the river. I'll fight for the river until my dying breath. But, we haven't reached out to the landowners on this issue (natural gas development). We're in turmoil because those things that we have to preserve, the environment and property rights and working with the park service, right now are in conflict with each other. I'd like to think that we can become more than a train riding on one rail, because eventually there's going to be a problem. We have a partnership. I hope we can keep it. Roeder presented the gavel to Keesler remarking use it wisely, best of luck and God bless.

Keesler commented that she's been concerned about the Upper Delaware River since 1954 when she stepped in it and then moved to the area in 1965. She said she's always loved the river and she will speak up for the river. She'll support private property rights as well.

Committee Reports: The committee reports were presented based on the meeting minutes. They included the Dec. 21 Operations Committee meeting by Roeder, and the Dec. 21 Project Review meeting by Peckham. The Water Use/Resource Management Committee did not meet in December.

Status Reports

Delaware River Basin Commission (DRBC): Exec. Dir. Carol Collier reported the river flows were high in December. As of now, the New York City Delaware River Basin reservoir storage is at 90% of capacity. The current snow pack report should be available tomorrow.

The DRBC issued its draft natural gas development regulations on Dec. 9. The comment period for the draft regulations will end March 16. The "At-a-Glance" Fact Sheet on the regulations was handed out. There are tentative dates being developed for the three public hearings on the regulations – Feb. 17 in West Trenton, NJ; Feb. 22 at Honesdale High School; Feb. 22 the Lodge at Rock Hill. The hearings will include afternoon and evening sessions. There will be presentations from 1:30 to 2 p.m. and public comment from 2 to 5 p.m.; in the evening presentation from 5:30 to 6 p.m. and comments from 6 to 9 p.m. This is the schedule they are working on and the presentations will be identical at all venues. There will be time limits on public comments and that will be determined. Collier noted that due to the expected high volume of public comments online on the draft regulations, the DRBC appreciates the assistance from the National Park Service in allowing DRBC to use their electronic online comment acceptance website where comments will be categorized and tallied. There will be a congressional briefing on the draft regulations on Jan. 26 in Washington, DC. State legislature briefings are also being planned. Focus groups were used during the drafting of the regulations process and they will be used again.

The next DRBC meeting will be held March 2. A summary of the Dec. 8 meeting was handed out.

Collier went on to the natural gas development fact sheet. She said it's been asked why the DRBC needs to have regulations when New York State and Pennsylvania already have regulations. She explained that just like the UDC, the DRBC has a mandate to protect the water resources of the Delaware River Basin. If either state has more stringent regulations, they can take the lead on the issues. The DRBC is working with the states on this two-step process – who has oversight and how do they do that oversight.

The Commission is proposing a new Article 7 of DRBC's Water Quality Regulations to protect the water resources of the Basin during the construction and operation of natural gas development projects. This Article applies to all natural gas development projects involving siting, construction or use of production, exploratory or other wells in the Basin regardless of the target geologic formation, and to water withdrawals, well pad and related activities and wastewater disposal activities comprising part of, associated with or serving such projects. Existing Commission regulations establish a program for regulating water withdrawals. The Commission has in other regulations established thresholds for project review based on the thirty-day average volume of water withdrawals. Water withdrawals for natural gas development including high volume hydraulic fracturing may have substantial water quality impacts due to their high intermittent daily withdrawal volume. The requirements for approval are designed to protect minimum stream flows, provide a record of water transfers and otherwise ensure that water resources are not adversely affected.

Collier continued that existing procedures for obtaining a Commission decision on a project application generally take 6-9 months. This Article 7 provides for a streamlined process for natural gas development projects that demonstrate that they satisfy certain criteria. It provides Commission approval for these projects under an "approval by rule" process involving public notice, application to and approval by the Executive Director in a process that may take less than 30 days. Approval by rule is not available for projects located in National Park Management Areas or in the watersheds of the New York City Reservoirs. Wastewater produced at natural gas well sites contains salts and other chemicals that present water treatment challenges. This Article provides that any wastewater treatment facility within the Basin may accept non-domestic wastewater from a natural gas development project only if the facility first obtains approval from the Commission in the form of a docket or modification of an existing docket. There will be tracking of this wastewater from its point of origin to its destination. If it's going to a wastewater facility, it has to be proved it is an approved facility.

The severity of the risks to water resources from well pad construction and operation depends in large part on where the well pads are placed. Article 7 seeks to minimize impacts to water resources from natural gas development by establishing a Natural Gas Development Plan (NGDP) and well pad siting and planning requirements, including:

~Mandatory preparation of NGDP by sponsors of natural gas well pad projects who have total lease holdings in the Delaware River Basin of over 3,200 acres or intend to construct more than five natural gas well pads designed for any type of natural gas well.

~Identification, through the NGDP, of the project sponsor's foreseeable natural gas development in a defined geographic area. These plans identify geographic and hydrological constraints to natural gas development and identify measures to minimize those impacts.

~Restrictions regarding siting in flood hazard areas, on steep slopes, and areas that serve as critical habitat for federal or state designated threatened and endangered species.

~Minimum setbacks from water bodies, wetlands, surface water supply intakes and water supply reservoirs at distances specified in the regulations, and from occupied homes, public buildings, public roads, public water supply wells, and domestic water supply wells as provided by regulations of the state in which the well pad is located.

~A requirement for pre-and post-project monitoring of surface and groundwater near well pads involving high volume hydraulically fractured wells, including a characterization of the hydrology, water chemistry and biological resources of surface waters and the water chemistry of ground waters.

~Requiring the monitoring, tracking, and reporting of water usage and wastewater treatment and disposal.

In this Article, the Commission is separately requiring that all non-domestic wastewater be transferred to appropriate tanks for temporary storage on the well pad site or to a centralized wastewater storage facility and that fluids and drill cuttings from horizontal wellbores in the target formation be beneficially reused or disposed of at an appropriate waste facility.

Peckham noted in New York State when the gas units are up, there's no area between them. That's 640 acres per unit. Collier said that's one square mile and we'll look at the best footprint area for the pad. Peckham commented there's also variances in the ground; maybe a fault, and Collier said we have allowances for variances. We can still look at the well pad. Our authority in Special Protection Waters is to minimize impacts. No well pads in sensitive habitats or any critical areas. DRBC is working with NPS and USGS for a monitoring plan.

Collier offered that if the UDC is interested, DRBC can schedule a meeting up here and do a walk through of the draft regulations. UDC would need to let us know if they desire that.

Chase mentioned to Collier that the UDC issued a letter asking about what happened to the 100 cfs release credits. Collier noted she received the letter and will look into the response which she thought had been done.

Chase brought up that he went to a NYC EP meeting in Grahamsville with state and other organizations. New York City told us what they would be doing in the future. They're diverting 550 mgd to NYC now. In the future it will go to 800 mgd which is legal. With combining the aqueducts, there's more water going out. Our Cannonsville Reservoir will go down and we'll have less cold water for our River. NYC EP is planning on raising the levels of the reservoirs for increased storage. Collier commented that any changes in the reservoirs needs unanimous vote of the Decree Parties. New York City is looking at releases in tune with the weather. They are putting the OST together and discussing that now. You're right; New York City could legally take up to 800 mgd.

Peckham asked with the no withdrawal in a National Park Management Area, is that arbitrary or following some specific requirements in the River corridor since you need full docket approval if going through that area. Seems DRBC is getting into land management. Will the River Management Plan be affected by you working in land management? Collier explained we're just saying you need full docket approval in that land area.

Boyar asked as to the wastewater, the state requirement would take the lead? Collier said we'd take the lead if there was no state requirement. Boyar said the manpower is limited in both states; will DRBC step in that gap? Collier noted that the fee structure allows for funding inspectors for now and future years. However, Congress has taken the Omnibus Bill off the schedule and our cumulative impact study funding is in that bill.

Sullivan said she had a consumptive use question. In 2008, you said not enough water in the basin to meet all needs. How will the demands of the natural gas industry be accommodated? Collier provided that her staff did an analysis on the amount of water needed for wells. It was 10% of what New York uses everyday. It's a one-time withdrawal over a couple of months. For each water withdrawal, we have passby requirements, and if we have a dry period, drillers cannot take water. Existing water use has priority over drilling. McGuinness inquired about aquifer withdrawal. Collier indicated we have pump testing to see if there's enough water. We also do testing for groundwater.

NYS Dept. of Environmental Conservation (NYS DEC): DEC Region 3 Natural Resources Supervisor Bill Rudge referenced the handouts provided. He reported that DEC has announced that the Environmental

Board approved a new regulation that sets stringent performance standards for new outdoor wood boilers sold in the state. The regulation will go into effect 30 days after it is filed with the Secretary of State. The stricter guidelines will ensure that new boilers burn at least 90% cleaner than older models. The regulation includes stack height requirements; set back minimum of 100 feet from neighboring properties; and fuel restrictions. Provisions in the regulatory proposal to phase out the use of older boilers and place restrictions on their use in the interim have been removed and will be addressed through a new public stakeholder process to develop a revised regulatory framework to address concerns of residents impacted by the operation of such units.

DEC is calling for writers to share inspirational stories of experiences in New York's great outdoors by entering the "Great Stories from the Great Outdoors" contest. Each month, DEC will select stories and post them on the DEC website. A prize will be awarded each month for the top story. Contest rules are available at the DEC website. All story entries must be received by Feb. 28, 2011.

DEC's Saratoga Tree Nursery has begun taking orders for its annual sale of tree and shrub seedlings. Schools across New York can also now receive free seedlings for spring planting through the DEC School Seedling Program. The Saratoga Tree Nursery produces more than 50 species of trees and shrubs for planting on public and private land. The objective of the program is to provide low-cost, native planting materials from known New York sources to encourage landowners to enhance the state's environment for future generations. Orders may be placed through mid-May. Applications for the School Seedling Program must be received by March 31, 2011.

Rudge reported that Governor Cuomo announced the nomination of Joseph Martens to serve as Commissioner of the Department of Environmental Conservation. Since 1998, Mr. Martens has served as President of the Open Space Institute. Rudge noted that most of the DEC staff knows Joe and they are looking forward to him running the agency. Rudge reassured the UDC that DEC has made it a priority to keep staff on in regulatory, ECO, and Forest Rangers capacities in light of all the recent state staffing cuts.

Peckham inquired about the Emerald Ash Borer eradication program. Rudge indicated that when people transport wood, the insect spreads faster and farther. There are also problems removing the borer from the gene pool in the state. DeMara added that both the Pennsylvania and New York forestry departments are working closely together on this issue.

Rajsz asked about the status of the Mongaup Valley Wildlife Management Area's Unit Management Plan. Rudge indicated right now there's not enough staff to finish up this project.

PA Dept. of Conservation and Natural Resources (PA DCNR): Natural Resource Program Supervisor Dennis DeMara referenced a handout regarding the Community Conservation Partnerships Program. The program combines several state and federal funding sources into one grant program. In 2011, the program will focus on making grant awards that create or enhance the Commonwealth's recreation and conservation infrastructure – supporting sustainable communities, economic development, healthy lifestyles and creating jobs. The open grant application period is Jan. 3 through April 20, 2011. Grant applications will be accepted between 10 a.m. Wednesday, Jan. 3 and 4 p.m. Wednesday, April 20. All applications must be submitted electronically through the Environmental eGrants System. DCNR, in cooperation with the Pennsylvania Recreation and Park Society, has scheduled seven workshops throughout the state during January and February. The closest workshop to the Upper Delaware River corridor is at Luzerne County Community College in Nanticoke on Feb. 3. DeMara was asked if there was a winner for the PA River of the Year voting as yet. DeMara said he heard there was heavy voting for the Delaware River but no results as yet.

National Park Service-Upper Delaware (NPS-UPDE): Superintendent Sean McGuinness reported that today he did a briefing package for members of the House and Senate that talked up the \$125,000 additional funding for UDC. Hopefully they'll leave it in the budget. Congress is still holding a continuing resolution on the appropriations bill until March 4. McGuinness provided a reminder that on Jan. 10, NPS would be meeting with the corridor towns/townships regarding law enforcement and trash removal funding levels. The meeting is being held in the UDC's conference room.

McGuinness reported that PennDOT has scheduled an emergency repair to the Pond Eddy Bridge. The contractor will replace approximately 64 steel stringer beams which are located directly under and support the wood deck. The bridge will be closed during the daylight hours when work is scheduled to take place. The project will be bid by Jan. 13, 2011. The work is expected to take four months.

NPS-UPDE has instituted a new water lab at the Milanville office that will handle the water quality monitoring datasonde project. He invited the members to come up for a look and explanation of how the new equipment works.

The Dept. of Interior, National Park Service has issued Notice in the Dec. 30, 2010 *Federal Register* of its intent to prepare an Environmental Impact Statement on proposed revisions to existing regulations governing the exercise of nonfederal oil and gas rights within the boundaries of units of the National Park System. The EIS will analyze a range of reasonable alternatives for regulating nonfederal oil and gas development and the potential environmental impacts on park resources. There is a Feb. 28, 2011 comment deadline.

UDC Executive Director's Report: Bill Douglass reported that Len Grover, Resource Conservationist, of the Wayne Conservation District telephoned the UDC to request approval for a presentation at the January Water Use/Resource Management Committee meeting about new erosion and sedimentation control regulations. The committee members agreed to the presentation.

Douglass announced that Governor Cuomo has passed an executive order allowing for the continuation of Executive Order 169 of 1993 directing all state agencies to work in consistency with the Upper Delaware Scenic and Recreational River's River Management Plan.

Old Business None

New Business

UDC Resolution 2011-01 Contracting for Auditing/Accounting Services for FY 2011: A resolution came through the Operations Committee recommending, after review, the Council contract with the firm of Eckersley and Ostrowski to provide auditing and accounting services for fiscal year 2011 at no increase in cost. A motion by Boyar seconded by Rajsz to approve the resolution was carried.

UDC Resolution 2011-02 Corporate Resolutions and Signature Cards for financial accounts: The resolution to allow the UDC officers and Executive Director to sign the corporate resolution and signature cards for the accounts in various banking institutions to reflect the change in officers was presented. A motion by Rajsz seconded by Kenny to approve the resolution was carried.

Other: Boyar introduced to the Council the new Alternate to the Council from the Town of Highland, Debra Conway. She was welcomed aboard. Chase reported Town of Deepark Alternate Mel Decker is recuperating nicely. Douglass handed out the informational brochure for the 10th annual Narrowsburg EagleFest taking place Jan. 15. The Council will have a booth at this event. McGuinness suggested sending a congratulatory letter to the newly elected Governors of New York State and Pennsylvania and providing them with a River Management Plan and introducing them to the Council's mission. Sullivan suggested doing the same when Joe Martens is officially appointed as the DEC Commissioner.

Public Comment

~ Bernie Handler asked Collier how long it would take to get the approval by rule. Collier responded the gas company would have to provide the Natural Gas Development Plan and it would have to be approved. Probably less than six months. He asked if any of the compliance officers would live in the area. Collier signified they'd like to get an office up here with the locals.

~ Jane Prettyman commented she was pleased about DRBC's water tracking and not allowing wastewater impoundments and no cuttings on site. She asked if DRBC was looking at green fracking fluids and Collier said yes. Peckham noted that Halliburton has a process for that called StimClean. Prettyman asked who determines the footprint area. Collier said that will be in the Plan the gas company submits to DRBC. Prettyman asked why the DRBC was considering gas regulations prior to the cumulative impact studies being completed. Collier explained all we've done is put draft regulations out and allowed a comment period. The Congressmen are disappointed there's no money for the study. We'll have to see what happens.

~ Soete asked if the funding was gone for the USGS cumulative impact study. Collier noted the Omnibus bill has been taken off the table. That money is considered an earmark. McGuinness added the money has been approved by committee but the new Congress is changing things.

~ Sullivan asked if the EPA study was out. Collier said she heard by the end of 2012. Peckham noted they're still looking for people to serve and ironing out other issues.

Adjournment A motion by Rajsz seconded by Roeder to adjourn the meeting at 9:25 p.m. was carried.

Carol Coney, Office Manager