

## UPPER DELAWARE COUNCIL MEETING MINUTES Feb. 3, 2011

The Upper Delaware Council held its monthly meeting on Thursday, Feb. 3, 2011 at the Council office in Narrowsburg, NY. UDC Chairperson Dolores Keesler called the meeting to order at 7:31 p.m. Coney provided a correction to the Jan. 6 meeting minutes: on page 5, under Public Comment, Peckham Halliburton process, should be CleanStim. A motion by Rajsz seconded by Kenny to approve the minutes as corrected was carried with one abstention. Under Public Comment, B. Arrindell requested a copy of the draft letter being discussed. She was informed that draft letters are not provided until they have been approved.

*In attendance:* Town of Hancock-Fred Peckham, Town of Fremont-Jack Niflot, Town of Delaware-Harold Roeder Jr., Damascus Township-Dolores Keesler, Town of Cohecton-Larry Richardson, Town of Tusten-Tony Ritter, Berlin Township-Lillian Russell, Town of Highland-Andy Boyar, Town of Lumberland-Nadia Rajsz, Town of Deerpark-Phil Chase, Lackawaxen Township-John McKay, Shohola Township-Scott Rando, Westfall Township-Peter Kenny, Delaware River Basin Commission-Clarke Rupert, and National Park Service-Don Hamilton. Also in attendance: Jim Rodgers-Town of Fremont Alternate, Debra Conway-Town of Highland Alternate. Absent: State of New York; Commonwealth of Pennsylvania.

**Committee Reports:** The committee reports were provided. The Water Use/Resource Management meeting scheduled for Jan. 18 was cancelled due to inclement weather. Keesler provided the Jan. 25 Operations Committee report. Peckham provided the Jan. 25 Project Review report.

### **Status Reports**

**Delaware River Basin Commission:** Clarke Rupert thanked Dave Soete for providing some of the photographs that were used in the DRBC's 50<sup>th</sup> anniversary 2011 calendar. Rupert reported that the New York City Delaware River Basin reservoir storage as of Jan. 28 was 18 bg above the long-term median and 27 bg below the level of one year ago. The combined reservoir storage was at 84%. The flows at Montague for January were 69% of normal. The trend continues to be below normal. For the past month, the precipitation in the upper basin is average to about 25% above average. The snowpack above the reservoirs contains about 59 bg of water.

Regarding the DRBC draft natural gas regulations, Rupert answered some questions from the Council members. Boyar-are the gas regs a product of DRBC staff or the Commissioners? Rupert-it's an integrated process. DRBC staff provided draft regs to the Commissioners; got feedback; and the regs issued Dec. 9, 2010 are the product of that back and forth process. Now we're in the process of getting public comment. Boyar-is a unanimous vote needed to approve the gas regs? Rupert-no, majority vote. A unanimous vote is needed for any adjustments to the Supreme Court Decree.

Rupert pointed out there was a press release in the Council members' meeting packets that outlined the public comment process for the draft gas regs. The public hearings will be held 1:30 p.m. to 5 p.m. and 6 p.m. to 9:30 p.m. at the following locations: Feb. 22 Honesdale High School Auditorium, Honesdale, PA. Feb. 22 Liberty High School, Liberty, NY. Feb. 24 Patriots Theater at the War Memorial, Trenton, NJ. Registration for those who wish to testify will begin one hour prior to the beginning of each hearing session. Registration is on a first-come basis. Oral testimony will be limited to two minutes, but can be supplemented with written comments submitted at the hearing or prior to the written comment deadline. Written comments will be accepted through the close of business March 16, 2011 by two methods only: 1) electronic submission using a web-based form available on the DRBC web site-[www.drbc.net](http://www.drbc.net), preferred, or 2) paper submission mailed or delivered to the Commission Secretary.

Further questions from Council: Ritter-New York State didn't vote on the draft gas regs? Rupert-each of the five Commissioners gave remarks. Everyone but New York State felt the time was right to get the draft regs out to the public. The NYS representative at the time was from then-Governor Paterson. Paterson had issued a letter to the DRBC on this issue. Peckham-since two public hearings the same day,

how is DRBC staff covering? Rupert-we felt the two hearings the same day would allow an opportunity for broader exposure to the greatest number of people in the area that wished to comment. Staff assignments for each hearing are being worked out. Ritter-did NYS vote no because they were still working on their regs? Rupert-don't know; the state can speak for itself. Governor Cuomo's executive order allows their regs to be out around June. It would be the Commissioners' call if changes are to be made to the DRBC draft regs based on public comment, and if changes were made, if we go to public hearing again. Peckham-will the public comments be made available? Rupert-we don't know how many comments there'll be. The website where comments will be made can combine comments to topics. The number of comments may be too large of a file to offer online, but hard copies should be available at the DRBC office in West Trenton.

Chase-NYS is diverting 550 mgd according to some, but the River Master's records from October through January are indicating just under 700 mgd. Rupert-divide all diversions and divide by 365 days. That figure cannot be over 800 mgd. The 800 number is an average number over the course of the year. They cannot go over that.

Rupert reported on upcoming meetings: DRBC March 2, Water Quality Advisory Feb. 8, Flood Advisory Feb. 16, Toxics Advisory March 1, and RFAC March 8.

He noted a handout was provided on the Delaware River Basin Forum, "Drinking Water Is A Critical Resource" on March 10, 2011. This is a free one-day forum to address local and regional issues affecting the current and future drinking water supply in the Delaware River Basin. This first-ever Basin forum will have eight linked locations and will be broadcast via live web cast. It is directed at municipal, community and business leaders and water professionals. The goals of the forum are to bring together the public, private and nonprofit entities that have a stake in clean and plentiful drinking water and can do something about it at the local level to develop a collaborative approach to protect drinking water. The location in the upper basin is at the Sullivan County Community College in Loch Sheldrake, NY. For further details visit [www.DelawareBasinDrinkingWater.org](http://www.DelawareBasinDrinkingWater.org).

**National Park Service-Upper Delaware:** Don Hamilton reported that NPS is reviewing the DRBC draft gas regs. The regional office will be making comment. He's been working with different cooperators on funding proposals. We submitted one to the USGS and made the initial cut for water quality proposals. We're constructing new lab space in the Milanville office to handle the datasonde water quality monitoring equipment. Some have telemetry capability so we'll have real-time data in some cases.

Peckham asked in reference to the oil and gas nonfederal land posting in the *Federal Register*, NPS owns surface rights? Don-in river corridor some of these regs would apply to surface. McKay-will the NPS comments on the DRBC draft gas regs be made public? Don-I'll ask.

**UDC Executive Director Report:** Bill Douglass announced that the Project Review Committee will hold a work session Feb. 10 to review the DRBC draft gas regs in order to prepare comments. There will be no public comment taken at this work session for the committee. Russell asked if DRBC executive director Collier would be attending; Peckham-no, two other staff members will be here. Boyar-why no public comment? Peckham-it's a committee work session, not a committee meeting. Keesler noted that all UDC members are invited. Peckham noted that the draft comment letter will be generated by the Project Review Committee but the draft letter will go to the full Council for action. Boyar felt the Water Use/Resource Management Committee should also have input into the draft comment letter. Rajs said she wanted someone from the DRBC to explain the draft regs and thought a work session would be helpful to the Council. Rupert indicated that the DRBC staff attending will provide the Council with an overview of the gas regs and could also answer any questions the Council members pose. Richardson suggested that instead of each committee holding a meeting on this issue, if another committee wants to hear the experts at the work session, he didn't have a problem with that. The public will have time to comment at a regular meeting. Ritter asked how the committee felt about an expert coming to the work session to ask questions for a member. Peckham indicated the expert would have to be approved by the towns/townships as the Council member is representing the town. If the town board/supervisor approves the expert for that town, he had no problem with that.

Douglass continued his report and indicated that the Central House in Beach Lake, PA has confirmed its availability for the Council's annual awards ceremony in April.

**Old Business** None

### New Business

**UDC Draft Comment Letter to NPS – Nonfederal Oil & Gas Development Within the Boundaries of Units of the National Park System; Intent to Prepare an Environmental Impact Statement for a Proposed Revision 36 CFR Part 9:** The Council reviewed a draft comment letter to NPS regarding issue noted above. A motion by McKay seconded by Rando approving the draft letter was carried.

The letter stated in part: “While the Upper Delaware Scenic and Recreational River is a unit of the National Park System, it is not a national park, and it is unique in that most of the land in the river corridor is privately owned. The National Park Service ownership is limited to several small parcels totaling 30.74 acres. The section of the River Management Plan regarding the National Park Service on page 17 states, ‘Federal regulations governing activities by the National Park Service have limited applicability within the Upper Delaware River corridor. Particular regulations covering National Park Service activities are included in Title 36 of the Code of Federal Regulations. These regulations apply on the surface of the river and on lands owned or leased by the agency. They do not apply to private lands in the river corridor.’ That said, the UDC would like to go on record as being an interested party because the Upper Delaware Scenic and Recreational River corridor is underlain by the Marcellus shale, and other shale formations, which will be targeted for natural gas development using horizontal drilling and hydraulic fracturing. We welcome any science-based knowledge that can lead to improved best management practices and a better understanding of the issues. Please keep us informed on this matter.”

**Informational Handouts:** The members received handouts covering topics: 1) Hinchey, Holt Urge DRBC to Suspend Hydrofracking Rulemaking Process. 2) Environmental groups sue Delaware River Basin Commission. 3) Department of Energy Transmission Corridors Gone. Peckham asked Soete to look further into this matter of the NIETCs since this was a 9<sup>th</sup> Circuit case against the Department of Energy designations. Soete indicated that so far, he has not seen any FERC ruling on this in the *Federal Register*.

**Other:** Niflot announced there would be a meeting of the Personnel Subcommittee following the UDC meeting. Keesler noted the meeting was open to any board member.

### Public Comment

~ Barbara Arrindell of Damascus Citizens handed out information for web links to chemical and biological risk assessment for natural gas extraction in New York along with other experts’ testimony. She said she would email the link for the members to the paper by Ronald E. Bishop, Ph.D.

~ Bernie Handler asked Rupert why there was so much back and forth between DRBC staff and the Commissioners regarding the draft natural gas regs. Rupert indicated the back and forth was to capture what the Commissioners had in mind for the regulations.

~ Arrindell asked if the public was an annoyance since there were thousands of public comment against the Lackawaxen River water withdrawal for gas drilling, but the Commissioners approved the docket anyway. Rupert explained that we take input from the public and it is considered, but the Commissioners have to make the ultimate decision.

~ Jane Prettyman asked if doing a cumulative impact study was considered by the DRBC staff or Commissioners. Rupert noted DRBC does not have funding to do a cumulative impact study. We reached out to various groups and Congressman Hinchey tried to see what he could do. Congress now is not addressing any funds they consider “earmarks” so we are hard put to get any money. Rupert noted that regulations passed on gas regs can be amended if new information is found; that’s adaptive administration. The Commissioners make that decision.

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

Carol Coney, Office Manager