

## UPPER DELAWARE COUNCIL MEETING MINUTES May 7, 2009

The Upper Delaware Council held its monthly meeting on Thursday, May 7, 2009 at the Council office on Bridge Street in Narrowsburg, NY. Chairperson George J. Fluhr called the meeting to order at 7:31 p.m. A motion by Wieland seconded by Bowers to approve the April 2 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 Cohecton-Larry Richardson, Town of Tusten-Charles Wieland, Berlin Township-Andy Dean, Town of Highland-John C. Sundholm, Town of Lumberland-Jay Shafer, Town of Deepark-Phil Chase, Lackawaxen Township-John McKay, Shohola Township-George J. Fluhr, Westfall Township-Alan Bowers, and National Park Service-Carla Hahn. Also, Town of Fremont Alternate-Jim Rodgers. Absent: State of New York, Commonwealth of Pennsylvania, Delaware River Basin Commission. Special guest: Ed Zygmunt-Field Representative, U.S. Congressman Chris Carney.

**Committee Reports:** The Council's committee reports were provided by the committee chairpersons based on the meeting minutes. They included: Water Use/Resource Management April 21 by Wieland; Operations April 28 by Fluhr; and Project Review April 28 by Roeder.

### Status Reports

**Delaware River Basin Commission:** The DRBC could not attend this meeting. Handouts were provided. They included:

Delaware River Flow & Storage Data: The combined NYC Delaware River Basin reservoir storage was at 98.3% of capacity on May 1, 5 bg below daily storage median. The Cannonsville Reservoir was at 99.1% of capacity.

DRBC Hydrologic Conditions Report of May 5: The observed precipitation for the Delaware River Basin above Montague, NJ for the period Jan. 1 through May 4, 2009 was 8.56 inches or 4.75 inches below normal. The average observed streamflow of the Delaware River at Montague in April 2009 was 5,407 cfs, or 47.5% of the long-term average for the month. As of May 4, the salt line was located at river mile 72. This location is 8 miles upstream of the normal location for May.

DRBC May 5 news release, "DRBC Announces Flood Analysis Model Status Update": The news release stated, in part, "the DRBC announced that the flood analysis model being developed by an interagency team led by the U.S. Geological Survey (USGS) is now expected to be available sometime this summer. The USGS and its two federal partners are adapting existing model applications to develop the flood analysis model for the DRBC...it is proving to be more time intensive than originally expected to represent multiple watersheds and reservoirs, each with unique characteristics, for a river system as large and diverse as the Delaware. When completed, this tool will help the DRBC and the decree parties to evaluate the potential impacts that different initial storage levels at 15 major reservoirs would have had on flooding at forecast points located downstream for the three storm events experienced in September 2004, April 2005, and June 2006."

Upcoming meetings to be held at DRBC office in West Trenton, NJ: DRBC Floodplain Regulations Evaluation Subcommittee-May 8; DRBC Flood Advisory Committee-May 19; and DRBC Toxics Advisory Committee-May 27.

Copy of agenda (updated) for May 6 DRBC meeting: In part, the business meeting included-- public hearing on a resolution to amend the Commission's fee schedule for the review and renewal of

project approvals; consideration of resolutions concerning (a) future updates of DRBC Water Quality Regulations (postponed), (b) election of officers for the year 2009-2010, commencing July 1, 2009, (c) adoption of fiscal year 2010 budget; and action on 15 project dockets.

Peckham wondered why the Chesapeake and Stone Energy water withdrawals were taken off the docket list for the DRBC meeting. Soete indicated that DRBC has received incomplete applications from the companies and maybe that was why the dockets were removed.

**NYS Dept. of Environmental Conservation:** No one from DEC could attend. A handout was provided, DEC April 29 news release, "DEC Accepting Applications for Volunteer Fire Assistance Grants". The news release in brief announced that DEC was accepting applications for Volunteer Fire Assistance Grants to provide funding to rural fire departments to enhance their wildfire fighting capabilities. The deadline for applications is May 31. For further information, [www.dec.ny.gov](http://www.dec.ny.gov), subject index-Forest Rangers.

**PA Dept. of Conservation and Natural Resources:** No Report.

*PA Dept. of Environmental Protection:* Bill Manner announced that John Hanger has been sworn in as the fourth Secretary of the DEP. The ceremony took place in Harrisburg on May 4.

Gov. Rendell announced on April 29 that Pennsylvania is taking steps to ensure three important Delaware River gauges on the Upper Delaware continue to operate and provide critical information that protects residents by monitoring flood conditions and water quality. Funding shortfalls by New York City had threatened to cease operation of the gauges, located at Callicoon, Pond Eddy and Barryville. Beginning Oct. 1, Pennsylvania will provide funding to operate gauges at Barryville, Shohola, and Pond Eddy. Funding for the Callicoon gauge will begin Oct. 1, 2010.

As of last month, water management plans will be handled out of the Williamsport office since they are trained for this task. Changes to Regulations under Chapter 1 & 2 of soil and erosion control will be going to the Environmental Quality Board in June for review, then out to public comment. The changes will involve more agriculture covered in the regs; permit-by-rule; and mandatory buffer zone for streams and wetlands. Manner felt that the Council might want to offer comment on the recommendations during the public comment period.

Roeder inquired why the Basin states were paying for the stream gauges since New York City is using the water. The reason seems to be the shortfall in the NYC and NYS budgets. Peckham noted that NYC is concerned with meeting the Montague flow target. Manner offered that other Rivers using USGS stream gauges are losing funding as well, and the Delaware River is not unique in this situation.

**National Park Service-Upper Delaware:** Carla Hahn presented the report for Superintendent Martinez, who was out of town. Frank Connor, Regional Associate Director for Administration, enjoyed UDC's annual awards ceremony and both he and Martinez send congratulations to the award recipients. Seasonal interpretive staff will begin training on May 11. Portajohns and trash receptacles are being placed at NPS facilities and law enforcement agreements are in place.

Al Henry, Chief of Protection, will retire from the NPS-Upper Delaware on June 1 after 30 years of service. He was the first field person to report to the Upper Delaware in 1979. Joe Nicholson will serve as Acting Chief of Protection after June 1.

Following the discussions at the Upper Delaware River Safety Committee meeting on April 29, the National Canoe Safety Patrol and the NPS will collaborate to tackle safety issues by ~Having more NPS and National Canoe Safety Patrol personnel on hand at sites where most fatalities occur. ~Collaborating with the canoe liveries on a consistent safety message. ~Having the Canoe Safety Patrol train livery personnel and working with them to get safety messages out to customers and telling river users what should be done in an emergency situation. ~ Having more NPS staff on the River during the "season". The NPS is gathering data to assist with understanding safety problem trends so issues can be addressed on a local, regional and national level and educating river users about the need to wear life jackets.

Projects to take place in Upper Delaware: ~Roebing Bridge beginning in June - repair towpath trail and wooden ice breakers and masonry piers; replacing roof at Zane Grey Museum and addressing the bat problem and disabled accessibility without damaging the historic integrity of the building. After the Museum closes in October, it will undergo a makeover for curatorial exhibitions.

NPS will upgrade some of its buildings once funding from the American Recovery and Reinvestment Act is received. The NPS Regional office and its Lands Office are working with Alliance

Energy to examine its offer to donate the former “tri-state diesel” site to NPS for use as a welcome center site. In the meantime, NPS and NYS DEC are discussing temporary use of the DEC access site on NYS Route 97 at the Mongaup for a welcome center this season.

Two scientific research and collecting permits were issued: to the U.S. Fish and Wildlife Service for its study of the age structure of the American Shad in the Upper Delaware, and to Jeffrey Cole to assess presence of threatened, endangered or rare fresh water mussels around the Roebling Bridge structure in preparation for the ice breaker/pier repair work.

The Core Operations Analysis continues with a workshop on May 13 and 14. Hahn noted this analysis will provide the opportunity to focus attention on our unique mandate, to help others understand our needs, and present us with hard data to justify additional resources and dollars to accomplish our joint mission. The UDC staff is participating in this Analysis and NPS appreciates their attention to detail that has been part of their input. The Mission Statement and priorities list resulting from the first workshop in April was handed out to the members.

The Delaware River Sojourn will hold the Upper Delaware Section river trip on June 21 and 22.

Some of the members pointed out that protecting private property rights should be part of the mission and/or priorities. The Upper Delaware land is 99% privately owned and this is one reason it is a unique unit of the National Park Service system and why a locally produced *River Management Plan* was put in place.

**UDC Executive Director’s Report:** Bill Douglass noted that Penn State Cooperative Extension was holding a gas leasing workshop on May 14 at Wallenpaupack High School and he planned on attending. The Delaware River Basin Commission’s Flood Advisory Committee will be meeting on May 19. The NY-PA Joint Interstate Bridge Commission meeting will be held May 28 in Dunmore, PA and UDC staff will attend. The *River Reporter* has a nice article on the Council produced by Sandy Long.

At the April 29 Safety Committee meeting, eel weir safety issues were discussed. The eel weirs seem to be getting wider and river users have been hurt on them. Roeder informed Hahn that when this issue came up in the past, the NPS Superintendent held a meeting with all the stakeholders to solve the issues. Roeder suggested that this approach happen again.

**Old Business** None

**New Business**

**Limited Liability for Landowners handout from Fluhr:** Fluhr noted that at the last meeting of the Delaware & Hudson Transportation Heritage Council, there was discussion on the implications for landowners of permitting visitors on their property to view the remains of the Canal. Copies of the NYS and PA laws relative to landowners and recreational use of their lands was obtained by Fluhr. A copy of these laws was handed out to the members for their information. These laws also appear to have implications in municipal planning for landowners who, out of fear of liability, have opposed greenways on which people are allowed to hike or bike. Peckham offered that even though landowners may be protected by the Courts under the law, they still have to dish out dollars for Court proceedings, and that’s one reason they are reluctant to open their land to the public.

**Public Comment**

◆Noel vanSwol, co-founder of the Sullivan-Delaware Property Owners Assn., spoke to the members regarding gas leasing. He explained the Association has approximately 70,000 acres they hold to negotiate decent leases with the gas companies. He felt Marcellus Shale was so rich a resource it could be worth \$337,000 an acre.

VanSwol mentioned the reason he was addressing the members was that in the UDC’s Spring/Summer 2009 newsletter in the natural gas article it stated that UDC had commented on the NYS DEC’s scoping document for its proposed Supplemental Generic Environmental Impact Statement on the Oil, Gas and Solution Mining Regulatory Program. The article stated “Upper Delaware Council staff claimed one of the 3,770 written statements submitted in response to the GEIS. While stating in its Dec. 15 letter that the 1986 River Management Plan never envisioned horizontal drilling or hydraulic fracturing technology, the UDC ‘relies on its member states and DRBC to ensure that natural gas exploration

activities do not adversely impact the Upper Delaware Scenic and Recreational River corridor... We believe that natural gas exploration activities at the scale being proposed would constitute an incompatible use anywhere in the river corridor.” VanSwol noted that statement has the potential to create a firestorm.

He went on to reference a Nov. 9, 1984 letter (copy appears in the Final River Management Plan of 1986) from then NPS Mid-Atlantic Region Regional Director James Coleman to the Foresight Consulting Group in response to questions regarding the scope of 36 CFR (Code of Federal Regulations) applicable to the Upper Delaware River. The letter states in part “...36 CFR applies to lands owned or leased by the NPS and to activities in and on the Upper Delaware River which involve the recreational use of the River. It does not apply to privately-owned lands, whether within or outside the river corridor boundaries.”

VanSwol pointed out that if NPS or UDC were to shut down gas drilling, it would be a “taking”, and without compensation it would be nationalism. If it’s an incompatible use as stated in the UDC letter, does NPS or UDC want to face lawsuits? He said he’s talked with some members of the Council that are in favor of gas drilling. He commented that we all need to have environmental protections in place and gas could then be a good thing. NPS and UDC should work together with the property owners’ groups for compromise and not confrontation.

He felt that the UDC newsletter comment was not well thought out. He offered to have his group meet with the Council to answer any questions they had on this issue. They’d also be willing to assist the Council with any issues they had. VanSwol noted a comment made in the UDC letter indicated that with present technology it may be possible to extract gas in the River valley without harm. He felt that could be true as gas withdrawal has been done in other areas and it could be done here without problems if we work together.

♦Ed Zygmunt, Field Representative to U.S. Congressman Chris Carney, a guest at the meeting, promised to visit more often. He noted that he stays in contact with UDC Executive Director Bill Douglass and visits the UDC website to read the newsletter and meeting minutes. He offered that if there was something important to the Council that Congressman Carney’s office could assist with, he was just a telephone call away. Zygmunt mentioned he was glad the River stream gauges were saved, and that the Congressman voted for full federal funding restoration for the Delaware River Basin Commission. Lastly, he mentioned that the Congressman was excited about coming to the Delaware River Sojourn and it’s hoped his schedule will allow that. The Council members thanked Zygmunt for attending the meeting.

### **Executive Session**

A motion by Wieland seconded by Shafer to enter into executive session at 8:29 p.m. to discuss staff health insurance issues was carried. The members came out of executive session at 9:22 p.m.

**Council Health Insurance:** A motion was made by Shafer and seconded by Keesler to obtain health insurance coverage through Empire using Option 3. A call for a vote resulted in 7 in favor; 3 nays; 2 abstentions, the motion carried.

A motion by Keesler that before next March the Council looks into other health insurance options. Richardson commented that the matter needs to go to the Operations Committee meeting. Keesler withdrew her motion. Fluhr indicated that the matter will be scheduled for the Operations Committee meeting in June so that some figures could be estimated for the preparation of the Council’s fiscal year 2010 budget that becomes effective Oct. 1, 2009.

**Adjourn** A motion by Roeder seconded by Bowers to adjourn the meeting at 9:30 p.m. was carried.