

UPPER DELAWARE COUNCIL MEETING MINUTES Aug. 6, 2009

The Upper Delaware Council held its monthly meeting on Thursday, Aug. 6, 2009 at the Council office on Bridge Street in Narrowsburg, NY. Council Chairperson George J. Fluhr called the meeting to order at 7:30 p.m. A motion by Wieland seconded by Chase to approve the July 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, Town of Lumberland-Jay Shafer, Town of Deerpark-Phil Chase, Lackawaxen Township-John McKay, Shohola Township-George J. Fluhr, Westfall Township-Alan Bowers, Commonwealth of Pennsylvania-Dennis DeMara, Delaware River Basin Commission-Carol Collier, and National Park Service-Sandra Schultz. Absent: Berlin Township, Town of Highland, State of New York. Also in attendance: Town of Fremont Alternate-Jim Rodgers; Town of Hancock Alternate-Jim Serio.

Committee Reports: The committee reports were provided based on the meeting minutes. These included: July 21 Water Use/Resource Management by Wieland; July 28 Operations and July 28 Project Review by Roeder.

Status Reports

Delaware River Basin Commission: Carol Collier, Exec. Dir. of DRBC, introduced fellow staffer Jessica Sanchez, who is the Basin Planner in the Commission's Planning and Information Technology division. Collier noted that she handed out the brochure "Delaware River State of the Basin Report 2008 Summary" for the Council's information. She mentioned that she had attended the Upper Delaware River Roundtable meeting in the afternoon at the Tusten Town Hall in Narrowsburg and reported there are good natural resource maps being prepared as a project of the Roundtable.

The past seven days two to six more inches of rain was received in the Basin. The Upper Delaware River didn't reach flood stage. The Beaverkill did reach action stage Friday night. The Cannonsville and Pepacton reservoirs are still spilling and releases are at L1a on the FFMP chart. The Rondout was at 96%. Diversions were halted July 30 and now have resumed again. The NYC Delaware River Basin storage as of July 31 was Cannonsville 100.2% of capacity; Pepacton 95.9%; and Rondout 99%. The average observed streamflow of the Delaware River at Montague in June 2009 was 10,054 cfs, or 299% of the long-term average for the month. The River level has come down some today since we had no rain.

Collier mentioned that according to the National Weather Service-NOAA, they are expecting a near- to below-normal Atlantic hurricane season as the calming effects of El Nino continue to develop.

It was announced that the National Fish and Wildlife Foundation is offering grants under the Delaware Basin Habitat Restoration Initiative Fund. This is a funding opportunity to 1) develop a set of shared restoration priorities for a single ecological community in the four-state Delaware River Basin Watersheds, 2) support several riparian projects that demonstrate the highest potential for restoration of key hotspots for biodiversity and that demonstrate multiple conservation values associated with restoration of the Delaware River Basin. The deadline for applications is Aug. 24, 2009. For more details visit www.nfwf.org/delawarebasin.

Collier noted that the July 15 DRBC meeting was long. Public testimony was taken relative to the Chesapeake surface water withdrawal Docket. There was both verbal and written testimony provided. The DRBC has received the Council's letter noting that a comment letter on the Chesapeake Docket should be

forthcoming at the Aug. 6 UDC meeting but unfortunately that is past the deadline of July 29 and asked the DRBC to consider the letter. Collier noted that DRBC will accept the UDC letter passed tonight.

She commented there were lots of issues mentioned at the July 15 meeting including pass-by flows, endangered species impacts, flow targets at Montague, among others. Due to the public comments received, the DRBC staff will revise the Chesapeake Docket to take into consideration the concerns mentioned. On Sept. 23, a public hearing will be held at PPL Lake Wallenpauack to take testimony on the "revisions" made to the Docket. The matter will be brought up at the Oct. 22 Commission meeting. The Sept. 22 DRBC meeting will be rescheduled to October as mentioned.

The DRBC currently has five gas applications—Andrews Forest Products water withdrawal site on the East Branch Delaware; the Matoushek gas well in Clinton Township; water withdrawal site on the West Branch of the Lackawaxen River; and water withdrawal site in Bucks County, PA, in addition to the Chesapeake Docket. She noted that the NYS DEC has 12 applications from Chesapeake in-house. Collier noted that her executive director's Determination issued earlier said that DRBC was preparing oil and gas regulations. The DRBC will be putting forth "approval by rule" for well pads, like the Susquehanna basin has. DRBC is looking at three separate pieces: withdrawals; impacts to tributaries of withdrawal; and well-pad approval. She said remember that the area up here is classified as Special Protection Waters. DRBC will not overlap State review work. DRBC will look at wastewater removal. We assume wastewater will be going out of the Basin for treatment so all water withdrawn is consumptive and we need to look at that. Collier mentioned that the NYS DEC has no issue with DRBC doing water withdrawal reviews.

NYS Dept. of Environmental Conservation: While no one was present from DEC, a news release had been provided and handed out, "State Implements Quarantine to Prevent Spread of Emerald Ash Borer". The NYS DEC and the NYS Dept. of Agriculture and Markets are establishing a quarantine encompassing Cattaraugus and Chautauqua counties in upstate New York that will restrict the movement of ash trees, ash products, and firewood from all wood species in order to limit the potential introduction of EAB to other areas of the state. The EAB is a small but destructive beetle that infests and kills North American ash tree species. Since its discovery in southeastern Michigan in 2002, the beetle is responsible for the destruction of over 70 million ash trees in the U.S.

PA Dept. of Conservation and Natural Resources: Dennis DeMara noted that he took a look at the DRBC State of the Basin report handed out and saw listed "important changes in land use include a substantial rate of forest loss". DCNR is trying to reverse this trend.

DeMara announced that through the Scenic Rural Character Preservation fund and PA DCNR, Pike County was able to acquire an 88 acre property on the Delaware River that could give county residents over 4,000 feet of river access in a park-like setting. This property is known as the Santos farm property. As part of the SRCP grant, the county is required to place a conservation easement on the parcel to retain its open character for future generations. In addition, the Pike County Commissioners have closed on the purchase of the conservation easement on a 708 acre Westfall Township tract belonging to the Polatnick family. The land itself was then turned over to DCNR's Bureau of State Forestry. The property is adjacent to state game lands and will have hiking trails cut through it for public use.

A new category has been added to the scenic character state grants in the amount of \$25,000 to assist landowners with conservation easements, with additional monies available for conservation easement monitoring.

DeMara noted there was still time to register for the Penn State Extension program on Aug. 14, "Community Impacts of Marcellus Shale Natural Gas". The program would be held at the Honesdale High School.

DeMara showed the Delaware Highlands Conservancy's recently published brochure, *Shop Local-Save Land Guide to Wood Products, Professionals and Resources Working Together to Sustain Our Forests* and remarked that the brochure could also be accessed at www.shoplocalsaveland.com.

In keeping with New York State's concern over the Emerald Ash Borer, DeMara passed around Pennsylvania's brochure on the issue, *What is the Emerald Ash Borer*, alerting residents to report any sightings of the insect and alerting them not to move firewood; use local firewood. Check the U.S. Dept. of Agriculture website for further information.

The DCNR is using "thumper" trucks to gather seismic data in select areas of the Commonwealth for carbon sequestration. The data will enable scientists to determine if carbon dioxide can be stored in

underground reservoirs. The underground storage would help to reduce the state's greenhouse gas emissions.

DeMara handed out information on DCNR's new initiative "Pocono Forest and Waters Conservation Landscape". The Conservation Landscape Initiative is a place-based strategy for natural resource stewardship and advocacy in key landscapes across the state where there are strong natural assets and local readiness and support for land conservation, locally-driven planning, and community economic revitalization efforts.

DeMara showed a new brochure "Park & Forest Visitor, Welcome Kit, PA State Parks and Forests Guide, Eastern Pennsylvania" that included a full-color map, expert tips, fun ideas, Going Green, and valuable offers. More information can be accessed at parkvisitor.com. The Welcome Kit has been created at no cost to Pennsylvania State Parks and Forests or taxpayers.

National Park Service-Upper Delaware: Sandy Schultz, Asst. Superintendent, noted that she and Emily Wood completed the re-fresh project on the River mural on the UDC's conference room wall that Schultz had originally drawn. They also added in demarcation lines for the scenic and recreational designated sections of the Upper Delaware River.

NPS has completed the Smith Family Barn stabilization project for now. Later on they'll be doing the roof and some site work. The ice-breaker rehab at the Roebling Bridge is still ongoing since high water level has interfered with the work. A photograph was passed around. The restoration of the Canal towpath trail is being done. A photograph was passed around. Since they want the turf grass to take hold, they won't be opening the trail right away. A photograph of the temporary mobile trailers that will be used at the Mongaup Visitors Center site was handed around.

An NPS news release copy was handed out giving notification that on August 13 and 14 motorists going between Lackawaxen, PA and Minisink Ford, NY should be prepared for short delays crossing the Roebling Bridge. This will allow bridge contractors to seal the cracks, apply a top coating, and line stripe the approach roads to the bridge. Flaggers will direct traffic.

Schultz reported that the Upper Delaware River height was at 7-8 feet. The canoe liveries were allowing rafts to be rented which are considered safer at that height, but some individuals didn't rent through a livery and put themselves in the water. The Delaware Water Gap did issue a mandatory life jacket notice to river users "due to the high and fast" Delaware River conditions and that notice was to remain active until further notice. Tickets for non-compliance were issued. The Upper Delaware saw a number of water rescues given the hazardous conditions. NPS-Upper Delaware is looking at requiring PFDs at certain river heights. They had an incident where a log crashed into the center pier of the Pond Eddy Bridge and subsequent rafters hit that and fell out of their vessel. We thought one man was lost and a search was launched but that man was able to get to another raft and continued downriver. Fluhr asked Schultz to check and see if the NPS-Upper Delaware Superintendent had the authority to call for mandatory PFDs on the river. Peckham asked if Lordville was a river access, and Schultz said it was and it was managed by the NYS DEC. Peckham mentioned that canoeists were going downriver among debris, such as trees.

Schultz reported there was a drowning at a campground in Wayne County. The victim was swimming and had trouble with the river's current and disappeared under the water. He was found in about 10 feet of water approximately 40 feet from shore. Schultz handed out "Drowning Statistics 1989-2008" indicating 56 cases. Also handed out was a map reference indicating where the "hot spots" were for most of the drowning events. Most of the events took place from Skinners Falls to just below Pond Eddy. A majority of the drowning victims were males between 18 and 30 years of age and the causes were swimming and canoeing during June, July and August. She mentioned that NPS has a task force on drowning and holds teleconferences on this issue. "River" park areas see more drowning than "beach" parks because people underestimate how deep and wide the river is along with the drop-offs and undercurrents.

UDC Executive Director's Report: Douglass reported the Council's Aug. 2 family raft trip saw downpours and high River levels. Of the 143 registered for the event, only 64 participated due to weather forecasts. Everything went well, however.

Douglass noted some thank you's were in order from the Council. Sandy Schultz and Emily Wood from the NPS-Upper Delaware for the fine work they did on the River mural in the Council office. It was two days of tedious work but the results were excellent. Also, Connie Lloyd of the NPS-Upper

Delaware, for her work in producing an entirely new traveling exhibit to replace the old, worn-out Council exhibit. It's very nice to have this attractive new tool to help explain who and what the Council is and does. The tasks mentioned are part of the partnership services the NPS does on behalf of the Council.

Last but not least, to Council Representative from Highland, John C. Sundholm, for taking a day out of his time to do landscaping work on the Council's hedge in front of the office. It's sincerely appreciated and looks great.

Old Business None

New Business

UDC Comment Letter to DRBC – Chesapeake Docket surface water withdrawal: The members were provided with copy of the UDC comment letter to DRBC prior to the meeting. The letter pertained to Chesapeake Docket No. D-2009-20-1, proposed surface water withdrawal for natural gas exploration and development projects, Cutrone Withdrawal Site, West Branch Delaware River, Buckingham Township, Wayne County, PA. Fluhr explained that this issue was discussed at the Water Use/Resource Management Committee meeting and referred to the Project Review Committee for action before the comment deadline. However, the Project Review Committee referred the matter to the full Council. Fluhr said he was glad to hear from Collier that DRBC would accept the comment letter.

Fluhr asked the members for their comments on the draft letter and some changes were made. During the course of the discussion some issues were reviewed with Collier. Wieland mentioned DRBC getting some engineers to check about getting the withdrawal based on volume in river. Collier noted DRBC already had that condition for the Docket. They are looking at 25% of the average flow and no withdrawal during low flows. Schultz wondered since there will be more applications to DRBC for withdrawals, will DRBC also have the pass-by flow conditions. Collier indicated that they were putting together a database and will have the amount of withdrawals in the database to keep tabs on cumulative effects. Keesler asked but you'll have more than one gas company withdrawing, and Collier remarked we can handle that with timing constraints. McKay wondered what would happen if the gas company brought in the water they needed via railroad. Collier indicated they would not do the first part of the permit, but the gas company would still have to tell us the water use at the well pad and the wastewater amounts. Wieland asked if the DRBC would have regs so our aquifers are safe, and Collier said, yes. Keesler wondered who's going to watch when they withdraw and drill and Collier explained that we'll require a data form from them. As far as "on ground", we'll use fees to hire inspectors. We're also counting on the states for oversight as far as the well construction and casing. They should have inspectors on-sight when the well is drilled.

DeMara noted that PA DEP has hired extra folks for the gas drilling and has taken the soil erosion oversight from the local conservation districts to streamline the process. There will be cooperative work between DEP and the districts however.

Following discussion, a motion by Bowers seconded by Keesler to issue the comment letter as amended was carried.

UDC Resolution 2009-03 Adopting 2nd Draft FY 2010 Operations Committee Work Plan: Members were provided with copies of the draft fiscal year 2010 work plans prior to the Council meeting for their review. A motion by Richardson seconded by Roeder approving the resolution was carried.

UDC Resolution 2009-04 Adopting 2nd Draft FY 2010 Project Review Committee Work Plan: A motion by Roeder seconded by Shafer approving the resolution was carried.

UDC Resolution 2009-05 Adopting 2nd Draft FY 2010 Water Use/Resource Management Committee Work Plan: A motion by Wieland seconded by McKay approving the resolution was carried.

Constituent Letter, Damascus Township: The members were provided with email correspondence from Rev. Jean Blackie. Rev. Blackie asked the question "who will be the watchdog so that environmental controls and best practices occur?" The letter continued "I think the Upper Delaware Council is uniquely qualified and positioned to be the coordinator of 'watchdog' efforts as we move forward with natural gas drilling in the River Corridor. To coordinate and train local groups, act as a clearinghouse for observations;

and respond to gross violations in a timely manner seems vital as the whole process moves forward. The UDC is ideal to act in the role as coordinator, clearinghouse and news source. As a local group it has a high level of visibility and integrity which I think citizens would be willing to work with in a 'watchdog' monitoring program."

Fluhr said he appreciated Rev. Blackie's remarks. He pointed out that the UDC has no regulatory power but can monitor and highlight any issues based on the guidelines in the *River Management Plan*. The local municipalities have oversight in their own districts. The states through the PA Dept. of Environmental Protection and the NYS Dept. of Environmental Conservation also have certain jurisdictional regulations. In addition, the Delaware River Basin Commission has a review process for applications that enter its procedural realm. The UDC does work with these agencies providing input and offering guidance as provided for in the Plan. The UDC does not make regulations relative to gas drilling/exploration. It does provide information through a listserv and has coordinated with the National Park Service in sponsoring an educational forum on natural gas exploration in the River corridor. There are also numerous grassroots groups that are already acting in somewhat of a watchdog role. If an individual has a piece of information or observes a problem with a gas well, they can bring that to the UDC and the UDC will review it and pass it on to the appropriate agency for follow-up. What Rev. Blackie is suggesting is basically beyond the Council's scope. Peckham noted that a lot of local people will be watching and will report any problems with gas drilling. The landowners are good stewards of the land. Collier of the DRBC added that they do need eyes and ears on the ground and if anyone sees something untoward, they are welcome to call the Delaware River Basin Commission.

Public Comment

> Richardson asked Collier when the gas companies are taking the wastewater for processing is there an audit trail to keep track of amounts coming in and then going out. Collier responded DRBC is developing that. The question is we have to manifest that information on the ground. Richardson commented that years ago trucks used to dump hazardous water on local roads instead of bringing it to where it should have gone. DeMara reported that gas companies are now looking at mobile wastewater treatment units.

> Schultz wondered if anyone had the MSDS (Material Safety Data Sheets) on chemicals used. Collier replied the DRBC has the MSDS on additives. More additives come out during the beginning of the drilling process. By the end of the second week of drilling, wastewater is much saltier and needs to go to a certified briny wastewater facility for treatment.

> Rodgers asked Collier that if a landowner owns 1,000 acres, seeks permit and is approved can they drill on that property for just water. Collier said if the withdrawal was more than 100,000 gallons a day the landowner has to come to DRBC for approval. If it's the gas driller, DRBC could review the withdrawal if under the 100,000 because of the executive order DRBC issued. DRBC also needs to know from the applicant the location of the water withdrawal.

> Sue Sullivan mentioned that the Cutrone property site in the current Docket was close to the Upper Delaware River corridor. How will the water withdrawal be monitored to see if it goes to another state? Collier said DRBC says in its Docket they have to use the water in the Basin. Sullivan said then there's a gap in enforcement "on the ground" from the paper requirements. Collier acknowledged the DRBC doesn't have the manpower to ride on the trucks. Sullivan commented that's a big gap to have.

Peckham wondered what the difference was if the water was taken out of the Basin. Collier indicated that the Delaware River Basin Commission and the Susquehanna River Basin Commission are trying to respect each others watershed boundaries regarding consumptive use.

> Serio noted that in the Chesapeake Docket it states that a record of average daily flow rate and daily and monthly totals of the withdrawal shall be maintained and reported to the DRBC on a quarterly basis, and the record of monthly totals be reported to the PA DEP annually. Serio felt that with Internet capabilities, these reports should be posted every day. Peckham added that the UDC comment letter was suggesting that all water withdrawal and metering reporting data should be immediate and available online.

Adjournment A motion by Bowers seconded by Roeder and carried adjourned the meeting at 9:11 p.m.