

UPPER DELAWARE COUNCIL MEETING MINUTES

Sept. 3, 2009

The Upper Delaware Council held its monthly meeting on Thursday, Sept. 3, 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 Roeder seconded by Bowers to approve the Aug. 6 meeting minutes was carried. There was no public comment on the agenda. Fluhr welcomed NYS DEC Region 3 Regional Director Willie Janeway.

In attendance: Town of Hancock-Fred Peckham, Town of Fremont-Jack Niflot, Town of Delaware-Harold Roeder Jr., Damascus Township-Dolores Keesler, Town of Cochecon-Larry Richardson, Town of Tusten-Charles Wieland, Berlin Township-Andy Dean, Town of Highland-John C. Sundholm, Town of Lumberland-Jay Shafer, Town of Deerpark-Mel Decker, Shohola Township-George J. Fluhr, Westfall Township-Alan Bowers, State of New York-Bill Rudge, and National Park Service-Vidal Martinez. Also present: Jim Rodgers-Alternate from the Town of Fremont; Lillian Russell-Alternate from Berlin Township. Absent: Lackawaxen Township, Commonwealth of Pennsylvania, Delaware River Basin Commission.

Committee Reports: The committee reports, based on the meeting minutes, were provided by the committee chairpersons and included: Aug. 18 Water Use/Resource Management by Wieland; Aug. 25 Operations by Fluhr; and Aug. 11 and Aug. 25 Project Review by Roeder.

Status Reports

Delaware River Basin Commission: The Delaware River Flow and Storage Data charts as of Aug. 28 were handed out. The NYC Delaware River Basin combined reservoir storage was at 95.3%, with Cannonsville at 95.1%; Pepacton 95.4%; and Neversink 95.2%. The observed August average streamflow was 10,269 cfs, or 478% of normal. The salt front is ten miles downstream of normal location for this time of year.

Also handed out was the most recent Notice of Public Hearing on Chesapeake Appalachia Proposed Surface Water Withdrawal Project. The DRBC will be holding a public hearing on Wednesday, Sept. 23, 2009 at the PPL Wallenpaupack Environmental Learning Center in Hawley, PA beginning at 10 a.m. and continuing until all those who wish to speak have had an opportunity to do so. No other Commission business will be conducted at the Sept. 23 hearing. Comments will be taken on the revisions to the Chesapeake Docket No. D-2009-20-1. The Commission and staff are developing a revised draft docket, which will be posted on the Commission's website (www.drbc.net) on or before the close of business on Sept. 11. Public comment is requested on those aspects of the docket that have been substantively modified.

NYS Dept. of Environmental Conservation: Bill Rudge reviewed a few news releases handed out in addition to other information. The American shad population in the Hudson River is at historic lows. DEC plans to propose closing recreational and commercial fishing for American shad in the Hudson and prohibit commercial landings in marine waters. DEC will hold three public information meetings in September to outline steps to be taken to save this historically important species. The meetings are: Sept. 14 Castleton-on-Hudson; Sept. 15 East Setauket; and Sept. 16 New Paltz. At the same time, DEC will implement a Hudson River American Shad Recovery Plan to help rebuild the stock. The recovery plan is available on the DEC website at www.dec.ny.gov/docs/remediation_hudson_pdf/shadrecoveryplan.pdf. The DEC is also looking at possible shad restrictions on the Delaware River.

Beginning Nov. 1, 2009, Section 40, Subdivision 1 of the Navigation Law shall be amended by adding new paragraph (e), which reads as follows: "No owner or operator of a pleasure vessel less than

twenty-one feet, including rowboats, canoes, and kayaks shall permit its operation, between November first and May first, unless each person on board such vessel is wearing a securely fastened United States Coast Guard approved wearable personal flotation device of an appropriate size when such vessel is underway.” Failure to wear a lifejacket on such vessels will be considered a violation punishable by a fine of not less than \$100 nor more than \$250, applicable to either the operator and/or the owner of the vessel. Rudge commented that this Law dovetails with what the NPS-Upper Delaware is trying to do regarding making PFDs mandatory under dangerous conditions.

NYS DEC Commissioner Grannis has issued a news release on changes to the reservoir flow plan for the Delaware River Basin. In order to perform necessary dive work on a dewatering shaft, the Rondout to West Branch Tunnel is tentatively scheduled to be shut down in the fall of 2009. In accordance with Section 17 of the Flexible Flow Management Program (FFMP), the NYC DEP is herein authorized to implement a temporary supplemental releases program for the period ending May 31, 2010. Shutdown supplemental release quantities from each reservoir will be determined individually, based upon each reservoir’s water supply conditions. This will be the amount of supplemental water that can be released each day, over and above any other programmed releases. If all reservoirs remain in excellent water supply condition, the total supplementary releases will be approximately 50 billion gallons. Release levels will be reevaluated, generally on a weekly basis, in conjunction with the issuance of National Weather Service updated AHPS (Advanced Hydrologic Prediction Service) probabilistic forecasts. The full text of this temporary modification may be viewed on the Delaware River Master’s website at <http://water.usgs.gov/osw/odrm/>.

Rudge reported that continuing an aggressive approach toward invasive species, the NYS DEC will apply an aquatic pesticide to portions of Catlin Creek and adjacent wetlands to eradicate an invasive fish called the Northern Snakehead. The treatment, slated for October, will reclaim the Orange County waterway so that a healthy and natural fishery can be restored. The action is a follow-up to successful steps taken to rid nearby Ridgebury Lake and Catlin Creek of more than 200 Northern Snakeheads in summer 2008. DEC believes this follow-up application is the best course of action to assure this invasive species does not spread to other New York waters such as the Wallkill and Hudson Rivers. No native species of fish were restocked in the upcoming treatment area so few if any are expected to be killed.

PA Dept. of Conservation and Natural Resources: No Report

National Park Service-Upper Delaware: Vidal Martinez noted there has been a lot of controversy over the mandatory life jacket proposal but unfortunately another drowning has occurred on the Upper Delaware. On Aug. 23 the river was over 6 foot and the liveries were using rafts only. One of those rafts with a party of four flipped over near Staircase Rapids in Pond Eddy and a man not wearing a life jacket was pulled under by the current in turbulent and muddy water, despite rescue personnel diving in after him. His body was recovered seven miles downstream on Aug. 27. Stress counseling was arranged for rescue personnel and NPS assisted with getting visas for the man’s family to come here for the body.

The NPS has been reviewing the gas drilling exploration activities in the Upper Delaware with the Delaware River Basin Commission.

A VIP visit and river trip was arranged for a representative of the Office of Management and Budget to view the area.

The NPS is continuing to work with the NYS DEC on the Mongaup Visitor Center temporary site at the DEC access. The mobile trailers are stored south of Harrisburg and some staff members went down to review them. They should blend into the landscape at the DEC access site and maybe by next spring they’ll be on site and ready to be used. Information about the Upper Delaware, including wearing PFDs, will be provided to visitors at this southern terminus of the River corridor.

UDC Executive Director’s Report: Bill Douglass referenced a USGS news release covering the temporary supplemental releases from the NYC Delaware Basin reservoirs as mentioned by DEC. Under the terms of the Sept. 2 agreement now in effect, total supplemental water available to be released from the Cannonsville, Pepacton, and Neversink reservoirs could be as high as 50 billion gallons over the course of this program that is scheduled to expire on May 31, 2010. These temporary releases will be in addition to water that will be released under the Decree Parties’ September 2007 Flexible Flow Management Program agreement that was amended in December 2008. A final decision has not yet been made by NYC DEP on

when the tunnel shutdown will take place. In the event the tunnel shutdown does not occur, the temporary releases program could be terminated by NYC DEP.

Douglass reminded that the intent of the DRBC public hearing on Sept. 23 as mentioned was to not rehear what was said at the Bethlehem public meeting on the Chesapeake Docket, but to hear comment on the “revisions” to the Docket.

Old Business None

New Business

UDC Resolution 2009-06 Approving Technical Assistance Grants for FY 2009: The members were provided with draft resolution regarding the TAG awards for fiscal year 2009 that came out of the Project Review Committee. The grant pool was \$20,000 and items funded totaled \$16,700. A motion by Roeder seconded by Wieland to approve the funding recommendations of the committee was carried. The following are the TAG awards approved:

- ~*Damascus Township* – training & installation for an E-mail Document Server, \$1,000.
- ~*Town of Delaware* – make all local laws and ordinances available on Town website, \$1,700.
- ~*Shohola Township* – water well educational program travel expenses and printing costs of water well testing fact sheet, \$500.
- ~*Town of Lumberland* – Zoning Law re-write to coincide with updated comprehensive plan, \$3,500.
- ~*Pike County* – update and print map/brochure of best planning practices, \$1,200.
- ~*Lackawaxen Township* – production & distribution of two issues of a Township newsletter, \$1,800.
- ~*Town of Cochecton* – update Town’s Zoning Law to address green building standards & natural gas drilling/exploration, \$4,000.
- ~*Town of Tusten* – mapping services for a Town Natural Resources & Open Space Inventory Database, \$3,000.

UDC Resolution 2009-07 Awarding Printing/Mailing of UDC Newsletter: The members were provided with draft resolution regarding annual renewal of contract for printing/mailing of the Council’s twice annual newsletter, *The Upper Delaware*, which came out of the Operations Committee. A motion by Richardson seconded by Shafer to approve the contract renewal for Courier Printing Corp. in the total amount of \$4,428, with no increase in costs was carried. The Council also posts its newsletters on its website, www.upperdelawarecouncil.org, and hopes to reduce costs further by discontinuing the postal mailing of its publication.

UDC Resolution 2009-08 Adopting the FY 2010 Budget: The members were provided with draft resolution regarding the amended draft of the FY 2010 UDC budget that came out of the Operations Committee. Wieland made a motion to adopt the budget; there was no second to the motion. Fluhr explained there would be an executive session regarding salary changes before the draft budget could be voted on. Richardson requested that this resolution be moved to the end of the meeting and the members agreed.

UDC Resolution 2009-09 Supporting Mandatory Life Jacket Use During High Water Conditions on the Upper Delaware River: A motion by Richardson seconded by Wieland to approve the resolution was made; discussion ensued.

Bowers commented that he planned to abstain on the vote because he felt there should be a change in the wording to indicate supporting the creation of a policy to create a mandatory life jacket regulation, and that the six foot criteria at the Barryville gauge might not be applicable in the Lordville or Shehawkens geographic area at the same time. Bowers said he agreed with the wearing of the PFDs but felt further discussion about the six foot criteria at Barryville was needed. This is a 75 mile section of the Delaware River and six feet at Barryville might not be reflected at Lordville.

Martinez felt that Bowers was getting hung up on semantics about the wording. As NPS has shared with the committees the proposed regulation, it was also share how NPS will implement this. Having different regulations for different sections of the river poses an enforcement issue. Bowers said he understood that concern. Peckham offered that he agreed with Bowers. There are not a lot of canoe liveries upriver; mostly fishers up there, and six feet at Barryville is different than nine feet at Lordville.

Peckham was worried that a mandatory life jacket rule downriver would negatively impact the fishing industry economy upriver, but he agreed that PFD use was good. Martinez said he understood the concern expressed and he was not dismissing it out of hand, but high water is high water, and he'd have to consult a gauge reading relative to threshold reached and enforcement issues.

Richardson pointed out that the NYS Navigation Law change mentions "pleasure vessels" not fishers. Roeder said he agreed no one should be on the River at the six foot height without a PFD; not my family or anyone else. The six foot criterion is a concern given the different river locations. The other concern is once this regulation is implemented, and there's a change in NPS Upper Delaware Superintendents down the road, maybe the new Superintendent won't be as concerned with the six foot criteria, and we'll have another change. Roeder said he wears a PFD and agrees everyone should but he understood the issues of concern being mentioned by the members. Martinez offered that he had the discretionary powers to make the ruling and was using the six foot criteria since that was used by the canoe liveries to mark high water conditions. Wieland wondered if Martinez had the power as well to have his Rangers treat river users differently on different sections of the river if the six foot gauge height would be handled differently in other geographic parts of the river.

Sundholm questioned how one could legislate this when people don't pay attention to using PFDs now anyway and how would you control PFD use for swimmers. Martinez explained there would be a public outreach program on this and maybe using red flagging as Richardson had suggested in committee, also we'd be having the Rangers give warnings during this educational process. This is not a policy, it's a regulation. The intent is education on the value of wearing life jackets and that's a message that needs consistency and always wearing the life jackets is the message we ultimately want to get out. Keesler referenced the NYS Navigation Law change that applies from November 1 to May 1 for mandatory PFDs and asked if this applied to the Delaware River. Rudge indicated yes, and that NPS is looking at depending on River height at other times.

Bowers mentioned that we have time to discuss the NPS mandatory regulation before the "season" starts again next year. Peckham brought up that the NPS has 44 years of data on the River heights available at the USGS website to view that could become part of the discussion. Shafer felt another source of public notice would be the NPS River Hotline where a message could be added there that the river is six feet at Barryville and PFDs are mandatory. Niflot said all people on the river should have PFDs on. The six foot criteria may inconvenience some people upstream but PFDs save lives. Let's get our priorities straight here.

Fluhr called for a vote on the motion and a hand count indicated no majority vote to pass the motion. Fluhr indicated that because of the seriousness of this issue he wanted to see some movement on the question. Martinez said he appreciated the UDC's time in this matter but he had the authority to do this regulation, however, he wanted UDC buy-in. He said he'd discuss the matter further with his staff but he may have to use his authority. Fluhr noted that UDC could pass a resolution to say we're supporting the concept. Richardson said we appreciate NPS coming to the UDC with this, but it would be a bad precedent for NPS to set to use its authority to do a regulation without UDC support.

There was further discussion and Fluhr suggested a wording change to the resolution eliminating the six foot height at Barryville gauge and saying to develop regulations to make life jacket use mandatory for river users under dangerous conditions. The members were agreeable to that. A motion by Richardson seconded by Shafer to approve the amended resolution was carried unanimously.

UDC Bylaws Subcommittee Memo – Amendment Proposal: Fluhr read the memo from the UDC Bylaws Subcommittee proposing an amendment to the UDC Bylaws that would allow the Council's standing committees by vote to transmit time sensitive opinions in writing from the corresponding committee. These opinions would be tagged that they were from the committee only and not the full Council. Fluhr noted that an amendment proposal must be presented to the full Council in writing 30 days prior to a vote. He said he'd like to see a resolution on this at the October Council meeting. Bowers asked if the matter could be discussed at the Operations Committee meeting and Fluhr said it could.

Public Comment

~ Don Hamilton queried that since the NYS law mentions "pleasure" vessels, are licensed fishing guides' vessels considered "pleasure"? Rudge said he would look into that. Soete wondered how NYS would enforce the new Navigation Law change on the Upper Delaware. Rudge indicated that technically it would only apply to NYS waters and that would be to mid-channel in the Upper Delaware border waters.

Soete thought maybe PA should be encouraged to pass a similar law as these bordering states often work in unison regarding regulations and enforcement.

~ Bill Weber, NPS Ranger, provided an impassioned presentation on wearing life jackets. Weber said he's been working in the Upper Delaware for 23 years and has had the opportunity to wear many hats. One of the hats he wears is a dive helmet which he displayed. He indicated that this "hat" aids him in finding individuals underwater. There's no do over when you drown he said. We have the opportunity here to pass a rule to help us use it as a tool to save lives. I've listened to you bicker but let's pass this rule. I'm the one who puts his life on the line to get the bodies and I'm the one who has to tell the family members their loved one will not be at the next family gathering. Weber continued and displayed his life jacket. These are the tools of my trade. This is a National Park Service tool, with emphasis on service. This Personal-mine, Flotation-buoyant, Device-something I can wear—a PFD, saves my life and could save others. I've heard the excuses why people won't wear life jackets---too bulky, too hot, too uncomfortable, etc. Life jackets are not good tools unless they're being worn. Visitors from all over the world come to the Upper Delaware. They look at the river and think it's a serene calm river. The river doesn't care who you are or where you're from or what you do. It only goes downhill. It's not mean but will wash over anyone or anything that gets in its way downhill. Weber said he's spent 23 years on the river and just when you think you might have figured it out, it wags its finger at you as says "watch this" and something new is learned about this river. For too long we've said it's a shame they drown and now you have the power to change things. NPS staff and the National Canoe Safety Patrol volunteers have to wear PFDs no matter what. Maybe six feet is too high here and on other parts of the river it's different, but no matter where, PFDs save lives. Let's not bicker about water levels, let's get it done now. Can you live with yourself if next week the river is at six feet, and there's no PFD mandatory rule, and someone again drowns.

Chairperson Fluhr said he took issue with the term bickering. We support PFDs. Our discussion supported the Superintendent's intent. We are concerned about all who use the river and we are also concerned about saving lives. We commend NPS about their work on the river. We need a solution to accommodate what NPS is requesting and this forum provides for that discussion. Fluhr commended the members for their discussion on the issue and coming to an agreement.

Hamilton commented that NPS expects a lot from our Rangers. Also consider the volunteer National Canoe Safety Patrol and the local divers that put their lives on the line to save people in the river.

~ Rick Lander, Lander's River Trips, commended the NPS Superintendent for suggesting mandatory life jacket use for high water at six feet. Lander said he'd like to see it even at five feet. When the river is at five to six feet the fishers and swimmers are not on the river. The canoe liveries use the gauge at Barryville to determine the six foot river height and we're liable for our customers. We need some kind of mandatory rule now. This year the river's been crazy acting. You need to come up with something to please all the river users. This is a start to do something. We can instruct people to put on their life jacket but once on the river they take them off in most cases.

~ Dave Jones, Kittatinny Canoes, commented there was insurance and liability concerns involved here as well. You can't really use skill levels of the boaters either. We make our customers sign paperwork that they'll wear their PFDs, but they take them off and still can sue us. We also give safety briefings before a river trip. We need a mandatory life jacket regulation. Others suffer when someone drowns such as family members, rescue personnel, etc. The River can be tricky at three feet without a PFD. If river users were ticketed or fined, maybe they'd start wearing the PFDs all the time. The only way to enforce this is to have everyone wearing a life jacket.

~ DJ Jahn, Roebling Inn on the Delaware proprietor, mentioned that he has heard the statement so often that no one has drowned on the Upper Delaware that had a PFD on. If everyone is required to wear a PFD, it would save lives and also protect businesses from lawsuits. If you give businesses the regulation tool, you're protecting its customers and also protecting the economy of the area. It also makes river users the ones responsible for their own protection. Everyone wants to save lives, but we need the PFDs to do that.

~ Ken of the National Canoe Safety Patrol asked everyone if they all wore life jackets when they're on the river. They should.

Executive Session: A motion by Roeder seconded by Niflot to go into executive session at 9:30 p.m. to discuss salaries was carried. It was noted that the Berlin Township Representative had to leave and the Alternate would take his place. A motion by Roeder seconded by Wieland to come out of executive session at 9:37 p.m. was carried.

A motion by Bowers seconded by Shafer to accept the recommendation of the Operations Committee on salary levels was carried, with one opposed.

Return to UDC Resolution 2009-08 Adopting FY 2010 Budget: A motion by Roeder seconded by Wieland to approve the amended draft FY 2010 budget with the salary changes was carried, with one opposed.

Adjournment A motion by Bowers seconded by Peckham to adjourn the meeting at 9:40 p.m. was carried.

Carol Coney, Office Manager