

UPPER DELAWARE COUNCIL MEETING MINUTES Sept. 2, 2010

The Upper Delaware Council held its monthly meeting on Thursday, Sept. 2, 2010 at the Council office on Bridge Street in Narrowsburg, NY. Chairperson Harold Roeder Jr. called the meeting to order at 7:36 p.m. Coney made correction to the Aug. 5 meeting minutes: under committee reports, 7th paragraph, should read Peckham noted “Cabot” and Range. A motion by Rando seconded by Niflot to approve the amended minutes was carried. There was no public comment on the agenda.

Chase commented about the Aug. 5 meeting minutes under the DRBC report. He had asked Collier about the loss of the 100 cfs excess release credit. He wanted the answer in writing although Collier said she’d speak with Chase after the meeting. Chase said he did not see a letter on the agenda to Collier on this matter. Soete said he drafted a letter to Collier and that was then handed out for further action.

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-Sue Sullivan, 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, and National Park Service-Sean McGuinness. Also in attendance were: Damascus Township Alternate-Jeff Dexter; Town of Fremont Alternate-Jim Rodgers; Town of Tusten Alternate-Tony Ritter. Absent: State of New York; Commonwealth of Pennsylvania; Delaware River Basin Commission.

Committee Reports: The committee reports were provided by the committee chairpersons and included: Aug. 17 Water Use/Resource Management by Jim Serio, Aug. 24 Operations by Harold Roeder Jr., and Aug. 10 and Aug. 24 Project Review by Fred Peckham.

Status Reports

Delaware River Basin Commission: Roeder reviewed the Delaware River Basin Flow and Storage Data Aug. 27 handout. The combined NYC Delaware River Basin reservoir storage was at 69.4%. The Neversink at 73.3%; Pepacton at 75.6%; Rondout at 96.8%; and Cannonsville, which feeds the main stem Delaware, at 58.8%. Roeder noted the basin storage graph is showing a dip toward the drought line.

NYS Dept. of Environmental Conservation: Roeder noted that DEC news releases of interest were handed out. They included DEC urging compliance with firewood transport regulations to limit further Emerald Ash Borer beetle, an invasive species, migration into the state’s forests.

DEC announced the 2010-2011 sporting licenses availability starting Aug. 16. Roeder said it would be a nice idea to give a youngster you know a gift of a lifetime license.

DEC announced that ECO Scott Steingart, stationed in Sullivan County, was honored as the 2009 “Officer of the Year” by the Shikar-Safari Club International. Each year the club sponsors an award for the Wildlife Conservation Officer of the Year in all 50 U.S. states, 10 Canadian provinces and the territories of both nations, acknowledging the important role ECOs play in local, national and international wildlife conservation. Roeder reviewed some of Steingart’s impressive accomplishments.

PA Dept. of Conservation and Natural Resources: No report at this time.

National Park Service-Upper Delaware: Supt. Sean McGuinness announced that he had completed visiting all the towns and township municipalities that border the Upper Delaware River as he had promised when he took the Upper Delaware's Superintendent position for the NPS. He found it very enjoyable and was pleased to have met with the local officials.

He announced that there will be a meeting on Sept. 21 at NPS headquarters with NYS DEC Regions 3 & 4 personnel and NPS personnel to discuss cooperative issues in the River corridor.

He announced the federal representative on the Delaware River Basin Commission will host a federal stakeholders' summit on Oct. 6 & 7. The topic will be natural gas issues. All federal agencies are invited to participate to discuss the year ahead.

UDC Executive Director's Report: Douglass announced the Council's Fall/Winter newsletter has been mailed and is available at the Council's website, www.upperdelawarecouncil.org. Ramie does a good job putting this together for the two issues a year.

He announced that the Penn State Extension is holding a program on "Natural Gas Pipelines – Understanding the Infrastructure Development" on Sept. 8 from 6:30 to 9 p.m. at the Wayne County Park Street Complex in Honesdale. Some topics include: Tennessee Gas Pipeline Looping Project; Interstate Gas Pipeline Regulations; and Local Review of Gas Pipeline Projects. A copy of the program announcement will be emailed to the Council members.

Douglass mentioned that Sullivan County has been awarded a \$500,000 grant through the 2010 NYS Main Street Program. This grant will be used for main street improvements on the Delaware River corridor in the hamlets of Callicoon, Narrowsburg, and Barryville. The grant will be administered by the County's Division of Planning and Environmental Management. Ramie noted that the Upper Delaware Council had submitted a grant support letter for this grant application.

Old Business

National Environmental Policy Act (NEPA)-Oil & Gas Development Process: Fred Peckham noted he had researched and handed out information on NEPA and that federal agencies are required to comply with NEPA and assure compliance with all national environmental laws throughout the oil and gas development process. Many regulations controlling the location of onshore oil and gas production stem from the Federal Land Policy and Management Act (FLPMA) of 1976. Under water quality ground and surface, it is noted that onshore exploration and production facilities may be subject to four aspects of the Clean Water Act: national effluent limitation guidelines; stormwater regulations; wetlands regulations; and spill prevention control and countermeasure requirements.

EPA's Public Meeting on Hydraulic Fracturing Study Rescheduled to Sept. 13 & Sept. 15 in Binghamton: The members received copy of an U.S. Environmental Protection Agency news release announcing a re-scheduling of its public meeting on EPA's upcoming hydraulic fracturing study originally scheduled for Aug. 12. EPA will hold four identical sessions during a two-day period at the same location. The location will be the Broome County Forum Theater in Binghamton, NY. The sessions will run Sept. 13 and Sept. 15 and will include: pre-registration at 10:30 a.m.; public meeting Noon to 4 p.m.; pre-registration 4:30 p.m.; public meeting 6 to 10 p.m. Same schedule applies Sept. 15.

Also provided to the members was copy of the Weiden Lake Property Owners Association Board of Directors Aug. 24 comment letter to EPA on its upcoming study. In its cover letter to UDC, the WLPOA Board noted, "We provide these comments to the UDC since this study will likely become part of the UDC's considerations as it formulates its position on hydraulic fracturing in the Upper Delaware Valley."

New Business

UDC letter to NYS Gov. Paterson-NYS DEC Attendance at UDC and DRBC Meetings: The members had been provided with the letter to Governor Paterson prior to the meeting for their review. The letter states in part: "Executive Order No. 9 ordered the following pertaining to the Upper Delaware Scenic and Recreational River: All state agencies shall act consistently with the River Management Plan to the extent permitted by applicable law. The Department of Environmental Conservation shall provide to other state agencies such technical information and assistance as they may require in order to comply with this Order.

NYS is currently represented on the UDC...but they have been missing many UDC board and committee meetings because of financial constraints. Their active participation is critical to the success of the UDC, both for sharing information and hearing UDC concerns on issues. Also, the DRBC is a non-voting member of the UDC. It has come to our attention that a representative from New York State has not been regularly attending DRBC meetings because of budget issues. Recently, New York State missed an important vote regarding a proposed water withdrawal in the Delaware River basin for natural gas drilling. We would hope that New York's participation on a Commission that oversees the drinking water supply for over 19 million people would be a higher priority. Again, we believe the State employees do a great job, but they must be given the opportunity to fully do their job. We look forward to your response and immediate action to remedy this situation"

A motion by Peckham seconded by Russell to approve the letter was carried.

UDC Comment Letter to US EPA Region 2-Cortese Landfill Superfund Site Proposed Plan Options:

The members had been provided with the letter to U.S. EPA Region 2 prior to the meeting for their review. The letter states in part: "The UDC has reviewed the U.S. Environmental Protection Agency's Proposed Plan dated August 2010 for the Cortese Landfill Superfund Site located in the Town of Tusten, Sullivan County, NY. The River Management Plan has several specific references to the Cortese Landfill and its cleanup is considered a high priority. We support the US EPA's following remedial action objectives in the plan to protect human health and the environment that were established for the source areas (of pollution) and groundwater, which are: reduce or eliminate the potential for source areas to release contaminants to groundwater; restore the aquifer downgradient of the landfill as a potential source of drinking water by reducing contaminant levels to the federal and state MCLs; and reduce or eliminate the potential for migration of contaminants downgradient of the former landfill. The US EPA looked at three options to address the groundwater contamination: Alternate 1-No Further Action; Alternative 2-Groundwater Near-Source Extraction and Treatment and Downgradient Monitored Natural Attenuation; and Alternative 3-In Situ Source-Area Treatment and Downgradient Monitored Natural Attenuation. Based on the cost and time constraints, and the RMP's call for the UDC to 'advocate the prompt cleanup and removal of its contents', we support the US EPA's preferred Alternative 3." A motion by Rando seconded by Peckham approving the letter was carried.

UDC Comment Letter to US EPA-Proposed Hydraulic Fracturing Research Study: The members received copy of the comment letter to the US EPA prior to the meeting for review. The letter stated in part: "The River Management Plan requires the Upper Delaware Council to maintain or improve the existing quality of water in the Upper Delaware River and ensure that water resources development on tributaries of the Upper Delaware River do not negatively impact the area or unreasonably diminish the resource values for which the river was designated. No degradation of water quality whatsoever can be allowed to take place. Protection must be afforded to not only the River itself but also its watersheds and tributaries. All of the highways, roadways and railways in the Upper Delaware Wild and Scenic River Corridor cross innumerable streams and tributaries entering the Delaware River. Special consideration must be given to this increased traffic and the additional risks must be provided for and mitigated. Unlike traditional National Parks, our unit is one where people, communities, and traditional uses are part of the landscape. An industrial landscape is not now a part of our landscape nor should it ever be allowed to be one. Protections required include both protection of our aquifers, as our populations relies on clean and pure well water, and protection against degradation of our 'Scenic' environs by industrial surface activity within the River corridor. The property rights of individuals living within the Upper Delaware Wild and Scenic Corridor must be considered. There is a difficult quandary that natural gas drilling and exploration poses to the region: how to protect the rights of individuals who choose to contract for the extraction of natural gas, while at the same time protecting the rights of those who choose not to extract gas from their property. We thank you for your request and hope that this letter will help guide the EPA in their decisions in prioritizing areas of study." A motion was made by Boyar seconded by Chase to approve for discussion. Discussion followed and certain amendments were made to the letter by the members. A motion by Kenny seconded by Rajsz to approve the letter as amended was carried; with one abstention.

UDC Comment Letter to Damascus Township-Proposed Zoning Ordinance Amendment Pertaining to the Use "Gas and Oil Well Pad":

The members received copy of the comment letter to Damascus Township prior to the meeting for review. The letter stated in part: "We understand, and appreciate, that it

is the intent of the Township Supervisors not to allow the use 'Gas and Oil Well Pad' anywhere in the River District (RD) zone. However, we would like to bring it to your attention that the Township's RD zone is based on a 1,500 foot distance from River Road and does not include all of the official congressionally-designated river corridor. As such, some of the RR district is located in the western portions of the designated river corridor, which opens up the possibility that the use 'Gas and Oil Well Pad' could be allowed as a Principal Permitted Use in the designated river corridor. It appears that the Township's present 2006 Zoning Map more closely resembles the designated river corridor than it did in 1990, but we believe that parts of the RR district are still located in the designated river corridor. The National Park Service could provide a more detailed GIS-based map showing the overlay of the Township's zoning districts in relation to the designated river corridor, if asked to do so. The River Management Plan does have specific references to the words 'oil', 'gas', and 'pipeline', but its publication pre-dated the horizontal drilling techniques." The letter included options for changing the boundary of the RD zone to include all of the designated river corridor. Soete noted that the area in question was in substantial conformance with the River Management Plan as the existing zoning allowed for a special permit. Now that special permit is being changed. A motion by Peckham seconded by Russell to approve the letter opened the floor for discussion.

Roeder asked Damascus Township Supervisors' Chair, Jeff Dexter, for his input on the matter. Dexter indicated there are two maps mentioned, 1990 and 2006. You should have told me about this a long time ago. Soete indicated the Township was reviewed by the NPS early in the process for substantial conformance since they were not yet members of the UDC. Dexter said he was disappointed it came to this (a letter); you should have called me. We have a map that appears different than what you have here.

Roeder offered that this seems to be a communication problem. Peckham withdrew his motion; at which point a motion by Kenny seconded by Russell to send the letter as is and discuss with the town was made. Boyar thought maybe the letter should be tabled for a month to allow dialog with the township. Soete indicated that the township was holding a hearing on the matter on Sept. 20, and that the staff didn't have a problem with the map that much as the change of use. Boyar made a motion to table the letter for one month, seconded by McKay. A hand count vote saw 8 to 5 in favor of tabling the letter, and the motion overrode the motion on the floor.

UDC Letter to DRBC-Montague Flow Target 100cfs Excess Release Credit: As mentioned earlier in the meeting, copy of a UDC letter to Carol Collier, Executive Director of the Delaware River Basin Commission, had been handed out for member review. The letter stated in part: "Mr. Chase stated that since 1980 a release of 100 cfs excess release credits (during the summer-120 days?) on top of the 1,750 cfs at Montague has been shown in the River Master's report as 1,850 cfs at Montague. In the last several years the 100 cfs (excess credits) has disappeared from the report. Why? We believe that the 100 cfs was incorporated into the Flexible Flows Management Plan (FFMP), but we would appreciate a written response with all of the details from you or your staff. Thank you." A minor change was made to the letter. On motion by Chase, seconded by Boyar, the amended letter was approved.

Public Comment In Brief (34 guests signed in)

~ UDC Chairperson Roeder said he wanted to comment on what the UDC was and why it's here. We're here because years ago the feds came in and said they like it and want our land. People here said no, you messed up Tocks Island and people lost their land and the people got upset up here. What we ended up with were people along the River corridor forming a partnership with a federal agency for the betterment of the people and the River. The River Management Plan charges the UDC with protecting the corridor and the River; and protecting people's land in the corridor. Roeder said he thought gas drilling and environmental protection could both be done. He asked the people in attendance to raise their hands if anyone would not protect the river here (no hands); and if anyone would not protect private property rights (no hands). He continued that this board (UDC) has to work with the National Park Service and the people in the corridor. It's a dilemma at times. He suggested that we all work together. The board needs to protect the River and the corridor and the people who live here.

Roeder said to clarify his past remarks that the Council is neutral, the UDC has to take care to not take sides, one-side over another, in the gas issues. With that in mind, he said he would open the public comment section of the meeting. There was a two-minute timeframe put on comments to enable a larger portion of the audience to offer their remarks.

~ Barbara Arrindell provided remarks from a Rocket-Courier article of Sept. 2 pertaining to "Gas Bubbling from River at Sugar Run". Methane was bubbling in this section of the Susquehanna River. She mentioned that Chesapeake well drilling was taking place nearby.

~ Roy Tedoff offered as to property rights, the River Management Plan states what sets this River apart and makes it unique. The landowners are to protect the River corridor. The RMP doesn't limit lawful operations of landowners. On page 41 of the RMP it summarizes the purposes of the Land and Water Use Guidelines. UDC cannot remain neutral if there is a clear and direct threat. Major mining and subsurface mining is excluded here.

~ Bruce Ferguson offered it doesn't matter who had a hand in writing the RMP, it's the guidelines we're suppose to follow.

~ Allan Rubin mentioned as to drilling considerations, the gas well in the Gulf exploded. In Pavillion, WY EPA told people not to drink the water. Maybe it's gas drilling related as well as other things, like runoff. Shepstone's article in the River Reporter mentions open space. The gas companies don't prevent you from putting houses on lands or using land for other things. Farmers will do what they can to save land.

~ (Not identified) Seems that there's more shades of grey in this issue. If a landowner has small acreage and cannot do a lease, then what rights do these small landowners have? They still have to put up with the truck traffic and noise. We have to be included in discussions and we shouldn't be left out of discussions. It's not just leased landowners and the River issues, the small landowners have rights too. Roeder said if we protect landowners, you're included. NYS DEC sets outline of 640 acre units and there will be small parcels included. DEC decides on unit. It's difficult for UDC.

~ Marian Schweighofer said with compulsory integration and pooling your land may be included if you didn't sign a lease. She pointed out the RMP on pages 123 and other sections contemplated oil and gas drilling. She noted that she was concerned with the Council's Water Use/Resource Management Committee being supportive of the RMP revision. We've had the RMP over 20 years and I don't see any problems. It's working and I hesitate to endorse a revision.

~ Ramona Jan said she endorses revising the RMP. Gas drilling like this was never in the valley before. How is UDC going to vote in the future if members on UDC have signed gas leases. In Damascus Township all the supervisors and planning board have signed leases. Peckham offered that the UDC members were appointed by their towns/townships. They would ask their towns. Kenny felt Jan was still entitled to an answer to her question of how the members would vote in the future. Jan said when you receive money it's a conflict of interest. Kenny noted if we have a conflict of interest we should recuse ourselves from voting. Richardson added that our vote should be what our town wants, not what we want as an individual.

~ Jim Rodgers mentioned that the standard is disclosure. I'm not sure you can make someone recuse themselves.

~ Dave Jones said we have gas naturally in the River. Our farmers are hurting here now. Why deny the landowner wealth. The people on the UDC that have gas leases and recuse themselves would then have to apply that process to fishing issues, bluestone issues, etc. I won't stand by and have people take my land if I have an option like leasing.

~ Lillian Russell noted that awhile ago she contacted the NPS for a certificate of compatibility on her land and gas drilling was not allowed in the river corridor.

~ Greg Swartz explained he was a farmer and he's not leasing his land. With private property rights we have a private property responsibility which includes harm to others. In your deliberations you have to acknowledge people who are not leasing.

~ Bernie Handler noted it's easy to say live with it if you are drilling your land, but it's hard to live with that if I'm not drilling. You should reverse it and put yourself on my side of the fence. Roeder offered if you choose not to drill, that's your right, and my right could be to drill. It's true some horrific things have happened with wells, but you don't hear about the wells without problems.

~ Neal Fitzgerald said he was a farmer. He uses the river. Once the groundwater and river are destroyed, there's no bringing it back. You cannot clean an aquifer. Nobody has the right to destroy my groundwater. You mention that no one talks about good wells. The gas companies won't, for there's none out there.

~ (Not identified) I'd like to congratulate the UDC and NPS for taking this on. It's up to the towns to oversight. Hydraulic fracturing is promoted as safe. The controversy still exists with the problems with drilling. We need to take time for studies. He mentioned the list of concerns with drilling and agriculture

that the NYS Farmers Association had that was provided to the NYS DEC when it was seeking comments on its dSCEIS regarding gas drilling regulations.

~ Barbara Yeaman mentioned that there's very little drilling here but it has been a major affect to property values. Properties are not selling when people who want to move here learn about it being a Marcellus Shale gas drilling area.

~ Richard Preznarz (sic) noted there are 3,200 people working for NYS DEC and 400 will go through attrition. DEC has no experience with human health. The NYS Dept. of Health is responsible for that. Who is going to determine if it's safe or not? DEC will protect the natural environment. I'd like to see the gas companies bring the DOH into the mix; I'd feel better.

~ Sue Sullivan referenced the comment letter copy in the members' meeting packets from the Weiden Lake Property Owners Association. She said the POA brought in a consultant and I applaud them for doing that. She also applauded the Water Use/Resource Management Committee on their comment letter to the EPA on its research study discussed earlier. She said you cannot divide residents by whether they signed a lease or not. The RMP is there to protect the health and safety of all and we have to stand up for it.

~ Andy Boyar thanked McGuinness for visiting all of the River corridor towns as he didn't think that had ever been done before. He said as to the notion to recuse oneself if there's a conflict of interest, disclosure is important. There's a need to know where our colleagues stand through disclosure. I'm providing the Council with my disclosure information to have on file. He also felt tonight's discussion was important as we hear the pros and cons of an issue. He thanked everyone for taking the time to attend the meeting and offer their opinion.

Adjournment A motion by Kenny seconded by Peckham to adjourn the meeting at 9:30 p.m. was carried.

Carol Coney, Office Manager