

Upper Delaware Council
WATER USE/RESOURCE MANAGEMENT COMMITTEE MEETING MINUTES
Sept. 15, 2009

Committee Members Present: Wieland, Bowers, Serio, Chase, Sundholm, McKay, Fluhr, Keesler
Committee Members Absent: Shafer, Flaherty
NPS Partner: Martinez
Advisory Council: None
Staff: Soete, Coney, Ramie
Guests: D. Hamilton-NPS

The committee chairperson Charles Wieland called the meeting to order at 7:06 p.m. A motion by Bowers seconded by Chase to approve the Aug. 18 meeting minutes was carried. There was no public comment on the agenda.

Announcement: NPS Upper Delaware Superintendent Vidal Martinez informed the committee that he had taken another Superintendent position at a location closer to his home in Virginia. He will be re-locating to the Prince William Forest Park, a 15,000 acre park in northern Virginia. His last day at the Upper Delaware would be Oct. 23. He mentioned that he had learned a great deal about the Upper Delaware and its unique co-management arrangement. He leaves with mixed feelings as he loved the resource but also his family and they come first. The NPS is working on a good fit to refill his position here in the River corridor. He has enjoyed working with the many diversified groups here and all the people who are dedicated to this resource.

Old Business

Upper Delaware Scenic Byway Update: Ramie reported that the Byway group met Aug. 24. The D & H Canal and Gravity Railroad executive director gave a presentation for placing canal marker logo signs on the Byway signs for hiking and biking tours at sites from Port Jervis to Minisink Ford. The Byway didn't approve this proposal but felt it would be more appropriate, and approved a letter, to have such signs affixed to NYS DOT roadway signs.

The Town of Deerpark Supervisor also addressed the Byway group regarding DEC's leased access at Sparrowbush and the town's desire to have this important River access remain a public access instead of being commercially developed. The Town is trying to obtain funds to keep the access in the public domain. The Byway issued a letter (handed out) to the NYS DEC in support of keeping the public access.

The grants projects which were due to be finalized by Aug. 31 were and documentation for reimbursement was received. Since there was deficit spending, another town project was able to be completed using leftover funds. A reimbursement request has been filed with the state.

A meeting scheduled with the Byway's marketing subcommittee and Sullivan County's capital committee has been cancelled by the County regarding the proposed visitor center's inclusion in the County's budget. However, the County did put in \$150,000 in the FY 2010 budget which counted as a match to the federal grant.

Sullivan County's funding application for the Local Waterfront Revitalization Program should be approved by the NYS Dept. of State by the end of December. The Sullivan County Planning office is requesting completion and return of the questionnaires they handed out during their visits to stakeholders regarding the funding request.

NPS Superintendent Martinez updated the Byway group on his proposal for a mandatory life jacket regulation when the River is at six feet at the Barryville gauge.

The next Byway meeting is Sept. 28 at the Council office.

Chase asked Ramie if the Byway group realized that there was a *River Management Plan* that offered guidelines on river access and river rest stops. It seemed to him that the letter handed out addressed to the NYS DEC Commissioner and Town of Deerpark Supervisor indicated the Byway was going its own way on this subject. The letter indicated: "The Upper Delaware Scenic Byway, Inc. voted unanimously at its monthly meeting on August 24, 2009 to endorse and assist efforts to: 1. Maintain public access through some public/private arrangement; and 2. Acquire the parcel in question for public use and protection as opposed to commercial development. We believe the Sparrowbush River Access must be preserved. We

believe a partnership of private and public money, encouraged by citizen's efforts, can save it." Ramie indicated that the Byway has a management plan they follow. Chase asked if the Byway wants accesses, will they put them anywhere or go by the *River Management Plan*. Ramie noted the Byway has no authority to buy accesses. Chase said he felt the Byway was taking over the UDC's job. Wieland suggested that Chase could attend a Byway meeting and review his concerns with them. He asked Ramie to provide the Byway with Chase's issues. Martinez offered that some folks that serve on the Byway also serve on the UDC and they are aware of the *River Management Plan*. Chase indicated that he did not want to see an access on the beach below the Mongaup. That site has been argued by us before. Martinez said he saw it as an emergency response access. Chase added that past NPS Superintendent Hutzky agreed that that site shouldn't have a road access across it because of the canal remnants in the area. Chase said the Byway group should not go against the *River Management Plan* and they should discuss the issue with us and not do accesses overnight.

NYS DEC Recreational Marine Fishing License: Sundholm provided the committee with copy of correspondence he received regarding a new DEC regulation. The email indicated: "Beginning Oct. 1, 2009, any angler fishing for 'migratory fish from the sea' (e.g. American shad, striped bass) in the Delaware River or tributaries will need a recreational marine fishing license. The New York State legislature did not build in any type of reciprocity with the State of Pennsylvania in regard to fishing the Delaware and tributaries for 'migratory fish from the sea' so anglers that hold a PA fishing license will need to acquire a NY recreational marine fishing license to fish for American shad (or striped bass or hickory shad.....) from the border water area of the Delaware River and West Branch Delaware River." The committee offered their concern how this new regulation would play out given that there was no reciprocity with PA for the Delaware River.

New Business

DRBC's Sept. 11 Revised Docket D-2009-20-1 Chesapeake surface water withdrawal; Notice of public hearing for comments: The committee was provided with documents from the DRBC. They included: "Notice of Public Hearing on Chesapeake Appalachia, LLC Proposed Surface Water Withdrawal Project" and the revised "Docket No. D-2009-20-1 Delaware River Basin Commission, Special Protection Waters, Chesapeake Appalachia, LLC Surface Water Withdrawal for Natural Gas Exploration and Development Projects Cutrone Withdrawal Site, West Branch Delaware River Buckingham Township, Wayne County, Pennsylvania".

The Notice of Public Hearing offered a new comment deadline of Sept. 30, 2009. It also laid out that the Commission held a public hearing on the initial draft Docket on July 15, 2009; heard testimony on the draft Docket from approximately 40 witnesses; received approximately 1,200 written comments (excluding petitions); after review and consideration of the comments, the Commission and staff developed a *revised* draft docket posted on the web site Sept. 11; and *public comment is requested on those aspects of the docket that have been substantively modified*. A public hearing on the revised docket would be held 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.

Based on its review of the comments received on the June draft docket, several significant changes to the Cutrone Withdrawal Site docket were highlighted in the revised docket. They are, in brief:

1) The June draft proposed to require a pass-by flow requirement based on the consecutive 7-day flow with a 10-year recurrence interval or 48 cfs. The pass-by flow requirement has been revised from 48 cfs to 25% of the Average Daily Flow or 235 cfs. The ADF was calculated for the period of record from 1964 to 2008.

2) The 30 mg/30 days allocation provided in the June draft has been removed since the limitation of 1 mgd allocation is a sufficient volumetric control.

3) The term of the docket has been revised from 10 years as proposed in the June draft to 5 years from the date of issuance.

4) Condition I.p. requiring the implementation of an Invasive Species Control Plan approved by the Executive Director, has been added to the Decision section of the revised docket. The condition requires the docket holder to manage and treat withdrawn waters and equipment that comes into contact with the West Branch Delaware River and withdrawn water to control the potential spread of the invasive species didymo.

Soete noted that he had looked at the revised Docket and it seems to address the UDC concerns. The UDC did issue a comment letter on the original June Docket. Hamilton mentioned that Chesapeake doesn't have wells waiting for water as yet. Soete added that there would be a gauge at the water withdrawal site and that records should be made available on a daily basis of what's withdrawn. The withdrawal remains in the Delaware River Basin. Bowers mentioned that a 1 mgd withdrawal is equal to 2.5 cfs over a 24-hour period. Soete said he heard that Chesapeake is still interested in an East Branch withdrawal site. He asked the committee to review the revised Docket and provide him with comments on the modified material. Some comments made at the meeting for further review included, but not limited to: the pass-by flow should have some seasonality and it should be higher than 235 cfs

NYS DOT Region 9 Aug. 18 Letter to UDC-meeting with stakeholders about river level pictorial representation painted on bridges substructures: Ramie explained that during the last several years at the NY-PA Joint Interstate Bridge Commission meetings, the UDC brought up using markings on the Upper Delaware River interstate bridges to act as a visual aid of river height conditions for river users. The UDC received a letter from the Cultural Resource Coordinator of NYS DOT Region 9 in response to these requests. The letter stated in part: "Some type of pictorial representation as suggested during the recent meeting, depicting historic water levels that could be simply painted on the bridge substructure seems to be an ideal solution. Pictorial representations would provide readily understood information and graphically depict safe ordinary high water levels, historic flood levels as well as river levels indicating unsafe conditions. This would have immediate interpretive value to the recreationist. The New York State Department of Transportation believes that this is an idea well worth pursuing but efforts to design, install and maintain gauges must be a group effort involving commitment from the Council, Park Service and perhaps other stakeholders as well. As a first step, NYS DOT Region 9 would like to meet with you to discuss how best to accomplish this initiative. Please feel free to contact me to discuss things and perhaps set up a site visit to the bridges." The committee consensus was to instruct staff to follow-up on this meeting request.

U.S. Fish & Wildlife Service News Release-"Improved Eagle Management Program Helps to Incorporate Scientific Data, Identify Information Gaps": The committee was provided with copy of a U.S. Fish & Wildlife Service news release regarding an improved eagle management program. The release stated in part: "The U.S. Fish and Wildlife Service today (Sept. 11) announced a new program to issue two new types of permits that will be used to improve the management of bald and golden eagles under the Bald and Golden Eagle Protection Act. The two permits are designed to protect public safety and manage activities or projects that may disturb or otherwise incidentally "take" bald or golden eagles or their nests, while maintaining stable or increasing populations. Permits will only be granted when they are compatible with this goal."

"The first new permit type may be issued only where the "take" – in this case referring to the disturbing, or harming of eagles – is associated with, but not the purpose of an activity, such as commercial or residential real estate development."

"The second new type of permit governs removal of bald or golden eagle nests under limited circumstances, including removal of nests that create safety concerns on or near airports. Deliberate killing of eagles will not be allowed under either of these new permits." The rule goes into effect 60 days after its publication on Sept. 11, 2009 in the *Federal Register*. The Final Rule can be found online at www.fws.gov/migratorybirds.

Two River Junction Sept. 5 letter to UDC Supporting mandatory life jacket use: The committee was provided with copy of letter the Council received from Two River Junction in Lackawaxen, PA. The letter stated in part: "We are required under our licensing to carry liability insurance to protect ourselves and the National Park Service in the event of a drowning or serious accident. Nonetheless, I have seen our premiums more than double in the past 18 years, primarily due to repeated drownings on the river. We make every effort to thoroughly instruct our clients in river safety and lawful conduct on the river. We also follow the advisories put out by the NPS during high water. Unfortunately, once our customers are around the first bend in the river, if they choose to do so, they remove their life-jackets, hence increasing the chance of a drowning. If the NPS would be able to enforce the rules of our contracts, which require the wearing of life jackets at all times on the water, and enforce the rules put forth by our local Director, that there would be mandatory wearing of life jackets, I believe we could reduce the number of drownings to

almost zero. I have never had to make a phone call telling parents their children would not be coming home, nor do I want to make that call. It just makes sense to require life jackets on our river. I give my full support to Vidal Martinez' proposal and encourage you to do the same."

Wieland asked Martinez if NPS was pursuing the life jacket regs, and Martinez said yes, maybe do a two-zone regulation as the UDC suggested. We have to look at river height relative to enforcement issues. Chase mentioned that if there's high water in the Delaware downriver it would be PPL generation into the Lackawaxen River that you wouldn't have in the upper reaches of the River. Martinez mentioned the other issue NPS is looking at is timely notice to river users when life jackets would be mandatory; possibly with the NPS radio station, River Hotline and red flagging. Serio wondered if there would be anything about no river travel when the water is real high. The letter says the Superintendent could close the River. Martinez confirmed that he had that authority to close the river. He said the canoe liveries have agreed with using the six foot level at the Barryville gauge for mandatory life jackets and that they'd prohibit other river craft and use only rafts at that level.

The committee was provided with copy of the Sept. 14 editorial in the *Times Herald-Record* under "Cheers"; saluting the Upper Delaware Council for backing the move to require mandatory life jacket use on the Upper Delaware River; "just the fact that the Council has taken some action helps call attention to the notion that people with experience on the river routinely use these safety devices and others – especially the occasional or first-time canoeist or kayaker – should follow that good example".

NPS Report: Martinez handed out a special edition of the "GOPARKS" newsletter published by the National Park Foundation. The newsletter's focus was the announcing of the Ken Burns documentary series premiering on PBS, "The National Parks: America's Best Idea", airing starting Sept. 27, 2009. Nearly 10 years in the making, the six-part, twelve-hour documentary by Ken Burns and Dayton Duncan traces the evolution of the national park from its birth in the mid-1800s to the late 1900s. The series explores the stories of people who were willing to devote themselves to creating new parks, saving crucial parts of our land from destruction and exploitation, and in doing so, reminded their fellow citizens of the full meaning of democracy. Martinez noted that 2016 will be the 100th anniversary of the National Parks System.

Don Hamilton provided a PowerPoint display to illustrate some resource management activities engaged in during the summer. Activities included aquatic studies, invasive species issues, Bald eagle habitat use study, Bio-Control for Non-Native Invasive Plants, removing water chestnut from a pond just off the Delaware River with Boy Scout assistance, targeted mammal inventory, and Marcellus Shale gas drilling meetings. There was a question and answer session following the presentation. The committee thanked Hamilton for an informative presentation.

Public Comment None

Adjourn A motion by Bowers seconded by Serio to adjourn the meeting at 9:10 p.m. was carried.

Carol Coney, Office Manager