



**August 16, 2023 Minutes of the Meeting
Delaware and Raritan Canal Commission**

TIME: 10:00 a.m.
DATE: August 16, 2023
PLACE: Prallsville Mills, Stockton, New Jersey

ATTENDING COMMISSIONERS:

Vice-Chairman Bruce Stout and Commissioner Phillip Lubitz attended the meeting in the Commission office. Robin Madden, designee for Commissioner of Environmental Protection Shawn LaTourette; Commissioner Douglas Palmer; and Commissioner John Reiser participated via online platform and teleconference.

STAFF: Executive Director John Hutchison, Deputy Attorney General Jordan Viana, and Ms. Colleen Maloney were present in the Commission office. Commission Engineer Joseph Ruggeri, Communications Director Darlene Yuhas, and Executive Assistant Erica Vavrence participated via online platform.

GUESTS: Lauren Rojewski, Superintendent, Delaware and Raritan Canal State Park; Michael Sellar, Facilities Manager, New Jersey Water Supply Authority (NJWSA); Linda Barth, D&R Canal Watch; Bob Barth, D&R Canal Watch; Robert von Zumbusch, Kingston Historical Society; Brian Friedlich; Thomas O'Shea; Emily R. Goldman; Jeff Haberman; Mark Strozeski; Kenneth Schlatmann; Kathy Hale; Alex Farrell; Antonia Pchola, Stony Brook Regional Sewerage Authority.

Vice-Chairman Stout announced that this was a monthly meeting of the Delaware and Raritan Canal Commission and that the provisions of the "Senator Byron Baer Open Public Meetings Act" (OPMA) had been complied with in the scheduling of the meeting.

Vice-Chairman Stout announced that the meeting was being taped pursuant to the exception set forth at Section C.(1) of DEP Policy & Procedure 2.85 "Prohibition of Recording in the Workplace" Policy adopted on September 18, 2019.

Since Commission members were participating in person and via telephonic device pursuant to Article III, Section 4 of the Commission Bylaws, Vice-Chairman Stout directed the Executive Director to call

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the roll:

Vice-Chairman Stout	Present
Commissioner Designee Madden	Present
Commissioner Reiser	Present
Commissioner Lubitz	Present
Commissioner Shoffner	Absent
Commissioner Palmer	Present

Director Hutchison stated that a quorum was present.

Administrative Items

Confirmation of September 20, 2023, Meeting Date

Vice-Chairman Stout stated that the next Commission meeting would be held on September 20, 2023. Commissioner Lubitz stated he would not be able to attend the meeting.

Minutes

Approval of the Minutes of the July 19, 2023, Commission meeting

Vice-Chairman Stout inquired if any of the Commissioners wished to propose comments or corrections to the July 19, 2023, Commission meeting minutes. Hearing none, he asked for a motion to approve the minutes as prepared by staff. Commissioner Reiser made a motion to adopt the minutes as proposed, which was seconded by Commissioner Lubitz.

Vice-Chairman Stout asked Director Hutchison to call the roll:

Vice-Chairman Stout	Yes
Commissioner Designee Madden	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Absent
Commissioner Palmer	Yes

The minutes were approved.

Review Zone Actions

Zone A Projects

#23-3357A Lambertville Historical Society -- Interpretive Signage (Lambertville City)

The Vice-Chairman requested a motion on the Zone A project. Commissioner Reiser made a motion to approve the project, which motion was seconded by Commissioner Palmer. The Vice-Chairman asked for comment from the Commissioners and then the public. Hearing none, the Vice-Chairman directed Director Hutchison to call the roll on the Zone A project:

Vice-Chairman Stout	Yes
Commissioner Designee Madden	Yes

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Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Absent
Commissioner Palmer	Yes

The motion was approved.

Zone B Projects

#22-0089A	Stony Brook Regional Sewerage Authority -- Hopewell Wastewater Treatment Plant Upgrade (Hopewell Township)
#23-2441CCC	Princeton University -- Poe-Pardee Field Geo-Exchange (Municipality of Princeton)
#23-4636C	102 Walters Avenue -- Warehouse-Office Complex (Ewing Township)
#20-5547	420 & 430 Amwell Road -- Proposed Retail/Office Buildings (Hillsborough Township)
#22-5850A	Dog Days Daycare Center -- Expansion (Hillsborough Township)
#22-5886A	72 Alexander Avenue -- Phillips Barber Expansion (Lambertville City)
#22-5947	Hartwick and Village Drives -- Memory Care Facility (Montgomery Township)

The Vice-Chairman requested a motion on the Zone B projects. Commissioner Lubitz made a motion to approve the projects, which motion was seconded by Commissioner Palmer. The Vice-Chairman asked for comment from the Commissioners.

Commissioner Lubitz asked with regard to #22-0089A Stony Brook Regional Sewerage Authority -- Hopewell Wastewater Treatment Plant Upgrade, in what way the stream corridor easement agreement would be designated. Director Hutchison stated that the easement includes an existing undeveloped stream area exclusive of an area designated for future wastewater treatment plant upgrades. He stated that the stream corridor easement agreement would be documented in the following three ways: by means of a metes and bounds description, a color-coded map, and the recording of the easement and accompanying map and metes and bounds description in the office of the Mercer County Clerk.

Vice-Chairman Stout asked for further comment from the Commissioners and then the public. Hearing none, the Vice-Chairman directed Director Hutchison to call the roll on the Zone B projects.

Vice-Chairman Stout	Yes
Commissioner Designee Madden	Yes
Commissioner Reiser	Yes
Commissioner Lubitz	Yes
Commissioner Shoffner	Absent
Commissioner Palmer	Yes

The motion was approved.

Executive Director's Report

Director Hutchison reported on the Commission workload for the period encompassing July 18, 2023, to August 16, 2023. In addition to the 8 projects listed on the meeting notice, the staff issued 17 deficient staff reports, 14 jurisdictional determinations, 10 certificates of approval, and 8 general permits, and

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completed review of 1 September meeting project. In addition to these matters, staff organized and conducted 15 pre-application meetings related to proposed and pending projects. As of August 15, 2023, the Director noted that there were 35 projects awaiting staff review.

The Director stated that fee collections totaled \$25,850 for the month. This was the lowest August monthly fee collection in five years, considerably less than the \$66,777.72 collected in August 2022, and less than the \$26,800 collected in August 2021, the \$51,900 collected in August 2020, the \$54,100 collected in August 2019, and the \$41,153.35 collected in August 2018. Therefore, with two months of Fiscal Year 2024 completed, the Commission had collected \$50,850.

Director Hutchison stated that Commission staff would need to exercise great caution with respect to spending going forward. Although a reduction in applications would reduce engineering special project blanket expenditures, it was also reasonable to assume that the new bargaining agreements with the CWA and IBEW would increase employee salary costs. Although major capital and maintenance projects to the Commission office were largely complete, the office floor still needed to be painted, and some additional IT costs would be incurred as the Commission transitioned to a GIS-based project database.

The Director stated that the downturn in fee collections coincided with the resumption of the imposition of fringe and indirect costs on the Commission by the Department of the Treasury, retroactively applied to Fiscal Year 2023, which Vice-Chairman Stout intended to discuss during the New Business portion of the meeting agenda.

The Director stated that out of an abundance of caution, he decided not to renew the Commission's purchase order with ACCSES NJ for the file scanning project. While this will unquestionably prolong, by a considerable period of time, a project that should have been addressed decades ago, Mr. Hutchison stated it is the only prudent approach to take under the circumstances.

Director Hutchison stated that an alternative approach was under active consideration, namely to rent a large document scanner. He stated that the State recently entered into a lease agreement with the State copier vendor (Ricoh) for this type of equipment. The Commission received a quote from Ricoh on August 15, 2023, which indicated that a scanner may be leased for 48 months at a cost of \$322.81/month. Commission staff could advance the project more quickly by hiring an hourly temporary employee; however, the Director noted that the uncertain budget and fee collection situation would preclude such a decision until it became clear that the Commission can absorb such a cost.

The Director stated that the recently readopted Commission rules (N.J.A.C. 7:45) had been posted to the Commission website. The new regulations made a series of technical corrections and updates to the rules and, absent any further amendments, would be in effect until June 5, 2030.

Director Hutchison stated that the Commissioners had received via email a copy of draft amendments to the Commission Bylaws on August 15, 2023. The amendments propose two changes to the Bylaws. The first amendment provides that in the absence of the Vice-Chairman, the Treasurer may sign Commission documents such as certificates of approval. The second amendment proposes that at the discretion of the Chair, Vice-Chairman, or Treasurer, the Commission may impose a five-minute limit

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upon public testimony for any matter pending before the Commission. The Director stated the Bylaws require that any proposed amendment be distributed to the Commission at least 30 working days prior to adoption; therefore, the earliest the proposed amendments could be considered is at the October 18, 2023, Commission meeting.

Director Hutchison stated that, as the staff expected, the adoption of the new DEP Stormwater Management and Flood Hazard Rules at N.J.A.C. 7:13 on July 17 resulted in a surge in telephone calls and emails from applicants, attorneys, and engineers seeking guidance on how the new rules impact existing and potential applications pending before the Commission. He stated he plans to compose a series of “Frequently Asked Questions” (FAQs), which can be posted on the “Hot Issues” section of the Commission website to respond to the most commonly asked questions posed by the regulated community.

Director Hutchison stated that on July 28, he and Ms. Yuhas met with DEP colleagues Steven Jacobus, Dave Dumont, and William Smith at Bulls Island Recreation Area to discuss the best way to obtain aerial drone footage of the canal and its many historic resources. The video and still imagery could then be uploaded to a Commission YouTube site that can be linked to the Commission website. The Director stated that the initial raw video imagery taken during this “maiden voyage” was quite striking and provided views of the canal that can only be captured by canoeists and kayakers. He stated that DEP colleagues are pleased to begin this exciting and ambitious endeavor which will, when completed, become a significant historical record of the canal and key parts of the region. The Director stated that he looked forward to a continued creative partnership with Mr. Jacobus and his team.

Director Hutchison reported that the second scheduled meeting of the New Jersey Department of Transportation (NJDOT) Route 29 Kingwood Rockfall Mitigation Project -- Design Working Group Meeting was held on July 20. Following this meeting, Commission staff was able to obtain the Block and Lot designations for the Kingwood Township portion of the project, along with the Lambertville portion located along the western side of Goat Hill. While a portion of the Kingwood section is outside the Commission Review Zone, the remainder is within the Commission’s jurisdiction, as is the Goat Hill section. Commission staff will continue to attend the working group meetings and report any new or additional information.

Director Hutchison reported that, on August 7, 2023, he and Damian Friebel met with NJDOT to discuss a proposed project located along N.J. State Highway Route No. 29 in Delaware Township, Lambertville City, and Frenchtown Borough, from Milepost 19.66 to 24.5, Milepost 27.09 to 30.72 and Milepost 33.69 to 34.28. The Director stated that the purpose of the project is to address pavement deficiencies, contain surface runoff to prevent further pavement deterioration, and improve safety along Route 29. The Director stated that, as anyone who has driven this section of the highway is aware, there is a high incidence of flooding and icing at numerous locations due to what NJDOT characterizes as inadequate drainage facilities. This has led to prolonged standing water within the roadway, which in turn undermines the integrity of the underlying pavement. Additionally, slope failures along the canal have resulted in pavement failures in those places where the roadway runs parallel and in proximity to the canal. Therefore, NJDOT proposes drainage improvements, slope stabilization, and some limited pavement reconstruction to be included in this project.

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Director Hutchison stated that at first blush, some of the proposed slope stabilization measures, such as a technique known as pile and lagging, could have a visual impact upon the Delaware and Raritan Canal State Park, and the addition of new sources of stormwater discharges to the canal have been prohibited by the Commission's regulations since 2009. Director Hutchison stated that he reminded NJDOT that a considerable amount of riprap has been dumped along Route 29 as an emergency measure in recent years, both during Hurricane Sandy and Tropical Storm Ida, and that this required a more permanent solution that respects the canal's historic resources and its use as a water transmission complex. He also reminded NJDOT that NJDOT is a signatory to the [Delaware River Scenic Byway Corridor Management Plan](#), and that the provisions of that plan with regard to viewsheds, vegetation removal and planting, signage, and guiderail design should not be ignored. The Director stated that he also reminded NJDOT that the corridor has been poorly managed and maintained in recent decades, and that this project represents an opportunity for all State agencies to do better. He strongly advised NJDOT to include the State Park Service and NJWSA in future discussions.

Park Superintendent's Report

Superintendent Rojewski reported that weekend visits to the Delaware and Raritan Canal State Park remained high, resulting in closures of the boat launch areas and Route 29 parking areas.

The Superintendent reported that exterior renovations to the Rockingham Historic Site in Franklin Township, Somerset County, had been completed. Further improvements were planned, including parking lot replacement, installation of ADA-accessible walkways throughout the entire site, and exterior renovations to the restroom within the stone building. In addition, quotes for the repair of the HVAC system in the main building were being reviewed.

The Superintendent reported that the NJDOT Washington Road bridge replacement project in the Municipality of Princeton/West Windsor Township was underway. For park multiuse trail users, a pedestrian detour had been established and a floating dock system on the northern and southern sides of the canal has been installed to allow canal water trail users to portage around the trail closure by walking along the pedestrian reroute.

The Superintendent reported that the State Park Service was reviewing a proposal and evaluating the feasibility of creating a canoe/kayak access area to the Delaware and Raritan Canal at Barber Boulevard near the historic Abraham Staats House in South Bound Brook Borough. She stated that the Park Service will subsequently respond to South Bound Brook Borough, likely in the early fall.

Superintendent Rojewski reported that hazardous tree removal was ongoing on both along the main and feeder sides of the canal. In addition, park staff was addressing numerous reports of hazardous trees on private property adjacent to State lands.

The Superintendent reported that park staff will install new signs to address improper park usage and public safety concerns along the banks of the Delaware River at the Frenchtown Borough Park and Ride Lot. She noted DEP Land Management Review and State Historic Preservation Office (SHPO) signage reviews were complete.

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Commissioner Lubitz noted he was recently on Passaic Street in Trenton and was dismayed by the condition of the railing barrier on the sidewalk that parallels the canal. He asked what entity is responsible for maintenance of the railing. Commissioner Designee Madden stated that the City of Trenton is the governmental entity responsible for the maintenance of Passaic Street and the sidewalk railings, which are within the street's right-of-way. She noted that the DEP would be meeting with the City of Trenton to discuss how the department could assist the city with repairs to the area. Commissioner Lubitz stated he was pleased that the DEP is meeting with the city to address the matter.

New Jersey Water Supply Authority (NJWSA) Report

Mr. Sellar reported that work was completed on the Landing Lane Spillway rehabilitation project (DRCC #19-3300B) located in the City of New Brunswick, Middlesex County.

Mr. Sellar informed the Commission that the project to rehabilitate the stone culvert, which conveys Six Mile Run underneath Canal Road, the Delaware and Raritan Canal and the park multiuse trail in Franklin Township, Somerset County (DRCC #22-3306C), would commence on August 21, 2023. The project will involve an initial road closure, a reopening, and then closure for the majority of the work on the project.

Mr. Sellar reported site preparation work had commenced for Phase 1 of the project (DRCC #22-3255D) to repair an approximate 1.0-mile section of the western embankment of the Delaware and Raritan Feeder Canal in Stockton Borough, which separates the canal from the Delaware River and is generally located between the Prallsville Lock and the railroad bridge crossing over the canal at Brookville in Stockton Borough. A staging area was set at Mill Street in Stockton.

Mr. Sellar reported that NJWSA continues to monitor the canal for the invasive aquatic plant Hydrilla.

Mr. Sellar informed the Commission that the contractor for the project to replace 11 canal sluice gates located at four locks in Somerset County had placed the order for the gates and that significant time was needed to manufacture them.

Mr. Sellar stated that NJWSA staff were working to address the impacts of seasonal severe thunderstorm damage along the Delaware and Raritan Canal, including tree removal and debris cleanup. NJWSA crews were also cutting grass along the canal.

Mr. Sellar stated that NJWSA continues to monitor the canal and the Millstone River for a blue-green harmful algal bloom (HAB) caused by cyanobacteria, which was detected in the Millstone River last summer; however, no bloom has been detected thus far.

Mr. Sellar stated that NJWSA staff responded to a report of a sinkhole that is associated with a culvert on Easton Avenue (Somerset County Route No. 514) in Franklin Township near the border of that municipality with South Bound Brook Borough. He said that NJWSA is working with a consultant to address the issue.

Old Business

None.

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New Business

Denial by the Department of the Treasury, Office of Management and Budget, of Commission requests for exemptions from payroll fringe and indirect budget costs for Fiscal Year 2023.

Vice-Chairman Stout stated that since 2018, the Commission had received a waiver of salary fringe and indirect costs from the Department of Treasury, Office of Management and Budget (OMB). However, the Commission was recently informed that the waiver for FY 2023 was denied and applied retroactively to Fiscal Year 2023, resulting in a cost of approximately \$261,000 to the Commission. The Vice-Chairman stated that this decision poses a significant fiscal impact on the Commission, and while the Commission has a carry-forward balance that could defray this cost, the Commission's carry-forward balance would be depleted in the current situation within three years. As the situation currently stood, the second of three years has already commenced with FY 2024 beginning in July 2023.

Vice-Chairman Stout stated that the Commission became a fee-based program in 2009, and the fees rates had not been changed over the ensuing 14 years. Vice-Chairman Stout stated that no one wanted to consider a fee increase, but it was only fiscally responsible for the Commission to enact a fee increase that permitted fringe, indirect and Office of Attorney General (OAG) costs to be included in the fee structure. He stated that given the length of time it would take to advance a fee increase proposal through the process set forth in the "Administrative Procedure Act," (APA) he had directed Director Hutchison to begin preliminary research and preparation of a fee increase proposal that would enable the Commission to match its revenues with its costs.

Director Hutchison stated that the Commission is a fiscally prudent agency, and there was little room to cut costs to pay for fringe, indirect and OAG costs. Thus, if the exemption were to be denied going forward, increasing the Commission's revenue was the only viable option to maintain Commission operations.

Commissioner Lubitz noted that the fee increase proposal would be a laborious process, but that it was critical to start the process immediately to address what could become a future budget shortfall, since it could take a couple of years to propose and adopt a fee increase.

Director Hutchison stated that, in his experience, even a modest rule proposal could take a year to advance through the APA process, and the process for the Commission would require research and take time. Based on his previous experience, Director Hutchison offered an outline of the fee increase proposal process: the fees must be published; a public hearing where comment is solicited must take place; the Commission must respond to that public comment; and then move to adopt the fee increase. In addition, the Commission must engage the OAG and Office of Legal Affairs and, ultimately, the fee increase must be approved by the Office of Administrative Law in the Department of Treasury.

Vice-Chairman Stout stated that in addition to the OMB decision to deny the fringe and indirect waiver and thereby force the Commission to incur these costs, two additional issues were exacerbating the Commission's fiscal situation. He noted that the Commission was collecting less fee revenue, and the Commission has incurred increased OAG costs related to litigation and other legal matters. Thus, the Commission costs had increased, and revenues had decreased.

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Vice-Chairman Stout stated that there is nothing to vote on at this time, but in the future the fee increase proposal will be shared with the Commission.

Public Comment

Vice-Chairman Stout asked for public comment.

Mrs. Barth asked what the status is of getting crosswalks and flashing signs where the towpath crosses Somerset County roads. Director Hutchison stated that installing thermoplastic crosswalks and pedestrian crossing beacons was the responsibility of the government agency that has jurisdiction over the road, which crossed the Delaware and Raritan Canal State Park multiuse trail, subject to Commission approval. He noted that certain county engineers supported the installation of such devices, while others did not for reasons of cost and liability. The Director suggested that Mrs. Barth pursue the matter directly with the Somerset County Engineer.

Mr. Barth stated that he appreciated the effort made by Superintendent Rojewski and NJDOT to keep the water trail open and accessible during the Washington Road bridge replacement process.

Mr. Barth stated that he appreciated Director Hutchison's speaking with NJDOT about the unpermitted placement of riprap along Route 29. He noted that over the years it has resulted in a hodgepodge appearance of the canal embankment.

Mr. Barth stated that he was greatly satisfied with the improvement and repair project at the Landing Lane Spillway, and that the visual outcome was pleasing. He noted that result looks historic, and the repair appears to be a long-lasting solution. He commented that he was disappointed that the spillway must be so wide, pointing out that the historic canal towpath was always 10 feet wide, and new spillway is about 12 or 14 feet wide.

Mr. Barth's final comment was on the proposed change of Commission Bylaws, which would allow the Commission to limit comments from the public to five minutes. He stated that some matters require more than five minutes of public comment. Vice-Chairman Stout noted that such a limit would, if approved, be set at the discretion of the Commission.

Commissioner Lubitz stated that Mrs. Barth's comment reminded him that a crosswalk at the Cooley Preserve in Kingwood Township would be a valuable addition for park users during the time of year when the public has access to the parking lot. He asked that the State Park Service and the DEP request the crosswalk from NJDOT.

Written Public Comments

None.

Adjournment

There being no other business, Vice-Chairman Stout entertained a motion to adjourn. Commissioner Lubitz made a motion to adjourn, which was seconded by Commissioner Reiser. Vice-Chairman Stout called for a vote on the motion to adjourn, which was unanimously approved by voice vote.

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The meeting adjourned at 10:35 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Hutchison", written in a cursive style.

John Hutchison, Secretary