

**DELAWARE RIVER BASIN COMMISSION  
REGULATED FLOW ADVISORY COMMITTEE  
May 5, 2011**

**MEETING SUMMARY**

The May 5, 2011 Regulated Flow Advisory Committee (RFAC) meeting began at approximately 10:00 a.m. at the Delaware River Basin Commission (DRBC) offices in West Trenton. Ms. Stefanie Baxter of the Delaware Geological Survey chaired the meeting. Introductions were made around the room and via telephone for those attending on a conference call.

**Review of minutes from the March 8 and April 7 RFAC meetings**

Stefanie Baxter noted that the minutes from the March 8 RFAC meeting had not been approved at the April 7 meeting. Separate motions were made and seconded to approve the minutes from the March 8 and April 7 meetings. Both sets of minutes were approved by unanimous vote of all committee members present.

Peter Kolesar stated that he had an issue with the minutes of the April 7 meeting, because there is no detailed record of the question-and-answer period. He indicated that in his view there were important contributions in many responses and he would like to have those documented. Stefanie Baxter responded that this particular set of minutes was not intended to be an overall question-and-answer record, and asked if a more complete set of notes from the last meeting and this meeting could be prepared. Hernán Quinodoz responded that DRBC staff had specially considered how to prepare minutes from these two meetings. He indicated that that in typical RFAC meetings where the agenda includes a few items, the minutes summarize in some detail the presentation and discussion for each item. That approach did not seem practicable for these two meetings, where the combined question-and-answer period included over 100 questions. DRBC staff felt that many details would be lost if answers were summarized. Hernán noted that when DRBC conducts public hearings as part of a rulemaking process, a court stenographer is hired to prepare a full meeting record. This is not done for advisory committee meetings. He added that DRBC would post online any answers documented by individual responders; the audio-tape recordings of the meeting would be available as well. Stefanie indicated that this issue could be revisited at the next RFAC meeting.

**Brief report on Decree Party work group progress**

Stefanie Baxter reported on recent progress made by the Decree Party work group towards developing a new FFMP agreement, following directions set by the Decree Party Principals. There is something regarding storage voids, increased reservoir releases and enhanced flows when the reservoirs are full that has been agreed upon by all Principals. However, the details are not firm until a new agreement is signed. Glenn Erikson asked if a decision had been made about using OST or the release table proposed in the joint fisheries white paper. Thom Murphy responded that the plan is to use OST as a tool that allows larger releases when excess water is available. He added that the release table proposed in the white paper has been, to a large extent, incorporated in the higher OST release tables. Glenn Erikson noted that his primary concern was about the minimum releases that will be established under OST, which were apparently lower than those proposed in the white paper. Stefanie Baxter stated that the same fisheries staff from NYS DEC and PA FBC that produced the white paper has been involved in the current discussions concerning release tables.

### **Question-and-Answer session (questions submitted in advance)**

Stefanie Baxter introduced the main agenda item, a continuation of the question-and-answer session that began at the April 7 meeting. More than 100 questions had been submitted by members of the public on the various presentations given at the March 8 RFAC meeting; many of those questions were addressed at the April 7 meeting. Submissions were received from Phil Chase, Peter Kolesar, Jim Serio, Elaine Reichart, Chuck Schroeder, Glenn Erikson, Alycia Scannapieco, Joan Homovich, Sheila Gallagher, Garth Pettinger and Jeff Zimmerman. The rest of the meeting was devoted to addressing the remaining questions on the list. Questions were addressed by many attendees, including Thom Murphy, Luke Wang and Brenan Tarrier. Follow-up questions and comments were contributed by many of those in attendance.

As done with the minutes of the April 7 RFAC meeting, DRBC staff determined that a summary of the responses was not practicable and perhaps not very useful, given the many questions submitted and the detailed nature of many of them. The full list of questions and the written answers provided by some of the presenters are posted on the DRBC's advisory committees web page (<http://www.state.nj.us/drbc/advisory.htm>). An audio tape record of the meeting is kept at the commission offices and is available for the public to replay by appointment.

### **Public Dialogue on FFMP Issues**

A few additional issues were discussed. In response to a question, Thom Murphy stated that NYC DEP plans to update OST predictions every few weeks or more frequently if warranted, and a summary of OST predictions will be posted on the River Master's website. Thom added that although OST will provide a recommendation on what release table to use over the next few weeks, NYC DEP staff will make the final determination. Peter Kolesar stated that this approach represented a substantial change with respect to previous programs (like the original FFMP) that had prescribed reservoir releases, and changes to the release tables required unanimous approval from all Decree Parties. Peter said he hoped that the Decree Parties appreciated that the rules being contemplated give NYC much more authority and flexibility than before. Mary Ellen Noble asked if NYC would be able to show that a given change in release tables can be traced to results of the algorithms built into OST. Thom replied that sometimes this will be the case, while in other cases the OST recommendation may not be followed – the FFMP-OST program will give NYC the flexibility to do that.

Glenn Erikson commented that the history of dealings between NYC and the people living downstream of the reservoirs has created a sense of mistrust that is apparent at this meeting. He acknowledged NYC's need for control of key information, but argued that the issue of trust has become a problem and needs to be addressed. Thom Murphy replied that NYC staff was very aware of this issue: the challenge with OST being a very large and complex computer model is that it may be seen as a "black box" by the public. He said NYC is currently working on the design of a summary page for the internet, through which information will be shared with the Decree parties and other stakeholders – the summary page would provide insight into why a release decision was made. Peter Kolesar argued that the black-box concept should be unacceptable to other Decree Parties and many stakeholders. He explained that a summary posted online after a decision was made would not be very useful; he would like to have access to the models and the algorithms and rules that produce the model results. Thom Murphy replied that OST can only be run by someone plugged into the NYC computer system and receiving all the information that feeds the model. He said he was not authorized and NYC DEP has no plans to give access to the model or to give the model away.

Glenn Erikson asked about plans to do any academic research on the effect of flows on instream habitat, both for historical and proposed flows. Thom Murphy replied that while the FFMP has a monitoring component, a program needs to be in place for a period of time to make any data meaningful. Glenn acknowledged that NYC DEP has sponsored in the past a number of studies on reservoirs, streams, and watersheds, especially upstream of the reservoirs. Going forward, he would like to see studies on effects on downstream habitat as well. Thom replied that another source of funding would be needed to support that research.

Elaine Reichart stated that there has been no due process and no transparency in the development of the new releases program to be adopted by June 1. There have been no hearings and no public comment period, unlike the process followed with previous programs. She added that if a one-year program is adopted on June 1, the time remaining to work on the next program will not be a full year, but maybe six months, since time needs to be allowed for public input and comments. Someone asked if a study group could be formed to allow interested individuals and groups to start developing some ideas on what the next reservoir releases program should look like. Mark Hartle suggested that the Subcommittee on Ecological Flows (SEF) could meet over the summer, with the first topic on the agenda being a presentation on the new FFMP-OST so that people can understand the new program that is being put in place; the second topic would be a discussion of what needs to be considered for a long-term program. Mark Hartle stated that he would poll SEF members to find an agreeable date for a SEF meeting over the summer.

Elaine Reichart indicated that flood advocacy groups felt that they were not represented at the same level that fishery advocates were. She asked if a subcommittee similar to SEF could be formed for that purpose, since flood advocacy groups had different concerns about flows, diversions, and every aspect of the release program. Elaine said the scope of the floodplain subcommittee was not appropriate or sufficient to address her concerns and issues with the flow management plan. Stefanie Baxter suggested that Elaine bring this issue up at the next Commission meeting.

Peter Kolesar raised the issue of transparency of operations under the new FFMP-OST that the Decree Parties plan to approve by June 1. He said he was concerned about what he heard today about a “black box” to describe the new FFMP-OST. He indicated that up until now he and other stakeholders had been able to fully participate in discussions at RFAC, developing and presenting their own proposals developed with the DRB OASIS model. He argued that without outsiders doing a substantial amount of analysis, the program of reservoir releases program would not be what it is today. He said the black-box idea is essentially handcuffing and perhaps cutting off completely the opportunity to keep collaborating in the same fashion. A black-box approach would make it impossible for the Decree Parties or anyone else to make an independent evaluation and understand what is going on. He called on RFAC and the Decree Parties to continue the tradition of openness.

Peter listed the standardized set of inputs that he would need from OST to feed into the DRB OASIS model in order to test how the new FFMP-OST works. Thom Murphy stated that NYC would share the data and algorithms, but not the actual OST program or the computer code; the input data and forecast data will be made available, and the algorithms will be explained. Glenn Erikson argued that sharing the algorithms and the computer code would facilitate more knowledge and transparency for everyone. He added that real-time OST data streams do not have to be shared, since the evaluations described by Peter Kolesar are done in hindcasting mode. Thom Murphy reaffirmed that his instructions today were not to make the actual code available, but did not rule out a change of policy in the future.

Someone asked what the Decree Parties were agreeing to under the new FFMP-OST program. Thom Murphy replied that NYC is only obligated to make the minimum releases contained in the base table. Everything above the base table is a voluntary program that is conditional on excess water. When the excess water is available, the plan is to release it.

**Next Meeting Date**

The next RFAC meeting was scheduled for Thursday, August 18, 2011. *(Note: this meeting was first rescheduled for August 30, 2011 and later rescheduled for October 5, 2011)*

**REGULATED FLOW ADVISORY COMMITTEE (RFAC)**

**May 5, 2011**

**ATTENDANCE LIST**

<b>NAME</b>	<b>AFFILIATION</b>
BAXTER, Stefanie	DE Geological Survey
BERNASCONI, Alessandra	Delaware Riverside Conservancy (DRC)
BONOS, Mary	Aquatic Conservation Unlimited (ACU)
BUCHMAN, Gail (via phone)	NYC Dept. of Environmental Protection (NYCDEP)
CROWLEY, Mary Jo	ACU
DOMBER, Steven	NJ Dept. of Environmental Protection (NJDEP), NJ Geological Survey
ELLSWORTH, Alan (via phone)	National Park Service (NPS)
ERIKSON, Glenn	Wild Trout Flyrodders
FLECK, Andrew	ACU
GALLAGHER, Sheila	Delaware Riverside Conservancy (DRC)
GRUBER, Hank	US Army Corps of Engineers (USACE)
HAMILTON, Don (via phone)	NPS, Upper Delaware Scenic and Recreational River
HARTLE, Mark	PA Fish & Boat Commission
KOLESAR, Peter	Columbia University
LIAGHAT, Hoss (via phone)	PA Dept. of Environmental Protection (PADEP)
LOVELL, Stewart	DE Dept. of Natural Resources and Environmental Control (DNREC)
MOLZHAN, Robert	Water Resources Association of the Delaware River Basin
MURALIDHAR, D.	Hazen and Sawyer
MURPHY, Thomas	NYCDEP
MYERS, Robert	Flood victim
NOBLE, Mary Ellen	Delaware Riverkeeper Network
PAULACHOK, Gary (via phone)	US Geological Survey, Office of the Delaware River Master
PEDRICK, Gail	ACU
PETTINGER, Garth	NYS Trout Unlimited, Delaware Committee

<b>NAME</b>	<b>AFFILIATION</b>
PLUMMER, Dan	Friends of the Upper Delaware River (FU DR)
QUINODOZ, Hernán	DRBC
RATHMILL, Scott	Philadelphia resident
REICHART, Elaine	ACU
REUSS, James	DRC and ACU
SAPIENZA, Ellen	ACU
SCANNAPIECO, Alycia	Resident – flood concerns
SERIO, Jim	Delaware River Foundation
SILLDORFF, Erik	DRBC
TARRIER, Brenan	NYS Dept. of Environmental Conservation
WANG, Luke	Hazen and Sawyer
ZIGON-RICHARDSON, Valerie	DRBC
ZIMMERMAN, Jeff	FU DR et al.