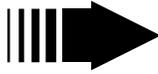




DEEP CREEK DISPATCH



Spring 2019

Newsletter of the
Property Owners' Association
of Deep Creek Lake, Inc.

FELLOW PROPERTY OWNERS – YOUR BOARD OF DIRECTORS HAS DETERMINED THAT THIS ISSUE OF THE DISPATCH SHOULD HAVE A SPECIAL FOCUS ON ONE OF THE MOST TIME CRITICAL ISSUES FOR THE LAKE COMMUNITY IN 2019 WHICH IS THE RENEWAL OF THE DCL WATER APPROPRIATIONS PERMIT. IN LIGHT OF THE IMPORTANCE OF THIS ISSUE, WE ARE MAILING COPIES OF THIS DISPATCH TO ALL PROPERTY OWNERS IN THE WATERSHED.

WE WILL RETURN TO NORMAL DISPATCH FORMAT WITH THE SUMMER EDITION.



The President's Message

Folks,

This edition of the Dispatch is a variation on our usual content and format as we have focused, for the most part, on the upcoming renewal of the Water Appropriation Permit (WAP), which governs how much water can be withdrawn from the lake for a variety of purposes. The WAP is renewed every 12 years by the Maryland Department of Environment (MDE); a renewal will take place this year. What matters to the POA and our members is that the WAP is fair and equitable for all DCL stakeholders who use or depend on the water in the lake. Your POA has been working with both MDE and the dam operator, Brookfield Renewable, to formulate the next iteration of the WAP. Following are some of the key issues that your POA has been advocating for:

- Recognition in the WAP that recreational boating and swimming are recognized uses of DCL;
- The use of a "Predictive Tool" that will allow Brookfield to anticipate possible violations of the Lower Rule Band (LRB) which sets the lower limit to which the lake may be drawn down;
- The development and adoption of a "Operations

Management Plan" for managing the water levels in DCL.

There are three articles in this Dispatch edition which will give you a good understanding of the WAP and attendant processes. One is an introductory article "For Dummies"; another gives an overview of the WAP and its implementation and a third offers more technical insights to water level management and the WAP. Also, there is a "time-line" which shows the planned steps and related dates, for the issuance of the renewed WAP.

As we move from Spring into the Summer season at DCL, I encourage everyone to stop and think about boating and swimming safety. There are numerous publications about safety that I suggest everyone take some time to review.

Have a great Spring!

Paul W. Weiler

President, POA

Editor's Note

By Grant Callery

Dispatch readers – as noted above we are dedicating a significant portion of this edition of the Dispatch to a single issue – the renewal of the DCL water appropriations permit. As you have seen from my prior notes I am new to the job of Editor of the Dispatch and relatively new to the POA Board.

As the newbie, I am a bit less familiar with “lake issues” than many of my colleagues on the Board and it is a little easier to me to put myself in the imaginary shoes of many lake area homeowners and to say –

WHAT THE HECK IS A WATER APPROPRIATION – WHY IS THERE A PERMIT AND MOST IMPORTANTLY – WHY SHOULD I CARE??

Simple Overview

- DCL was created in the 1920's and owned by Pennsylvania Electric as a hydro electric generator
- Since 2000 the lake and the land under it have been owned by the State of Maryland
- The water use rights are now governed by a

permit issued by the State to the dam operator (currently Brookfield Renewable Power) which is up for renewal this year

- There are four principal, and sometimes competing, stakeholders in the water releases through the DCL dam. These are:

- o Hydroelectric generation
- o Whitewater recreation
- o Fishery maintenance
- o Lake recreational activities

- The Water Appropriation Permit defines the Upper (URB) and Lower Rule Bands (LRB) within which Brookfield Power must endeavor to maintain lake levels.

- The following articles are intended to educate the POA membership about the substance and process for the permit renewal.

- **THE REASON THIS ISSUE IS IMPORTANT TO US AS LAKE AREA PROPERTY OWNERS IS THAT ENSURING THE PROPER BALANCE AMONG THESE STAKEHOLDER INTERESTS CAN IMPACT OUR ABILITY TO FULLY ENJOY THE RECREATIONAL ACTIVITIES THAT BROUGHT US TO DCL.**



Roger W. Titus



Former POA President and Board Member Roger Titus passed away on Sunday, March 3, 2019 from complications of liposarcoma. Roger was a lake property owner in Thousand Acres since 1976,

was active in the Deer Creek Yacht Club at Turkey Neck and was instrumental in bringing Laser Class sailboat racing to DCL.

Roger is survived by Catherine, his beloved wife of 57 years. He was the devoted father of Paula (Felix) Laboy, Richard (Marlene), and Mark (Roz Waldman); loving grandfather to Benjamin and Grace Laboy and Emily and Andrew Titus; and dear brother of Donald (Kay) and Elaine Jones (Robert). He is also survived by numerous brothers and sisters in law, nieces and nephews, and many other loving relatives and cherished friends.

Born on December 16, 1941 in Washington, DC to George and Margaret Titus, nine

days after Pearl Harbor, Judge Titus grew up in Chevy Chase and graduated from Bethesda-Chevy Chase High School with the class of 1959. He earned his undergraduate degree from Johns Hopkins University Class of 1963 and his Juris Doctor from Georgetown University Law Center in 1966. He practiced law for 37 years in Rockville, first with his own firm (Titus & Glasgow) and then as a partner with Venable. In 2003 he was confirmed as a judge on the United States District Court for the Southern Division of Maryland. At the time of his death, he remained an active participant on the Court as a senior status judge. Roger was widely regarded as a man of integrity and honor, and he will be sorely missed and fondly remembered.

In lieu of flowers, gifts in memory of Roger Titus may be made to support Dr. Christian Meyer's sarcoma research at the Johns Hopkins Kimmel Cancer Center (please make checks payable to Johns Hopkins University, mailed with a memo indicating designation and that this gift is in memory of Roger Titus to the Johns Hopkins Kimmel Cancer Center, PO Box 17029 Baltimore, MD 21297-1029); or to the Maryland Bar Foundation, 520 W. Fayette Street Baltimore MD 21201.



Renewal of the DCL Water Appropriations Permit- POA Engagement

By John Quilty

Beginning in 1994, the Maryland Department of Environment (MDE) has issued a series of “water appropriations” permits to the dam operator, currently Brookfield Power LLC. The current permit (https://mde.maryland.gov/programs/Water/water_supply/Pages/DeepCreekLakeRenewalProcessFor09.aspx) became effective on June 1, 2011 and was to expire on April 1 of this year, but has been extended as the renewal process continues.

We all have a significant stake in this matter---the permit controls the level of water in the lake as the boating season progresses, as well as the releases from the lake for specified purposes. The POA has been working on your behalf---providing recommendations and proposals designed to assure the best possible outcome for lake recreational boaters. Minimizing late season dock access issues is the key objective. Although “the jury is still out” on MDE’s response to our inputs, this article attempts to summarize our concerns, our recommendations and proposals, and the current state of play.

The MDE permit renewal process---MDE announced, last December, that they would hold a series of 3 stakeholder meetings to collect stakeholder input, discuss issues/concerns, and achieve consensus on proposed permit changes wherever possible. The meetings were held on February 28th, March 28th, and April 25th. Invited participants included a number of whitewater recreation and fishing community representatives, the DNR Policy and Review Board (PRB), the Deep Creek Watershed Foundation (DCWF), your POA and the Friends of Deep Creek Lake (FODCL).

Your POA representatives participated actively in these meetings and, before the first, sent a letter to MDE Secretary Grumbles expressing our

concerns and recommendations from a lake recreational boating perspective---while recognizing the legitimate interests of other stakeholders. Further, MDE-led stakeholder meeting discussions generated the opportunity for us to provide follow-up input on approaches to avoiding late season LRB “breaches” and proposed changes/additions to permit language.

The sections which follow summarize our concerns, our inputs to the process, and the current status. We note, with appreciation, that MDE has conducted well-structured meetings, fostered constructive dialogue, and provided the opportunity for constructive input from all stakeholders.

Reminder; permit provisions and the inherent competition for water-- With respect to controlling lake water levels, the permit defines an “operating range” by specifying targeted maximum and minimum lake levels for each month. These levels are known as the upper and lower “rule bands” (URB and LRB) and are separated by 2’ in elevation from July through October. The specified releases cover the following uses: “hydroelectric generation, temperature enhancement [maximum temperature for fish health], whitewater boating enhancement, and maintenance of minimum flows in the Youghiogheny River.” The inherent competition for the available lake water can become an issue as water levels decline in the August through October timeframe, particularly in “dry” years.

POA concerns---As indicated above, POA concerns relate to late-season water levels which can deny dock access to a significant number of recreational boaters, particularly during “dry” seasons. An analysis of bathymetry data provided by DNR shows that roughly 200, increasing to 350, docks will experience access problems even at the

late-season LRB levels. The current LRB is, then, already a compromise from the viewpoint of recreational boaters. Further, the current permit allows the LRB to be “breached” by up to 1’ in order to preserve selected whitewater and protocol-driven “temperature enhancement” releases. Finally, the permit does not explicitly recognize support of lake recreational boating as an important objective.

POA recommendations and proposals--- Three recommendations constitute the core of our inputs to MDE. They are:

- Add permit language to explicitly recognize lake recreational boating as an important objective—As suggested above, specific language to accomplish this has been proposed.

- Include a permit requirement for the operator to adopt and apply predictive tools and methodology to better and more equitably manage the lake’s water in support of the various “uses” and stakeholders
 - o This is viewed as key both to anticipating and responding to issues in “dry” years (e.g., a “breach” of the LRB), and to projecting opportunities in “wet” years (e.g., providing previously unscheduled whitewater releases).

- o Specific language has been proposed to accomplish this as well.

- o In support of this fundamental concept, the DCWF contracted with an independent engineering firm to develop the Water Budget Model (WBM), a tool with demonstrated predictive capability. This tool, its potential application, and Brookfield’s plans to refine and utilize it as part of the existing operator’s tool suite are discussed in the companion article which follows.

- Apply this predictive capability—along with specific operating procedures and protocols---to specifically protect the LRB against predictable and therefore avoidable breaches.

- o Although “wet” years have been dominant during the life of the current permit, “dry” years will of course occur, with resulting LRB breaches having potentially serious impact on dock access.

- o Responding to an invitation from MDE, we have offered 2 “protocol” options for taking corrective

action when a relatively near-in LRB breach is predicted. Both would leverage predictive capability to identify “triggers” for taking corrective action (e.g. 15 then 5-day projections of an impending breach). Corrective actions, as we outlined, would involve either (1) temporarily transitioning to a Temperature Enhancement Release (TER) which uses less water (a “conservation” TER) or (2) temporarily suspending weekday, lower priority whitewater releases. Such “contingency operations” would typically terminate---with a return to normal operations—once rain relief has arrived.

- o Protocol option specifics are not typically included in the permit itself. Our further engagement on this recommendation will involve further discussions with MDE and Brookfield. Additionally, and importantly, we will be participating in and attempting to shape the deliberations of a “TER working group”, an initiative we’ve helped to instigate. The group will hopefully be chartered by MDE to broadly address options including the “conservation” TER concept (saving water while still providing effective temperature control).

Impact on other stakeholders---Achieving balance among stakeholder interests is of course a central MDE objective. We think we’ve been mindful and sensitive in this regard and, more specifically, have included our best assessment of impacts when forwarding both our protocol ideas and our language proposals. We’ve laid out considerations ranging from the low “statistical” incidence of “dry” years to the likely short duration of any “contingency” operations. We have also noted that the “dual use” design of current TER’s---offering whitewater recreation opportunities while controlling river temperature---can compensate for the temporary suspension of weekday whitewater releases. Our bottom lines: no impact on fishing community temperature control objectives and minimal impact on whitewater boating opportunities. It is worth noting that the referenced impacts are likely to occur once every five years.

Looking forward ---As of this writing, both further protocol discussions with MDE/Brook-

field---and MDE responses to our permit language proposals-- are pending. However, some level of resolution can be expected as MDE releases a planned late June draft of the proposed new permit and remaining comments/concerns are addressed. Further, there may be some further exploration and negotiation over the summer as the TER working group convenes and a probable public hearing is contemplated (by the end of September). MDE's

schedule calls for issuance of a new permit by 31 December.

So, we are engaged in a continuing process. We are "cautiously optimistic" that at least some of our recommendations and proposals will be adopted. MDE has been receptive, but there is a natural reluctance to make substantive changes to the permit or the underlying protocols. We'll see. And, we will keep you posted.

A "Deeper Dive" – The Technical Aspects

By: Morgan France

The permit renewal process only happens every twelve years, unless the operator of the power plant changes. Your POA is representing the property owners and is working with MDE and the dam operator, Brookfield Renewable, to assure the best possible terms in the new Water Appropriation Permit. We will be the most successful in this if we can show that our proposed changes will benefit all of the stakeholders. It is not important how much water Brookfield releases from the lake or when as long as the lower rule band is not violated. We have recommended to MDE that a management plan to assure that this happens is implemented. No changes to the Rule Bands are recommended.

PROPOSED PERMIT REVISIONS-

1. Incorporate the Water Budget Model (WBM), or Brookfield equivalent, to predict remaining storage above the Lower Rule Band (LRB) in terms of days remaining above the LRB before water levels go below. The WBM, a model developed under contract by the Deep Creek Watershed Foundation, is a spreadsheet that subtracts the remaining permit mandated releases from the amount of water in storage above the LRB. The User Interface part of the WBM inputs the date and the pool elevation. The output is the number of days remaining before a LRB breach. If Brookfield uses the WBM, or an equivalent predictive tool, on a daily basis we will have an excellent management tool. Further, if

Brookfield were to post the daily data and the days remaining on the Brookfield website, the process would be very transparent.

2. Incorporate a two stage Temperature Enhancement Release (TER) protocol by DNR Fisheries. TER releases are not subject to the LRB. Fisheries would make the First Stage to be the same as the current protocol. Fisheries would make the Second Stage to be different from the first in that it is not a dual-purpose release. Fisheries would design the Second Stage release to protect the fishing resource in the river. The Second Stage release would occur when the predictive tool indicates less than five days to LRB violation. The TER releases are not subject to the LRB. The TER Protocol is not contained in the permit, but the requirement and the conditions for a protocol are.

3. Brookfield could make white water releases in addition to the scheduled releases in advance using the WBM or equivalent predictive tool. If the predictive tool indicates that there are fifteen days or more remaining in the pool, Brookfield could announce a release five days in advance. If the next day's evaluation of the remaining water shows an increase an additional recreational release would be warranted for a day later than the first, and so on. In the event that the predictive tool shows less than five days remaining in the pool scheduled recreational releases will be limited to two-hour releases, with no releases below the LRB.

JUSTIFICATION

In July of 2012 there were 23 TER releases and 3 recreational releases. Wicket gate losses and bypass flows are minor, but total about 35 acre-feet per day. The 23 TER releases plus minor used 107.6 Ac-Ft plus 35.8 Ac-Ft, or 143.4 each, times 23 = 3,298.2 acre feet. The 3 recreational releases used 161.5 Ac-Ft plus 35.8 Ac-Ft, or 197.3 Ac-Ft times 3 = 591.9 Ac-ft. For a total of 3890.1 Ac-Ft drained during that month. Between elevation 2462 and 2455 the area of the lake is about 3900 acres. Conveniently that means a drop of about a foot, which is the same as the rule band drop. In 2012 July the starting elevation was 2460, right at the LRB. At the end of July, the lake elevation was 2459, or at the LRB. Technobabble aside, the lake elevation was below the LRB for many days that July, but even in that dry year the recharge was equal to the usage.

FISHERIES REQUEST FOR TER EXTENTION INTO SEPTEMBER

Fisheries have requested that MDE extend the TER protocol to 15 September. A two hour TER is equal to 143.4 Ac-Ft per day, or 0.037 feet per day, assuming the lake area is 3900 acres. The drop would be over six- and one-half inches drop in the first two weeks of September. Presumably it would only happen in a hot dry summer when maintaining the LRB would already be a challenge. With the LRB at 2457 at the beginning of September and 267 docks impacted at that level and 335 docks impacted at 2456 the results would be very detrimental for the lake stakeholders. The POA is recommending that MDE not honor this request.

If the predictive tool and Brookfield's management plan are working correctly there should be adequate water in storage to avoid a temperature spike that would be detrimental to the fisheries without compromising the LRB during September.

Water Permit Timeline

- 21 June - draft permit from MDE
- By 30 September - public hearing (if requested?)
- By 31 December - new permit issued

The POA and the Policy and Review Board

By: Robert Hoffman, Immediate Past President POA

When the state of Maryland purchased Deep Creek Lake in roughly the year 2000 time-frame, our local representatives to the State Senate and House of Delegates wanted to insure there would be some local input into decisions regarding matters of the lake. They created in law the Deep Creek Lake Policy and Review Board. A variety of designated seats on the board were determined but one of those was for the President of the Property Owners' Association of Deep Creek Lake (POA) or the president's designee. There is also a nonvoting ex officio member who is the Secretary of DNR or the Secretary's designee. The PRB is charged with the responsibility to offer advice regarding DCL matters that fall within the responsibility of the DNR Secretary.

After serving on the PRB for some time on behalf of the POA, I realized that some matters that came up to the board involved the Maryland Department of the Environment (MDE) but the PRB did not have the responsibility in law to refer matters to the Secretary of MDE nor was there a representative on the board representing MDE.

In December of 2017, I attended the pre-legislative meeting held each year by Senator George

Edwards and Delegate Wendell Beitzel to receive input from local citizens regarding legislative matters. On behalf of the POA, I spoke publicly to our representatives and explained the situation described above and suggested this be remedied by creating a seat for an MDE representative on the PRB. Both agreed this would be helpful in providing more comprehensive management of the lake and related matters through the PRB so they introduced legislation in the 2018 legislative session to that effect. The Senate and House of Delegates both approved the respective bills and the Secretary of the Environment (or designee) was added to the nonvoting ex officio members of the PRB effective July 1, 2018. In addition, language was added that the PRB could advise the Secretary of MDE on appropriate matters regarding DCL that fell within the Secretary's responsibilities. Governor Hogan signed the bill into law on April 24, 2018.

This is but another example of the efforts undertaken by your POA over time to insure for the best possible management of DCL by our state agencies.

From the Editor

By Grant Callery

The following is a listing of boating safety classes being offered at Garrett College this summer. All persons born after 1972 are required to have successfully completed this course to operate a boat on DCL. Also included is an update on Hydrilla treatment for the Summer season.



**MARYLAND
BASIC BOATING CLASSES 2019**

Join an interactive & dynamic one-day class to learn the basics of safe boating. The State of Maryland requires this course for new boaters and it's a great review for parents and grandparents of younger boaters.

WHEN: 8:30 a.m.-5:00 p.m. (Choose one date only)

April 27 – Saturday
May 18 – Saturday
June 8 – Saturday
July 13 - Saturday
Aug 8 – Thursday (NEW weekday class)

Continuing Education/Building 100 @ Garrett College, McHenry MD

\$29- Garrett County Residents
\$39 - Out of State Residents

\$34 - Other Maryland Residents
\$19 - MD Senior Citizens over 60

Class size limited - Call early to register.

Course is open to those 12 years of age and over.

Registration deadline- 3:00 p.m. Thursday, the week before class.

You will be mailed a book to study and need to complete 'homework' before you come to class.

No refunds after the registration deadline unless the class is canceled.

**PRE-REGISTRATION REQUIRED
CALL 301 387-3069**

Deep Creek Lake Natural Resources Management Area

Hydrilla Control Program Will Continue in 2019

In 2013, Maryland Department of Natural Resource biologists discovered hydrilla – a fast growing invasive weed that can negatively impact recreational opportunities in the southern portion of Deep Creek Lake. The department convened a nationwide expert panel to evaluate all potential hydrilla control strategies and implemented a multi-year herbicide program. Since 2014, the department has been treating the lake-bottom where hydrilla has been found with small amounts of herbicide each year to exhaust all of the tubers (reproductive structures that generate new plants). The treatment program has been successful since its inception in 2014 and is planned to continue during the summer

of 2019.

The 2019 planned herbicide treatment dates are as follows:

- o June 3 – 1st hydrilla treatment
- o June 25 – 2nd hydrilla treatment
- o July 16 – 3rd hydrilla treatment
- o August 13 – 4th hydrilla treatment

Treatments are usually conducted on Tuesdays, however the first treatment is scheduled for Monday June 3, 2019. These dates are subject to change due to weather conditions. The Department encourages lake residents to [sign up for email updates](#). For questions about the Hydrilla Control Program, please contact Mark Lewandowski at Mark.Lewandowski@maryland.gov.

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