

ROSELAND TO SUSQUEHANNA OVERLAND TRANSMISSION PROJECT

10/6/11

Delaware Water Gap and Appalachian Scenic Trail

The people of the United States, acting through Congress, designated a large and contiguous tract of land centered on the middle Delaware River in New Jersey and Pennsylvania as the Delaware Water Gap National Recreation Area (NRA). The lands at the time of designation were largely in private ownership with a considerable tract owned by the State of New Jersey.

Congress at first selected the area for protection to secure an area for a large dam at Tocks Island to be built by the U.S. Army Corps of Engineers. The Corps acquired much of the needed lands, some tracts with the consent of the private owners, and others without the consent of the seller, i.e. by eminent domain. The dam proposal engendered much controversy because the Delaware remained as the last free-flowing major river in the northeastern United States. Ultimately, Congress de-authorized the dam. The government had acquired and assembled the land to be the site of the dam and reservoir.

The middle valley of the Delaware River is an extraordinary place. The Delaware River is the last remaining major river on the East Coast that remains free-flowing for the entirety of its length. The valley lies to the west of the largest metropolitan area, in terms of population, in North America. The Delaware Water Gap NRA encompasses nearly 67,000 acres. Nearly all the lands are in Federal or State ownership for preservation purposes. These lands and waters afford a wide array of recreational opportunities that include hunting, canoeing, fishing, hiking and sightseeing.

The lands encompass a striking geologic formation where the front range of the Appalachian Mountain chain is breached by the Delaware River – the “Delaware Water Gap.” The long and high ridge that forms that mountain front is significant in the natural and human history of America. It is a scenic treasure of national scale.

The NRA encapsulates a small section of the vast ridge and valley topography of the Appalachian Front, one of only two areas of the national park system (along with Shenandoah National Park, Virginia) that represents this geologic feature. The NRA then moves across the Delaware River to include fringes of the Pocono Plateau, an area known in the 18th Century for its remote and silent forests, bogs, ponds, and relict, unusual vegetative communities. Though close to areas of dense human development and settlement, the Pocono Plateau was largely bypassed and thinly populated until the mid-20th Century. Settlement and development associated with coal mining lies to its west in the Wyoming and Lackawanna Valleys.

The NRA is a reserve of national significance both because of its size and its location in the long-settled portions of America. Since 1965, development on both sides of the NRA – New Jersey Highland fringes and the Pocono Plateau - has accelerated. Unless

safeguards are developed, the large tract of land in the NRA could be isolated and surrounded over the course of the 21st Century and its biologic and scenic values stunted.

The Appalachian Scenic Trail (AST) also presents a unique setting. The iconic trail from Maine to Georgia is more than a footpath alone. It links a nation from its North Woods to its Southern Hardwood Forests. This link is held in common and represents the Appalachian front that presented a formidable rampart to settlement that confronted the burgeoning population of the eastern coast. Searching for “gaps” in that rampart provided avenues of the first westward wave of “Manifest Destiny.” The Wilderness Road in the Cumberland Gap of Virginia, Tennessee and Kentucky is of such significance that it is preserved in the national park system as an individual unit.

When Congress designated the AST, many miles were located on lands under state control, in parks and forests. Other miles traversed national forests, acquired in the eastern United States, under the Weeks Act of 1911. Still other trail segments cross national parks established in the 1930’s when the national park system began the “move East.” These parks are Shenandoah and Great Smoky Mountains. The AST also crosses the lands of Delaware Water Gap NRA.

The Law’s Protective Mandate

Congress established the Delaware Water Gap National Recreation Area in Pennsylvania and New Jersey on September 1, 1965. The Recreation Area was originally intended to include and surround a dam and reservoir at Tocks Island. The purpose of the new park was to provide for public outdoor recreation use and enjoyment not only of the reservoir but also of scenic, scientific and historic features. (Public Law 89-158; 16 U.S.C. 460o *et seq.*) Although subsequent action by Congress de-authorized the Tocks Island Dam, the recreation area and its fundamental mission endured.

The NPS administers Delaware Water Gap NRA in conformity with the purpose prescribed by the 1965 enabling act, and, in addition, to the extent there is no conflict, with the fundamental purpose of all areas of the national park system. The Act of August 25, 1916 created a National Park Service and prescribed that “the fundamental purpose of said parks, monuments, and reservations...is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”

One principle is clear – the NPS is charged with conserving the scenery and associated values of the Delaware Water Gap NRA. The law requires that the NPS preserve such values “unimpaired” for present and future generations.

The proposed transmission line project would also affect the Appalachian National Scenic Trail (NST). Established in 1968 to include 2,175 miles of trail from Maine to Georgia on the Appalachian crest, the NST acreage (over 200,000) would constitute one of the largest parks in the East. Because of its long and linear configuration, the NST is

subject to many of the same issues as the NRA but within a much longer and complicated arena.

Congress directed the NPS to acquire the lands needed to protect the trail, where that trail crosses non-governmental lands. This has been a decades-old assignment. The NPS has acquired over 200,000 acres towards the goal of forging an unbroken trail. The task is not yet complete. In addition, the NPS seeks to shield the vistas and grand views that are the signature of hiking “the Trail.”

In some ways the threats of development to these values are greater for the AST than for the NRA. The sheer number of miles, the narrowness of the corridor – both magnify the potential injuries to the scenic values the Trail affords.

The AST and NRA share in common that scenic values are integral to both. In addition, because of the location of the NRA and the AST in the heavily populated eastern United States, both areas may influence economic activities and commerce that are essential to national well-being, as well as be influenced by them. Long before there were protected park areas at the Delaware Water Gap and astride the Appalachian crest, people have constructed trails, railroads, roads, utility lines and communication facilities to serve commerce. The nation could not function if the NRA and, especially the AST, were so protected that they precluded the arteries of that commerce. Coal mined in the Appalachian Plateau could not make it to port. Power generated in the Ohio Valley could not be transmitted east.

For this reason, Congress authorized the NPS to issue right-of-way for, among other things, electric utility lines through the NRA and the AST. The critical location of the NRA and the AST to the economic life of the nation is part of their physical setting.

The NPS Decision at Delaware Water Gap NRA and AST

In the absence of the Delaware Water Gap NRA, suburbanization and development would long ago have displaced the scenic, natural and historic values within what is now the NRA, and many of its recreational opportunities. The people of the United States have placed the Delaware Water Gap NRA among the assembly of the most valued places in the American landscape.

The values of the NRA also exist in a real world. Private citizens possess tracts of land within the NRA. Companies, such as Pennsylvania Power and Light, possess rights-of-way that transmit the energy of the nation from generators to consumers. The NRA now lies amidst a geographic area that is increasingly developed. Adjacent counties whose population numbers were stable or slow to rise for decades have undergone rapid growth over the previous three of those decades. These factors may put at risk the long-term viability of the natural, historic, scenic and recreational values of the NRA. The public review process for Roseland-Susquehanna Overland Transmission Project must seek to assure the preservation of the NRA’s values far into the future.

The classic manufactured landscape in the United States is Central Park in Manhattan. Delaware Water Gap NRA is only 80 miles away in a straight line. Yet it is a world away. Though settled and occupied, cleared, grazed and farmed for over three hundred years, the lands within, and to a lesser extent, outside of the NRA, still maintain a complement of healthy and functioning natural systems. Forests grow untended by human hand, wildlife species still dwell in and migrate through its recesses. Those who seek it find solitude in its woods, or on the river. They, and others, may find solace in its vistas, still untrammelled by structures of whatever sort. Transmission lines for electric power intrude on such vistas and are rarely regarded as beautiful.

The NPS decision must ensure the long term survival of its qualities, even as the requirements for living space, commerce and utilities progress. As a nation, America has led the way in recognizing that a people's life and prosperity is advanced by conserving its natural and cultural heritage. In past centuries, it was conceivable to set aside vast tracts of public lands in the West, such as Yellowstone in 1872, or acquire sizable chunks of real estate in the East, like Delaware Water Gap in 1965, and assure their protection. This approach, while essential to conserve the patrimony of the people of the United States, is no longer sufficient.

Delaware Water Gap and the Appalachian Trail are not like Central Park, and must never be impaired. The Organic Act of 1916 commands that the National Park Service conserve for "future generations."

The Power Line Proposal

PPL Electric Utilities of Allentown, Pennsylvania (PPL) and Public Service Electric and Gas Company of Newark, New Jersey (PSE&G) seek the use of federal lands acquired and set aside for preservation and public enjoyment. The Roseland to Susquehanna Overland Transmission Project will bring power from PPL generating facilities at Berwick, Pennsylvania across the Delaware River and the NRA to northern New Jersey. The power line will be strung on 200 foot-tall towers that will permanently impair the scenic values of one of the most beautiful areas in the crowded Northeastern Corridor of the United States.

Such use intrinsically impacts the scenic and recreational values for which the park lands have been set aside. At a certain level, that impact may impair the resources of Delaware Water Gap NRA and the AST. ***If the NPS were to make an impairment determination, the NPS must, by law, regulation and policy, deny the request.*** No amount of "smoke and mirrors" is sufficient to mitigate such impairment. In short, granting project proponent requests is wholly discretionary by the NPS. The general exception may be where the proponent may already possess a property interest, such as a right-of-way, within which the proposed project would fit.

PPL and PSE&G have, understandably, sought to gain approval from NPS officials of the power line route that the companies seek. Towards that end, company representatives and lobbyists have met repeatedly with Secretary Salazar, his deputies former Assistant Secretary Strickland, Deputy Secretary Hayes, NPS Director Jarvis and former Deputy

Director Wenk. PEER is attempting to obtain a list of the meeting dates during 2009-11, which would be a first step toward establishing the degree of project proponent's attempt to influence the decision-making process.

There is nothing criminal or improper about meetings by themselves. However, what is suspect is the degree to which high level officials of the DOI and NPS have countermanded and overruled local park managers in manipulating the NEPA review process to reach the outcome demanded by PPL and PSE&G.

For at least three years, the NPS has been developing an environmental impact statement (EIS) to consider the PPL/PSE&G proposal, following the National Environmental Policy Act (NEPA) and NEPA rules, adopted by the Council on Environmental Quality. The draft EIS is expected to be announced for public comment before the end of 2011.

But in the last ninety days, under relentless pressure from the companies and their lobbyists, the Department has short-circuited the NEPA processes. NPS Director Jarvis has ordered that the draft EIS include at least one alternative (#2B) demanded by the companies that is untenable from a safety perspective. He also ordered that the draft NOT consider at least two other alternatives that were reasonable and would lessen impacts to the park's scenery (#6 and 7). The reason behind these orders is that the companies do not want the NEPA process slowed down by consideration of the other alternatives.

More damaging is that the Secretary and the Director have reportedly unofficially committed to the companies that the NPS will select Alternative 2, the alternative demanded by the companies. It is one thing to select an alternative AFTER the conclusion of the NEPA process, but is something else to decide on the alternative BEFORE the process is even announced to the public for comment. Even worse than this procedural violation, the alternative the Secretary and Director have already decided upon, Alternative 2, is one of the worst for the resources and scenery of the parks. To be sure, they have exacted a price from the companies – a reported \$60 million for land acquisition and administration inside and within the vicinity of the NRA in exchange for giving the companies the corridor they want.

Alternative 2 is among the worst of the alternatives insofar as impact on the scenery of the parks. Yet, the Interior Department decisions culminated in the late summer of 2011 with verbal assurances to adopt the companies' alternative by Secretary Salazar and Director Jarvis themselves in a meeting with company officials this past summer.

Unfortunately and despite the clear mandates of the law, these top officials are paving a path so that the Roseland to Susquehanna Overland Transmission Project will impair the core values of Delaware Water Gap and the Appalachian Trail.

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