

Fight over dredging continues

Riverkeeper appeals Delaware River deepening decision

By Leah Hoenen

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Five environmental groups from Delaware and New Jersey have appealed federal court rulings in those two states allowing the Philadelphia District U.S. Army Corps of Engineers to proceed with a project to deepen the Delaware River shipping channel. The move comes days after the Delaware Riverkeeper Network highlighted a Delaware report criticizing corps plans to replenish beaches.

Delaware District Court Judge Sue Robinson handed down a ruling last November and New Jersey District Court Judge Joel Pisano issued a ruling Jan. 13, 2011. Both judges said the dredging project, which both states and several environmental organizations sued to stop, does not violate state or federal law and should therefore be allowed to proceed.

Appellants disagree and say the project violates the Clean Water Act, National Environmental Policy Act, Coastal Zone Management Act and Delaware laws.

“The Army Corps has played fast and loose with the law for a project that many other branches of government have questioned and challenged. Stripping states of their legal rights and placing a federal agency above the law betrays the trust and obligations promised by our country to its citizens,” said Maya van Rossum, head of the Delaware Riverkeeper Network.

She said the appeal is about the precedent being set by the Delaware River project.

Jane Nogaki, vice chairwoman of the New Jersey Environmental Federation, said, “The Army Corps must be held to the same standard as any private or public entity, and we are confident that when the full weight of evidence is heard by the judge, that a ruling will go in our favor to protect the precious

Broadkill Beach and Kelly Island project

Anthony DePasquale, chief of the Operations Division of the U.S. Army Corps of Engineers Philadelphia District, said dredged material from the Delaware River main channel deepening will be deposited on Kelly Island and Broadkill Beach in two distinct projects.

DePasquale said in the original Delaware River channel deepening plan, the corps proposed to stockpile dredged material along the river, but fishermen opposed that plan, and Delaware environmental officials wanted the corps to reuse the dredged material in an environmentally beneficial project.

DePasquale said Kelly Island’s shoreline is eroding rapidly. The corps plans to restore 60 acres of tidal marsh lost to erosion, add one mile of shoreline protection and a mile of horseshoe crab habitat that has washed away.

“They are still there,” he said, of horseshoe crabs. “But, it’s not the best place for them.”

Broadkill Beach, on the other hand, will be a beach nourishment project. DePasquale said the state and federal governments are splitting the cost of building a dune and beach there, and by using dredge material from the deepening project, the first phase will be free for Delaware.

“The sole intent is not to create a horseshoe crab habitat. There will be a beach there and the horseshoe crabs will use it,” DePasquale said.

He said there is strong backing from the Broadkill Beach community for beach nourishment.

resources of the Delaware River.”

The National Wildlife Federation calls the project disastrous.

Jane Davenport, senior attorney for the Delaware Riverkeeper Network, said the federal court judges took the corps’ assertions at face value without delving deeper into its analyses and assumptions.

Report criticizes corps’ science

The Delaware Riverkeeper Network recently released a report prepared by the Department of Natural Resources and Environmental Control (DNREC) and the University of Delaware, which was a public document, but DNREC did not publicize its release.

The technical report says tests used by the U.S. Army Corps of Engineers were done with improper sampling methods and that using dredge spoils from the controversial Delaware River

Deepening Project may be detrimental, not beneficial, to horseshoe crab spawning beaches on Kelly Island and Broadkill Beach.

Van Rossum said, “This is important new information that shows the continuing deception of the Army Corps.

“It demonstrates the corps’ claims of the benefits from this project are false and the counter is true.”

The corps says sediment it plans to dig up from the shipping channel of the Delaware River will enhance spawning sites.

But the DNREC report says the sand in the dredge material does not match the texture of sand that’s already on the beach. “The discrepancy between grain sizes means that the requirements set by the ASMFC [Atlantic States Marine Fisheries Commission] Fishery Management Plan for Horseshoe Crab that placed sediment matches existing conditions would not be met,” the report reads.

Van Rossum says many people have put in many years of effort to protect horseshoe crabs. “Here we have a federal agency coming in and undoing all that good work,” she said.

Anything that harms horseshoe crabs harms the migratory shorebirds that depend on their eggs for survival, she said.

“Without the use of Kelly Island and Broadkill Beach, two fundamental elements of the Army Corps’ spoil disposal plan for the project fall away, and the corps’ project no longer is able to fulfill its own legal plans and obligations for moving the project forward,” van Rossum said.

She said the report emphasizes the need for the corps to complete a new environmental impact statement, instead of using a 13-year-old document. Army Corps spokesman Ed Voigt said beach nourishment has been part of the Delaware River Deepening Project plan since the mid-1990s.

“It’s gone through a whole number of tests, studies and monitoring indicating the project would be safe,” he said.

He said the corps tries to match grain sizes when doing any beach-nourishment project.

Anthony DePasquale, chief of the Operations Division of the Army Corps’ Philadelphia District, said the corps office got a copy of the DNREC report after the Riverkeeper’s release. “We haven’t had a chance to discuss this with DNREC, but we will, and we’ll work out the differences,” he said.

DePasquale said the corps has taken as many as 50 sediment samples from the river channel and is confident the sand will be beneficial to the beaches. He said the corps is confident in the quality of its data.

Van Rossum said Congress has not yet funded the dredging work.

She said the DNREC report should inform lawmakers as they decide whether to pay for the project.

Van Rossum said when environmentalists, Delaware and New Jersey were last in court over the deepening the judge allowed only Army Corps documents.

Van Rossum said she hopes the judge will allow new information, including this report, when the groups return to court.

DNREC did not comment on the report by press time