

DEEP CREEK DISPATCH

Fall, 1998

Newsletter of the
Property Owners' Association
of Deep Creek Lake, Incorporated

Lake Sale Update

On November 9, GPU Energy announced that it had signed agreements to sell the remainder of its generating assets, including the power generating facilities at Deep Creek Lake to Sithe Energies for \$1.72 billion. It is anticipated that the transaction will be concluded in the second half of 1999.

Sithe is an independent power producer, founded in 1984, which currently operates 28 power generating facilities in the United States and Canada. Sixteen are in the northeastern US, six in California, three in Idaho, and one each in Ontario Canada, Colorado, and North Carolina. The GPU transaction will make Sithe the largest independent power producer in the United States.

Sithe is a privately held company, 60% owned by Vivendi, France's largest services company, 29% owned by Maribeni Corporation, a major Japanese trading company, and 11% by local management.

Earlier this year, GPU Energy agreed to exclude its non-power generating assets at Deep Creek Lake from the auction sale process, thus the sale to Sithe does not include Deep Creek Lake, the buffer strip, or at this time, the dam.

In the meantime the state has transferred responsibility for negotiations for the acquisition of Deep Creek Lake from the Secretary of Natural Resources, John R. Griffin, to the Secretary of General Services, Eugene R. Lynch and Andrea Leahy-Fouchek, an attorney on the staff of Maryland Governor Parris Glendening.

In an announcement made by GPU and state officials in June, September 30 was set as a target date for completing the sale of Deep Creek Lake. On July 31, it was announced by the State that confidential negotiations were "progressing." However, the September 30 deadline came and went. Both parties announced that they were continuing with their discussions. It is believed that the parties are still far apart on valuation issues, and the very

real possibility exists that the State will be required to use its condemnation powers to conclude the transaction.

The next few months will be a critical time in the negotiations, and there will be many intricate details to be worked out as the GPU/ Sithe and GPU/State transactions move forward. Deep Creek Lake is currently operated under a water appropriation permit originally issued by the Department of Natural Resources, but which is now under the jurisdiction of the Maryland Department of the Environment. The permit applies to Deep Creek Lake as a whole, and it is unclear how the relationship between the parties will be established with a single permit covering two separate property owners.

In its announcement of the purchase, Sithe was quoted as stating that it intended to "develop additional capacity at selected GPU sites." It is not clear how this will be played out at Deep Creek lake. The Memorandum of Understanding between the State and GPU provides that GPU desires to discuss "unduly restrictive and burdensome" restrictions imposed on its operation of the hydro plant as a result of "rule band/operation protocols" that are a part of the conditions of the operating permit. These "rule bands" regulate the permitted variances in the level of the lake. To the extent that a greater latitude exists in the ability to raise and lower the lake level, a greater amount of power can be produced, but at the risk of a significant disruption to the recreational enjoyment of Deep Creek Lake.

With ownership likely to be resolved by the end of 1999, attention is being focused on management of the lake once it is publicly owned. Two different Garrett County groups are presently focused on this issue. First is the Deep Creek Lake Advisory and Review Committee, established by State law as an advisory body to the DNR. The second committee was created by the Garrett County Commissioners, and is known as the Garrett County Deep Creek Lake Advisory Committee. The State committee is

(Continued on page 2)

chaired by former POA President Ed King, and has had a number of meetings this fall to address management issues. The County Committee is chaired by retired Circuit Court Judge Fred A. Thayer. POA President Roger Titus was appointed to that committee to replace former President Gerald Polansky who died in July. While there are some differences between the positions of the two committees concerning the future management of the Lake, they are relatively minor. Both groups favor the creation of a lake management group having members that represent a broad spectrum of state and local interests, including the POA.

Under Maryland law, the State may not acquire Deep Creek Lake without securing the concurrence of the Board of Garrett County Commissioners. It is believed that the Commissioners will insist on the creation of a governing body consistent with the recommendations made by both committees.

Garrett County Elects New Commissioners; Delegate Edwards and Senator Hafer Reelected

Over half of Garrett County's registered voters went to the polls to choose three new county commissioners. Ernest J. Gregg returns to the position after an absence of eight years. He previously served three terms as commissioner from district one. In district three, Frederick Holliday, mayor of Grantsville, out-pollied incumbent Gary Fratz. Wendel Beitzel was the winner in district two. Beitzel has been county administrator of the Sanitary District.

George Edwards (R) was reelected delegate for district 1-A with 82% of the vote. State Senator John Hafer, faced a strong challenge in the Republican primary, but was unopposed in the final ballot.

Deep Creek Lake Property Owners' Association Elects New Board Members and Officers

At its membership meeting on August 22, the Property Owners' Association of Deep Creek Lake, Incorporated, re-elected four Directors and elected three new Directors.

The new Directors are Carol C. Perez, a resident of Beckman's Peninsula and Potomac, Maryland. Perez is an attorney with offices in Rockville, and is a past president of the Bar Association of Montgomery County. Perez replaces Alan Boyd, who resigned for health reasons.

Katheryn Gemberling, a resident of the Gleanings and Silver Spring, Maryland, was elected to a three-year term succeeding Gerald A. Polansky, who died on July 1.

Gemberling is currently Deputy Superintendent of Schools for Montgomery County.

W. Thomas Myers, Jr., was the third new Director elected at the August 22 membership meeting. Myers and his wife, Karen, reside on State Park Road. A native of Clarksburg, West Virginia, Myers is a graduate of Yale University with masters and doctorate degrees in wood chemistry, and engineering from Lawrence University in Wisconsin. Myers retired this year from Fort James Corporation after serving in a variety of executive leadership positions. Myers was elected to replace Tony Gnegy, who resigned.

Re-elected to three-year terms were Barbara Elster, Steven Jellinek, Helga Williamson, and Ted Rissell.

At a meeting of the Board of Directors immediately following the meeting of the membership, the Board of Directors elected officers for the forthcoming year. Steven Jellinek was re-elected as Treasurer, and Anne Horowitz was re-elected as Secretary. Ted Rissell was elected Vice President, and Roger W. Titus was elected President, to succeed the late Gerald A. Polansky.

Commenting on the election of the new members, Titus said, "I am extremely pleased that we have added three additional Directors of such high caliber and qualifications. I look forward to working with them in the years ahead, and believe that they bring added strength to our Board at a critical time in the future of Deep Creek Lake."

Gerry Polansky Honored by POA

At the general membership meeting, Roger Titus, POA vice president, and acting president following the untimely accidental death of President Gerald Polansky, presented the Polansky family, Betty, Anne, Barbara, and Tom with a bouquet of flowers and a memorial plaque honoring Gerry for his unstinting service to the POA and Garrett County.

DNR Answers Questions About Lake Purchase

The POA invited DNR Secretary John Griffin to attend the August membership meeting. Secretary Griffin was unable to attend, due to a medical emergency. In attendance for the DNR was Under Secretary Jim Dummmyer, who responded to these questions.

Judge Fred Thayer: Has there been a response from Secretary Griffin to the County's letter of August 18 regarding the status of negotiations? The letter indicates that the county wants to do whatever is appropriate to assure meaningful local input in lake management and

does not want the September 30 deadline to pass without having had some input into the process.

Jim Dunnmyer: The state will keep the commissioners abreast of developments as soon as it can report on these. It wants to get together with the commissioners at a meeting set for later in August. There has been a meeting, open to the public, and will be one on September 2, also open. But the State does not know if it will do anything with the commissioners by the September 30 date. The issue of lake control will likely be discussed at the governor's level. The process that has been set up with Paul Durham is for the purpose of working out the level of local control.

Peter Truboff: What can be done so that property owners can have stability of ownership between the front of their lands and the lake such that the current uncertainty regarding the buffer strip arrangement is eliminated? What is the state's position about buy-downs?

Jim Dunnmyer: One of the solutions discussed is the possible sale of the buffer strip to individual property owners. But this is not the current position of the state. Another, more likely outcome is state ownership of the buffer strip with dock permits to be issued at the current prices and property owners continuing to have the right to cross the state land to access their docks-- in effect no change in the status quo. The current thinking is to have the current Deep Creek Lake Advisory Committee, into which the POA has input, remain and act as the managing body of the facility.

Ed Neff: How is the revenue the county loses from GPU as a result of the lake sale going to be replaced?

Jim Dunnmyer: The current state position is that nothing will change as far as lake revenues (fees) are concerned. Any excess, above what it takes for lake management, at this time is being held as potentially being needed to debt service the lake purchase. No further decision has been made about that or the type of funds the state will use for the purchase.

David Moe: Is it the state's position that the 25% revenue refund to the county from state land revenues is not applicable to the states purchase of the lake and the revenues it generates?

Jim Dunnmyer: As the current agreement exists, the county does not have that revenue coming back to it from what GPU pays on the lake. How this later will be handled is a function of what you call "property." The state now plans to use the revenue from the lake for debt service on the sale, if necessary. It has not looked at anything else to date.

Gary Love: What will be the relationship between the price set for the lake and other conditions such as the water discharge permit?

Jim Dunnmyer: The power plant operator needs a permit from the state for water usage. But never has anyone paid for that right. At this point, there is no cost associated with the usage of water . . . The ongoing discussions regarding the terms of water use permit have not involved any changes in such things as water levels, volume flows, etc. If the permit is to be changed, it would involve public hearings.

Jack Elster: What is the time period the state now contemplates for county review of the sale documents?

Jim Dunnmyer: The individual public utility commissions will require plenty of time and public comment. It is anticipated that once price agreement is reached, that public process will begin, which will include the county. There is no time frame yet set beyond the 30 September date.

Mark Rothman: How would bond debt be retired if current lake revenues are insufficient for this purpose?

Jim Dunnmyer: The dock fees in excess of what is needed for lake management currently amounts to about \$200,000. At this stage, there is no plan to increase dock fees to raise additional funds. The decision as to how to handle the revenues that are excess to facility operation costs has not been made, and at this time the state will reserve that money if it is needed for debt service.

Stu Schwartz: What is your personal opinion of the probability of the state buying the lake?

Jim Dunnmyer: I believe there is 100 % probability that DCL will be in state ownership. The State does not want to condemn the property, but does want to make sure it is protected.

Jess Miller: Besides having the power of state condemnation, since the state owns the water, can they refuse to let it go through the power plant?

Jim Dunnmyer: That is a legal issue and the answer has to come from Jane Nishita, Secretary of the Department of Environment. That issue is in conversation with her office.

Ted Rissell: The MOU says that the parties will discuss changing the rule band. Would you comment on that?

Jim Dunnmyer: We believe that the MOU does not discuss changing the rule bands. The rule bands will not change. There was no rule band discussion in the talks with GPU on the water permit itself.

POA Membership

Current POA membership stands at 1133, just 17 short of our all time record of 1150 at the end of 1996. Your 1999 dues will be due after the first of the year. You will receive a billing with the winter issue of the Dispatch.

POA Board Members

Howard Bailie	301-387-6639	Ed King	301-387-5702
Mike Belmonte	301-387-6371	Tom Myers	301-387-9162
Roger Dandridge, PO Box 3002, Swanton, MD 21561		Carole Perez	301-340-3180
Barbara Elster	301-387-4093	Ted Rissell	301-387-6463
Katheryn Gemberling	301-384-2850	Mark Rothman	301-229-7992
Bob Heslin	410-557-9063	Jack Seelig	703-323-7076
Anne Horowitz	301-656-7204	Roger Titus	301-365-2930
Steve Jellinek	301-718-7231	Lindsley Williams	202-537-4884
Jonathan Kessler	301-387-6229	Helga Williamson	301-929-9099

Property Owners' Association of
Deep Creek Lake, Inc.
P. O. Box 816, McHenry, MD 21541

**DEEP
CREEK
DISPATCH** 

FIRST-CLASS MAIL
AUTO
U.S. POSTAGE
PAID
Terra Alta, WV
Permit No. 101