BEFORE THE

DELAWARE RIVER BASIN COMMISSION

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PUBLIC HEARING

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IN RE: PROPOSED RULEMAKING TO IMPLEMENT A FLEXIBLE FLOW MANAGEMENT PROGRAM FOR THE NEW YORK CITY DELAWARE BASIN RESERVOIRS

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BEFORE: HARRY W. OTTO, JOSEPH A. MIRI, and MARK KLOTZ, Alternates; and CAROL R. COLLIER, Executive Director

HEARING: Wednesday, January 16, 2008
3:10 p.m.

LOCATION: West Trenton
Volunteer Fire Company
40 West Upper Ferry Road
West Trenton, NJ 08628

Reporter: Sharon M. Marsh

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P R O C E E D I N G S

MS. COLLIER:

Good afternoon. If people can please take their seats. I am Carol Collier, Executive Director of the Delaware River Basin Commission, and will serve as Hearing Officer this afternoon.

I hereby open this afternoon's session of the public hearing on the Proposed Rulemaking to Implement a Flexible Flow Management Program, the FFMP, for the New York City Delaware Basin Reservoirs.

And I'd like to introduce the gentlemen on either side of me who are alternates to the Commissioners, to the Governors of their states, and serve on the DRBC.

To my left is Mark Klotz, representing New York. Next to my right is Joe Miri representing New Jersey, and Harry Otto from the State

of Delaware. We also have representatives from the State of Pennsylvania, Bill Gast in the front row, and from the Corps of Engineers, the agency that represents all federal agencies on the Commission. Hank Cooper is here for the Corps.

If you would like to speak for the record, you must fill out a comment card. And they are on the front desk and I think others here have them. If you've already pre-registered with the Commission Secretary, you do not need to fill out a comment card. Comments will be taken first from the federal, then state, then municipal elected officials or their appointed representatives, then from those who pre-registered and then from the remaining individuals that have filled out the cards.

Pam Bush, Assistant Counsel and Commission Secretary, will call the speakers and she'll also call the

speaker next in line. And once you hear your name, please come up and sit in one of the seats up here in the front. That's sort of our on deck area, so we can keep things moving.

If you have not filled out a comment card and you want to speak, please let us know and we'll distribute cards throughout the audience.

Because of the size of the audience interested in speaking, please limit your comments to five minutes or less, and we will have a time keeper. We want to ensure that everyone has equal opportunity to state their comments. And then if there's time at the end, you're welcome to give additional comments.

You can also submit your full written statements for the record. And as I stated, we'll be keeping track of the time. When you speak, we have a court reporter. Please speak clearly and state your

name, place of residence and affiliation for the record.

Please note that the comment period closes in two days, this Friday. And we can take written comments up to 5:00 p.m. on Friday. They can be submitted by e-mail or hard copy by mail or by fax. Please also note that all the testimony and written comments that we have received on the FFMP all the way back a year ago, starting in February of '07, will also be considered and you don't need to resubmit those.

The fire company has been very gracious and have a refreshment stand. If you get thirsty and want to have something, it benefits the fire company. Just some logistics. Restrooms are located in the back on the left wall there.

Before we start the formal testimony, I'd like to ask Bill Muszynski, manager of DRBC's Water Resources Management Branch, to give a

short presentation on the proposed rulemaking. Thank you.

MR. MUSZYNSKI:

Thank you. I'm going to just go through a shorter presentation that I presented at the Public Availability Session so we can provide more time for comments.

Let's go to the next slide. On September 26th, 2007, the Decree Parties reached a unanimous agreement on a flexible flow management plan which provides a framework for diversions and releases for the city's Delaware River Basin reservoirs. The plan provided for --- it covered water supply, drought mitigation, flood mitigation, protection of the tailwater fisheries, diverse array of habitat needs in the main stem, estuary and bay, recreation and salinity repulsion.

This record, as the Chair has mentioned, has been open since February of 2007. All comments

received since then will be considered. You do not have to resubmit them. If you chose to, you can.

On December 3rd, 2007, the Commission draft rulemaking was posted on our web site, and we went through a series of outreach efforts to make sure that everybody was aware that the rules were out there. Went to the local newspapers, to lots of newspapers throughout the basin, as well as mailings.

We also conducted four public availability meetings for ---. These meetings were set up for an exchange of information only. And we noted at the meetings that any comments that we received at the meeting while we could think about them and consider them, they wouldn't be part --- necessarily part of the official record. You actually had to submit those comments if you want them as part of the official record either

at this meeting or by mail to the Commission. There were two locations of those meetings. One was in Matamoras in Pennsylvania and the other was in Philadelphia, Pennsylvania.

Today we're having the official public hearing at the West Trenton facility here at the volunteer fire company. And they'll be two sessions. One is from 3:00 to 5:30, and the other is from 7:00 p.m. to 10:00. And as the Chair mentioned, the comment period ends at the close of business Friday, January 18th, 2008.

Written comments are to be submitted to the Commission. You can submit them either by e-mail to paula.schmitt@drbc.state.nj.us. When you do that, we're asking that you not only include your name and affiliation with the comments would you please indicate FFMP on your e-mail, especially in the subject because

sometimes junk mail systems interpret things differently and we always get them. So if you put FFMP, we feel confident that we will get them if you send them by e-mail.

If you send by U.S. mail you can send it to the Commission Secretary, DRBC, Post Office Box 7360, West Trenton, New Jersey 08628-0360 or you can send it also by fax. And our fax number is 609-883-9522. Again, please send that to the attention of the Commission Secretary. And name, affiliation and address would be helpful. We will accept written comments through January 18th.

The process that we follow is that when we get all of the comments in and the comment period is closed we will assemble those comments and discuss the comments with the Decree Party members. The Commission staff will then prepare responses to the comments and recommendations to the Commissioners. We anticipate that

Commission action would be taken at the regularly-scheduled meeting that we have before the Commissioners on Wednesday, May 14th, 2008.

Going quickly through what the Water Code Amendments provide. The Water Code Amendments that were amended or changed, modified to cover various sections of our Code. The first section is Section 2.5.3. This section has now been newly-entitled Flexible Flow Management Program.

Section 2.5.4, this is the section that concerns itself with drought emergency actions taken by the Commission in accordance with Section 3.3 of our Compact. We also modified Section 2.5.5 which coordinates the operation of lower basin and hydroelectric reservoirs during a basinwide drought. And Section 2.5.6 which relates to coordinate operations of upper and lower basin reservoirs during a lower basin drought. And these sections together collectively

implement the FFMP.

The terms of the the code amendments that we're proposing would expire on May 31st, 2011, unless the FFMP is extended or modified by unanimous agreement of the Decree Parties and that that is approved them by the Commission. Unless it's extended or modified prior to May 31st, 2011, then the reservoirs will need to be operated in accordance with the pre-FFMP Water Code and Docket D-77-20 CP (Revised). This is known as Revision One that some of you have heard about.

The rulemaking itself, the effects of it, it establishes diversion and flow objectives. It substitutes fixed volume of releases called the interim excess release quantity for the excess release quantity. It modifies the schematic rule curves, diagrams that define what the basin's normal condition is, what drought watch, drought warning and

drought emergency operating conditions. It also increases New Jersey's allowable out-of-basin diversion during drought warning and drought emergency operations by 15 and 20 million gallons per day respectively, above the levels established by the Good Faith Agreement.

It eliminates the link that was established in the Good Faith Agreement between Montague, New Jersey flow objective and the location of the salt front during basinwide drought emergency operations. And they also establish the rate of releases that will be made from each of the City's Delaware River Basin reservoirs for habitat protection and discharge mitigation and this is based upon the combined reservoir storage levels and the individual storage levels of each reservoir.

It's known as the Tailwater Habitat Protection and Discharge

Mitigation Program and it consists of conservation releases to help maintain minimum flows and adequate temperatures in the tail races immediately below the City's Delaware Basin reservoirs to protect the cold water fishery.

It consists of discharge mitigation releases to help mitigate the effects of flooding immediately below the three City reservoirs. And releases are defined for each of the reservoirs individually, but it's also based upon what the total combined storage in these three reservoirs is at the time.

The Tailwaters Program also has amendments that essentially largely eliminate the use of any banks for the purposes of habitat protection and these are --- including the thermal bank that was in the prior amendment.

Conservation releases based on reservoir storage levels resulting

in large releases when the reservoir storage level is high and smaller releases when the storage is at or below normal. Conservation release rates are defined in the new Tables 3A through 3D in Section 2.5.3 of the regulations.

These mitigation releases are designed to help mitigate the effects of flooding immediately below the three City reservoirs while not compromising the availability of that storage for other uses. Designed to increase the likelihood of storage voids during fall and winter. But voids of a given size are not guaranteed, and size and duration of the voids will really depend upon the combination of inflows, releases and diversions from each reservoir.

There is a provision in the regulations that allows for the temporary suspension or modification of the FFMP in case of emergency. Essentially, the Executive Director

after consultation with the Decree Parties and their unanimous consent, if Director finds that the customary notice and comment rulemaking by the Commission is impractical and contrary to public interest, the Executive Director can issue an emergency order. This emergency order has to be ratified, rejected or modified at the next formal meeting of the Commission, and it is also subject to unanimous approval of the Decree Parties. So public notice in advance of that meeting would be given and is obviously required.

So ratification by the Commission would be temporary. Basically it means that it will last until the extent of the emergency is over.

So in wrapping this up, once again, I want to remind everybody written comments are due by the close of business on Friday, January 18th, 2008. And they can be addressed to

Paula Schmitt by e-mail at that e-mail address up there, drbc.state.nj.us, or by regular mail to the Commission Secretary, DRBC, Post Office Box 7360, West Trenton, New Jersey, 08628-0360, or by fax at our number, 609-883-9522. Thank you.

MS. BUSH:

Okay. I'll begin by calling our national representatives. Doug Platz is here on behalf of Representative Patrick Murphy. And I'm sorry. I'm going to be calling two names, as Carol reminded me, at a time so that we have someone on deck. And that second person will be the speaker on behalf of Bernie O'Neill and Marguerite Quinn. We'll have to ask you to give your name when you come up.

MR. PLATZ:

I should introduce myself, I guess. I'm Doug Platz. I'm the Deputy District Director for Congressman Patrick Murphy. We're

just across the river in Bucks County. I handle the flooding and environmental issues of the office. This is the second time I've been here representing the congressman at one of these public meetings. The last time was for the preliminary action plan.

I'm here today presenting a statement that was written and circulated by Congressman Murphy around the capitol yesterday and today. And it has the support and signatures of 14 different members of Congress, which I can read in the record at the end, or I just can turn it in. I'm not sure which is more appropriate. This is also kind of a follow up to a letter which was sent last September at the last time there was a public comment period on the FFMP.

In September of 2007, we wrote to you, the Delaware Basin Commission to request sufficient room be reserved in the New York's Delaware

River reservoirs to protect against flooding downstream. We're writing again today to reaffirm our commitment to improving life along the Delaware River, to protect our constituents and to renew our request.

Since our last letter, there has been much discussion of the DRBC's partnership with the Army Corps of Engineers, United States Geological Service and the National Weather Service to create a computer model of the Delaware River Basin. This development is encouraging, and we are hopeful that this model will provide much-needed information and will lead to the creation of informed and effective policies to protect both those living along the river and those who rely on it for drinking water.

The unfortunate reality, however, is that this study will take more time than those living along the river can afford to lose. Moreover, our constituents have expressed a

great deal of anxiety regarding the flexible flow management plan currently under consideration. Simply, they fear that the voids under the plan will not be enough to prevent a flood this spring.

Therefore, we must ask again that the Delaware River Basin Commissioners act with urgency to ensure that flood waters are reduced as much as feasibly possible. The flexible flow management plan is a start, but we believe that more action is required. No one knows how much rain will fall this spring, but without urgent action, by the time we see the river's level rising, we will know it will be too late.

As we stated previously you can count on our continued support for this and all your efforts to improve life for families along the Delaware River. Please let us know if we can be of assistance in that effort. In the meantime, we again appreciate your

consideration of our request. And that's signed by Representatives Patrick Murphy, Christopher Smith, Scott Garrett, Michael Arcuri, Joe Sestak, Allyson Schwartz, Kirsten Gillibrand, Paul Kanjorski, John Hall, Chaka Fattah, Maurice Hinchey, Christopher Carney, Robert Brady and Rush Holt.

MS. BUSH:

Could you please hand any written testimony to me for inclusion in the record? Okay. Our next speaker will be Cindy Beck or Janine Bishop on behalf of Representative Bernie O'Neill, followed by Ashley Sciarrotta for Marguerite Quinn.

MS. BECK:

Actually, Ashley Sciarrotta is here with me on behalf of Representative Marguerite Quinn's office and Janine Bishop is here on behalf of Bernie O'Neill. I will speak for both offices.

My name is Cindy Beck, and

I'm a legislative staffer for Representative Bernie O'Neill of the 29th Legislative District in Bucks County. And I am here on behalf of the Pennsylvania House of Representatives for State Representatives Bernie O'Neill and Marguerite Quinn who are both in Harrisburg. So I handle flooding in our office and I have been present personally for all three of the floods that affected New Hope and Solebury which is the part of the district Representative O'Neill handles. So I'd like to read the comments that Representatives Quinn and O'Neill have submitted for you today.

Thank you for allowing us the opportunity to submit our written comments for today's very important public hearing. Due to legislative voting in Harrisburg, we are unable to attend today's hearing on the Delaware River Basin Commission's Flexible Flow Management Program, but we wanted to

provide you with our thoughts.

We represent the 29th and the 143rd Legislative Districts in Bucks County, Pennsylvania. Our constituents in this are have suffered on three different occasions from the flooding caused by waters of the Delaware River and its tributaries within a 21-month period. In many cases, the same homes and businesses have been devastated by these rising waters.

Three times they have sought the assistance of local, state and federal agencies for recovery and aid. This time is different. The effort is to prevent the flooding from reoccurring and thereby saving the treasured and historic communities of Bucks County.

We would like to applaud the members of the Delaware River Basin Commission for their proactive efforts to ensure that our businesses, roads, community and environment are healthy

and protected. We believe that the levels of various reservoirs under the authority of the Delaware River Basin Commission are a major factor in the river's flooding.

As elected officials, we believe that any responsible reservoir management plan should not have 100 percent full reservoirs in any month of any year. One hundred percent full reservoirs are threatening to human and animal life as well as to property. This is something that can be completely controlled.

Many say the 100 percent levels do not or have not affected the flooding situation. However, no one, let us repeat, no one, has proved the contrary.

The Delaware River Basin Compact clearly sets one of the primary responsibilities of the Commission as flood management. Furthermore, the United States Supreme Court through its 1954 ruling in New

1 Jersey versus New York limited the
2 allotment of water that could be
3 diverted from the Delaware River into
4 reservoirs. Despite the mission of
5 the Compact and the 1954 Court ruling,
6 the City and State of New York have
7 consistently maintained high levels of
8 water in basin's reservoir system. At
9 the time of both the September and
10 April 2005 and June 2006 flooding, the
11 Cannonsville, Pepacton and Neversink
12 Reservoirs along the river were all at
13 or near 100 percent capacity.
14 In contrast when the
15 Delaware Basin experienced heavy rains
16 in October of 2005, capacity levels
17 for the same reservoirs were
18 approximately 26.1, 56.5 and 63
19 percent. During the October 2005 rain
20 event, no major flooding occurred.
21 To our residents,
22 alternatives to prevent flooding just
23 aren't feasible. Raising their homes
24 may be against township ordinances and
25 selling their homes when the market is

in a slump is not practical or affordable.

We applaud the efforts of our involved citizens and ask that you respectfully acknowledge their apprehensions, concerns and data. Please realize the enormous impact your decision has on their well-being.

While we have your attention, we would also ask that you consider the impact flooding has had on our local infrastructure and local economy.

River Road is one of the major arteries through Bucks County. And the continual flood waters have caused major deterioration of the roadway and the Delaware Canal State Park, a tourist destination. Tourism to the entire area has declined due to the damage of the canal, tow path and lack of highway access to many businesses along the river.

We have concerns for the long-term economic viability of this

region. The safety of our residents has been jeopardized. Decades-old business establishments have closed their doors, and we have suffered major damage to a beautiful natural resource and tourist attraction to our area with flood damage to the walls of the canal.

Tax dollars continue to rise as a result. Numerous repairs to the road and canal are eating away at tax dollars. This is entirely unnecessary and needs to be taken into consideration when making your decision on the Flexible Flow Plan.

We would like to explore an idea that involves raising the reservoirs' walls so that today's measurement of 100 percent levels would drop to an 80 percent level. This would not impact the water capacity needed, but at the same time provide the necessary levels for floor mitigation.

When you take a vote on this

plan, please keep in mind the thousands of residents living on the Pennsylvania side of the river and imagine yourself and your family threatened with tragedy and misfortune.

Thank you for allowing us the time to represent the voice of our constituents today.

I could answer any questions if there are any.

MS. BUSH:

Thank you. We're only taking testimony.

MS. BECK:

If not, then I will submit this to the Commission. Thank you very much.

MS. BUSH:

Thank you. Next speaker is on behalf of Marcia Karrow and Senator Leonard Lance, Carol Bastille, followed by Matthew Sinberg, Mayor of Yardley.

MS. BASTILLE:

My name is Carol Bastille. I'm a legislative aide for Assemblywoman Marcia Karrow. I believe Senator Lance, in fact, has asked someone else to speak for him, so I will not be speaking for the Senator, only for Assemblywoman Karrow.

The Assemblywoman served on the taskforce that the DRBC had last year. In fact, she was the only legislator from the State of New Jersey to serve on that taskforce. And in that capacity, she was able to attend many meetings and read and study many aspects about flooding in the Delaware River Basin and so she's very, very familiar with this problem.

Also, she represents about 15 towns along the Delaware River that have been greatly impacted by the flooding. And so her concern is very real. The people she represents have been terribly impacted several times as those who have spoken about their

constituents living on the Pennsylvania side of the river.

I think the main concern the Assemblywoman has is that the comment period having gone through the holiday time may not be sufficiently long and is requesting that the comment period be extended so that more people can have an opportunity to comment on the impact of this FFMP, the Flexible Flow Management Plan.

She sent a letter to the Commissioners, which I have delivered to the Executive Director here, but I want to read just a couple of comments from that letter.

After hearing from all of the stakeholders and studying all of the information, I believe that the Delaware Riverside Conservancy along with other concerned residents and affected parties have made a very strong argument about the need for addressing the high water levels of the reservoirs.

Moreover, their concerns, I believe, about the role that these reservoirs have played in the last three floods, and more importantly the real threat the reservoirs pose by being kept at such dangerously and what seems to most to be unnecessarily high water levels has some validity.

I was very disappointed when the DRC resigned from the DRBC taskforce. This group represents real people whose lives have been disrupted and whose homes have been damaged and in many cases even destroyed by the floods. Their members are also environmentalists who are committed to keeping the Delaware River pristine and the basin safe and healthy for all who live along it.

The DRC and other advocacy groups who shared their concerns about the reservoirs deserve to have their views addressed in substantive ways, and I regret that they feel that neither the taskforce nor the proposed

FFMP have done so.

As you may know, the taskforce in its report acknowledged the fact that the reservoir management action could reduce flood crests for a given flood. For this reason, the taskforce included reservoir management at water supply reservoirs as an element in its report. The report also states that there is sound justification for addressing all measures for reservoir management that do not adversely impact water supplies.

Clearly, the taskforce felt there was some basis for the DRC's claims. Because of this language, like the DCR and many others, I am extremely disappointed that the proposed FFMP does not address the concerns about the reservoirs. In fact, I am shocked that the proposal includes language that allows the four watershed states to increase the height of the dams by adding 13

billion gallons of water of storage capacity on behalf of New York City.

Additionally, the proposal fails to include a year-round safety void in reservoirs. The proposed FFMP also does not take into account any heavy snow or rainfall and only 50 percent of the snow pack is taken into consideration when calculating levels for these reservoirs. It also fails to include an emergency flood plan. I urge the DRBC to address these issues before the plan is finalized.

Then she highlights and asks that the plan have an additional comment period of at least another 45 days. So with that, I'll just turn in this written letter and ask for that consideration. Thank you very much.

MS. BUSH:

Next speaker is Mayor Matthew Sinberg. He will be followed by Edward Smith representing Assemblyman Dougherty.

MR. SINBERG:

Good afternoon. And thank you for the opportunity to address the Commission with our concerns. Yardley Borough, located directly across the river from here needs all the help we could get to mitigate the certainly of devastation from future flooding.

Few of us are here who witnessed the effects of the 1955 flood, which was three feet worse than what we recently experienced. Three feet more of water would have quintupled the impact to our town. In fact, one more foot of water would triple the number of homes with first floor damage and cripple our residents in town.

We have barely recovered from the last flood. Only 15 homes have been elevated, but at least 160 need to be. We were able to have two buyouts. We sustained complete collapse of our sewer system, which has cost $6.2 million to repair, but will actually cost us $12 million with

the interest tacked on. That is way too much for just 1,200 ratepayers to pay back. I cannot even imagine what would happen if there was a flood like the ones of 1902 and 1903 where there was five more feet of water. Imagine that in your towns.

The Delaware valley right or wrong is now heavily developed on both sides of the river. Obviously, we are all in the same precarious situation awaiting the impending doom. The hundred year flood level went up a foot in 2000 and is due, I hear, to go up another foot or so when the Army Corps publishes their new maps. We are living next to a ticking time bomb.

If we can cut through the bureaucracy, red tape and self-serving interests to achieve a meaningful solution, we can diffuse this bomb. New York City as good and responsible neighbors should honor the Supreme Court Decree and draw down in advance

of storms, maintain voids and institute water conservation measures for their users as is done in most of the world.

Unregulated wasting of resources is irresponsible in these times and dangerous to many. These are important measures that can be readily instituted in the short term, but in the long term if the engineering proves out, I see Skip Garlick's (phonetic) Wallenpaupack flood control plan as the most meaningful solution. And I beseech the Commission and the rest of you here to give your sincerest study and attention to this idea.

How bad will it look when the next one hits and all anybody in authority can say is well, we were meeting on it? What if we actually had a hundred-year flood? How about a 200-year flood? It's coming. Let us be prepared. Let's be safe. Let's protect our homes and populace.

I grew up in Johnstown where the last flood not only resulted in devastating property damage, but the loss of over 200 lives. It's been 35 years since then, and Johnstown has not recovered from the resulting economic ruin and never will. Let's take real action now to make sure this doesn't happen to us. Thank you.

MS. BUSH:

We have Edward Smith on behalf of Assemblyman Dougherty, followed by Mr. George Munn, Councilman, Borough of Delaware Water Gap.

MR. SMITH:

Thank you for providing the opportunity to speak. We receive a lot of constituent e-mail in our office, and one of the things that was brought up of particular concern I would like to focus on this. We have advocated through our office in testimony before our request that there be a void in the New York

reservoirs.

Now, I understand it's been pointing out very clearly to me the purpose of the New York reservoirs was to provide for water supply for New York. However, I want to know why I'm told that we're nearly at a hundred percent in January, because we're talking January is just the beginning. The snows haven't melted. The spring rains haven't come. I don't think that anyone could argue the fact that if we were at 80 percent in January, the bonus would be possible flood mitigation. And we would actually be able to still pretty much say to New York City ---.

PA SYSTEM MALFUNCTION

MR. SMITH:

That gets my point across. That's what's going to happen and there's no reason that should happen. I don't think it's unreasonable for the people who are downstream from those reservoirs to at least say ---

even if we were, just arguendo, say all right, maybe you're entitled to 100 percent at some point --- and I'm not admitting that fact --- but why do we have to be there now? I just don't understand.

And I would ask that we make some kind of provision somehow to make it where --- until we're past the snow packs and the heavy rains that the people in New Jersey and Pennsylvania can count on the fact that they're not going to have a flood because New York wanted to have 105 percent in storage when they could have been happy with 80 and then in June, you got a right to be at 100 percent possibly. But why not --- why not at least now let's have a winter of peace and draw those reservoirs down.

And I would also mirror the request from Assemblywoman Karrow, more time because clearly it's demonstrated here we are at 97 percent in some of the reservoirs now and it's

only January. So maybe another 45 days might provide some very additional powerful evidence that we're not addressing this right.

And I would ask that that please be considered, more time to address the facts. And meanwhile, how about we draw those reservoirs down at least until we're at the end of spring time and then you start to build up your reserves. There's no excuse for that now. Thank you.

MS. BUSH:

I just to remind everyone that we are providing five minutes for every individual who testifies. And we'll alert you when you are running out of time. I have Lynn Bush, Director of Bucks County Planning Commission, followed by Susan and Charlie Cooper, residents of the Delaware Water Gap. I'm sorry. Are there any other public officials in the room who wanted to speak?

Okay. You'll follow Ms.

Bush. Thank you.

MS. BUSH:

Thank you. I'm Lynn Bush. I'm Executive Director of the Bucks County Planning Commission, and I'm here today on behalf of our Bucks County Commissioners as well as our Bucks County Delaware River Flood Taskforce. This group was empanelled by the county commissioners in 2007, and we've been meeting diligently for about eight months to do some fact-finding and to figure out ways in which we can reduce the flood damage to Bucks County communities.

We've heard from many experts and interested parties in order to gain an understanding of the history of flooding and its causes and what we can do about it. We've reviewed documents about the devastating floods of '04, '05 and '06. And interestingly, all of our resource people interviewed agree that voids in the New York City reservoirs

would have reduced flood levels along the Bucks County riverfront communities in these last three floods. However, there are differences of opinion as to the amount of flood reduction that could be achieved, as well as the wisdom of adopting a policy of permanent reservoir voids.

We understand and acknowledge that the proposed rules that you're considering would allow for seasonal reservoir releases as part of the discharge mitigation program as well as taking into effect some of the snow packs that contributes to the flows.

We meet with Governor Rendell on December 1st, along with his senior staff from the Department of Environmental Resources and discussed our fact-finding. At that time, he reinforced the fact that the U.S. Army Corps of Engineers and other groups is doing a study to develop a

Delaware River Basin flood analysis model that will evaluate the alternative reservoir release rules and reservoir operating plans to assess their impact on downstream flooding.

Until these definitive studies are completed, our taskforce members cannot ignore the testimony of experts who acknowledge, yet differ substantially on the beneficial downstream impacts of year round reservoir releases and mandatory safety voids. According to Governor Rendell, Pennsylvania is not in a position to support this as a policy until the Army Corps of Engineers' study is completed and demonstrates that reservoir voids are beneficial and needed.

Unfortunately, this study is at least a year away as we understand it, and time is important. We need the results of an impartial study so that the right policy direction can be

set by the Commonwealth and by the Commission to protect the people and property along the Delaware River.

In summary, we have two positions to report to you today. Number one, the taskforce has gone on record in supporting permanent year round reservoir voids, unless and until we have definitive and impartial studies that demonstrate that these voids would play no role in reducing downstream flooding.

And secondly, we've reached out to our federal representatives in Congress to urge the expeditious completion of the Delaware River Basin flood analysis model by the Corps of Engineers so that we will have the results as quickly as possible.

Should these results lead to a different conclusion about the impact of voids on downstream flooding, then we would hope that the Flexible Flow Management Plan rules should be changed to reflect that.

Thank you.

MS. BUSH:

Elaine Reichart on behalf of Senator Lance.

MS. REICHART:

Dear Commissioners, I regret that I am unable to attend tonight's public hearing on the proposed Flexible Flow Management Plan. As you know, many residents and municipalities in the 23rd Legislative District have endured enormous loss due to major floods.

I have received many letters and telephone calls from constituents who are concerned about the proposed plan. This plan has a great impact on my district, and I am writing to express concern about certain aspects of the plan.

The first concern has been expressed not only by residents and municipalities but by the Delaware River Basin (sic) is the effect of the reservoirs levels and the role the

releases of water from those reservoirs played in the last three major floods.

The concern that the high level water capacity in various reservoirs will continue to pose a danger is an issue that needs to be further examined. Reservoir management and the allowance of safety voids are necessary components of the plan, and I ask that these issues be further examined.

The second concern is that the public has not been able to fully express its concerns about the proposed plan. I respectfully ask that the comment period be extended for a full vetting of all concerns and proposed changes. It is through greater input from all interested parties that a sound plan may emerge.

I appreciate your consideration of my letter and am happy to address any questions that you may have. Sincerely, Leonard

Lance, State Senator.

MS. BUSH:

Susan Cooper, followed by Sue Fanok of The Nature Conservatory.

MS. COOPER:

My name is Susan Cooper. I live in Delaware Water Gap, Pennsylvania. I have lived along the river my entire life. The flooding has destroyed my home, my business and the lives of 18 families that are my tenants and that I am responsible for.

A plan without a safety void is totally irresponsible. I look to you for action to reduce water levels at all times. The one thing we have learned during this flooding is that we don't have time to react to additional water being released into the system in the time of a storm. We need a plan that addresses prevention. We need a plan that includes a safety void.

We in Water Gap have lost a factory that has necessitated a 55-

percent increase in taxes because of this flooding. We need a plan that ensures our lives and our towns will be safe and that must be a safety void. Thank you.

MS. BUSH:

Sue Fanok for The Nature Conservatory followed by Elizabeth MacLin of Trout Unlimited.

MS. FANOK:

Hello. My name is Sue Fanok, and I work for The Nature Conservatory and I'm here on behalf of The Nature Conservatory chapters in all four Delaware Basin states, including the Eastern New York Chapter, Pennsylvania, Delaware and New Jersey.

The Nature Conservatory appreciates the opportunity to comment on the proposed rulemaking. The mission of our organization is to preserve the plants, animals and natural community that represent the diversity of life on earth by

protecting the land and the waters they need to survive.

Our comments represents our efforts in the basin where we have been working on conservation from the headwaters down to the bay. The Nature Conservatory has also been engaged in the process of the Delaware Basin flow management for over six years. Since the initial presentation of our vision of ecologically-sustainable flows for the Delaware, we have worked collaboratively with the DRBC, the parties to the Decree and many other partners from the basin to enhance the scientific basis for water management in a manner that promotes the ecological health of the Delaware River Basin.

The success of this collaboration is demonstrated by the technical proposal in which the importance of fresh water flows to ecological health has become a clear program goal.

It is with this history of investment in flow management in the basin that we provide the following comments.

The Flexible Flow Management Program and the associated habitat protection and discharge management program should result in some major improvements on past systems of reservoir release management. However, there are a number of ways in which the current Flexible Flow Management Program proposal can be significantly enhanced before it is adopted. These changes can be made with little risk to the DRBC and the parties to the Decree.

Such changes include, one, increased releases in the spring L2 and the summer L2 levels from Cannonsville, and the spring L2 level from Pepacton and Neversink akin to the CP2 proposal.

Two, explicitly committing to moderating the rate of change of

releases, or ranking rate, from New York City's reservoirs.

Three, a strong commitment to review and evaluate desirability of, and alternatives to, the Montague and Trenton flow objectives which artificially raise base flow levels in the main stem below Montague.

Four, commitment to complete decision support modeling upgrade to allow for refinement of water management policy over time.

Five, strengthening the monitoring and reporting aspects of the Flexible Flow Management Program. Monitoring responsibilities should be distributed across the basin states in a manner that is that is linked to the critical resource concerns in each state. A more prescriptive, active, adaptive management program would help to fill these gaps.

And finally, number six, creation of and commitment to a detailed active adaptive management

program.

In conclusion, The Nature Conservatory supports the general framework presented to the public as the Flexible Flow Management Program. We believe the DRBC and the parties to the Decree should build on this framework by adopting a program that enhances some of the benefits of the Flexible Flow Management Program through modified releases, while providing more specificity to the Flexible Flow Management Program language. Thank you.

MS. BUSH:

Next speaker Elizabeth MacLin, Trout Unlimited, followed by Elaine Reichart.

MS. MACLIN:

Thank you for the opportunity to comment here today. I'm Elizabeth MacLin. I'm the vice president for Eastern Conservation for Trout Unlimited which is a national organization committed to protecting

and conserving of historic cold water habitat for trout and salmon species.

Trout Unlimited will be submitting formal written comments on the interim Flexible Flow Management Program, so I'll keep my remarks here very brief.

After completing an extensive review of the interim FFMP, Trout Unlimited has determined that while the FFMP concept is indeed the best way to manage the upper Delaware River flows, changes are absolutely needed to correct the deficiencies that are currently contained within the FFMP.

One of our biggest concerns is the constraint under which the FFMP is modeled is flawed. And that based on New York City actual average diversion, there's significantly more water available for environmental benefit downstream in the reservoirs than the DRBC is currently using in its model for the FFMP.

Among other things that will be outlined in our formal written comments, Trout Unlimited strongly urges the DRBC to re-examine the water release schedules in the FFMP, and to make the necessary changes to ensure that the Delaware River's trout fisheries are protected. Thank you.

MS. BUSH:

Jeff Zimmerman, Lee Hartman.

MR. ZIMMERMAN:

Thank you for this opportunity to provide testimony on the critical, important issues related to the proposed modifications to the water allocation management system for the Delaware River. I'm Jeff Zimmerman. My comments today will be brief and directed to the legal principle that must guide your actions as you consider the proposal before you.

The fundamental legal principle to which I refer was established by the U.S. Supreme Court

in 1931 in Justice Oliver Wendell Holmes seminal opinion for the Court in the State of New Jersey versus State of New York. Of course, we all know that this decision involved allocation of the waters of the Delaware River and New York City's diversion of waters out of the basin to supplement its water supply. In addition to the famous statement that a river is more than an amenity, it is a treasure, Justice Holmes recognized that the water from the river basin had to be rationed among those with power over the water and the substantial interest of the respective states had to be reconciled, quote, as best they may.

He then announced the legal principle that must guide the allocation of the basin waters, the principle of equitable division, also known as the principle of equitable apportionment. Knowing that quote where that principle is established

there is not much left to discuss, he did observe a very important point, that it is the City of New York that must take the risk of the future. In other words, if the circumstances affecting the allocation of the waters changes, the risk of this change falls on the party who is diverting water out of the basin.

The principle of equitable apportionment adopted by the law in this case in 1931 was carried over into the Decree entered in 1954 when the City of New York re-opened the case to seek an increase in its allowed inter-basin diversion.

The Decree entered in '54 remains in effect today. The Court has retained jurisdiction to allow any of the parties to the case to seek modifications to the Decree.

It is important to note the structure of the '54 Decree. It begins by enjoining diversions by the City except as authorized in the

Decree. In other words, if the Decree doesn't specifically allow the City's actions, the City cannot pursue them.

The '54 Decree allows the city to divert up to 800 million gallons a day from the three Delaware watershed reservoirs for water supply purposes, but then specifies two types of compensating releases the City must make from these reservoirs. First, it is releases to assure that a minimum basic rate of flow of 1,750 cubic feet per second at the USGS gauging station is maintained at Montague, New Jersey.

The Court, through the Special Master appointed to handle the case, concluded that there was more than enough water storage capacity in the City's Delaware reservoirs to meet both the allowed diversion and the minimum basic flow rate at the downstream gauging station.

Consequently, the Court directed a second required release of 83 percent of the amount by which the

continuous safety yield of all of the City's sources obtainable without pumping exceeds the amount of water the City projects it will need for water supply purposes.

This amount of water, known as the excess release quantity, must be released by the City at rates designed to release the entire quantity in 120 days commencing on June 15th of each year.

As part of the technical allocation formula the Court imposed certain boundary conditions on the parameters involved in the ERQ formula. For present purposes, the most important of these is that the Court specified that the minimum safety yield could not be less than 1,665 million gallons per day.

After authorizing a much more limited of out basin diversion for New Jersey, the Decree stated that the parties to the case have the right to continue all existing uses of the

water in the basin that do not involve a diversion out of the watershed.

When the Delaware River Basin Compact was adopted in 1961, the doctrine of equitable apportionment was specifically carried over and applied to the Commission's allocation of the waters of the basin through allocations, diversions and releases.

While this principle is supposed to control the Commission's actions in its New York City reservoirs docket, it is painfully obvious in the proposed changes to the water code to implement the FFMP, that the Commission would violate the equitable apportionment principle in order to adopt the pending proposal.

While there are many provisions that do violence to the equitable apportionment principle in this proposal, let me point out the most obvious place where the FFMP violates the principle.

In Section Five, the drought

management provisions, the FFMP adopts ---

MS. BUSH:

Fifteen (15) seconds.

MR. ZIMMERMAN:

--- maximum diversion and downstream flow amounts with normal operations, drought watch, drought warning and drought emergency. The percentage reduction in diversion of amount for normal drought watch is 15 percent, another 15 percent for drought warning and 5 percent more for drought emergency. Yet, when you ---

MS. BUSH:

Time.

MR. ZIMMERMAN:

--- when you turn to the tailwaters habitat division in the FFMP, the amounts in Table 3D, using Cannonsville as an example, the percentage reductions are 96.6 percent, 97.6 percent and 97.53 percent, as you go from normal to emergency. I'm not much of a

mathematician, but 35 percent and 97 percent just aren't equitable as far as I can tell.

If the Commission adopts the diversions and the release schedule for the FFMP as proposed in the water code amendments now pending, they will be violating the equitable apportionment principle of the Compact and the '54 Decree. Thank you for your attention.

MS. BUSH:

Elaine Reichart followed by Lee Hartman.

MS. REICHART:

My name is Elaine Reichart, and I'm representing the Aquatic Conservation Unlimited group.

Thank you members of the Delaware River Basin Commission for holding this hearing and giving the public a chance to weight in on the proposed plan.

I'll get straight to it. The FFMP is fundamentally and first and

foremost the plan crafted for and by New York City. The structure is good, but the numbers and the devilish details are disasters waiting to happen. Specifically the FFMP exacerbates flooding.

Another disastrous aspect of the FFMP which is not well-publicized is the fact that the plan compromises Philadelphia's water supply by detaching the Montague flow targets from the location of the salt front during drought emergency conditions. What's more, this detachment is being done incredibly without sufficient scientific modeling, without the sound science that the DRBC holds in such high regard. I'll say it again.

The City, with the assent of the other Decree Parties and the tacit backing of the DRBC, are playing fast and loose with Philadelphia's drinking water supply by attempting to pass into law a plan for which validated scientific modeling has not been done

to ensure that the Treton target can be maintained under the flow outlined in the proposed changes to the Water Code.

How hypocritical and ironic is it to state there's no sound science on reservoir-caused flooding when there is, and then to turn around and jeopardize millions of people's water supply without the proper scientific modeling to back up the proposed change to the minimum Montague flow requirement of the Supreme Court Decree.

The implications of upstream migration of salt front, the increased total dissolved solids and chloride concentrations at the Philadelphia Water Department's water treatment plant and the advancement of the Trenton target has not been studied. You know this. The Philly Water Department has stated some of these concerns in their FFMP comments.

Governor Minner, the water

draws of United Water in Delaware and New Jersey American are in jeopardy as well. How the governors of the lower region states can accept this plan that will harm their state's water supply operations needlessly is beyond me. Let's make this clear. There is no sound science that says the lower basin states' water supply will not be harmed by this disastrous miserly plan.

The cold water fisheries and the endangered species in the river are needlessly harmed as well, but I'll let the fishermen, who are the experts, talk about the dangers to the aquatic life due to the disaster of this plan.

Flood victims, water supply authorities, water departments and environmentalists all agree, this plan is terrible. It does exactly the opposite of what it is advertised to do. As there isn't any hydrologic or engineering justification for this

plan, it is either incompetency or political shenanigans that has allowed New York City to muscle this Commission into prosing a plan with the provisions that you have published.

Here is the heart of the matter. The FFMP is geared to achieve one goal and one goal only, legitimizing and endorsing New York City's plan to hoard more water at everyone else's expense. The great myth that the drought of record starts tomorrow coupled with the great lie that there is not enough water to go around only feeds New York City's power base and their ability to bully the lower basin states into negotiating away the lower basin states' equitable proportion of the river's water.

The data exists to support the contention that there is more than enough water to go around. Most of it is contained on the Rivermaster's web

site as well as New York City DEP's web site. One just has to dig for it, pull it together and analyze it.

New York City DEP normally takes 400 mgd to 650 mgd from the Delaware River reservoirs. The year's average has gone down to approximately 460. But this average only tells part of the story. Since 2000, New York City's DEP's pattern of usage has drastically morphed into a practice of extremes, overdrafting during hot summer months. And why is that? Bacteria problems on the Hudson side? Electrical generation? Sale of water? All of the above? And underdrafting when it is cold and rainy.

Cases in point, before the floods of 2004, '05 and '06 New York City curtained their diversions to less than 300 mgd in some cases four to six weeks before the floods. For days on end they actually took zero mgd, i.e. no diversions, from the Delaware River reservoirs. This

allowed the capacities of the DRRs to fill to a hundred percent and be in constant spill mode.

MS. BUSH:

Time.

MS. REICHART:

Add in a couple of heavy rain storms and voila, basement floods. However, it's the overdrafting practices that otherwise cause Philadelphia and Delaware possible drinking water shortages and will put a serious hurt on New Jersey. Overdrafting will destroy the cold water fisheries as well as the jobs and economic dollars that Pennsylvania and New York State derive from the Delaware tributary and main stem fisheries and ecotourism. If you look at the past April 23rd to September of 2007, New York City DEP diversions from the DRRs averaged 750 million gallons a day or higher more weeks than not.

MS. BUSH:

Time's up. We have to ask you to wrap it up. If there's time at the end, we can invite speakers back to finish.

MS. REICHART:

What I will ask is that someone will yield their time to me who signed up.

UNIDENTIFIED SPEAKER:

I will yield my time to you.

MS. REICHART:

Thank you. Thank you very much. Where was I? Let me find my place before I start talking again.

If you look at the past April 23rd to September 2007, you will see DEP diversions from the DRRs averaged 750 million gallons a day or higher more weeks than not. June 23rd, 2007 New York City DEP actually took 1.3 billion gallons of diversions from the three DRRs. This, of course, through a tunnel that has fractures in it, a tunnel which experts advise not to push more than 750 million gallons

a day for fear of collapse the RWB section of the tunnel.

With the taking of hundreds of millions of extra gallons, their total daily consumption remained relatively the same. New York City DEP was making a run for the drought line. We know what happens when the DRRs reach the drought line. New York City reduces the flow of the river to practically a trickle. These drought designations are not droughts due to lack of precipitation. These are storage droughts artificially created by New York City's reservoir diversion management practices.

New York City DEP has sucked Cannonsville, Pepacton and the Neversink Reservoirs into a drought level L3, L4 or even L5, curtailed the flows to practically nothing, while the rest of their system on the Hudson side and their total system storage capacity was staying well within the normal range.

New York City DEP operated this way in the summer of 2005. That's why in October of 2005 there was no flood, because there was plenty of room in the reservoirs due to a whole summer of overdrafting. It rained, quite heavily I might add, all month that October, the second wettest month since 1941 according to the National Weather Service. There was room in the DRRs and no flooding occurred.

This experience alone proves safety voids do work and fit well as part of the reservoir operating protocol.

The most important change to New York City's water supply operating methods is their conservation programs. Started well over a decade ago they have worked extremely well. In 1980 the volume of gallons used per day was 233 gpcd, which is gallons per capita per day. Today is it 133 gpcd. That's almost half of the usage from

20 years ago. If the consumer usage has been cut practically in half, then shouldn't more water be released? Unfortunately for us, New York City DEP pretends that nothing has changed.

What has changed, and dangerously so, is now there's a buildup of overcapacity which means the reservoirs are spilling more water over the spillways much more often than pre-2000. It also means the City is being needlessly over-concerned with releases in all categories, L-1, 2, 3, 4 and 5. The City is being quite picky about it. It is hoarding water, and what's worse, the City has lied to us all for at least eight years about the abundance of available waters.

As I said, the data exists. It's there for whoever wants to find it. What's more amazing is New Jersey, Pennsylvania, Delaware and New York State have all seen the data and all except New Jersey are ignoring it.

New York City flatly refuses to even look at it. This is government officials protecting its constituents and natural resources. Oh, wait, that's not right. It's our government officials protecting New York City's government officials and their needs. How nice for them. How very bad for the rest of us.

How can Governors Rendell Spitzer and Minner forsake their states' needs in light of proof, the sound science members of this Commission have insisted be assembled before would deign to do the right thing? Have the lower basin water needs been bargained away for some other political give-mes from New York City? Are their future aspirations of cabinet positions in the 2008 presidential victory that stops our representatives from standing up to New York City in managing this great river equitably?

A total system-wide

reassessment is the only way New York City can prove it is managing their system and our river in an optimal way. Anyone who imposes this from the lower basin states, whether they be wearing their Decree Party hat or their Compact Party hat, is clearly working for New York City, and not their own state's needs.

We are in a crisis. Suboptimal reservoir operations and the pitiful releases New York City has given us since October 1st, 2007, when the FFMP adopted by the Decree Parties went effect have already caused the reservoirs to fill to the point of spilling. Cannonsville is spilling even now as I speak.

Ignore this FFMP-created crisis and we will flood again, this month, next month, even as late as June, but we will flood. If you do not change the path you are own and we flood, none of you or your bosses can escape the responsibility of what you

have failed to do, and that is to protect us. We will not let any of you forget should there be flooding or come summer an artificial drought that imperils Philadelphia's drinking water and/or decimation of aquatic life.

The scandal of supporting a plan that you know is bogus for all the above-stated reasons and all of the reasons you are hearing today, will follow all of you into whatever political endeavors you seek beyond the office you hold now. FFMP, this acronym does not stand for Flexible Flow Management Plan. It stands for fried fish, more flooding, parched throats. Have a dry and safe day.

MS. BUSH:

We have Lee Hartman and Gail Pedrick. Thank you.

MR. HARTMAN:

I represent the Pennsylvania Council of Trout Unlimited. I'm the Delaware River chairperson.

Pennsylvania Trout Unlimited

cannot support the release schedules within the current FFMP. Without higher release regimes and additional levels, the plan will ultimately cause high water temperatures lethal to the trout in the lower west branch of the main stem.

The Subcommittee on Ecological Flows, that committee commissioned by the DRBC four years ago, its own report questions the 260 cfs L2 release level from Cannonsville Reservoir and states its concerns on the negative impact it may cause on the main stem. The DRBC must not ignore their own committee.

The key to equitable water proportions lies with the OASIS model. The current OASIS model figures used for the FFMP release schedule are invalid, bias and inflexible. Using realistic everyday numbers would show that there is more than enough water in the Upper Delaware River for all of the Decree Parties and for health

aquatic habitat for trout and the many other species that live in and along the Neversink and east and west branch and main stem of the river.

The OASIS data should include realistic numbers. The average diversions are 582 million gallons a day for the past ten years. Not --- right now they're using 765 million gallons per day in the data for the OASIS model. It should take into account the Hudson River reservoir storage. And third, it should be upgraded to show the last seven years of New York City reservoir data, storage data.

These true numbers for calculations in the OASIS model will result in more water in the Upper Delaware River and correct the deficiencies of the FFMP with no risk to any of the Decree Parties' water rights and availability.

The DRBC cannot allow a release schedule calculated for

extreme water supply diversions when the actual annual average diversions are much lower. This will result in far more reservoir spills and significantly higher reservoirs each year than the OASIS model currently predicts. This will be wasteful and irresponsible management of the Upper Delaware River's water. The Pennsylvania Council recognizes the extraordinary efforts that are necessary for the equitable apportionment and management of the Upper Delaware watershed.

The cold water fishery on the Upper Delaware River has been in existence for over 35 years. It is considered one of the best world class trout fisheries in the country. Thousands of anglers and boaters visit the river each year. To not protect this treasured resource would be a travesty. It can be and must be protected. The Pennsylvania Council requests that the Commission do

realistic assessment of the FFMP proposal that includes revisiting the criteria and constraints used in the OASIS model. Thank you.

MS. BUSH:

Gail Pedrick, followed by Scott Burgess.

MS. PEDRICK:

I'm Gail Pedrick, and I have two homes in New Hope and so I can relate.

Okay. I'd like to address the dams. These are three dams and they contain many more billion gallons than the Johnstown flood contained in 1989. That contained --- that poured out 4.8 billion gallons. Listen carefully as I give you the ones from what we have. 140 billion gallons, 34 billion gallons and 95 billion gallons. So imagine the day when all the New York City reservoirs are at a hundred percent and torrential rains continue to fall. One of the three dams on the Delaware fails. No

emergency plan is available to warn the people. Thousands try desperately to escape the wave, but die. The millions of people living in the communities directly below the dam see their communities completely disappear. Major roads and bridges are gone. It will take years to replace. I know one thing we will have the 95 bridge and the toll bridge in New Hope.

Now, if you think that these dams are well-inspected, there's a phony dam inspection report which was investigated by the Times Herald Record up in the Poconos. The first reason why the dams fail, put out by FEMA, is over time caused by floods that exceed the capacity of the dams. Surprise, surprise. That’s what we’ve been having. We have had three floods, and the capacity of these dams has been listed over a hundred percent many times. One was as high as 106 percent. Now, you just keep thinking

that is just washing that away.

So we ask for the Freedom of Information Act and we asked for inspection reports. Could not get any. Surprise, surprise. But we were given visual inspection reports back in May of 2006. That contained internal cracking, beaching erosion, rebars are exposed, holes along the downstream face of the embankment, minor surface erosion, wet area at toe, seepage, erosions, et cetera. That's one thing I'm concerned about.

And with the plan that they're putting through right now, they are basically ensuring 100 percent full reservoirs. And they have these little release valves that are in these reservoirs that they can't let the water out. So you've got one that's at over a hundred percent now and another one that's in the highs 90s, 98 or so and there were all at the 80s and 70s in December, by the way.

So what we have now is these reservoirs filling up and filling up and they have no way of getting it out quickly because there's no flood gates there. They have no way of lifting it up like we do in Lake Wallenpaupack. When all the reservoirs are filled full, it takes 60 days to even reduce the total capacity to 90 percent. So if we started now, okay ---. Now, in their new plan, they don't consider rainfall when they evaluate the heights of these reservoirs. And they only figure 50 percent of the snow pack. I mean, that killed us in the April flood. They did nothing to release any water in those April floods, by the way. So if we have a two-foot snow pack, well snow pack, they count it all as 50 percent. Unbelievable.

Okay. Now, in New York City, the DEP had a very bad dam called the Gilboa Dam. And that was in such disrepair that they put flood

gates in there and they put 500 million gallons per day --- they had to remove it with siphons that they installed. They installed 80 boundary cables. They drilled holes into bedrock. Other upgrades included automatic monitoring of snow pack, computer monitoring of stream gauges and intake gauges, 24 hour surveillance, lighting, video, electric monitoring. We're lucky if we get the dam inspected. And if we did get one, they're not letting us see.

Okay. The Delaware Aqueduct which is what carries the water to New York City ---.

MS. BUSH:

Twenty (20) seconds.

MS. PEDRICK:

Okay. The bridges. In 1955, there was a one-day flood. The water crested up on the bridges two or three hours after 24 hours. These floods and the one in June was four feet below normal. Add four feet to

the last flood, then you have water up on --- or at least in New Hope two feet up on that bridge.

MS. BUSH:

Time.

MS. PEDRICK:

We'll lose all the bridges, not just the one, Phillipsburg, Point Pleasant and Yardley. And I just call on Governors Rendell and Corzine to stop catering to New York City and New York State. Stand up for your own citizens.

MS. BUSH:

Scott Burgess followed by Keith Jackson. I'm trying to get people to come up on deck so they're up here in the front when they're called. Do we have Scott Burgess or Keith Jackson? Thomas Finn? Thomas Scannapieco? Oh, I'm sorry. Lucille Mayton?

MS. MAYTON:

Good afternoon. And thank you for this opportunity. I'm a

resident. My name is Lucille Mayton, and I live on the river in Trenton, New Jersey. And I have lived in that home for 11 years. It's part of the Delaware Basin, as everyone knows.

And in 1961, the four states represented here today including New Jersey and the federal government created a Compact that stated, the waters of the basin were to be allocated in accordance with the doctrine of equitable apportionment. This has been mentioned several other times this afternoon

In reference to that, it means that the waters must be controlled to prevent flooding at all times. We who live in the Delaware River Basin, count us in the millions, have experienced three devastating floods, one in '04, one in '05 and one in '06.

Before each of these floods, the three reservoirs on the Delaware, the Pepacton, the Cannonsville and

Neversink were at 90 to 100 percent capacity. This flooding could have been prevented if the three reservoirs would have maintained a void of 20 percent. So any water beyond that level would have been released as a standard practice, preventing the surge of water that comes from a sudden release of tons of water to prevent dams from bursting.

We must act now. This current situation is analogous to a parent walking into his three-year-old's bedroom and finding him playing with a loaded gun. The first thing he does is remove the gun from the child. Just so, the first thing we must do is remove the immediate danger of disastrous flooding by A) mandating immediate compliance of all dams on the Delaware River to 80 percent capacity at all times. These are urban dams, and they are over 50 years old, subject to failure.

B) Mandating immediate and

ongoing inspection of and repair to all failing infrastructure of the entire Hudson Valley and Delaware Basin systems.

And finally, C) creating a system of information available to the public that updates on a daily basis the inspection results of all infrastructure on the Hudson Valley and Delaware Basin systems and the water levels of all dams and reservoirs in these systems.

Thank you for this opportunity.

MS. BUSH:

Jolene Bernstein, followed by Peter Kolesar.

MS. BERNSTEIN:

I just have a quick question. Is there anyone from Senator Lautenberg or Menendez' offices today? How about for Congressman Holtz? Okay. Thank you.

Frankly, I'm not sure why I'm here. I've attended most of the

public hearings and sent more letters to more people in the last year than I have in a lifetime.

It all started with a dream I had in my late 20s. It was to own a home along the Delaware. It took my husband and I the greater part of our lives to reach that goal. In September of 2004, we bought and moved into our cottage on the Delaware. On the evening of the first night we were to stay there, the fire department knocked on our door and told us we had to evacuate. For the past three years, we have lived the nightmare of the so called dreams.

I repeat, I don't know why I'm here. Nobody seems to be listening to us. As a matter of fact, the DRBC is the definition and example of the typical government, the typical government agency that most people stereotype. It's like talking to a blank wall. They say and do what they want with no regard to those of us who

have written and made public comment.

Not even over 12,000 signatures on a petition, hundreds of letters from our Congress people, businesses, residents, government officials, have gotten them to reconsider their position. It shows the blatant disregard we have come to expect from our governmental agencies.

I've been made to feel stupid, and I don't like the feeling. So maybe that, in the end, is why I'm here to let you know we're not stupid. How often do we hear from the DRBC when they say they can't effect change? It's the Decree Parties which must make the decisions. Many of the members of the Commission are the principal agents to the governors and they make recommendations. I don't know if the faces have changed, but I wonder what Paul Rush from New York State, Michele Putnam from New Jersey, Kevin Donnelley from Delaware and Cathleen Curran Myers from

Pennsylvania have been saying. Can it really be the truth? Are they telling our government what we are saying? I can't believe that the governors would be turning a deaf ear to their constituents if they really could hear from us. If it were their homes, would you all be so blatantly and arrogantly unhearing?

In the Compact of Part One, there's language that allows the DRBC to act to avoid catastrophic events such as floods on the Delaware. It also states that the Commission maybe plan, design, construct and maintain projects as it deems necessary to reduce flood damage. And it can store and release waters on the Delaware to meet flood conditions as required. So I ask you, why don't you do something? You can, but you don't. But somehow you think we're stupid.

How often do we hear the DRBC quote the national weather forecaster and NOAA saying the reasons

we flooded were the result of significant rainfall events, yet in 1999 when there was 6.5 inches of rain and in 2005 when there was 8.5 inches of rain, we had no flooding? Do you think there may have been a correlation, that the fact that there were significant voids in the reservoirs during these events may have had something to do with it? But somehow you think we're stupid.

Unbelievably the DRBC is on record as saying that the affect that the reservoirs would have had on the amount of the water in the river basin was inches when NOAA’s reservoir simulator stated it could have been 1.8 to 10.5 feet. There's also a hydrologist's report that indicates flooding would have been reduced substantially. For many of us the reductions would have been the difference between flooding and not flooding. It's not just an inch. But somehow you think we're stupid.

The public hearings were held the day the governors of the Decree Parties signed the Flexible Flow Management Plan. Please, we would like all of you to comment on the plan that was just signed, even though we don't know what it is and we have no time to develop a comment. Somehow you think we're stupid.

I find it funny that that DRBC web site ---

MS. BUSH:

Time.

MS. BERNSTEIN:

--- chooses to provide the storage capacities of the reservoirs as of September of '07. It is the only month that the reservoirs were at 65.2 percent. You used that to support the premise that there was a potential drought concern. What they don't say is that this was the first time that the Flexible Flow Management hearings were going on, and for approximately three to four weeks the

amount of water stored in the reservoirs was lower than at any other time. Coincidence? I don't think so.

MS. BUSH:

I'm afraid we're out of time. We have about an hour and a half worth of additional comments that folks would like to offer.

MS. BERNSTEIN:

Okay.

MR. KOLESAR:

Let me preliminarily say that these comments of mine are the result of joint effort of Jim Serio and myself, and we could partition the comments, but Jim has suggested he relinquish his time. I will still try to be quite brief.

My name is Peter Kolesar. I'm a professor at Columbia University and a member of The Conservation Coalition that’s been researching the Delaware on these issues for a number of years. I'm also currently a resident of New York City and a summer

and weekend resident of the Upper Delaware Valley.

This statement is being made on behalf of myself and my research team at Columbia University and the research efforts of Jim Serio and his colleagues at the Delaware River Foundation.

We believe that the structure of DRBC's interim Flexible Flow Management Program is basically sound, but as currently implemented it would produce clearly suboptimal results. We also believe that with a modest improvement on the release policies significant benefits can accrue to all of the users.

The FFMP currently is itself the modest improvement over what's been done in the past. Yet it exposes the aquatic community of the upper river and human community of the upper river to higher risks than necessary. Our extensive experimentation, and DRBC's own OASIS simulation model of

the Delaware, has shown that prudent increase in conservation releases made under FFMP during the late spring, early summer, together with an averaging approach to the Montague flow target will correct these deficiencies.

And we did not come here today simply to complain. We are prepared today to recommend a thoroughly-tested detailed modification of FFMP that will correct these deficiencies.

Why is the FFMP deficient and how is it deficient? There are a number of dimensions, but the one that we want to focus on today is the key flaw. The FFMP suffers from these deficiencies because the design is based on the flawed, unfair, and unrealistic premise that New York City will be diverting 765 million gallons per day annually from its reservoirs when, in fact, it will be drawing closer to 500 million gallons per day.

1 That 765 million number is not simply
2 the number used to make estimates in
3 the past. It is written into the
4 structure. The FFMP is forced to
5 actually release water as if we
6 diverted 765 million. That's an
7 overstatement by 53 percent. And
8 here's what it means.
9 It means that this policy
10 overestimates water availability risk
11 counted in drought days, which is the
12 way the DRBC counts this, by 3,747
13 days, or more than 200 percent. A 200
14 percent overstatement of risk. They
15 underestimate in so doing the
16 probability that a reservoir will
17 refill, by 50 percent. They
18 underestimate average daily spills by
19 47 percent. They underestimate
20 average September reservoir levels by
21 31 billion gallons or 17 percent,
22 which is critical to the issue of the
23 potential for flooding due to
24 hurricanes in the late summer. And
25 from our view as fishing

conservationists, they unnecessarily penalize the summertime aquatic habitat in critical sections of the upper basin of the Delaware by 92 percent.

The DRBC and the Decree Parties utilized dire worst-case projections of diversions to justify an unnecessarily conservative policy. Deliberately blinding themselves to reality, they have categorically refused --- and I know this only because we had personally made a request. They have categorically refused to even examine the results of any analyses that do not assume the annual diversion of 765 million gallons. This is done with the full knowledge that actual diversions have averaged about 536 million gallons over the last decade. The maximum over the last decide is 631 million gallons on an annual basis.

It assumes that New York City will use vastly more water than

it actually requires, and by so doing, they punish the environment in the Upper Delaware communities.

Now, we do not disagree with the premise that New York City might at some time require the full 800 million gallon diversion allocation that it's entitled to under the Supreme Court Decree. Nor do we disagree with the fact that there should be available a release plan that's capable of meeting this contingency. But that does not mean the river should be managed as if 765 million gallons or 800 million gallons will be diverted in this coming year when it will not be.

Sound public policy must be based on reality, not on fiction. We have a simple solution. Reservoir releases should be based upon the realistic estimate of the water that New York City will actually divert in the coming year. In the event it requires 765 million gallons, so be

it. And our plan will support that diversion level with exactly, precisely, the same release schedule and exactly the same water availability risk the DRBC has adopted under the interim FFMP. But when we know that the City will divert only 500 million gallons, or say 600 million gallons, or 700 million gallons or the like, reservoirs in the basin should keep that anticipated diversion level. And we have formulated a policy that does exactly that.

We call our policy Augmented FFMP. And I want to bring to your attention that it's well-known that New York City can make reasonable estimates of annual water consumption well in advance. Moreover, I want to call your attention to the fact that the 1954 Supreme Court Decree that governs the allocation of the Delaware waters obliges New York City to do so. And they have not.

The concept we propose is far from revolutionary. Indeed, it is already incorporated in the current FFMP. If you read that document, you'll see that it contains four distinct release tables keyed to New York City diversions of 765, 780, 790, 800 million gallons. What we call for here is a simple logical extension of this idea, by adding two release tables, which we call Table A and B --- actually probably should be called them E and F, which key in releases at the following rates, and our documents that we'll file electronically --- I mean, make available at our web site will give you the details.

The idea is simply this. We have scheduled releases when New York City diversions are forecast to be 600 million gallons or less which increases the summertime releases from Cannonsville and Pepacton. If New York City diversions are above 600 but below 700, we use our next table. And

if New York City diversions are above 700, we would revert to FFMP exactly as written.

What will this policy do for the river, for the environment and the communities? How is it an improvement over the existing FFMP? We have got a lot of detailed data, which will be in documents that we'll file. Suffice it for me here to summarize some of the outstanding facts.

Fact number one, it uses no additional water, not a drop. It takes no water away from any party, including New York City, or any other user. What does it do? It changes the timing of the releases. It changes the timing of the releases and reduces the spills. It turns spills into releases during the time of the year when the river needs it most.

Second point, with regard to trout habitat benefits which is a guiding motivation for our coalition, there will be an increase of 92

percent ---

MS. BUSH:

One minute.

MR. KOLESAR:

--- in trout habitat ---. Shared time? Okay. I'm just about done here.

So there will be an increase of 98 (sic) percent in trout habitat on the upper river relative to the FFMP. With regard to spill mitigation, we'll increase the September voids by six billion gallons and 12 percent. There will also be a decrease in spills by 11 million gallons per day, and average 6.6 percent.

With regard to reliability of water supply, there will be no change in the number of years that the reservoirs refill relative to the current FFMP.

And finally, my last comment, with regard to water availability risk and the measure that the DRBC uses, at a 500 million gallon

per day diversion, our plan will produce 1,983 drought days as estimated by OASIS, versus the benchmark of 5,522. No problem. At 600 million gallons, we'll produce 3,474 versus 5,522. At 700 million gallons we'll produce 4,727 versus 5,522. And at 765 mgd diversions, our plan will hit exactly on the benchmark.

So let me just conclude by saying that we urge speedy adoption of the Augmented FFMP as soon as this interim plan expires. We're pleased to share the details of our analysis with any interested parties. Thank you.

MS. BUSH:

Maya Van Rossun, and Bill Rosebruck.

MS. VAN ROSSUN:

My name's Maya Van Rossun. I'm the Delaware Riverkeeper. My organization is the Delaware Riverkeeper Network. We're an

advocacy organization that works throughout the entire Delaware River watershed to make sure that the needs and the voice of the Delaware River are heard.

I'd like to begin by saying that we believe that achieving more natural flows in the Delaware River is a beneficial and laudable goal of the Decree Parties and the Delaware River Basin Commission. It's a laudable goal that you're trying to attempt to achieve through the Flexible Flow Management Plan, and we absolutely support it.

That being said, unfortunately I am not here today to express support for the FFMP in total. In fact, I'm here to raise a number of very significant concerns that we have about it.

Just in brief with regards to our three concerns, we believe that the FFMP process is being used to highjack another public debate about

building bigger dams on the headwaters of the Delaware River, and we're concerned about that. We believe that flood control is being inappropriately inserted into the reservoir management process, and we believe that the fisheries are not being given the level of protection they need or that they're entitled to through this process.

With regard to the bigger dams, the Delaware Riverkeeper Network opposes including any plan for or reliance upon increasing the size and the storage capacity of the New York City dams as part of any reservoir management plan for the Delaware River. Holding back and artificially managing more water on the Delaware River will simply exacerbate the harm that the river is already experiencing from being dammed. It will inundate, manipulate and harm more of our sensitive headwater lands, waterways and ecosystems, and we believe that it

opens the door to increased diversions and damage that we simply cannot support or accept.

The Delaware River Keep Network I must say, does not agree that more stored water is needed to accomplish the legitimate and the achievable goals of protecting current drinking water needs, river flows and the fisheries and ecosystems of the Delaware River.

The reservoir management plan that we end up implementing needs to be crafted and based upon the water that is truly available today. The states and New York City must not use this process to hijack a future public process whereby New York is looking to build bigger dams on the Delaware's headwaters. And we think frankly it's disingenuous in terms of full and open public dialogue and decision-making to agree upon a plan that's based upon bigger dams and more storage before that concept has been truly vetted by

the public, by the decision makers or frankly before it's even been presented, because pretty much nobody knows about it except through this process.

With regards to flood control, one of the fundamental changes found in this FFMP is its inclusion of flood control as a priority goal for managing the reservoirs. The Delaware Riverkeeper Network does not agree that this is appropriate. We do agree that altering flow releases so as to not contribute to flooding in communities immediately downstream of the existing dams may make sense. But beyond these immediately downstream communities, it's not valid to alter the flow releases of the reservoirs for purposes of flood protection.

I will note that all of the FFMP written documentation and our presentation today seems to go to great pains to state that the flood

protection that would assertedly (sic) be provided is limited to the immediately (sic) downstream community. But in all of the public meetings and public discussions and even here today it's very clear that really folks are looking for flood protection much farther down the river, as far down as Bucks County.

Presenting reservoir management as a successful method for reducing flooding or flood damages along the Delaware River provides a false sense of security that we believe will ultimately do tremendous harm. This false sense of security will encourage communities to continue to develop in a flood plain. We believe it will very likely spur even more development in the current and future flood plains. The result is that we're going to put more people in harms' way of flooding and more people at risk from a catastrophic dam failure should one ever come to pass.

In addition, promising undeliverable flood protection, making the dams and the reservoirs the silver bullet for flooding along the Delaware River means that our communities and our region are no longer going to have the time, the resources or the inclination to seek out and fund truly effective flood protection measures.

The floods that have taken place in recent years were the result of extreme weather events. And while folks might want to argue that any reduction in flooding has a benefit and they might want to argue the extent to which changed reservoir operations may provide some level of benefit, the fact of the matter is we would have had catastrophic flooding and we would have had catastrophic damages regardless.

MS. BUSH:

Time.

MS. VAN ROSSUN:

And things are only

predicted to get worse with global climate change. We cannot continue to expect our community to knowingly support rebuilding homes in the flood plain when doing so keeps people in the path of harm and at the same time harms the health and the quality of the Delaware River that's crucial for sustaining and supporting our entire region as a whole. We can't rely upon the dams. The best protection, the only true protection that we can provide for flood damage reduction is protection, restoration, reforestation of our floodplains.

MS. BUSH:

Time.

MS. VAN ROSSUN:

We have more to say, but we will submit it in written comment. And I apologize for going over. I'm sorry.

MS. BUSH:

Thank you. Mr. Rosebruck. He'll be followed by Mr. Mackey,

Robert Mackey.

MR. ROSEBRUCK:

Winston Churchill said that Americans could be counted on to do the right thing once all the alternatives had been exhausted, and I think we've exhausted the alternatives.

I'd like to thank the DRBC for the opportunity to speak. I'd also like to thank the Delaware Riverside Conservancy and someone I've never met. Her name is Diane Tharp. I've been reading a lot of what she's written on the internet. She's written a high volume of very high-quality information that was helpful to me as I researched this situation.

I have lived along the Delaware River and near the Delaware River for more than 50 years. I currently live in Harmony Township, Warren County, New Jersey. Several years ago the New York City Department of Environmental Protection sent some

officials out to Harmony, and they told us that it would be a great idea if we permitted a local manufacturer to ship in thousands of tons of sewage sludge and then to mix it with fly ash from the bottom of a coal-fired incinerator and the product would be a beneficial soil amendment that would constitute an economically-feasible alternative to liming a farmer's field. Now, I'm not making this up and they said it with a straight face.

And after several years of this fraud masquerading as science, the New Jersey Department of Environmental Protection finally stepped in and shut the operation down. Now, what does that have to do with flooding? Well, when I read the literature, I have to decide pretty early on who am I going to believe.

Now, Dr. Ruggles from Lafayette College has said that if the 20-percent voids had been in place for the three most recent floods, the

water levels would have been six feet lower than they were where I live. The water rose three feet into my home in one flood and six feet into my home for the other two floods. So for me, the voids would have meant the difference between a destroyed house and a muddy basement.

So I read the literature and I conclude that the voids can be done, and they need to be done right now. I thank you very much.

MS. BUSH:

Robert Mackey and then we have Nancy Trushell (phonetic).

MR. MACKEY:

My name is Robert Mackey. Two things, Sharron Dallas is on your register for speaking. This letter is from her. I will read it on my time. And if I go over, use up a few minutes of hers. And if there's any time left, I would relinquish that amount of time to someone who needs it.

Thank you --- this is from

Sharron Dallas --- members of the Delaware River Basin Commission, also known as the Compact Parties, for holding this important public hearing on the future direction of the management of the Delaware River.

I find it inspiring that as a governmental body you still believe as every private citizen in this room believes, that the government serves the people, that public input has value, as governmental officials don't always know best and the will of the people must be considered and factored into any resolution or rulemaking that takes place concerning this river. For we the people are not wayward children. That we are not smart enough to understand the issues and the facts. That we the people do not advocate our rights for self-determination, what is equitable, just or fair concerning the allotments of water from the Delaware River.

It is because you value the

public process, which is a large part of why you even exist as an agency, that I know you will take my request to heart and consider granting it.

My first request, extend the public comment period an additional 90 days. I ask this for two reasons. First, from this past November when elections were held at the local levels until the first weeks of this new year, local municipal governments were in lame duck session. It was told me by different mayors in New Jersey that no planning will be reviewed until after the municipality reorganized after January 1st, 2008.

As such, this has not been reviewed by many municipalities. Those municipalities that held their first 2008 meetings in January had at best 17 days to review this plan, and at worst missed the comment period entirely because the first meeting of the municipal officials of the governing body were held later than

the 18th of the month.

Secondly, having the planned public, and opening the public comment period during the holiday season should have a suspicious person believing that you didn't really want people to pay attention to this plan. Since I know that you really do want public input, please start the new year off with a public-friendly gesture, extend the public comment period 90 days.

My second request is that during this 90-day period I ask that you schedule public workshops for interested public parties inviting private citizens, advocacy groups and municipal officials. Hold these workshops on weekend days so that people who cannot afford to take off work, and this includes the many supervisors and mayors of the small towns along the river and tailwater sections below the reservoirs, so that they will be able to attend. Hold

five of them, one in each segment of the river, meaning the tailwaters, upper stem, mid stem, lower stem and estuary sections of the river.

How is a workshop different than an informational meeting? Well, instead of an overview of the highlights of an FFMP plan, the workshop would go through each page of the FFMP document and just as importantly, the existing and proposed changes to the Water Code.

Why is this needed? I am willing to bet that 90 percent or better of the people in this firehouse today do not understand that the Water Code changes are the rule of law that the DRBC uses to manage the river. The FFMP is more of a concept document.

What's more, I am willing to bet most people have not read the proposed changes to the Water Code document. The two documents should be identical, but alas, they are not.

There are changes stated in the Water Code which do not appear in the FFMP, and there are changes in the Water Code that are only briefly touched upon in the FFMP, but not fully explained.

For example, under the availability of water to support THP/DMP, it states something to the effect, after December 31st, 2012, if additional storage has not been built, the THP/DMP will be based on zero mgd unless the Decree Parties change their minds and decide on getting more, parenthesis, proposed Water Code, page 17, first paragraph, C, end of parenthesis.

I do not think this change to the Water Code was included in the PowerPoint presentation on the web site. How many other provisions are there in the FFMP and the Water Code that should be discussed and understood thoroughly before any of us can make intelligent, informed

comments?

Also, none of the proposed changes, 20 pages worth, concerning the operational procedures of the three New York City-owned Delaware River reservoirs during declared lower basin drought even appear in the FFMP document. And what an impact this declaration will have on us all. Remember the lower basin drought is a capacity only issue and kicks in when the storage in Beltsville falls below a certain number and the storage in Blue Mark Reservoir falls below a certain number. That is the total definition of a lower basin drought.

Under alternative one, New York City, Delaware River reservoirs would make additional releases with 50 percent compensation, parenthesis, if storage were to drop below a 65-billion gallon limit above the L3 category, end of parenthesis. After this point, New York City would be credited gallon per gallon against the

following year's excess release quantity, or ERQ, unless there is an intervening spill condition.

There are other changes to both the FFMP and the Water Code which are never defined. You are changing the rule of law that a glossary of definitions is needed. For example, the term drought was never defined. I consider drought to include a lack of precipitation, but I have been told that this is not correct. That drought means the capacity level in reservoir, which may just be a storage issue. This is not the same definition that most people who read these documents are using.

There is another term used in the FFMP, balancing adjustment. Not only is the term not defined, but the procedure to be used has not been determined. Helping pass into law something that is not defined nor the process to achieve the definition has yet to be developed.

My third request is to have additional public hearings for oral testimony after the 90-day comment period is over and the informational workshops have been held. Please have these hearings again at locations that are easy to get to, different sites and within the different sections of the river on weekend days.

I ask for these things because there are so many changes of how the river is to be managed contained in these two documents. These new provisions and procedures need to be understood by everyone. I know I still have questions, and I could not attend the Philadelphia meeting because of work and family issues. Regardless, we all want to understand what consequences these changes will have on us.

As the Riverkeeper said, and I quote, we need decision-making based on river and community protection priorities. We need open public

dialogue prior to the deal being struck, not a process that tries to make a bad deal look good, end of quotation.

Please respect the public. Respect the local government officials and their needs. We all need to understand this plan, which is more than just numbers and charts. It is a rule of law that will govern the way our precious river is managed for years to come, and these changes will affect each and every one of us. Again, thank you for the opportunity to share my requests with you. Sharron Dallas, Stockton, New Jersey. And I thank you.

MS. BUSH:

Thank you. Nancy Trushell and then Carol Vaso (phonetic).

MS. SKOMORUCHA:

Good afternoon. My name is Susan Skomorucha. I'm actually speaking in lieu of Nancy Trushell on behalf of United Water Delaware. I'd

like to thank the Delaware River Basin Commission for having this open public comment period.

I am the general manager of United Water Delaware, and I just have a few comments on behalf of them.

United Water Delaware wishes to bring to your attention concerns with the protection of its intakes on the White Clay Creek and Christina River under the FFMP. United Water Delaware's intakes are under direct tidal influence of the Delaware River via the mouth of the Christina River located at river mile 70, which is below the FFMP river mile isofluor line of 82.9.

During droughts, under the previously existing flow targets at Montague and Trenton, United Water Delaware's intakes have been subject to salt intrusion levels that are above that of the EPA safe drinking water standards. Our Stanton Water Treatment Plant, which is capable of

producing 30 million gallons of finished drinking water per day to serve a population of nearly 109,000 people in New Castle County, Delaware cannot remove salt from the source water, which makes the decisions about the isofluor salt line that is critical to our operations.

We appreciate the action that the DRBC is taking to optimize use of reservoir storage for the basin. Also, we are pleased that the Commission recognizes the FFMP as a starting point and will be conducting a reassessment study to determine its effectiveness and identify possible improvements.

Due to concern for water quality at our intakes, we advocate that the reassessment study include evaluation of the effect of the decoupling of the flow target at Montague and what that effect will have on the reliability of meeting flow targets at Trenton. In addition,

due to past history of salt intrusion at our intakes, the established river mile triggers for the isofluor line and flow targets at Trenton should be re-evaluated in light of their resulting effect on the residents of New Castle County, Delaware. Thank you.

MS. BUSH:

Thank you. Carol Vaso? Okay. We have Mr. Gudmundsson?

MR. GUDMUNDSSON:

My name's Agust Gudmundsson. A-G-U-S-T, G-U-D-M-U-N-D-S-S-O-N. I'm conservation chairman for the New Jersey State Council of Trout Unlimited. Our comments will be submitted formally. I'll keep my comments brief.

The FFMP is a good model and a good framework. You're going to hear that repeatedly from a lot of people. But I learned software modeling a long time ago as a teenager when I first got to work at Bell labs.

And the first rule that we learned is that if you put garbage in and you get garbage out. The numbers that are being used in the model are not accurate. If New York City is using 500 million gallons a day and your model is basing it at 265 (sic), you're overestimating usage by 96.7 billion gallons a year. It's a very large number to be off by.

There's plenty of water in the system for all the Decree Parties and still keep a healthy environment and support the trout fisheries of all of the river systems within the system. The FFMP should be modeled with accurate actual usage, and in doing so, they'll be plenty of water to keep a healthy environment and no risk to the Decree Parties or any increased drought days.

The other difficulty that we have is with the current number of levels in the seasons within the river. We really need to have more

levels. The L1, L2 current setup is basically going to put us in at L2 for more than 75 percent of the time during the summer. We really have to look at more steps or a graduated --- calculus has been around since the 1500s. We don't have to have steps that drop from 1,500 to 300. We can put linear models in.

The Montague target has led to a number of yo-yoing effects with levels going from 1,500 to 200 to 30 out of the reservoirs just to meet that hard number on a per day basis. A weekly average would give us more moderate flows, a healthier river, more mitigation to the ecosystem, less dry beds, healthier populations of trout and insects and better recreational uses for all of the delivery systems that depend on the economy of the river.

The directed releases, instead of just opening up Cannonsville and boosting up the west

branch, we really have to make sure that the east branch and the Neversink systems are included in any equal distribution of the river, not evenly across, but unnaturally drawing Cannonsville to drought levels while the others are still high, as we've seen in the past, really should be avoided. You have to balance the entire health of the entire system.

The current numbers being used in the interim will lead to fish kills and severe degradation of the main stem and lower west branch. That has to be avoided and can be avoided at no risk.

And lastly, for a flexible flow management program to really be effective and to be a viable tool for the future, there has to be a degree of flexibility. It has to be revisited every --- annually at least, but more frequently when there are problems detected within the system. If the changes increase or decrease

flooding, that has to be accounted for. If we see fish kills, that has to be accounted for. There has to be regular scheduled and stakeholder represented meetings to make any changes to the program. It’s a good framework. But use valid numbers. The OASIS model is the benchmark for modeling reservoirs, for modeling water usage, but only if you put viable realistic numbers in.

The Delaware River's a treasure. The crown jewel of the Delaware River are the wild trout. People come from around the world to fish there. I've had friends and relatives from five countries in the last three years fishing in that system. It's not just something that's treasured here in New Jersey or in New York. My brother from Iceland, my uncle from Sweden, I've had people from Australia and New Zealand and all over the U.S. come to fish. When people have business, fisherman, trout

1 people like myself and the 20,000 TU
2 members in this area, ---
3 MS. BUSH:
4 You're out of time.
5 MS. GUDMUNDSSON:
6 --- businesses in New York,
7 they make a weekend trip to fish that
8 system. It is something that is worth
9 protecting. You have the power to do
10 so. Thank you.
11 MS. BUSH:
12 Thank you. There are two
13 individuals who yielded their time,
14 Bill Moser and John Walters. There
15 were three people and possible more
16 who cut off their testimony. There
17 are ten minutes left. Gail Pedrick?
18 Jolene Bernstein? Would you like a
19 few more minutes?
20 MS. PEDRICK:
21 I don't. Thank you.
22 MS. BUSH:
23 Madam Chairman, shall we
24 gave three minutes of additional ---?
25 How many other people still want to

speak?

MS. BERNSTEIN:

On the DRBC web site, there's something that says, setting the record straight, facts required for an informed debate. That in and of itself implies that we're uninformed and really perhaps stupid.

In statement five, say billions of gallons of water from the New York City reservoirs in the three floods were due to involuntary spills which took place when the reservoirs were at a hundred percent. Hello. That's our point. Billions of gallons of water were spilled because there were no voids in the reservoirs. That's why we're asking for them.

In summation, until the reservoirs are repaired and the thought of large valve releases and flood gates are considered, there must be a 20-percent void in each of the reservoirs. You can have a plan based on smoke and mirrors with no valid

research. And you've chosen releases on probabilities, not facts. You've not considered the dangers and conditions of the reservoirs, or you couldn't have allowed this program to continue. You've not outlined an emergency plan should the reservoirs fail. You've not created a statewide mitigation plan, which you were directed to do.

You've ignored the recommendations of members of the taskforce. You have not listened to the concerns of the New York State controller, who stated that the Delaware River Basin reservoirs should be lowered to 80 percent because of the structural problems. You’ve shown no concern for the conditions of the shaft number six, which is in such disrepair that if it collapses there'd be no ability to divert water, putting us all at risk.

You've totally disregarded all of us who are asking for your

help. I ask you, how would you feel if you were in our place? As I see it, if anything should happen, the DRBC has shown criminal neglect. You know what you're doing. You know what the issues are, and it appears to many of us that nothing is really being done to consider our well-being. I wonder now who's stupid. Is it really me? Thank you.

MS. BUSH:

Any other speakers? If someone has not spoken before, we need you to fill out a card.

MS. COLLIER:

Thank you. With that we will close out the afternoon session. The evening session starts at 7:00 p.m., same place. See you there.

* * * * * * * *

HEARING CONCLUDED AT 5:45 P.M.

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