

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
RESERVOIR

* * * * *

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

HEARING: Wednesday, January 16, 2008
7:03 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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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 -----

3 MS. COLLIER:

4 If people would take your
5 seats, please. Hello. I'm Carol
6 Collier, Executive Director of the
7 Delaware River Basin Commission, and
8 I'll serve as Hearing Officer this
9 evening. I am now opening the evening
10 session of our public hearing on a
11 proposed rulemaking to implement a
12 flexible flow management plan, the
13 FFMP, for the City of New York's
14 Delaware Basin reservoirs.

15 And I'd like to introduce
16 the gentlemen at the table with me.
17 These are alternates to the governor
18 representing the different states on
19 the DRBC. To my left is Mark Klotz,
20 representing New York State; next Joe
21 Miri on my right, representing New
22 Jersey, and Harry Otto representing
23 Delaware. We also have
24 representatives from Pennsylvania and
25 the federal government in the audience

1 who are not official alternates, so
2 they're not sitting up here. But Bill
3 Gast is in the front row for
4 Pennsylvania and Hank Gruber, Corps of
5 Engineers, representing the President
6 of the United States and all federal
7 agencies.

8 If you would like to speak
9 on the record tonight, you must fill
10 out a comment card. If you've already
11 pre-registered with the Commission
12 Secretary to speak, then you don't
13 need to fill out that comment card.

14 Comments will first be taken
15 from federal, state and then municipal
16 elected officials or their appointed
17 representatives. Then from those who
18 pre-registered and then from the
19 remaining individuals.

20 Pam Bush, our assistant
21 counsel and Commission Secretary, will
22 call the main speaker and also call
23 the name of the next speaker so we
24 have sort of an on-deck spot. So
25 there's some reserved seats up here.

1 The second speaker, please come up and
2 be ready.

3 Since we don't have as many
4 speakers this evening as we did this
5 afternoon, we would like to limit your
6 comments to ten minutes maximum. We
7 do want to ensure that everyone gets a
8 chance to speak. And then if we go
9 through all those who've signed up
10 with comment cards and folks still
11 have comments that they didn't get
12 through, we can come back and hear the
13 remaining comments.

14 When you speak, please speak
15 clearly in order to assist the court
16 reporter. State your name, your
17 residence and affiliation. Please
18 note that this Friday is the end of
19 the comment period. We will be taking
20 comments until five o'clock on Friday.
21 They can an e-mail or a hard copy by
22 mail or by fax.

23 Also, please note that all
24 testimony and written comments that we
25 have received for this whole year,

1 since February '07, will be
2 incorporated and reviewed in a comment
3 response document. You do not need to
4 resubmit those comments.

5 If you're thirsty or hungry,
6 the firemen are offering refreshments
7 and any donations go to the fire
8 company --- the proceeds go to the
9 fire company. Restrooms are located
10 in the back of the room there.

11 And before we start the
12 formal testimony, I'd like to ask Bill
13 Muszynski, our manager for our water
14 resources branch, to give a short
15 presentation on the proposal. Thank
16 you.

17 MR. MUSZYNSKI:

18 Thank you and good evening.
19 Let me go to the first slide.

20 On September 26th, the
21 Decree Parties reached a unanimous
22 agreement on the Flexible Flow
23 Management Program, which provides a
24 framework for managing diversions and
25 released from the New York City

1 Delaware River reservoirs. Included
2 in that FFMP are provisions for water
3 supply, drought mitigation, flood
4 mitigation, protection of tailwater
5 fisheries, a diverse array of habitat
6 needs in the main stem and estuary and
7 bay recreation, salinity repulsion.

8 The record has been open
9 since February, 2007 and all comments
10 received since then will be
11 considered. So if you've submitted
12 comments, you don't have to resubmit
13 them. If you want to, you can, but
14 they will be considered.

15 On December 3rd, the draft
16 rulemaking was posted and published,
17 and outreach endeavors were conducted
18 including mailings to newspapers and
19 to various parties who've expressed
20 interest. We've conducted four public
21 availability meetings. These meetings
22 were for the exchange of information
23 relative to the Water Code changes.
24 They were not transcribed in any way.
25 We didn't keep those comments other

1 than in our notes. So if you did not
2 submit your comments formally for the
3 record, but you gave it at these
4 public availability, they probably
5 won't necessarily appear in the record
6 itself. Availability sessions were
7 held in Matamoras, Pennsylvania and in
8 Philadelphia.

9 Today's public hearing is
10 being held. This is the evening
11 session from 7:00 to 10:00. And as
12 Chair mentioned, the comment period
13 ends on close of business on Friday,
14 January 18th. There are several ways
15 to submit your comments to us and your
16 written comments to us. You can do it
17 by e-mail, which could be sent to
18 paulaschmitt@drbc.state.newjersey.us.
19 You can submit them by U.S. mail to
20 the Commission Secretary, Post Office
21 Box 7360, West Trenton, New Jersey; or
22 by fax at 609-883-9522 to the
23 attention of the Commission Secretary.

24 In all cases, we'd like the
25 commenter's name, the affiliation and

1 the address to be provided with the
2 comments. And especially if you send
3 in e-mail comments, please use FFMP in
4 the subject so that it doesn't get
5 hung up in some sort of screening.
6 Sometimes comments don't get through
7 the screens if you don't use those
8 codes. Please use this. It will also
9 help us to get to the right place
10 immediately.

11 Again, comments through
12 Friday, January 18th and all testimony
13 that has been previously given will be
14 included in the administrative record.

15 When we get all of your
16 comments assembled and go through
17 them, we will discuss all the comments
18 with the Decree Parties. Staff will
19 then prepare responses to the comments
20 and their recommendations to the
21 Commissioners. And currently, we
22 anticipate the Commission action at
23 its regularly scheduled hearing, which
24 is Wednesday, May 14th, 2008.

25 The Water Code amendments

1 that were made were Section 2.5.3 of
2 the Water Code. This is now newly
3 entitled the Flexible Flow Management
4 Program. Section 2.5.4 concerning
5 drought emergency actions by the
6 Commission in accordance with Section
7 313 of the Compact. Section 2.5.5
8 which provides for the coordinated
9 operation of lower basin and
10 hydroelectric reservoirs during a
11 basinwide drought. And Section 2.5.6
12 relating to the coordinated operation
13 of upper and lower basin reservoirs
14 during a lower basin drought. And
15 taken together, these sections
16 collectively implement the FFMP.

17 The terms of the amendments,
18 the Code is proposed to expire on May
19 31st, 2011 unless the FFMP is extended
20 or modified by unanimous agreement of
21 the Decree Parties and approved by the
22 Commission. Unless extended or
23 modified prior to May 31st, 2011, the
24 City's Delaware Basin reservoirs will
25 be operated in accordance with the

1 pre-FFMP Water Code and Docket which
2 is C-77-20 CP (Revised).

3 The effect of the proposed
4 amendments, it establishes diversions
5 and flow objectives. It substitutes a
6 fixed volume of releases called the
7 interim excess release quantity for
8 the excess release quantity. It
9 modifies the schematic rule curve
10 diagrams that define the base of
11 normal, drought watch, drought warning
12 and drought emergency operating
13 conditions. It also increases New
14 Jersey's allowable out-of-basin
15 diversion during drought warning and
16 drought emergency operations by 15 and
17 20 million gallons per day
18 respectively above the levels
19 established by the Good Faith
20 Agreement.

21 It eliminates the link
22 established by the Good Faith
23 Agreement between the Montague, New
24 Jersey flow objective and the location
25 of the salt front during basinwide

1 drought emergency operations. It also
2 establishes the rate of releases to be
3 made from each of the City's Delaware
4 Basin reservoirs for habitat
5 protection, discharge mitigation and
6 that's based upon a combination of the
7 combined reservoir storage levels and
8 the individual reservoir storage
9 levels.

10 The tailwaters habitat
11 protection and discharge mitigation
12 program basically consists of
13 conservation releases to help maintain
14 minimum flows and adequate
15 temperatures in the tailwaters
16 immediately below the City Delaware
17 Basin reservoirs to protect cold water
18 fisheries. It consists of discharge
19 mitigation releases to help mitigate
20 the effects of flooding immediately
21 below the three City reservoirs. And
22 releases are defined for each of the
23 reservoirs individually, based upon
24 the total combined storage of the
25 reservoirs in accordance with the four

1 rule curves contained in Figure 1 in
2 proposed Section 2.5.3 but also the
3 individual reservoirs themselves.

4 Amendments largely eliminate
5 the use of storage banks for the
6 purpose of habitat protection
7 including thermal bank. Conservation
8 releases are based on reservoir
9 storage levels resulting in large
10 releases when storage levels are high
11 and smaller releases when storage
12 levels are at or below normal.
13 Conservation release rates are set for
14 each zone and are set in Tables 3A
15 through D in Section 2.5.3G.

16 The discharge mitigation
17 releases are designed to help mitigate
18 the effects of flooding immediately
19 below the three City reservoirs, while
20 not compromising the availability of
21 storage for other uses designed to
22 increase the likelihood of storage
23 voids during the fall and winter. But
24 voids of a given size are not
25 guaranteed, and size and duration of

1 the voids depend on a combination of
2 inflow, releases, and diversions for
3 each reservoir.

4 There's also a provision in
5 these regulations that allows for the
6 temporary suspension or modification
7 of the FFMP in case of emergency.
8 Under that provision, the Executive
9 Director after consultation with the
10 Decree Parties and with the unanimous
11 consent of the Decree Parties, if the
12 Executive Director finds that the
13 customary notice and comment
14 rulemaking by the Commission is
15 impractical and contrary to the public
16 interest, the Executive Director may
17 issue an emergency order. That order
18 must be ratified, rejected or modified
19 at the next meeting of the Commission
20 subject to the unanimous approval of
21 the Decree Parties. And prior to that
22 meeting, there would be public notice
23 of the action, so that the public
24 could come to the meeting and have an
25 opportunity to comment on it before

1 the Commissioners took their action.
2 Ratification by the Commission would
3 be temporary, basically to the
4 mitigation of that emergency or the
5 extent of that emergency.

6 Once again, the reminder is
7 that you can either e-mail written
8 comments to Paula Schmitt at the
9 e-mail address up there, send it to us
10 by U.S. mail to the Commission
11 Secretary at Post Office Box 7360,
12 West Trenton, New Jersey; or fax to
13 our e-mail (sic) which is 609-883-
14 9522. Thank you.

15 MS. BUSH:

16 I have list of folks who
17 phoned in advance to speak this
18 evening. First of all, are there any
19 public officials who came tonight to
20 speak? Okay. Diane Tharp and then
21 Sharon Dallas.

22 UNIDENTIFIED SPEAKER:

23 Sharon Dallas had to leave
24 for family issues and Bob Mackey has
25 already read her comments. So she

1 won't be here.

2 MS. BUSH:

3 Thank you. Diane Tharp
4 followed by Tom Scannapieco.

5 UNIDENTIFIED SPEAKER:

6 He's on his way.

7 MS. BUSH:

8 Okay. And if he's not here,
9 Ron Schmid. Thank you.

10 MS. THARP:

11 Okay. Good evening. I come
12 before all of you tonight and before
13 the Commission with a very heavy
14 heart. We have had three years of
15 public outcry, an interim plan that is
16 approved and effective, a four-state
17 governors taskforce with
18 recommendations for change, hundreds
19 of comments for changes on the
20 previously-proposed FFMP, letters from
21 both federal and state politicians,
22 hundreds of newspaper articles written
23 on the subject and millions of dollars
24 of damages to residences and
25 businesses, and more importantly, loss

1 of life. Yet, looking at the table of
2 contents of this FFMP document, it
3 does not contain a basinwide flood
4 management operating plan. In fact,
5 the word flood is not in the table of
6 contents.

7 On September 21st, 2006, a
8 letter was sent to the DRBC and signed
9 by the four governors, requesting the
10 DRBC to develop a set of recommended
11 measures to alleviate and mitigate
12 flooding impacts along the Delaware
13 and its tributaries. It also directed
14 the measures to be evaluated by the
15 taskforce included development of a
16 basinwide flood management operating
17 plan for the basins' existing
18 reservoirs.

19 The Flood Mitigation
20 Taskforce did develop a preliminary
21 action plan that listed 45
22 recommendations in six categories.
23 Recommendation R2 explicitly states to
24 develop a reservoir operation plan
25 that includes potential flood

1 mitigation by all major reservoirs.

2 In Carol Collier's cover
3 letter of this taskforce's preliminary
4 action plan to the governors on July
5 12th, 2007, she states that the
6 following immediate actions are
7 proposed. Develop a coordinated
8 reservoir operating plan. If this was
9 to be an immediate action, why isn't
10 this is part of the FFMP? Where is
11 this basinwide flood management
12 operating plan? A chart listing
13 releases it not an operating plan.

14 Don't you agree that after
15 three of the most devastating floods
16 that the Delaware River has endured
17 that the words flood management plan
18 deserve the priority as a separate
19 section in this document. Isn't this
20 what the governors requested?

21 What should this plan
22 include? First, each dam affecting
23 the Delaware River must submit an
24 emergency action plan to this
25 Commission. This includes all dams in

1 all four states.

2 It was stated at an
3 informational meeting in Matamoras
4 that I attended that these plans exist
5 and have existed for a long period of
6 time for the New York Delaware dams.
7 However, an inspection report of the
8 Neversink Dam that I received from the
9 New York City DEP dated May 11th,
10 2006, and I quote, it said, our
11 records show that no emergency action
12 plan is yet available for this dam.
13 It may exist now, but apparently from
14 1954 until 2006 the people living
15 below this dam had no formal emergency
16 action plan in place to protect them
17 in an emergency.

18 These emergency action plans
19 should address proactive steps for
20 flood management such as greater
21 releases of water when storms are
22 predicted far in advance as well as
23 reactive procedures to flooding events
24 and catastrophic failure. A rough
25 draft of the Lake Wallenpaupack flood

1 management plan does specify both pro-
2 active and reactive procedures, and
3 I'm sure that the dams controlled by
4 the Army Corps of Engineers have
5 similar plans.

6 After this Commission
7 received these plans a coordinated
8 operating plan should be established.
9 One example of the coordination would
10 be to develop a plan for the timing of
11 the flood gate releases during a storm
12 event so that all reservoirs equipped
13 with flood gates do not release at the
14 same time.

15 You have coordinated all the
16 reservoirs in the Delaware River Basin
17 under drought conditions. Now it is
18 time to do the same for flooding. It
19 is imperative that the inclusion and
20 coordination of these emergency action
21 flood management plans be part of this
22 FFMP to ensure the safety of all who
23 live and work in this Delaware River
24 Basin.

25 Secondly, this Commission

1 must require that a copy of all dam
2 inspection reports from all the dams
3 affecting the Delaware River in the
4 four states be provided to you at the
5 time of inspection. I've applied for
6 inspection reports for the three New
7 York City Delaware dams under the
8 Freedom of Information Act. Thus far,
9 I have received three visual
10 inspection reports from the New York
11 City DEP dated May 2006, one for each
12 of the dams.

13 In these reports, there is
14 reason for concern since the following
15 terms are noted, internal cracking,
16 beaching erosion, exposed rebar, holes
17 along the downstream face of the
18 embankment, minor surface erosion, wet
19 area at toe, seepage, erosion at
20 several of the catch basins on the
21 berm and maintenance deficiencies.
22 How serious are these deficiencies?

23 At the informational meeting
24 at Matamoras, it was stated by the
25 representative from the City that all

1 deficiencies are fixed immediately,
2 yet these reports from 2006 state that
3 there is a possibility that they will
4 be addressed --- a possibility that
5 they will be addressed in the 2008
6 contract.

7 It must be stated in this
8 FFMP that the DRBC receive this
9 information as part of basinwide flood
10 management plan.

11 In the past, the New York
12 City DEP has falsified dam inspection
13 reports. And in a Times Herald Record
14 article dated December 11th, 2005, the
15 reporter stated that neither the City
16 nor the state would provide
17 documentation detailing the condition
18 of the dams. New York's lead dam
19 inspector in the early 1990s in the
20 same article stated that the dams west
21 of the Hudson were never high on the
22 City's priority and at the time there
23 were a number of deficiencies that he
24 strongly suspected had not been fixed.

25 How safe are these dams or

1 other dams affecting the Delaware?

2 In part one of the Delaware
3 Basin Compact, it states that this
4 Commission was created to protect the
5 health, safety and general welfare of
6 the millions of people who live and
7 work in the Delaware River Basin and
8 will continue to be vitally affected
9 by the management and control of water
10 in the Delaware River Basin.

11 Certainly, as part of this
12 FFMP, it must be mandatory for this
13 Commission to receive a copy of all
14 inspection reports to ensure our
15 health, safety and general welfare.

16 The Delaware River Basin
17 Compact also states that whereas, the
18 public interest requires facilities
19 must be ready and operative when
20 needed to avoid the catastrophe of
21 unexpected floods, of prolonged
22 drought, and for other purposes. We
23 have heard over and over again from
24 this Commission, as well as the New
25 York City DEP, that these are not

1 flood control dams. Then it is time
2 to modify them so that they are flood
3 control dams.

4 Every dam in this river
5 basin must be managed for flood
6 control. This obligation is owed to
7 the people and communities living
8 below these dams. This FFMP must
9 include a timeline for the completion
10 of modifications to the New York
11 Delaware dams that will include larger
12 release, flood gates, siphons and
13 other flood control adaptations to
14 ensure the safety of the people in
15 this Delaware River Basin.

16 MS. BUSH:

17 One and a half minutes left.

18 MS. THARP:

19 If the New York City DEP can
20 make flood control modifications to
21 the Gilboa Dam on a river system that
22 rarely experiences any mainstream
23 flooding, then most certainly these
24 modifications must be made to the dams
25 on a river that's seen three

1 devastating floods in two years.

2 This Commission has the
3 right under the Compact to plan,
4 design, construct and operate and
5 maintain projects and facilities as it
6 may deem necessary or desirable for
7 flood damage reduction.

8 It is time for you to set
9 forth such a plan that includes a
10 timeline for the modifications
11 necessary for flood control as part of
12 this FFMP.

13 The fourth part of this
14 flood management plan must be an
15 equitable water release schedule to
16 create voids to lessen the flood
17 crest. Living near a stream or river,
18 we all take the risk of flooding.
19 Yet, in your water supply, reservoir
20 and flood protection article, this
21 Commission also admits that voids do
22 minimize flood crests. On the other
23 hand, reservoirs spilling billions of
24 gallons of water into the river
25 increase the flood crest. Whether the

1 scientific evidence shows that the
2 voids make a difference of three feet
3 or ten feet, the important point is
4 that having voids may save someone's
5 business, home or even their life.

6 Last April we narrowly
7 escaped our fourth flood due to the
8 fact that the interim release plan was
9 in place as well as help from mother
10 nature who turned some of the rainfall
11 over the reservoirs to snow.
12 Presently, over a billion gallons a
13 day is being released from the
14 reservoirs because two are above 95
15 percent.

16 MS. BUSH:

17 Time. Is there someone who
18 wants to yield time?

19 MR. THARP:

20 Yes. I would like to. I'm
21 Chester Tharp. I would like to yield
22 my time.

23 MS. THARP:

24 Thank you. This is
25 certainly helpful but not aggressive

1 enough. Also, if it were now May 1st,
2 the same releases would not be
3 happening because the release schedule
4 proposed in the FFMP does not include
5 releases at this time.

6 Mother nature does not read
7 a calendar when it produces excessive
8 rainfall to an area. The months of
9 the year must be removed and releases
10 strictly based on reservoir capacity.
11 All three of our floods occurred at
12 times when releases in this present
13 schedule would be minimal. We are
14 requesting that the release schedule
15 be changed so that there will be
16 maximum releases from reservoir valves
17 any time a reservoir reaches 85
18 percent, for every month of the year,
19 not the 90 to 100 percent for specific
20 months that you now have.

21 The Delaware River Basin
22 Flood Mitigation Taskforce in its
23 recommendations calls for releases
24 that will reduce the likelihood and
25 volume of spills from basin reservoirs

1 during storm events to help mitigate
2 flooding. The present release
3 schedule, although a start, still
4 allows for 100 percent full reservoirs
5 during specific months, with no
6 significant releases during those
7 months.

8 When the New York City
9 Reservoir System is at full capacity,
10 it would take 60 days for it to drop
11 to only 90 percent at a consumption of
12 over a billion gallons a day. If we
13 have frequent rainfall or snow melt,
14 these reservoirs may stay at 100
15 percent for many months, causing the
16 risk of deadly flooding at any time.

17 After three devastating
18 floods, you must negotiate to have a
19 more aggressive release schedule in
20 this FFMP to create the voids that
21 will reduce the likelihood of spills
22 during storm events, as the Governors'
23 Taskforce has requested.

24 This Commission has the task
25 of balancing all aspects of the use of

1 this river in an equitable manner,
2 which is certainly not an easy task.
3 However, it was not the intention of
4 the Delaware River Basin Compact for
5 you to be responsible for New York
6 City's water supply, but you are
7 responsible for the equitable
8 apportionment of the water.

9 The City has a legal right
10 to take an average of 800 million
11 gallons per day from these reservoirs.
12 When our New York Delaware reservoirs
13 are at full capacity, it would take
14 337 days for the City to withdraw that
15 amount. And taking a normal daily
16 average in the past of 465 million
17 gallons, it would take them 580 days.

18 The City has completely
19 ignored study after study, the Little-
20 Hoover Committee, 1950; Metcalf & Eddy
21 Study, 1974; and the Intergovernmental
22 Taskforce Study in 1985 to name a few,
23 that encouraged them to turn to the
24 Hudson to supplement their City water
25 supply. The City has ignored the

1 warnings to repair failing
2 infrastructure and leaks for 18 years,
3 according to the recent comptroller's
4 audit report placing the Delaware
5 River Basin in imminent danger if the
6 tunnel collapses.

7 The City continues to adhere
8 to the almighty filtration of rain,
9 instead of building a filtration plant
10 on the Hudson that would provide the
11 City with clean filtered water and a
12 source of water during times of
13 drought.

14 In the report of the Special
15 Master filed May 27th, 1954, it said
16 New York takes the risk of the future
17 and the possible experiences of the
18 future may make modification of the
19 plan as it now stands necessary in
20 unforeseen particulars. Three major
21 floods in less than two years
22 certainly constitutes unforeseen
23 particulars.

24 Releases from the New York
25 City Delaware reservoirs are

1 controlled by the unanimous decision
2 of four Decree Parties and New York
3 City. Thus, if New York City refuses
4 to agree, the resolution cannot be
5 passed, or instead as in the past, the
6 resolutions are written so New York
7 City will agree. Diversions from
8 these reservoirs to the Hudson System
9 are controlled exclusively by New York
10 City. Therefore, the reality is that
11 New York City controls the releases
12 and diversions of these Delaware
13 Reservoirs. Certainly, this is not
14 equitable apportionment.

15 On paper in this FFMP
16 proposal, it appears that New York
17 City makes cutbacks in diversions
18 during drought, but in reality these
19 amounts are still more than their
20 actual daily diversions. Yet the
21 Montague flow objective is severely
22 even though the Supreme Court Decree
23 states that this objective of 1750
24 cubic feet per second was to remain a
25 constant and never be changed. This

1 Commission needs to re-evaluate this
2 document in terms of equitable
3 apportionment based on the actual
4 scientific data.

5 In conclusion, the FFMP must
6 include a coordinated basinwide flood
7 management operating plan that
8 includes and manages all the
9 impoundments affecting this Delaware
10 River.

11 This includes the
12 coordination of the emergency action
13 flood management plan for all dams
14 affecting this river. Inspection
15 reports for each of the dams delivered
16 to the DRBC at the time of inspection,
17 a timeline for the completion of flood
18 control modifications to all high
19 hazard dams and mostly importantly an
20 aggressive release schedule to provide
21 voids to mitigate and lessen the flood
22 crest as the four governors and the
23 Flood Mitigation Taskforce have
24 requested.

25 Both as members of this

1 Delaware River Basin Commission and as
2 representatives of your respective
3 state and federal governments, you
4 have the legal obligation to manage
5 this watershed in a way that preserves
6 the health, safety and environment of
7 all who live in, work in or use the
8 waters of this great river.

9 The overriding legal
10 principle controlling your action as
11 expressed by Justice Oliver Wendell
12 Holmes, one of our most scholarly and
13 respected jurists, is the Doctrine of
14 Equitable Apportionment. This is the
15 doctrine adopted in this case in 1931,
16 reiterated in 1954, and again in the
17 Delaware River Basin Compact in 1961.

18 You are each bound by your
19 position as Commissioners and by your
20 oath of office as officials of your
21 respective governments to assure that
22 the waters of this basin are equitably
23 apportioned among the states in the
24 basin.

25 This FFMP and the proposed

1 revisions to the Water Code under the
2 Compact don't even remotely approach
3 an equitable apportionment. In fact,
4 the proposal before you only make the
5 current inequities worse.

6 In this proposal New York
7 City continues to expand its control
8 over the basin and to skew the
9 operation of the river system further
10 and further away from any concept of
11 equity.

12 You have the opportunity now
13 to stop this and to start to reverse
14 the inequities the City has demanded
15 over the last 46 years since this
16 Commission was created. Your actions
17 over the next several months on this
18 proposal are of the utmost importance
19 legally, politically and morally.

20 We will be watching,
21 questioning and encouraging throughout
22 the process, but we also will be
23 considering whether legal actions are
24 required to begin to restore the
25 equitable balance struck by the

1 original Decree of the Supreme Court
2 in 1954.

3 Thank you very much for your
4 time and for listening.

5 MS. BUSH:

6 Ron Schmid. Ron Schmid.
7 Next would be Bob Mackey again.

8 MR. SCHMID:

9 Good evening. I'm Ron
10 Schmid. I'm a resident of Lower
11 Makefield, also with the RAFT group
12 who is against river flooding. I've
13 been living in Yardley and Lower
14 Makefield for nine years. And I'm not
15 an engineer. I just have a few
16 comments, about a couple minutes.

17 We moved here from
18 Morristown, New Jersey and just fell
19 in love with the river. We fell in
20 love with the beauty of this area and
21 we're still in love with the beauty of
22 the environment of this area and the
23 river. However, you know, back in
24 September of '04, we saw 23.41 inches
25 of the Delaware that came up. In

1 April of 2005, 25.33 inches came up.
2 It's scary. I was nervous. And in
3 June of 2006, 25.09 inches. I built
4 some stairs going down to the river so
5 I just watched it come up. And for
6 me, it's just watching it down by the
7 river. For others who are part of
8 RAFT and other organizations, they
9 watched it come up in their houses.

10 So the flood causes havoc,
11 and you know this. But I just want to
12 restate just one or two things. One
13 is it damages houses. It damages
14 streets. It damages sewers. It
15 damages property values. It damages
16 the economy, and it damages the hearts
17 and minds of a lot of people who live
18 in that area.

19 So the proposal to lower the
20 reservoirs to 80 percent may not be
21 the only answer, but it, in fact, is
22 one answer. And 80 percent may not be
23 the number, but it stands to reason
24 --- and I would underscore that point,
25 it stands to reason, that lowering the

1 reservoirs and controlling the flow
2 from the reservoir may help the
3 communities when flood conditions
4 appear. It's just logical. It seems
5 rational to me. Again, I'm not an
6 engineer, and it's not political.

7 I was born and raised in New
8 York City, by the way. And I
9 understand the potential effects of a
10 drought, but a drought is a very,
11 very, very remote occurrence, very
12 remote. Any cost/benefit analysis by
13 anybody would demonstrate that the
14 occurrence of a drought is so extreme,
15 but the occurrence of flooding on the
16 Delaware now in Lower Makefield, three
17 in 24 months, has become the way
18 things are.

19 So I think the scales are
20 tipped in the wrong direction here. I
21 think there should be a lot of more
22 attention paid to flooding and the
23 ways to mitigate that, than a drought,
24 which is a extreme. Furthermore, I
25 don't think it's an all or nothing

1 proposition. Maybe effective public
2 policy or water management means that
3 it is a variable percentage based upon
4 conditions, weather, time of year, et
5 cetera. You know, maybe there's some
6 happy middle ground here that we can
7 reach that is acceptable both to those
8 who make public policy and those of us
9 who are residents in the area. And
10 what's wrong with that? What's wrong
11 with that?

12 So I recommend that you
13 consider a plan to lower the capacity
14 in the reservoirs and therefore take
15 steps then to prevent flooding in
16 Lower Makefield. Thank you very much
17 for your time.

18 MS. BUSH:

19 Tom Scannapieco here?

20 MR. SCANNAPIECO:

21 May I reserve my time for
22 later?

23 MS. BUSH:

24 Yes, you may. Aaron Hubble.
25 Barry Ziff?

1 MR. ZIFF:

2 Yep.

3 MS. BUSH:

4 The next speaker will be
5 Joanne Bitzer.

6 MR. ZIFF:

7 My name's Barry Ziff. I
8 lived in New Hope on the river for 28
9 years.

10 From 1980 to 1996, we did
11 not see any flood that did any damage
12 to our property, none whatsoever. My
13 house is a hundred feet back from the
14 river. In 1996, we had an unfortunate
15 ice dam experience. We got a foot and
16 a half in the basement, and that was
17 something that we said, okay, it
18 happened. Nobody could have really
19 anticipated it. And nobody could have
20 anticipated floods from 2004, '05, '06
21 and I'm sorry that was an important
22 flood this past April 16th, because
23 the people in Lumberton, the people in
24 Croydon had basements full of water.
25 And the news in Philadelphia reported

1 it was because of the high tide.
2 Nobody at any time bothered to look a
3 the flow from the reservoirs that was
4 coming down the Delaware River. They
5 ignored it completely. What a
6 terrible thing. Most people don't
7 even know what happened.

8 What happened to us, we
9 evacuated three times, 2004, 2005 and
10 2006. The worst experience anybody
11 has ever had of cleaning up their
12 homes is cleaning up the mud that
13 occurs as a result of a flood.

14 My question to you is, if
15 the people who made the decision, the
16 Decree of the Supreme Court in 1954,
17 knew the damage that would be
18 occurring as a result of these
19 particular floods, do you think they
20 would uphold the Decree in the form
21 that is currently being interpreted?
22 I don't think so. I don't think any
23 of those justices or any other Supreme
24 Court Justice would ever under any
25 circumstance allow what's going on.

1 It would not fit their conscience.

2 Now, what has happened to
3 me? Well, the first flood in '96
4 caused a little crack in the detached
5 garage. The 2004, 2005 and 2006
6 floods have now given me somewhat of a
7 crevasse in my garage. It's not
8 attached. It doesn't get paid for by
9 flood insurance, homeowners insurance
10 or anybody but my wife and myself.
11 We've replaced yard to the tune of
12 \$10,000, and then I just quit because
13 I am truly upset by the fact that we
14 have over 100 percent capacity in one
15 of the reservoirs right now and 85 to
16 95 percent capacity as I understand it
17 in the other two reservoirs.

18 And what could happen?
19 Well, there's rain coming in from the
20 west coast. There's a weather pattern
21 that crosses the United States, and it
22 rains here a couple days later. We
23 don't anticipate that. We don't
24 release. If we do release, we release
25 as they did in 2007 in April. They

1 released 1744 cubic --- I'm sorry,
2 1722 cubic feet per second of water
3 into the Delaware at the height of
4 that rain storm. Does that make
5 sense? Does that show anticipation?
6 Is that intelligent people thinking
7 about what's happening to the people
8 who live along the Delaware River? I
9 think not.

10 Has there been any dredging
11 in any of those reservoirs? Would it
12 be that if they did dredge and got rid
13 of silt that was there, that the same
14 capacity of water would be held to
15 offset any drought mitigation, and
16 still not be a potential terror to
17 those people that live along the
18 river?

19 What about all the other
20 smaller reservoirs? How are they
21 managed? Are they still at a hundred
22 percent capacity? Does anybody think
23 about this? And if so, is it, oh,
24 it's like in World War II, we're going
25 to take 10,000 losses but we'll win

1 the battle. Well, I'm sorry, I'm not
2 a well World War II person. I don't
3 want to be one of those 10,000 losses,
4 and I think you and all the people
5 that are concerned should give it good
6 thought. Thank you very much.

7 MS. BUSH:

8 Joanne Bitzer. And after
9 Joanne, Elaine Reichart.

10 MS. BITZER:

11 Joanne Bitzer. I'm going to
12 be dramatic. And I don't know anything
13 about billions of water coming over a
14 dam or any scientific things like
15 that. I just want to say that if New
16 York can't be concerned about people
17 in this country, then how do we expect
18 peace in the world?

19 MS. BUSH:

20 Elaine Reichart and then
21 Jeff Zimmerman.

22 MS. REICHART:

23 My name is Elaine Reichart,
24 and I represent the Aquatic
25 Conservation Unlimited Group.

1 Thank you, members of the
2 Delaware River Basin Commission for
3 holding this hearing to give the
4 public a chance to weigh in on the
5 proposed plan to vote it in on the May
6 time frame. Let's get straight to it.

7 The FFMP is fundamentally
8 and first and foremost a plan crafted
9 for and by New York City. The plan is
10 bad, really, really bad, for the rest
11 of us. The structure is good, but the
12 numbers and the devilish details are
13 disasters waiting to happen.
14 Specifically, the FFMP exacerbates
15 flooding. I'll talk about that in a
16 bit.

17 Another disastrous aspect of
18 the FFMP, which is not well-
19 publicized, is the fact that this plan
20 compromises Philadelphia's water
21 supply by detaching the Montague flow
22 target from the location of the salt
23 front during drought emergency
24 conditions. What's more, this
25 detachment is being done incredibly

1 without sufficient scientific
2 modeling, without the sound science
3 that the DRBC holds in such high
4 regard.

5 I'll say it again. The
6 City, with the assent of the other
7 Decree Parties and the tacit backing
8 of the DRBC is playing fast and loose
9 with Philadelphia's drinking water
10 supply by attempting to pass into law
11 a plan for which validated scientific
12 modeling has not been done to ensure
13 that the Trenton target can be
14 maintained under the flow outlined in
15 the proposed changes to the Water
16 Code.

17 How hypocritical and ironic
18 is it to say there is no sound science
19 on reservoir-caused flooding when
20 there is, and then to turn around and
21 jeopardize millions of peoples' water
22 supply, without the proper scientific
23 modeling to back up the proposed
24 changes to the minimum Montague flow
25 requirement of the Supreme Court

1 Decree?

2 The implications of upstream
3 migration of the salt front and
4 increased total sal solids and
5 chloride concentrations at the
6 Philadelphia Water Department's Baxter
7 Drinking Water Treatment Plant, the
8 abandonment of the Trenton target has
9 not been studied. You know this. The
10 Philly Water Department has stated
11 some of these concerns in their FFMP
12 comments.

13 Governor Minner, the water
14 draws of United Water Delaware and New
15 Jersey American are in jeopardy as
16 well. How the governors of the lower
17 basin states can accept this plan that
18 will harm their state's water supply
19 operations needlessly is beyond me.

20 Let's make this clear. This
21 is no sound science that says the
22 lower basin states' water supply will
23 not be harmed under this disastrous,
24 miserly plan.

25 The cold water fisheries and

1 the endangered species in the river
2 are needlessly harmed as well, but
3 I'll let the fisherman who are the
4 experts talk about the dangers to the
5 aquatic life due to this disaster of a
6 plan.

7 Flood victims, water supply
8 authorities, water departments and
9 environmentalists all agree, this plan
10 is terrible. It does exactly the
11 opposite of what it is advertised to
12 do. As there is no hydrology or
13 engineering justification for this ---
14 hydrologic or engineering
15 justification for this plan, it is
16 either incompetency or political
17 shenanigans that has allowed New York
18 City to muscle this Commission into
19 proposing a plan with the provisions
20 that you have published.

21 Here's the heart of the
22 matter. The FFMP is geared to achieve
23 one goal and one goal only, legitimize
24 and endorse New York City's plan to
25 hoard more water at everyone else's

1 expense.

2 The great myth that the
3 drought of record starts tomorrow
4 coupled with the great lie that there
5 is not enough water to go around only
6 feeds New York City DEP's powerbase
7 and their ability to bully the lower
8 basin states into negotiating away the
9 lower basin states' equitable
10 apportionment of the river's waters.

11 The data exists to support
12 the contention that there is more than
13 enough water to go around. Most of it
14 is contained on the Rivermaster's web
15 site as well as New York City DEP's
16 web site. One just has to dig for it,
17 pull it together and analyze it.

18 New York City DEP normally
19 takes between 400 million gallons a
20 day to 650 million gallons a day from
21 the Delaware River reservoirs, which I
22 refer to as the DRRs. The yearly
23 average has gone down to approximately
24 460 million gallons a day, but this
25 average only tells part of the story.

1 Since 2000, New York City DEP's
2 pattern of usage has drastically
3 morphed into a practice of extremes, a
4 practice of yoyo diversions,
5 overdrafting during the hot summer
6 months. And why would that be?
7 Bacteria problems on the Hudson side?
8 Electrical generation? Sale of water?
9 All of these? And then they
10 underdraft when it's cold and raining.

11 Cases in point, before the
12 floods of 2004, 2005 and 2006, New
13 York City curtailed their diversions
14 to less than 300,000 million gallons a
15 day, in some cases for six weeks
16 before the flood. For days on end
17 they actually took zero million
18 gallons a day, i.e. no diversions at
19 all from the Delaware River
20 reservoirs.

21 This allowed the capacities
22 of the DRRs to fill to a hundred
23 percent and to be in constant spill
24 mode. Add in a couple of heavy rain
25 storms, and voila, instant floods.

1 However, it's the
2 overdrafting practices that are going
3 to cause Philadelphia and Delaware
4 possible drinking water shortages and
5 will put serious hurt on New Jersey as
6 well. Overdrafting will destroy the
7 cold water fisheries as well as the
8 jobs and the economic dollars that
9 Pennsylvania and New York State derive
10 from the Delaware tributaries and main
11 stem fisheries and ecotourism.

12 If you look at this past
13 April 23rd to September 2007, New York
14 City DEP's diversions from the DRRs
15 averaged 750 million gallons a day or
16 higher more weeks than not. June
17 23rd, 2007, New York City DEP actually
18 took 1.3 billion gallons of diversions
19 from the three DRRs. This, of course,
20 through a tunnel that has fractures in
21 it, a tunnel in which experts have
22 advised not to push more than 750
23 million gallons a day for fear of it
24 collapsing the RWB section of the
25 tunnel.

1 With the taking of hundreds
2 of millions of extra gallons, their
3 total daily consumption remained
4 relatively the same. New York City
5 DEP was making a run for the drought
6 line. We know what happens when the
7 DRRs reach the drought line. New York
8 City reduces the flow of the rivers to
9 practically a trickle.

10 These drought designations
11 are not droughts due to lack of
12 precipitation. These are storage
13 droughts artificially created by New
14 York City's reservoir diversion
15 management practices. New York City
16 DEP can suck Cannonsville or Pepacton
17 or the Neversink Reservoir into a
18 drought level, L3, L4 or even L5,
19 curtail the flows to practically
20 nothing while the rest of their
21 system, on the Hudson side, and their
22 total system storage capacity, will
23 stay well within the normal range.

24 New York City DEP operated
25 this way in the summer of 2005.

1 That's why in October of 2005 there
2 was no flood because there was plenty
3 of room in the reservoirs due to a
4 whole summer of overdrafting. It
5 rained, quite heavily I might add, all
6 month that October. It was the second
7 wettest month since 1941, according to
8 the National Weather Service. There
9 was room in the DRRs and no flooding
10 occurred. This experience alone
11 proves safety voids do work and fit
12 well as part of the reservoir
13 operating protocol.

14 The most important change to
15 New York City water supply operating
16 methods is their conservation
17 programs.

18 MS. BUSH:

19 There's one minute
20 remaining.

21 MS. REICHART:

22 Started well over a decade
23 ago, they have worked extremely well.
24 In 1980, the volume of gallons used
25 per person per day was 233 gallons per

1 capita per day. Today it is 133
2 gallons per capita per day. That's
3 almost half the usage from 20 years
4 ago.

5 If the consumer usage has
6 been cut practically in half, then
7 shouldn't more water be released?
8 Unfortunately, for us, New York City
9 DEP pretends that nothing has changed.
10 What has changed, and dangerously so,
11 is now there is a buildup of
12 overcapacity which means the
13 reservoirs are spilling more water
14 over the spillway much more often than
15 pre-2000. It also means the City is
16 being needlessly over-conservative
17 with the releases in all categories,
18 L1, L2, L3, L4 and L5.

19 MS. BUSH:

20 Time.

21 MS. REICHART:

22 Will anyone yield time?

23 UNIDENTIFIED SPEAKER:

24 Take what you need.

25 MS. REICHART:

1 It also means the City is
2 being needlessly over-conservative
3 with releases in all categories, L1,
4 L2, L3, L4 and L5. The City is being
5 quite picky about it. It's hoarding
6 water. And what's worse, the City has
7 lied to us all for these last eight
8 years about the abundance of available
9 waters.

10 As I said, the data exists.
11 It is there for whomever wants to find
12 it. What is more amazing is New
13 Jersey, Pennsylvania, Delaware and New
14 York State have seen the data, and all
15 except New Jersey are ignoring it.
16 New York City flatly refuses to even
17 look at it.

18 This is government officials
19 protecting its constituents and
20 natural resources. Oh, wait, that's
21 not right. It's our government
22 officials protecting New York City's
23 government officials and their needs
24 and interests. How nice for them.
25 How very bad for the rest of us.

1 How can Governors Rendell,
2 Spitzer and Minner forsake their
3 state's needs in light of the proof,
4 the sound science members of this
5 Commission have insisted be assembled
6 before they will deign to do the right
7 thing. Have the lower basin water
8 needs been bargained away for other
9 political gimme's from New York City?
10 Are there future aspirations of
11 cabinet positions in the 2008
12 presidential victory that stops our
13 executive branch appointed
14 representatives from standing up to
15 New York City in managing this great
16 river equitably?

17 A total system-wide
18 reassessment is the only way New York
19 City can prove it is managing their
20 system and our river in an optimal
21 way.

22 Anyone who opposes this from
23 the lower basin states, whether they
24 be wearing their Decree Party hat or
25 their Compact Party hat, is clearly

1 working for New York City and not for
2 the needs of their own state.

3 We are in crisis. The
4 suboptimal reservoir operations and
5 the pitiful releases New York City has
6 given us since October 1st, 2007, when
7 the FFMP adopted by the Decree Parties
8 went into effect, have already caused
9 the reservoirs to fill to the point of
10 spilling. Cannonsville is spilling
11 even now as I speak.

12 Ignore this FFMP-created
13 crisis and we will flood again, this
14 month, next month or even as late as
15 June, but we will flood.

16 If you do not change the
17 path you are on and we flood, none of
18 you or your bosses can escape the
19 responsibility of what you have failed
20 to do and that is to protect us. We
21 will not let any of you forget, should
22 their be flooding or come summer an
23 artificial drought that imperils
24 Philadelphia's drinking water and/or
25 decimation of aquatic life.

1 The scandalous support of
2 the plan that you know is bogus for
3 all of the above-stated reasons and
4 all the reasons you hear today will
5 follow all of you into whatever
6 political endeavors you seek beyond
7 the office you now hold.

8 FFMP, this acronym does not
9 stand for Flexible Flow Management
10 Plan. It stands for fried fish, more
11 flooding, parched throat. Have a dry,
12 safe night.

13 MS. BUSH:

14 Tom Scannapieco?

15 MR. SCANNAPIECO:

16 Hi. I'm Tom Scannapieco. I
17 addressed you previously. I'm a
18 resident of New Hope. I'm a real
19 estate developer who built a project
20 that got water, as well as my house
21 and my office.

22 I can't say that I am as
23 well-informed on the issues as many of
24 the people in the audience and
25 certainly many of the prior speakers,

1 but I will say that from my
2 perspective, the arguments that I have
3 heard against this plan exceed, you
4 know, in validity the arguments that I
5 have heard for it, in my mind to this
6 date.

7 I believe that if New York
8 City needs more water in reservoirs,
9 that they should construct another
10 reservoir, that none of the reservoirs
11 should be at a hundred percent
12 capacity. There should always be a 20
13 percent gap, because that I think will
14 provide safety downstream.

15 The proposal I understand
16 would affect some of the reservoirs,
17 but not all of them. And the gap
18 that's proposed is only seasonal and
19 not all the time. So I am, I guess
20 raising my voice in support of the
21 others who have asked for a more
22 protective solution for the people who
23 live downstream. Thank you.

24 MS. BUSH:

25 Jeff Zimmerman and then

1 Scott Burgess.

2 MR. ZIMMERMAN:

3 Thank you for this
4 opportunity to testify. I appreciate
5 your consideration. I have a few
6 questions about particular points, and
7 I realize you're here to take
8 testimony and not answer questions,
9 but let me just raise them for the
10 record.

11 In Section 2.5.3 B4 of the
12 proposal, there is criteria for
13 program modifications. And number
14 four reads habitat types, with
15 naturally occurring habitats receiving
16 consideration over manmade habitats.
17 What does this mean? Where do we find
18 any information to help us understand
19 what you're after there? Is there a
20 definition of what you consider a
21 manmade habitat and a naturally-
22 occurring habitat?

23 Moving on to the interim
24 excess release quantity, which is in,
25 I think, 2.5.3 E. As was indicated in

1 the presentation Bill made earlier,
2 the IERQ is to substitute for the ERQ
3 that was part of the '54 Decree. And
4 it is an annual fixed amount, the
5 IERQ. It does not vary based on
6 changes in the safe yield. It does
7 not vary based on predicted
8 consumption. Yet New York City is
9 instituting conservation measures, as
10 we just heard, that have reduced the
11 per capita consumption by 50 percent
12 over the last number of years. If
13 they continue in that vein, why is the
14 IERQ not flexible like everything else
15 in the plan is supposed to be so that
16 it can accommodate changes in
17 consumption and changes in safe yield,
18 which is what the '54 Decree kind of
19 put in in the first place to be
20 calculated on an annual basis.

21 Next question, the interim
22 excess release quantity extraordinary
23 needs bank. Virtually no definition
24 of what that means other than it
25 allows this Commission to allocate

1 water from the IERQ to help support
2 research, aquatic life or any other
3 water use approved by the Commission.
4 What does that mean? What would be
5 approved water uses by the Commission?
6 There is no definition given in here
7 anywhere.

8 The balancing adjustment
9 provision in subsection F3. Again, in
10 order to conserve water, the
11 Rivermaster is requested to utilize a
12 balancing adjustment based on
13 procedures agreed upon by the Decree
14 Parties. Where are those procedures?
15 I see no definition of those
16 procedures anywhere in the background
17 documents or the materials published
18 for this proposal.

19 And then there's a question
20 that I brought up at the Philadelphia
21 meeting, and the New York City
22 representative, Mr. Murphy, who isn't
23 here tonight, gave an answer that I
24 couldn't quite understand.

25 If you look at Figure 2,

1 which is the releases that are
2 supposed to take place when we are in
3 the L1 period, from May 1st until June
4 15th when the reservoirs are all three
5 of them at a hundred percent of
6 capacity, there is to be a release.
7 But the release is not at the L1-a
8 level. The release is at the L1-c
9 level. There's absolutely no
10 explanation given for why one versus
11 the other when we're already at a
12 hundred percent. And this is a
13 significant difference.

14 For example, at Cannonsville
15 if we're under Table 3A, the L1-c
16 release level is 110 cfs, the L1-a
17 release is 1500 cfs, more than a
18 factor of ten difference, yet we're
19 already at a hundred percent and that
20 is the time of the year when we're
21 very likely to have flooding. Why
22 would be releasing at a much smaller
23 level when we're already at risk of
24 flooding?

25 Finally, let me ask another

1 procedural point. There were several
2 requests made this afternoon --- I
3 don't know if you received any written
4 requests --- for additional time for
5 people to work on and comment on and
6 study this proposal. I don't know how
7 or when you're going to make a
8 decision about that, but presumably
9 you would have to make that decision
10 before this Friday, because the
11 comment period is set to close at 5:00
12 p.m. on Friday.

13 My question is, what's your
14 rush? The FFMP is already being
15 implemented by the Rivermaster as
16 adopted by the Decree Parties. Why
17 are we in such a hurry that we have to
18 push this through during the holiday
19 period, or not give the municipalities
20 that are only constituting their new
21 governments now, basically 10 to 12
22 days to review and comment on this
23 procedure as a new governmental body?

24 I think there's plenty of
25 time to give this careful

1 consideration and a more complete
2 airing so that people really
3 understand what's going on.

4 What strikes me as a federal
5 agency the Administrative Procedure
6 Act applies to your deliberations and
7 your actions. And usually, when you
8 pick up a proposed rulemaking in the
9 Federal Register, there's an extensive
10 preamble that explains what the agency
11 is doing and why it's doing it and
12 what the foundation and basis for that
13 is. We have no preamble, none
14 whatsoever here, explaining any of
15 these points, or giving any answers to
16 any of the questions that I raised.

17 I submit that for your
18 consideration. Thank you very much for
19 your time.

20 MS. BUSH:

21 Scott Burgess, followed by
22 Michael Caccavella.

23 MR. BURGESS:

24 Good evening. My name's
25 Scott Burgess. I'm from Lower

1 Makefield Township in Bucks County,
2 Pennsylvania, chairman of the
3 residents' group RAFT and a member of
4 the Bucks County Flood Taskforce.

5 215 billion. That's the
6 number of gallons of spillage that we
7 had in the four years which included
8 the three floods. 225 million is
9 dollars in damage that were done to
10 homes and businesses up and down the
11 Delaware. 6,300 is the number of
12 property claims that have been closed
13 already at this point and nine deaths
14 that were reported during the floods.

15 We have asked for a simple
16 policy, putting in 20 percent voids
17 into the reservoirs. Why do we ask
18 for that? Because we believe that
19 reservoir spillage has contributed to
20 higher flood levels.

21 I myself am not an engineer.
22 However, a member of RAFT who is an
23 engineer prior did quick calculations
24 that showed that there was up to a
25 two-foot increase down in Trenton

1 based on the 2006 flood. Nobody has
2 been able to refute that yet as far as
3 I have seen. Roger Ruggles, another
4 engineer, has stated that up to six
5 feet in Montague, New Jersey and
6 possible higher. Again, no
7 information saying that that's been
8 refuted by anybody. The National
9 Weather Service and NOAA, has said
10 that anywhere from 1.8 feet to 10.5
11 feet as added to the flood waters
12 because of the reservoir spillage.

13 The DRBC apparently is
14 objecting to voids because they are
15 waiting for the Army Corps of Engineer
16 study due in 2009 to show whether or
17 not voids would affect levels. I know
18 from the meeting we had with Governor
19 Rendell last month that he will not
20 throw his support behind the voids
21 because of that.

22 However, nobody seems to
23 have any concern with saying that
24 without this study being done voids
25 could lead to droughts. I don't see

1 where the proof is on that. What are
2 these drought predictions based upon?

3 In addition to the drought,
4 there's concern that the voids would
5 lead to the salt line in Philadelphia
6 coming up too far. In the worst
7 drought on record, the closest that
8 the salt water came to the drinking
9 water plant was eight miles.

10 A lot of people might object
11 to what I'm going to say now, but
12 until we get --- if you're not going
13 to act until we get a reply from the
14 Army Corps of Engineers and you want
15 to do 20 percent voids, why not 15
16 percent voids? Why not 10? Why not
17 something? To continue to keep them
18 at complete levels, full levels, is
19 unsafe and dangerous for all of us
20 downstream.

21 Currently, the Cannonsville
22 Reservoir is at 102.5 percent
23 capacity. Pepacton is at 98 percent
24 capacity. Neversink is at 86.3
25 percent capacity. Current total

1 storage right now as of today's web
2 site, 95.7 percent capacity versus a
3 normal capacity at this time of 79.7.

4 Tonight's presentation
5 identified that there is an emergency
6 action plan that can be implemented by
7 the DRBC Executive Director. When I
8 looked at that, I had to laugh. What
9 kind of emergency action plan has to
10 be presented to the Commission and
11 approved by Decree Parties before
12 anything can be acted upon?

13 I was also given a letter
14 today, a copy of a letter, which I
15 believe has been presented to the
16 DRBC, signed by 14 members of
17 Congress, asking you not to wait until
18 the Corps' survey is completed.

19 And I'll end here with some
20 other numbers. Zero dollars in damage
21 from drought in the last four years.
22 Zero property claims from drought in
23 the last four years. Zero deaths from
24 drought in the last four years. Thank
25 you.

1 MS. BUSH:

2 Michael Caccavella and Roz
3 Andalora. I'm sorry. I can't read
4 the handwriting.

5 MR. CACCAVELLA:

6 My name is Michael
7 Caccavella. I've been a resident of
8 Yardley, live on River Road, since
9 1987. I am not a hydrologist, but I
10 am a social scientist. I have a
11 research background and I've had the
12 opportunity because of a lot of hard
13 work on the part of many people that I
14 --- I can't name all of the people,
15 Elaine Reichart, Diane Tharp and
16 certainly Scott who just spoke.

17 We lived 17 years without
18 any flooding and then we had three
19 floods, as everyone knows, in 18
20 months. And my wife and myself, I
21 think as many people, had to come to
22 the conclusion that the variables were
23 just impossible to identify. And you
24 could call it global warming and
25 whatever you wanted to, but there

1 would be no way to identify any single
2 variable that could contribute
3 significantly to the flooding that
4 could be identified.

5 But after looking at all of
6 the data --- and that data, I won't go
7 over all of it, but I'd like to point
8 out a few things. The reservoir
9 levels during the three floods, the
10 reservoir level in '05, after a
11 rainfall that exceeded all of the
12 rainfalls in the three floods that we
13 had, where we did not have a flood.
14 And I'm relying pretty heavily on the
15 information, although I've not seen
16 it, from Dr. Ruggles' report which
17 suggests as much as six and perhaps
18 more feet contributing to flooding
19 from the \$109 million and change for
20 the '06 in particular.

21 These facts concern me in
22 the sense that it seems that --- I
23 mean, despite the history which I've
24 read that, you know, essentially no
25 state except New York is exercising

1 much power or control, even though we
2 apparently have it. Why that's not
3 being exercised I don't know. So
4 indeed, your responsibility is great
5 and I don't think it's simple. And I
6 wouldn't expect that even if your jobs
7 were to look out only for New York
8 that you would turn your back on nine
9 deaths and \$225 million.

10 But I do think you need to
11 ask the question. I don't think it's
12 an unreasonable question, that if we
13 wait for yet another study that will
14 cost countless dollars and we lose
15 another life, one more life and one
16 more penny of federal dollars that we
17 can't afford right now with a war
18 going on, I don't know how you would
19 explain to yourselves, to your
20 families and to the public if, in
21 fact, the Army Corps of Engineers'
22 study substantiates the Ruggles' study
23 and suggests that not only are the
24 reservoirs contributing significantly
25 to flooding, but that their over

1 spillage could lead to a disaster
2 because of the nature of the earthen
3 dams and the state that they're in.
4 And according to the reports I've
5 read, there in a very vulnerable state
6 at this point.

7 And so am I imploring the
8 Committee, instead of waiting for
9 another study, to maintain safety
10 voids until there is proof that the
11 losses that we've already suffered
12 have not come about because of
13 something that, you know --- it has
14 been said, I understand from your
15 group, it has not been proved that the
16 reservoirs are contributing, when
17 there really are some facts and a lot
18 of --- a lot of data that suggests
19 otherwise.

20 And I'm urging you to err on
21 the side of safety and the public
22 good. And I appreciate you giving us
23 an opportunity to speak --- if nothing
24 else, to delay action on this FFMP
25 until more data can be ascertained as

1 to the dangers that we're in.

2 I think presently, with the
3 river swollen --- and I know we all
4 now --- I mean, I never did before. I
5 was never mindful. But now we look at
6 the levels of the reservoirs, and I
7 think we are presently in danger as we
8 stand here and speak to your
9 committee, if we have more snow melt
10 or a difficult storm in the coming
11 weeks and months. With the reservoirs
12 at their present levels, I think we
13 run the risk of yet another flood.

14 MS. BUSH:

15 Roz Andalora.

16 MS. ANDALORA:

17 Thank you. I should also
18 that that due to the strong advice of
19 my good friend who has put a lot of
20 hours into volunteering for studies
21 for the organizations that are
22 concerned about this situation, I came
23 at the last minute tonight. Had I
24 known, not only would I have baked a
25 cake, but I would have dressed

1 accordingly.

2 MS. BUSH:

3 Could you just spell your
4 last name for our court reporter?

5 MS. ANDALORA:

6 Sure. A-N-D-A-L-O-R-A.

7 I come without preparation,
8 you know, for this evening, but I come
9 with three years of preparation for
10 life experience. And I also should
11 say that I think of all of these good
12 people that have shown up here this
13 evening we probably represent still
14 only a fraction, as you well know, of
15 the people who have been affected by
16 these three floods.

17 Someone mentioned the aspect
18 this evening --- and I'm not going to
19 talk about numbers. That seems to have
20 been covered *ad nauseam*, which I think
21 is wonderful. It's mandatory and it's
22 necessary. But someone mentioned
23 earlier this evening, I don't remember
24 who it was, about the psychological
25 impact, the emotional impacts,

1 peoples' lives being forever changed,
2 not just a period ---. You know, most
3 of us have been fortunate enough to be
4 able to spend three years of our money
5 and time and lives to rebuild, fix,
6 try to get our lives back to where
7 they were before the floods. Many,
8 many people do not have that luxury.

9 I in my own personal issue
10 have been battling three years trying
11 to get some relatively minor repairs
12 done to a stream bank that feeds into
13 the Delaware that is on my property,
14 which I have stone, granite, on my
15 pants this evening which I apologize
16 for. That stream feeds into the
17 Delaware. I am less than a mile from
18 the Delaware. I get it twice every
19 time it floods. I get it coming off
20 the mountain like a train wreck
21 because we've had probably about 60
22 developments in the last seven years,
23 which all feed into the same basin.
24 And then the next day I get it when
25 the Delaware backs up. So I've had it

1 six times.

2 I think, you know, it is
3 painfully obvious. New York City is
4 one of the biggest east coast cities
5 if not one of the bigger cities in
6 this nation and in the world. It
7 demands enormous amounts of resources.
8 It always has. It's painfully obvious
9 after having read through a lot of the
10 information that is on line that's
11 been studied, that there are so many
12 studies that have been done that show
13 the sheer volume of what has been
14 available to them.

15 We live in a market-driven
16 society. There's no two ways around
17 that. We all know it. And oftentimes
18 in this country, you know, we have
19 sort of sacrificed because of that.
20 Here's a situation where it's too
21 close to home. We often say, okay, so
22 you know, the pitfalls and the
23 downside of paying for cheap goods
24 here is we're not thinking about
25 what's happening in China. New York

1 City is right up river. And many of
2 the people who live in New York City
3 come down to Northampton County, Bucks
4 County, New Hope and they have summer
5 homes. Several of my neighbors, two,
6 three homes in my neighborhood live
7 within a stone's thrown, no pun
8 intended, have come in and moved out.
9 They've been hit with one or two or
10 all three of the floods. They're out.
11 They're gone. They know the direct
12 relationship between what's going on
13 in the City and what's happening
14 downriver.

15 I call it the flush factor.
16 Forgive my directness, but most of
17 them don't think about where the pipes
18 are leading once we flush our
19 facilities. Most of the people in the
20 City are not really at first hand
21 familiarity with what's happening.
22 They've heard about it. They've read
23 about it. They've seen a few pictures
24 in newspapers. They've seen a couple
25 of newscasts that have shown the

1 devastation, but they haven't been
2 here first hand.

3 And I really don't blame
4 that factor that says, all right, it's
5 bad, but it's not going to happen
6 again. It is going to happen again.
7 And it means that we have an
8 opportunity to change what will happen
9 again. It's not global warming. It's
10 not --- you know, development is a
11 huge factor. Sorry, Mr. Scannapieco.

12 But here's a situation where
13 there's an opportunity to take one
14 thing in our hand and change it. And
15 if we don't take the opportunity to do
16 something that will make a difference,
17 then how are we ever going to effect a
18 change in areas where we haven't
19 really overturned the rocks yet. This
20 is a given. It's right in front of
21 our faces, and we can't ignore it.

22 The flush factor says we're
23 not thinking about it when it goes
24 down river. Personally, I think it
25 would be wonderful for New York

1 students. You know, take them on a
2 trip down river. They love the river.
3 They love tubing. The Delaware River
4 provides an enormous amount of
5 recreation for city dwellers. Bring
6 them down. Show them. Get them on a
7 flood tour. Bring them to a flood
8 tour. Show them the houses that were
9 here. In my process of doing what I'm
10 doing, I've been getting petitions for
11 other issues. I'm spending at least a
12 half an hour, 45 minutes for every two
13 signatures that I get in every
14 household.

15 In our township alone, there
16 are probably --- and this is, you
17 know, a small number relatively
18 speaking, but I'm thinking 15 to 20
19 people who will never be back in their
20 homes again. Some of them are
21 retirees. They've lived in their
22 homes their whole lives. Their houses
23 have been leveled, or they had to be
24 repaired and it took them three years
25 to go through the process. They'll

1 never be back in those homes again.
2 They're living in rented places.
3 They're living with family. This has
4 been their lives for three years.
5 That's a long time for a retiree.
6 That's a long time.

7 Any one of these floods is
8 enough to devastate your life. It's
9 not on the order Katrina. We know
10 that. But it's happened three times.
11 And if one of these floods could
12 change your life direction and focus,
13 --- we're not talking a small
14 percentage of people here up and down
15 the river --- then imagine what three
16 of them do. And I'm not just talking
17 about the financial impact or the
18 homes themselves.

19 Your home --- and if your
20 business is affected, it's extremely
21 important. We in this country go into
22 bottom dollars. Your business is
23 destroyed, that's a big issue. But
24 your home --- and every single one of
25 us this evening will go home to that

1 place where we walk in the door and
2 lock the door behind us and we feel
3 safe. We're away from the stress of
4 everyday. We're away from having to
5 be in front of people and portray
6 ourselves correctly. We're away from
7 all those pressures of life. And
8 that's our home. That's where we
9 recharge. That's where we get our
10 energy back to start the next day, to
11 start the next week.

12 If that's gone, you know,
13 you have lost an enormous amount of
14 emotional stride. And that's a factor
15 that really isn't the bottom line when
16 you're talking about the billions that
17 are being sold and spent for the
18 reservoir and the water for New York
19 City, but it is a huge, huge factor
20 and you can't ignore it. It can't be
21 ignored because in the end it will
22 come back to get us. People's lives
23 have not only been put on hold;
24 they've been turned upside down.

25 The psychology of it, the

1 feeling that they've just gotten back
2 on their feet and they get whacked
3 again and then you do it again and you
4 get whacked again. It's almost --- it
5 is overwhelming and it's almost
6 debilitating. It's caused stresses,
7 you know, beyond the nine deaths that
8 are unconscionable, should have never
9 happened, particularly 50 years after
10 1955.

11 But the physical strain, you
12 know, people have had heart issues
13 and, you know, the stresses of what
14 has happened. It's a cumulative
15 effect that just is not going away any
16 time soon.

17 I'm going to use the word
18 incumbent, and I hate that word, but
19 it really is. You know, we are
20 looking to you. You are
21 representative of a good portion of
22 this area because you've been elected,
23 appointed as part of our society to do
24 the right thing. So here we are
25 looking at you and saying please,

1 we're asking you to look at the time
2 and the effort that's been put into
3 the studies. I have been impressed
4 enormously by the amount of time and
5 energy that's been put into this
6 research. You don't do that without a
7 reason.

8 If you can just grasp that
9 idea, the amount of time that people
10 have put into doing all of this
11 research to ensure that we're doing
12 the right thing, I think that's your
13 role. And I won't speak anymore.
14 Thank you so much.

15 MS. BUSH:

16 There are people who either
17 called in or wrote on cards who either
18 spoke earlier or haven't responded
19 when I called their names so who's
20 here and who isn't. One is Jolene
21 Bernstein.

22 MS. BERNSTEIN:

23 I spoke.

24 MS. BUSH:

25 Okay. So you don't want to

1 testify again. And the other Aaron
2 Hubble. Okay. I don't have anyone
3 else on my list. Is there someone
4 else who signed up and I've missed
5 them. Anybody else who wants to speak?
6 And I'd ask you to fill out a card
7 first. Anyone who needed more time?
8 Okay. I'm handing it back to our ---
9 oh, yes. Okay. Would you mind
10 filling out a card just ---?

11 MS. MAYTON:

12 I'll give it to you in a
13 minute?.

14 MS. BUSH:

15 Okay.

16 MS. MAYTON:

17 Good evening. I spoke
18 earlier this afternoon, and I'm not
19 going to repeat what I said. My name
20 is Lucille Mayton, and I'm a resident
21 on the river in Trenton, New Jersey.

22 Having heard the afternoon's
23 speeches, presentations and having
24 heard from 7:30 on this evening, I
25 would like to make a comment. It is

1 overwhelmingly a consensus that
2 providing a void for the reservoirs on
3 the Delaware River would be a call to
4 action that we are asking this
5 committee to consider very seriously.

6 As you know, we are standing
7 on the brink of a possible disastrous
8 flood, and it is important that
9 everyone be given an opportunity to
10 hear more about this and to speak on
11 it. But until we are able to put all
12 of that together and to have the
13 proposal edited or rewritten or
14 whatever needs to be done, I am
15 imploring you, the committee, to
16 consider lowering the level of these
17 reservoirs, just to assure that we can
18 get through this year.

19 And just so that everyone
20 knows, there were 21 speakers that I
21 counted earlier this afternoon and 85
22 percent of them used the word void.
23 So we are a consensus. And many, many
24 of the presenters have done a lot of
25 research on this. So I ask you to

1 take me seriously, and thank you for
2 your good work.

3 MS. BUSH:

4 Okay. Anybody else?
5 Chester Tharp who yielded time? No?
6 Okay.

7 UNIDENTIFIED SPEAKER:

8 One of the things I wanted
9 to ask also, but what are the
10 possibilities of possibly delaying the
11 final decision so that more people can
12 be heard from?

13 MS. COLLIER:

14 We certainly heard those
15 comments, and I'll be speaking with
16 the commissioners tomorrow. And so
17 you will hear before Friday.

18 MS. BUSH:

19 I forget your name. I'm
20 sorry.

21 MR. CACCAVELLA:

22 I just wanted to ask a
23 question, could you answer whether or
24 not the Ruggles report was entered
25 into the public record?

1 MS. BUSH:

2 I am unaware of it. If it
3 has been delivered, it came by e-mail
4 or something not to my desk while I
5 was in the office. So I have not seen
6 it yet.

7 MS. COLLIER:

8 It was not presented as, you
9 know, testimony or attachments to
10 testimony today.

11 MS. COLLIER:

12 Well, with that, I think we
13 will close the hearing for this
14 evening. And thank you very much for
15 your time and your comments, and we
16 will talk to the commissioners about
17 your comments about extension. And
18 we'll also prepare a comment response
19 document. Thank you.

20

21 * * * * *

22 HEARING CONCLUDED AT 8:35 P.M.

23 * * * * *

24

25