

Ulster County Legislature



Carl Belfiglio, Legislator,
District No. 8 – Town of Esopus
Chairman, Environmental, Energy,
and Technology Committee

P.O. Box 1800
Kingston, NY 12402
Telephone: 845 340-3900
FAX: 845 340-3651

Environmental, Energy, and Technology Committee
Legislator Carl Belfiglio, Chair
Legislator Tracey Bartels, Deputy Chair

PUBLIC HEARING ON THE NEW YORK STATE (NYS) DEPARTMENT OF HEALTH (DOH) FILTRATION AVOIDANCE DETERMINATION (FAD)

September 25, 2013
4:00 PM – 7:30 PM
Legislative Chambers, 6th Floor, County Office Building
244 Fair Street, Kingston, New York

LIST OF PRESENTERS

1. New York State Assembly
Peter Lopez
Assemblyman, District 102
2. Town of Hurley
Gary Bellows
Supervisor, Town of Hurley
3. Town of Saugerties
Kelly Myers
Supervisor, Town of Saugerties
4. Town of Ulster
Rose Marie Sullivan
Resident, Glenerie Boulevard
5. Ulster County Legislature
Robert Aiello
Legislature, District 2
6. Town of Saugerties
Chris Allen
*Resident & Ulster County
Legislature Candidate, District 2*
7. Town of Saugerties
Mary O'Donnell
*Resident & Member, Town of
Saugerties Conservation Advisory
Commission*
8. Congressman Chris Gibson
Steve Bulger
*District Director, Congressional
District 19*
9. Coalition of Watershed Towns
Carl Stuendel
*Chairman, Coalition of Watershed
Towns*
10. Coalition of Watershed Towns
Jeff Baker
*Attorney, Coalition of Watershed
Towns*
11. Town of Ulster
Richard Halpert
*Resident, Leggs Mills Road, Lake
Katrine*

12. Town of Ulster
Steve Broskie
*Resident, Sawmill Road, Lake
Katrine*
13. Town of Ulster
Joanne Powers
*Resident, Glenerie Boulevard,
Saugerties*
14. Town of Marbletown
Michael Warren
Supervisor, Town of Marbletown
15. United States House of Representatives
Chris Gibson
Congressman, District 19
16. Lower Esopus Watershed Partnership
Mary McNamara
*Outreach Coordinator, Lower
Esopus Watershed Partnership*
17. Town of Ulster
John Morrow
Councilman, Town of Ulster
18. Town of Ulster
Charlotte Moore
Resident, Katrine Lane, Lake Katrine
19. Town of Woodstock
Karen Lahey
Resident, Zena Road
20. Riverkeeper
Kate Hudson
*Watershed Program Director,
Riverkeeper*
21. Ulster County Executive
Mike Hein
Executive, Ulster County
22. Town of Ulster
Joy Ann Simmons
Resident, Glenerie Boulevard
23. Town of Ulster
Linda Fallon
Resident, Glenerie Boulevard

Table of Contents

Submitted Written Testimony:

1. Kelly Myers, Supervisor, Town of Saugerties.....	5
2. Robert Aiello, Legislator, Ulster County, District 2.....	13
3. Carl Stuendel, Chairman, Coalition of Watershed Towns.....	15
4. Chris Gibson, Congressman, United States House of Representatives, District 19.....	17
5. Charlotte and Jerry Moore, Residents, Katrine Lane, Lake Katrine, Town of Ulster.....	19
6. Kate Hudson, Watershed Program Director, Riverkeeper.....	20
7. Mike Hein, County Executive, Ulster County.....	24
8. Alan Rosa, Executive Director, Catskill Watershed Corporation.....	25
9. Carter H. Strickland, Jr., Commissioner, New York City Department of Environmental Protection.....	27

Submitted Oral Testimony:

1. Pete Lopez, New York State Assemblyman, District 102.....	30
2. Gary Bellows, Supervisor, Town of Hurley.....	32
3. Rose Marie Sullivan, Resident, Glenerie Blvd, Saugerties.....	34
4. Chris Allen, Resident and Ulster County Legislature Candidate, Saugerties, Dist. 2.....	35
5. Mary O'Donnell, Resident and Member, Town of Saugerties Conservation Authority.....	37
6. Steve Bulger, District Director, Congressman Chris Gibson, Congressional District 19.....	38
7. Jeffrey S. Baker, Esq, Attorney, Coalition of Watershed Towns.....	41
8. Richard Halpert, Resident, Leggs Mills Road, Lake Katrine.....	42
9. Steve Broskie, Resident, Sawmill Road, Lake Katrine.....	43
10. Joanne Powers, Resident, Glenerie Boulevard, Saugerties.....	44
11. Michael Warren, Supervisor, Town of Marbletown.....	45
12. Mary McNamara, Outreach Coordinator, LEWP: Lower Esopus Watershed Partnership.....	47
13. John Morrow, Councilman, Town of Ulster.....	51
14. Karen Lahey, Resident, Zena, Town of Woodstock.....	52
15. Joy Ann Simmons, Resident, Glenerie Blvd, Saugerties.....	54
16. Linda Fallon, Resident, Glenerie Blvd, Saugerties.....	55

SUBMITTED
WRITTEN
TESTIMONY

Testimony of Kelly Myers, Supervisor, Town of Saugerties

Thank you so much for holding this Public Hearing. Department of Health refused to hold it and I think it is very brave for the County Legislature to step forward and give people a voice.

ENTER INTO RECORD



KELLY A. MYERS
SUPERVISOR
JAMES J. BRUNO
DEPUTY SUPERVISOR

TOWN OF SAUGERTIES

4 HIGH STREET, TOWN HALL
SAUGERTIES, NEW YORK 12477

TEL. (845) 246-2800 FAX. (845) 247-0355



MEMBERS OF TOWN BOARD
FRED COSTELLO, JR.
BRUCE LEIGHTON
LEEANNE THORNTON

AR
9/25/13
4:35

NYS DOH PUBLIC COMMENT ON DRAFT FILTRATION AVOIDANCE DETERMINATION

Kelly Myers, Saugerties Town Supervisor

9/25/2013

As Supervisor for the Town of Saugerties, I have come to this Public Hearing today to boldly and adamantly declare the Town's strong opposition to the Draft Filtration Avoidance Determination.

The DRAFT FILTRATION AVOIDANCE Determination, DEC Consent Order and Draft Interim Release Protocol were all negotiated privately between State and Federal agencies without input, participation or consent of: Ulster County, local governments, local businesses and local landowners, or any individuals affected by these agreements.

This trifecta of Draft proposals fails to enforce legal compliance with the Clean Water Act, Wetlands Protection Act, NYS Water Quality Standards, NYS Environmental Conservation Law, NEPA and SEQRA, and permits the devastation of one of Ulster County's most valuable and treasured natural resources—the Esopus Creek. The FAD, Interim Release Protocol, Draft Consent Order, Conditional Seasonal Storage objectives, and computer based modeling of Reservoir management – do not have adequate scientific grounds for safe and effective implementation nor do they take into account recent weather patterns and climate change.

When the Draft FAD was finally released for public review – I quickly looked for some assurance that the NY State Department of Health had taken appropriate measures to protect our families and our environment from the devastation caused by NYC Department of Environmental Protection. No such language has been included in this document. Once again we have been subjugated to DEP's predatory actions. I guess the Dept. of Health is only concerned with the health of NYC. The message you're sending us is that our families don't matter.

Our needs are simple:

First we need a commitment from the great state of New York to allow no further harm to our environment. As citizens in this state we have the right to expect that our families, our homes, our businesses, our land, and our economy, will be protected from the devastating actions of DEP. People should not live in fear. Parent's ability to support their families should not be jeopardized. People should not be deprived of the right to a clean environment or fear loss of life or property.

turbid water, or continued use of Alum in the Kensico reservoir. These alternate methods of managing turbidity need to be included in the Environmental Impact Statements and evaluated as viable solutions to the turbidity problem.

The DEP should be compelled to filter water, for their NYC clients. DEP has refused to discuss this, because of the expense involved.

NYC has had cheap clean water for nearly 100 years. This luxury comes at the expense of other communities. DEP pollutes our water, contributes to flooding and mold in our homes, destroys our natural resources, hinders our economy, erodes our land, reduces our property values, and limits our recreational use of waterways.

- 4- DEP asserts that we have to choose between flood control and turbidity. At meetings of the Ashokan Release Working Group we were told "you can't have it both ways." This unacceptable answer, is a blatant refusal to work cooperatively to control flooding and control turbidity. DEP does have other options but refuses to discuss them.
- 5- DEP should be forced to take advantage of newer technology for filtering water. There is the possibility of developing a mini-plant using newer technology that is much less expensive than the traditional filtration plants. DEP has the capability to do this now- but is not putting this option on the table for discussion or evaluation.

Flood protection should be handled on an emergency basis. Turbid non-emergency Discharge Mitigation releases and Operational Releases for turbidity control should not be included in the Interim Release Protocol or the Consent Order.

DEP staff commented that the Ashokan Reservoir was not designed for flood control purposes; DEP needs to be accountable to downstream communities for the impacts caused when they fail to properly manage flow control. DEP should acknowledge that the Esopus Creek was not designed as a Turbidity control device.

The Esopus Creek is not a "Waste Channel", it is a vital natural resource that the people of Ulster County rely on and have been recently deprived benefits from.

DEP should be required to update the flood maps for the lower Esopus watershed.

- 6- The enlargement of the release channel to a flow capacity of 1 billion gallons per day poses an ever greater risk of damage to the lower Esopus valley than the current maximum of 600 mgd, and the impacts of this increase need to be analyzed and a predictive model developed and included in the DEIS. Several areas in The Town of Hurley and Town of Ulster reach flood stage at release levels less than 600mgd. The Mt. Marion Flood gauge is not an accurate predictor of imminent flooding. Studies should be completed that evaluate actual transit time of water from the Ashokan Reservoir to areas that experience flooding.

7- The use of alum at Kensico Reservoir must be reviewed and analyzed without prejudice, "back on the table" that is. This is important since DEC cites the failure of DEP to remove alum from Kensico as a clear and direct violation of the 2007 Consent Order. Alum avoidance should not be assumed as a given, since the Consent Order analyzes and predicts that alum use will lessen or eliminate the need for turbid releases.

8- Although still in preparation, the data from the draft Watershed Management Plan for the Lower Esopus should be a major basis for the Scope and DEIS content.

9- DEP's proposed Conditional Seasonal Storage Objective (CSSO) is not based on science. The model for this was taken from the Delaware system and applied to the Ashokan system without regard for differences in the two systems. This needs to be put on hold until it can be adequately studied. Data used in the computer modeling for this dates back to 2008 and does not include recent flood events and climate change.

The CSSO was created and applied to the Ashokan system without: input from affected communities, SEQR, EIS, NEPA, or modification to the DEP's discharge permits, and FAD.

The minimum summer "void" level of 90% in the Ashokan Reservoir (as specified in the Interim Release Protocol) should be reviewed and analyzed in terms of impacts of the lower Esopus. Numerous Stakeholders believe that 90% was high, and that a lower "void" level (as low as 75%) might greatly reduce the need for and impact of turbid releases by reducing or even eliminating turbid releases in practice, without reducing the water supply substantially.

The consensus among stakeholders is that the Ashokan system operated successfully for over 100 years without releases into the Esopus Creek; and the way the recent releases have been implemented, has caused significant harm to the environment, properties, and regional economic interests.

DEP should stop releasing turbid water into the Esopus Creek and meet seasonal storage objectives through diversion of water into the Catskill Aqueduct, or other means.

10- In recent meetings DEP staff stated they will only fund the EIS if local communities give up their rights to utilize the information gathered in the EIS to take legal action against DEP. At the ARWG meeting on 6/1/12 DEP staff said that they will not pay for the EIS study unless they had a guarantee that the information gained would "never be used in litigation against us."

DEP wants to define the scope of work in the EIS and refuses to pay for work "outside of their defined scope". DEP wants to direct the work of the EIS consultant.

DEP is proposing fines for Local municipalities who utilize EIS results for litigation and forced remediation purposes.

DEP should not be allowed to do the Tech review of the EIS, this needs to be done by an independent objective third party.

There should be no limitations on the use of the EIS work product.

DEP should be required to fully fund a comprehensive EIS with "no strings attached".

11- The Draft Consent Order, and FAD is not in full compliance with SEQRA in that it assumes an outcome: the continuation of releases and the elimination of Alum use at the Kensico reservoir, and lacks a comprehensive alternative analysis.

12- Wildlife Impacts

- major habitat impairment in Esopus Estuary
- reduced dissolved oxygen (samples required) for fish putting trout & bass population at risk
- reduced photosynthesis and productivity of aquatic plants
- unnatural temperature changes in Esopus creek
- pollution of trout waters upstream of Tannery Brook
- altered benthic macroinvertebrates communities
- impair fish spawning and feeding of anadromous fish in the Esopus Estuary
- decrease feeding efficiency of fish – fish can't see food
- impaired waterfowl feeding in the Esopus Estuary-they can't see fish in the water
- impair osprey (species of concern) feeding and breeding in the Esopus Estuary
- impact on feeding/foraging on: Double-crested Cormorant, Great Blue Heron, Green Heron, Bald Eagle, Killdeer, Belted Kingfisher (from Breeding Bird Atlas); indirect impact on marsh wren and other marsh birds
- beavers haven't been observed lately, not sure what happened to them

14- Enhanced Invasive species growth

- enhanced growth of invasive species – water chestnut, "rock snot", and Eurasian water milfoil.
(our invasives are well fertilized by organic matter carried by turbidity, septic run off, farm fertilizer run off and increased water temperature)

15- Recreation/ fishing/tourism Impacts

-swimming beach closures: Department of Health requirements for swimming beaches such as the Village Beach requires water clarity measurements: "it shall be possible to see an eight-inch black-and-white disk in four feet of water...at a minimum of three different locations." In other words, the DEPs turbid water triggers a DOH beach closure.

-impacting recreational swimming at the Saugerties Lighthouse Conservancy.

* Riverkeeper has done water testing & found e-coli after heavy flow periods)

-when the water runs brown it is unappealing and people just don't want to swim in it.

-increased bacteria in Esopus Creek carried by sediment.

-increased bacteria- ecoli- due to washing out aging fragile septic systems

* see water testing results @ Saugerties Villiage beach – following high water events.

-interfere with recreational fishing (ice fishing, summer bass tournaments) and associated regional tourism related to recreation.

* Esopus Creek ice fishing event cancelled, due to turbid water fish are not biting –there is nothing to catch. There fishermen/tourists are not coming to spend money in Saugerties.

-Lost community revenue due to decrease in tourism.

-kayakers are avoiding the creek

16- Siltation, erosion and increased flow

-The significant sustained increase in excessively turbid flow (600million gallons per day) causes: increased erosion, riparian buffer failure, and stream bank failure in the upper and lower Esopus Creek, which in turn makes the turbidity even worse.

-Filling in of creek bed will allow the creek to hold less water during storm events and become more likely to flood.

-riparian buffers are falling into the creek and whole trees can be seen being carried away by the flow.

-several Towns have had to manage large flow blockages in the Esopus Creek caused by fallen trees and debris.

17- Wetlands impairment

-impacting registered, protected wetlands and 1.5 miles of Creek frontage owned by the Esopus Creek Conservancy.

- impacting protected tidal wetlands surrounding the Saugerties Lighthouse Conservancy.

Increasing the flow and volume of water in the wetlands, floods certain lowland areas constantly,

- trees sit in water, animal habitat at the edge of wetlands is flooded out.

- heavy siltation covers the creek bottom like a blanket impairing ecological health, animal, plant & fish habitat

18- - Agricultural uses & Development Projects, Property Damage

- following storm events the Waste/release channel into the Esopus creek was used to divert water pollution from the reservoir.

-increased stress and erosion of fragile aging septic systems at homes and camps along the creek

* 1/4/11 Septic System Failure Reported on Esopus Creek Road, Town of Saugerties

-pollute agricultural irrigation & farmland irrigation systems, clog farm irrigation systems, cause enhanced bacterial build up in the piping used to irrigate farms – and threaten farmer's GAP (Good Agricultural Practices) certifications.

*talk to Farms in Hurley about all the modifications in farmland irrigation that they had to do.

-siltation of Cantine Dam, affecting development of hydroelectric power generation (see LWRP Policy 18)

*Cantine Dam owner in Saugerties- had been prevented/delayed from drawing down water to get the Cantine Dam inspected.

19- - Increased Siltation & Turbidity

-siltation of tidal Esopus Creek, wetlands, channel, 3 marinas, & US Coast Guard Station

- significant visible plume of sedimentation deposit in the Hudson River delta

-Filling in of the Hudson River Delta near the US Coast Guard Station – limits access by large vessels, particularly at low tide.

- power boat engine intakes will clog and will not be able to run in turbid water.

* speak with Saugerties Power Boat Assn. & Curry Marina

20- The consent order touts environmental benefit projects as part of the order's remediation measures. However these were already agreed upon by DEP and the Ashokan Release Working Group stakeholders.

21- Fines and Compensation are inadequate:

The Draft Consent order and FAD fails to provide adequate and meaningful penalties to NYC DEP and provides no financial compensation for property owners, municipalities, farms, non-profits, and habitat restoration and businesses for damages caused by excessive turbid releases. There is inadequate funding for fishery habitat restoration and fishery re-stocking. There is no monetary relief specified in the Consent Order or FAD for property maintenance, septic system restoration, erosion control, stream bank stabilization, riparian buffer repairs and upgrades to farm irrigation systems. Over 100 properties, businesses, non-profits, and municipalities were surveyed based on reports of damage and none have been compensated for damage caused by the DEP.

DEP should not have immunity from remediation costs associated with environmental damage they caused.

The fine structure is inadequate to deter DEP from making future excessive turbid releases.

- a. The civil penalty of \$1.5 Million in the Draft Consent Order, is woefully inadequate as to amount and purpose, as it does not address, compensate for or provide for the damages forced upon the environment, the residents of Ulster County, the private and public properties in Ulster County, the recreational resources in Ulster County, and the economy of Ulster County by the NYC DEP, and further permits the NYC DEP to receive a "refundable deposit" of one third of that amount as a suspended penalty, and
- b. The fine appears to be little more than the "cost of doing business" and not a meaningful fine which deters future improper actions by the City of New York against the watershed area residents; and
- c. The Draft Consent Order does not provide relief to individual landowners, both public and private, along the lower Esopus Creek in the form of monetary damages incurred as a result of the actions by the NYC DEP as well as restoration funding for the purpose of debris removal, dock replacement, stream bank stabilization,, channel restoration and other damage mitigation.

22- The Interim Release Protocol, with the exception of Conservation Releases, should be separated from the Draft Consent Order as it removes it from the State Environmental Quality Review Act

(SEQRA) process and permits turbid releases which exceed New York State Water Quality Standards by creating a visual contrast.

23- Filtration Avoidance Determination

The City of New York should agree that it will not object to programs being extended to affected downstream properties and communities along the lower Esopus that are not currently included in the watershed but are impacted by the actions of the NYC DEP.

The City of New York should be open to discussing the possibility and evaluating methods of implementation to filter their water in order to alleviate many of the problems caused by Filtration avoidance.

ULSTER COUNTY LEGISLATURE

ROBERT T. AIELLO
District 2 Legislator
Saugerties



P.O. Box 1800
KINGSTON, NEW YORK
12402
Telephone: 845 340-3900
FAX: 845 340-3651

September 25, 2013

**STATEMENT FOR PUBLIC HEARING ON
NYC FILTRATION AVOIDANCE DETERMINATION (FAB)
HELD BY THE ULSTER COUNTY LEGISLATIVE
ENVIRONMENTAL, ENERGY AND TECHNOLOGY COMMITTEE**

The problems with the water releases by the DEP into the Esopus Creek are extensive and well documented.

For years local residence and politicians have bemoaned the issue with little or no impact and no resolution in site.

Hours of hearings where citizens recount the impact on everything from the quality of their life and the devastation to the environment to the tragic destruction to homes, businesses and infrastructure and damage to the Esopus Creek itself could fill a room.

The definition of insanity is doing the same thing over and over and expecting a different outcome. I, for one, have had enough.

No other business, homeowner or governmental agency would be allowed to openly dump and contaminate year after year in such a blatant and unchecked manner without repercussions by the DEC.

Last month I introduced a resolution that I had hoped would commence an Article 78 Proceeding to challenge the New York State Department of Environmental Conservation's continued delay in entering into a Consent Order with the New York City Department of Environmental Protection regarding the polluted releases into the Esopus Creek.

While the resolution received the unanimous support of the Ulster County Legislature last night, by the time it got to the floor it had been watered down (pardon the pun) to simply "authorize" the County Attorney to take action. I had hoped this resolution would "direct" or even "demand" she take action.

I have no problem taking action against the New York State Health Department if they do not take the issues of the DEP Filtration Avoidance Determination (FAD) seriously as well. The connection between the lack of filtration and the dumping of turbid contaminating water into the Esopus Creek cannot be overlooked.

I believe an Article 78 Proceeding would be the first small step toward making the State of New York and the City of New York take some responsibility for the devastation of their lack of action. I believe we should go further - a law suit demanding they repair and restore the damage they had cause is in order. But why should they when the County they are dumping on won't stand up for itself with something as benign as and Article 78 Proceeding.

The DEP and the State of New York departments that are charged with protecting us have ignored this issue long enough. It is time to take action.

Respectfully submitted
Robert T. Aiello
Ulster County Legislator
September 25, 2013

Coalition of Watershed Towns

c/o Delaware County Department of Watershed Affairs
1 Courthouse Square, Suite 3
Delhi, New York 13753
Phone: 607-746-8914, Fax: 607-746-8836

Executive Committee

Peter Bracci
Supervisor
Town of Delhi
607-746-9882

Linda Burkhardt
Olive Councilwoman
845-657-6543

Ric Coombe
Neversink Councilman
845-295-2717

Bruce Dolph
Supervisor
Town of Walton
607-865-5042

Bill Layton
Supervisor
Town of Tompkins
607-865-6310

Bruce LaMonda
Olive Councilman
845-657-2467

Michael McCrary
Jewett Councilman
518-263-4408

Carl Stuendel, Chairman
Tompkins Councilman
(Delaware Co. Alternate)
607- 865-7780

Anthony Van Glad
Supervisor
Town of Gilboa
607-652-7590

Stephen Walker
Supervisor
Town of Windham
518-734-4170

**Comments of Carl Stuendel, Chairman of the Coalition of Watershed Towns
Presented to the Ulster County Legislature
Environmental, Energy & Technology Committee
Hearing on the Draft Filtration Avoidance Determination
September 25, 2013**

My name is Carl Stuendel. I'm the chairman of the Coalition of Watershed Towns. I'm from the Town of Tompkins in Delaware County. Cannonsville was our town seat and it was centrally located. Today it's the site of the Cannonsville Reservoir.

Though we in the Coalition don't know all the details of Ulster County's issues with the City on how to best manage the Ashokan reservoir for flood control and the release of turbid waters, we do know the effects on the Lower Esopus communities is devastating, especially in these times of ever-increasing severe-storm frequency; a threat to life, livelihood, property, and riparian habitat.

I want to congratulate you for organizing this public hearing. I hope you'll persevere in what is probably just the beginning of an effort that may take years (hopefully not decades) to resolve.

The FAD is one vehicle for addressing these issues. We are encouraged that the FAD requires the City to develop its Operations Support Tool to look at ways of better managing reservoir releases and to convene a panel of experts to study the development and use of the OST. That is one step in the process and an important one. But it should not be the only effort. We believe careful consideration should be given to the draft Order on Consent issued by DEC. The CWT supports your efforts to have that Order finalized as soon as possible.

As currently drafted the Order requires DEP to prepare an Environmental Impact Statement to consider, among other factors, limiting releases to the Lower Esopus. It is important that the Ulster County towns participate in that process, the first step of which is a scoping document, an outline of all the issues to be considered. Make sure that it calls for consideration of changing weather patterns and provides for the mitigation of potential impacts from the City's operation of the water system.

As an initial matter that can be addressed in the short term, the Coalition believes that the City should be relieved of a significant amount of the \$50 million set forth in the FAD for further land acquisition and direct those funds to other necessary projects, such as flood hazard mitigation both inside and outside of the watershed. That is one manner in which immediate relief can be achieved without putting a national burden on the City.

As you continue working with each other to formulate your positions and expectations, we at CWT can more easily determine where our concerns overlap and hopefully, on that basis, form alliances as needed.

You already have access to us through your two representatives that sit on the executive committee of the CWT, Bruce LaMonda and Linda Burkhardt, both council members from the Town of Olive. And from Ulster County, Amanda LaValle (Dept of the Environment) and Dennis Doyle (Director of County Planning) approached the CWT at our September 16th meeting, seeking to find common ground.

Wrapping up, I would again like to emphasize the importance of organization and dedicated commitment. Al Rosa, the Executive Director of the Catskill Watershed Corporation, couldn't be here today, but he prepared a written statement and submitted it to Chairman Carl Belfiglio. I'd like to quote one paragraph from his statement.

"In March of 1991, we held a public meeting in my town at the Margaretville High School gym to start responding to NYCDEP. We filled every seat on the bleachers. The idea of a Coalition of Watershed Towns (CWT) came out of that meeting. I was proud to serve on the Executive Committee of the CWT, and most of the meetings of the CWT were held in my town office in Margaretville. After pooling our resources and hiring our own team of lawyers, it took years of fund raisers, negotiations, several lawsuits, and hundreds of meetings. As a principal negotiator for the CWT, I personally attended 468 meetings over five years before we reached an outline of the agreement that would ultimately become the 1997 Watershed Memorandum of Agreement."

In conclusion, we in the CWT have struggled for 20 years to reach a variety of accords with NYC. And the dialogue and negotiations continue. While we could not always say this in the past, in recent years DEP officials are accessible and cooperative and we have found it more productive to engage in constructive dialogue than making public attacks in the press. Understandably you may feel that the City has not been responsive to your concerns, but we think there are means of having a useful discussion. Of course, if that isn't working, then there is recourse to various legal procedures that may change the dynamic. That is the path the CWT originally was forced to take that resulted in the MOA.

I'd like to introduce Jeff Baker. He is the attorney for the Coalition and one of the primary writers of the 1997 MOA document. I'd like to invite him to add a few sage comments. Jeff...

CHRIS GIBSON
19th District, New York

1708 Longworth Building
Washington, DC 20515
(202) 225-5614

<http://gibson.house.gov>



Congress of the United States
House of Representatives
Washington, DC 20515

HOUSE AGRICULTURE COMMITTEE

Subcommittee on General Farm
Commodities and Risk Management

Subcommittee on Livestock,
Rural Development, and Credit

HOUSE ARMED SERVICES COMMITTEE

Subcommittee on Tactical Air and
Land Forces

Subcommittee on Intelligence,
Emerging Threats, and Capabilities

Subcommittee on Military Personnel

Congressman Gibson's statement on the FAD Review:

"My Watershed Advisory Group has undertaken a review and analysis of the FAD, gathering input from affected parties throughout the region. This is a process which is still ongoing, given the complexity of the issue and number of stakeholders involved. However, some topline findings have become apparent, and will form the basis for what we are advocating.

"Principally, we are looking for effective flood mitigation strategies for Upstate communities, resolution to turbidity issues throughout the watershed, and equitable policies that balance the need for the conveyance of clean water to NYC with the economic viability and safety of communities in my district. One of the driving forces for everyone is the devastating impacts that Hurricanes Irene and Lee and Superstorm Sandy have had not only in the watershed itself, but throughout our State. It's clear we have changing weather patterns and we must do better in protecting ourselves from these weather events.

"While this FAD makes marked improvements in some areas, more work remains to achieve these objectives. This includes a shift in focus from land acquisition to stream mitigation, an effective plan for the Lower Esopus, technical corrections impacting the current draft, and a comprehensive review and adjustment to reservoir levels in the Watershed impacting constituents both above and below the dams. I believe many of these changes can be made within the framework of the FAD review; others, however, will be the result of our ongoing dialogue with various parties to achieve the goals we've set.

"I have been encouraged by the willingness of so many stakeholders to have substantive conversations on these issues. Notably, the Department of Environmental Protection has expressed a willingness to work together, and groups like the Catskill Watershed Corporation and the Coalition of Watershed Towns, along with town and county leadership and other stakeholder groups, have been critical partners in our effort to achieve the best possible outcome. I hope this collaboration continues, as both New York City and the Watershed Communities will be best served by an improved and more equitable partnership moving forward."

Watershed Advisory Overview of FAD Position

1. **Land Acquisition Plan:** the current land acquisition plan in the FAD is unacceptable. The designation of \$50 million to fund up to 250,000 acres of continued land solicitation and acquisition by the DEP is the wrong solution to ensure both the protection of the City's water supply and meeting the goals of Upstate communities for both economic development and flood mitigation. The land acquisition plan needs to be scaled back, with money reallocated for stream mitigation and infrastructure projects, both within and adjacent to the watershed. This is a widely shared belief throughout the region, with support from the CWT, many County and Town officials, and even the DEP itself.

2. **Turbidity in the Lower Esopus:** This situation must be addressed now. If the FAD is not the best process or framework to do this, then the DEC's Consent Order on the Lower Esopus must be finalized and released to the public immediately, before the comment period on the FAD expires October 15th. We believe the Consent Order will be released soon, based on discussions with the Governor's Office. Once it is, we plan to have the Watershed Advisory Group review the Order and make recommendations on it's content
3. **Technical Comments:** We have received feedback from many of our WAG partners regarding specific language modifications and clarifications on a number of points within the FAD. Each partner will be communicating these directly to the DOH for review prior to October 15th. In general, we are supportive of our partner's concerns and questions, and would ask that DOH please clarify these technical points prior to final FAD approval.
4. **Reservoir Levels:** The levels reservoirs are maintained at is a critical issue for many Watershed and surrounding communities, both above and below the dams. Though technically not part of the FAD review itself, it is essential that reservoir management be a key component of any discussions involving how to best meet the drinking water needs of NYC, while also offering the best possible protection to the constituents impacted by watershed policies. Reservoir levels should be maintained based on a scientific and technical review of NYC water needs, new infrastructure improvements, and an analysis of the risk facing Upstate communities. Contingency plans should also be put in place in the event of the potential of significant weather events. Congressman Gibson is calling for action now to address this matter.

For additional information, please go to www.gibson.house.gov/watershec, or contact Steve Bulger, WAG Chairman, at the Kingston Congressional Office at 845-514-2322.

To Whom It May Concern:

My Husband and I have lived at 211 katrine Lane, Lake Katrine, just downstream of the Leggs Mill Bridge, for 17 years. Over the last several years we have witnessed the harsh and negative effects that occur each time high levels of water is released for long periods of time from the ashokan into the lower creek. We are also negatively affected when these releases are highly turbid.

By the releasing of the water, not only are the residents of the area affected, but it also creates havoc on the natural world along the creek. Many families are no longer able to boat, swim, fish and enjoy our once pristine creek. We have watched the number of natural species decrease along the creek. We were once proud of having eagles in the area, knowing that a healthy creek supported their needs. Sadly, the eagles and other animals have left our area for a healthier environment.

Also we have lost land due to erosion caused by these releases. In years past we knew our home was safe when flood levels, stated at the stream gauge, reached 25 feet. Now, we can be assured of flood damage when the level shown on these stream gauges reaches 23 feet. This number seems to be changing every year for the worst.

We are now retired and have thought we might move from the area. However, we know that we cannot be guaranteed a fair selling price based on the activities surrounding the creek, all controlled by the City of New York and its agents. Ultimately, if the situation were reversed, we know the citizens of the City of New York would want to be included in any decision making process which adversely effected their livelihood, just as we are asking now.

Charlotte Moore

Jerry Moore

211 Katrine Lane, Lake Katrine, New York

Testimony of Kate Hudson, Watershed Program Director, Riverkeeper

Testimony of Riverkeeper, Inc.

To The Ulster County Legislature, Environmental, Energy and Technology Committee On the New York State Department of Health's Proposed Mid-Term Revisions To the 2007 Filtration Avoidance Determination

September 25, 2013

Riverkeeper appreciates the opportunity to comment on the midterm review and revision of the Filtration Avoidance Determination ("FAD") that County Legislator Carl Belfiglio and his Committee have afforded us and other Lower Esopus stakeholders by holding this hearing today. We continue to call on the NYS Department of Health to step up and hold its own official hearing.

Riverkeeper is a signatory of the 1997 Watershed Memorandum of Agreement ("MOA"), which requires New York City to meet the requirements of the FAD and maintain the quality of its unfiltered drinking water. The MOA provides the framework through which New York City conducts its water supply operations and funds projects to address such issues as septic system upgrades, infrastructure repair and extension, pollution control and land acquisition. We have been engaged on the issue of the impacts that DEP's water supply operations have had on Lower Esopus communities and the County since February of 2011 and we are committed to continuing to support local and county government and stakeholder efforts to resolve these issues in any way that we can.

My comments today are directed to the NYS Department of Health. Although I do not believe that they are represented in this room here now, we have been assured by the organizers of this hearing that our comments will be transcribed and submitted to DOH as written comments on their proposed FAD revisions. We would urge everyone here today to also submit, by email or mail, their own written comments before the close of the comment period set by DOH, Oct. 15.

- **It is beyond dispute that the initiation of extended high flow, high turbidity releases from the Ashokan Reservoir through what was then known as the Waste Channel to the Lower Esopus Creek was approved by DOH, EPA and DEC pursuant to the 2007 FAD to control turbidity and preserve water quality in the NYC drinking water system.**
- **Given this clear record, the NYS DOH should not and cannot walk away from its obligation to address the consequences, both environmental and**

human, that have resulted, over the past three years, from its decision and authorization of these discharges.

- **Consequently, we urge DOH to address the issue of these discharges and their impacts on the downstream communities and environment going forward from today in the context of the FAD revision process. You have the authority, the responsibility and the opportunity to modify your FAD approval of the practice of wasting turbid water out of the reservoir system in order to avoid or mitigate the impacts that have clearly resulted from your authorization of this activity.**

We make three specific, over-arching recommendations to guide your review in the context of the FAD process:

I. Ensure that any discharges authorized under the FAD comply with State and Federal Law

- **In February of 2011, DEC initiated an enforcement action against DEP for the very releases to the Lower Esopus that DOH had authorized, based on their determination that these releases constituted violations of state environmental laws.** Specifically, DEC found that these discharges violated the prohibition against discharging waste from a point source into waters of the state in non-compliance with standards, rules and regulations set by DEC and the prohibition against discharges of pollutants from a point source in a manner other than prescribed by a permit.
- **In August of 2012, EPA found that there had been an exceedances of state water quality standards for turbidity in the Lower Esopus Creek, and in January 2013, EPA determined these exceedances were caused by human activities, including waste channel operations associated with the Ashokan Reservoir which had increased the duration of turbidity in the Creek, and required the Lower Esopus to be listed as impaired under the Clean Water Act.**
- **DOH has the authority and responsibility to insure that activities that it approves or requires under the FAD comply with all applicable state and federal laws.** Given that clearly these releases have not, based on DEC's enforcement action and EPA's impairment determination, **DOH is obligated to re-visit its approval of the use of turbid releases to the Lower Esopus to control water quality within the NYC reservoir system.**

- Also not contemplated when DOH approved the use of the waste channel in November of 2010 were the storms of record in 2011, Irene and Lee, and the impacts that climate change were going to have on reservoir operations into the future. **This is yet another reason why DOH must exercise its authority under the FAD to re-visit its approval of waste channel releases with this new information in mind.**

II. Evaluate Potential Alternatives and Mitigation

- **The mid-Term FAD revision process provides DOH with the perfect opportunity for a re-evaluation of the FAD requirements related to the use of turbid discharges to the Lower Esopus Creek as a Catskill Turbidity Control mechanism. The FAD revisions that have been proposed, with the re-insertion of the deleted provisions related to expert panel review of the operation of the release Channel and examination of potential alternatives to control Catskill turbidity, provide an excellent framework for such a re-evaluation.**
- **Specifically, we strongly recommend that DOH include in the draft FAD revisions provisions that address operation of the Ashokan Release Channel to release turbid water to the Lower Esopus Creek, and require evaluation of the impacts of and alternatives to those releases.** This FAD-required and -directed alternatives analysis should provide that alternatives to relying on Release Channel turbid discharges to the Lower Esopus to control turbidity and flooding risk in the reservoir system be studied and evaluated, including structural controls. Alternatives to Release channel operations before, during and after the Catskill-Delaware Shaft 4 Connection should be examined.
- **It is also strongly recommended that DOH seek the assistance of independent national experts in conducting this alternatives analysis, as well as with identifying impacts, evaluating alternatives, assessing ways in which to avoid or mitigate impacts associated with each of the alternatives examined.** The expert panel review should include consideration of the likely effects of climate change going forward. The alternatives analysis should be conducted in conjunction with the modeling review already required by the draft FAD revisions. The modeling review should also evaluate integration of the releases to the Lower Esopus and the impacts thereto into the modeling that underlies the CSSO and OST.
- **DOH, in consultation with EPA and DEC, should make any final decisions with respect to modification of Catskill Turbidity Control Mechanisms**

required under the FAD, based on the alternatives and impact analyses and expert panel input.

- If DOH decides, based on this alternatives analysis, impact evaluation and expert panel input, to continue to authorize turbid releases to the Lower Esopus, **the FAD revisions should require DEP to propose and release for public input a plan for remediating the identified and unmitigated environmental impacts and for compensating in some way communities adversely impacted by such DOH authorized reservoir operations.**

III. Establish Most Protective Interim Operating Rules in the FAD

- **Finally, interim operating rules for the Ashokan Release Channel must be provided for in the FAD revisions.** Those rules would govern releases while the impact and alternatives studies are being conducted and **must set clear caps on the turbidity, volume and duration of all releases from the Ashokan Reservoir through the Release Channel to the Lower Esopus at levels that will assure that those releases will not cause or constitute violations of federal or state environmental laws.** If such caps would require increased alum use at the Kensico Reservoir during this interim period, DEP's Catskill Aqueduct Influent Chamber SPDES permit, issued by DEC, authorizes such addition of alum upon DOH notice to DEC.

In sum, DOH, you have the authority, the responsibility and the opportunity, in the context of this FAD revision process, to require that steps will be taken, within a set time frame, to modify your FAD approval of turbid releases to the Lower Esopus to avoid or mitigate the impacts that have been experienced by Lower Esopus communities, their property and the environment over the last 3 years, and to ensure that the reservoir operations authorized by the FAD do not cause or result in violations of state or federal law. We urge you to step up and take the necessary actions to address the consequences of your previous decision and put us all on a better path going forward.

Testimony of Mike Hein, Ulster County Executive

"Today's announcement by the NYSDEC, regarding the draft NYS DEC Consent Order with NYC DEP, represents a step forward. Ulster County welcomes the opportunity for the County and the public to participate in a meaningful way in the comprehensive environmental review of releases from the Ashokan Reservoir. This review will be overseen by NYSDEC as the lead agency. I have always sought to build a partnership with NYCDEP in which Ulster County is a full partner in making decisions which affect our people, property and environment. I am hopeful that the Consent Order, together with the City's obligations under the FAD, will provide a framework to begin to work together on critical issues facing my communities. The projects and programs set forth in the Consent Order have the potential to provide significant benefits to Ulster County residents. Going forward, I will continue to vigorously monitor NYCDEP's activities and assure that Ulster County's best interests are represented."

Testimony of Alan L. Rosa, Executive Director, Catskill Watershed Corporation

Catskill Watershed Corporation
PO Box 569, 905 Main Street
Margaretville, NY 12455



Tel.: (845) 586-1400
Fax: (845) 586-1401
Toll Free: (877) WAT-SHED
Website: www.cwconline.org

September 23, 2013

Carl Belfiglio, Chairman
Ulster County Legislature, Energy and Technology Committee
PO Box 1800
Kingston, NY 12402

RECEIVED

SEP 25 2013

ULSTER COUNTY LEGISLATURE

Re: Filtration Avoidance Determination – Draft 2013 Mid-Term Revisions

Dear Chairman Belfiglio:

Thank you for the invitation to speak at your hearing public hearing on September 25th. Unfortunately, my schedule won't permit my personal attendance. I submit these comments in lieu of my personal appearance.

As you may be aware, in 1991 I was the Supervisor of the Town of Middletown in Delaware County when New York City Department of Environmental Protection (NYCDEP) first issued a set of watershed regulations that would have shut down all development within the Catskills. NYCDEP also proposed a land acquisition program and refused to rule out the use of eminent domain. Having both a business in Delaware County and family who were forced to move for construction of first the Pepacton Reservoir and later the Cannonsville Reservoir, both of the City's proposals were unacceptable to me personally.

In March of 1991, we held a public meeting in my town at the Margaretville High School gym to start responding to NYCDEP. We filled every seat on the bleachers. The idea of a Coalition of Watershed Towns (CWT) came out of that meeting. I was proud to serve on the Executive Committee of the CWT, and most of the meetings of the CWT were held in my town office in Margaretville. After pooling our resources and hiring our own team of lawyers, it took years of fund raisers, negotiations, several lawsuits, and hundreds of meetings. As a principal negotiator for the CWT, I personally attended 468 meetings over five years before we reached an outline of the agreement that would ultimately become the 1997 Watershed Memorandum of Agreement.

The Catskill Watershed Corporation (CWC) was formed out of the Watershed MOA. Every town with 100 or more acres in the West of Hudson Watershed is a member of CWC. Twelve of our fifteen directors are local publicly elected officials, who are elected to the CWC



Board by the Watershed Town Supervisors in their county. Two of those directors are from Ulster County.

The CWT's Executive Committee became the directors on CWC's Board and I was elected CWC's first president. In 1999, I stepped down as CWC President to take on managing the day to day operations of CWC as Executive Director. At that time, and at the CWC Board's request, I also resigned as Supervisor of the Town of Middletown.

As I can attest and the above demonstrates, negotiating with the City of New York is most effective when local municipalities organize and pool their resources. Having elected officials willing to devote a significant amount of their personal time to the matter also helps a great deal.

When I was first approached by a Lower Esopus town supervisor I suggested then that the affected towns organize themselves and come up with a list of needs and demands, and only then start talking to State and City officials. As we found out in the watershed early on, organization and speaking with a single unified voice is key to being heard by the City and State. I was pleased to read today that the towns are now pursuing that approach.

CWC as an organization will be commenting separately on the draft Filtration Avoidance Determination modification.

Thank you for the opportunity to comment.

Very truly yours,

Alan L. Rosa
Executive Director

cc: Georgianna Lepke, CWC Board President
Berndt Leifeld, CWC First Vice-President
James Eisel, Chairman, CWC Policy Committee
Richard Parete, CWC Director

Testimony of Carter H. Strickland, Jr., Commissioner,
New York City Department of Environmental Protection



September 25, 2013

Carl Belfiglio
Ulster County Legislature
PO Box 1800
Kingston, NY 12402-1800

Dear Mr. Belfiglio:

Carter H. Strickland, Jr.
Commissioner
cstrickland@dep.nyc.gov

59-17 Junction Boulevard
Flushing, NY 11373
T: (718) 595-6565
F: (718) 595-3557

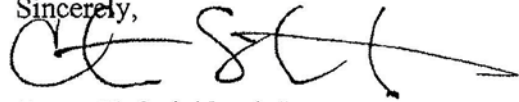
The New York City Department of Environmental Protection (DEP) is charged with providing clean, healthy drinking water nearly 9 million people every day. Since 1993, DEP has invested more than \$1.5 billion to protect the quality of the City's drinking water. Because of the high quality of its source water and these investments in water quality protection, DEP has secured a series of waivers from the filtration requirements of the federal Surface Water Treatment Rule (SWTR) for its Catskill and Delaware water supplies. Pursuant to the SWTR, the Filtration Avoidance Determination (FAD) requires DEP to implement a "watershed control program" in the City's Catskill and Delaware watersheds targeted to reduce the risks of contamination from microbes and pathogens. It is important to note that many of the programs required under the FAD benefit watershed communities, including large portions of Ulster County which are in the watershed.

Consistent with the FAD, and the proposed midterm revisions, DEP will continue to work with local partners and watershed communities, including Ulster County, to fund implementation of core watershed protection programs. These include: septic rehabilitations; new community wastewater solutions for select communities; the agricultural program working with watershed farmers; stream management and restoration projects, including flood hazard mitigation; and stormwater control programs. These programs are mature and have proven effective in protecting water quality, while preserving and in some cases enhancing the economic viability of watershed communities.

Concerns over impacts to the lower Esopus Creek from operations of the Release Channel at the Ashokan Reservoir have been the focus of much recent discussion. DEP will be performing a comprehensive study examining how releases from Ashokan Reservoir affect the creek and its floodplains, including their affect on downstream flooding, the health of the fishery, and more. DEP will provide funding to the Ashokan Release Working Group, which includes Ulster County, to hire a technical consultant to help them be active and informed participants in that study. This data will be used by DEP, DEC, and the communities in the lower Esopus watershed to make informed decisions together about potential changes to the release protocol for Ashokan Reservoir.

Including requirements for this study in the FAD is not appropriate given that the FAD, as noted above, is issued pursuant to the Surface Water Treatment Rule and thus focuses on conditions within the watershed. Rather, the study, as well as funding for development and implementation of a stream management plan for the lower Esopus, will be included in a consent order with the New York State Department of Environmental Conservation which we expect will be finalized soon. Those activities, together with other programs we are currently working on cooperatively with Ulster County, demonstrate our commitment to our continued working partnership with Ulster County to address common concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Strickland, Jr.', with a long horizontal stroke extending to the right.

Carter H. Strickland, Jr.

SUBMITTED
ORAL
TESTIMONY

Thank you, Chairman and thank you to the Committee for hosting today's forum. And just as a way of introduction, my name is Pete Lopez. I am the Assemblyman for the 102nd Assembly District, which comprises seven counties in the Mid-Hudson, northern Catskill, and Southern Tier. At present, I represent four counties within the New York City Watershed – portions of Ulster, Delaware, Greene and Schoharie and I have had the opportunity to work on watershed issues for a number of years. I had been staff to Senator John Cook, who had been instrumental in working with this region in trying to protect the rights and the opportunity of the people within the watershed to make sure that we were balancing principal objectives. And certainly, all of us understand the overarching theme, which is we have a city of nine million people who are looking for quality drinking water and we are working to balance, as a society, this against the needs, the opportunity, the hope, the dreams of people within the watershed and, as part of my comments, also people living outside the watershed and the impacts of the pursuit of clean drinking water for the city as a result.

So, just by way of history, the FAD itself, to me, is an overlay and it is really an augmentation of what previously existed in the region as a result of a massive grant of authority to the City of New York by the State Legislature – really an unprecedented grant of authority – which allowed the City to acquire properties, to begin with, to open up and establish a reservoir system, often in contravention of the will of the local population, property owners, and others.

So, the filtration avoidance, to me, is an overlay. And again, for those, all of us here, we understand that this gives the City of New York an opportunity to be part of a great experiment on a national basis. So, EPA, as part of the Surface Water Treatment rules, said that any ground water or drinking water source impacted by ground water or surface waters significantly influenced by ground water would have to be filtered. With that, the City of New York was facing billions of dollars in cost for developing a filtration plant, in addition to maintaining its current infrastructure; and also, making sure that that water was sufficiently treated to meet Department of Health drinking water standards.

So, the overlay itself has providing in no small measure additional controls, limits, parameters on the life and property of those within the Watershed and more recently, visible impacts outside the Watershed.

Part of our thrust here, and I am glad you brought this forward, part of our thrust as we look at the reauthorization of the FAD itself, which I know that we are mid-year or mid-term, but ultimately, we need to call upon the Federal Government to look at impacts both within the Watershed as well as those outside and I will give two striking examples.

In my home County, Schoharie, we witness the premise of potential collapse of the Gilboa Dam; which would have sent a forty (40) foot tidal wave through my home valley and torn apart schools, A.R.C.s, churches, businesses, and left people desolate. It would have continued to Amsterdam, along the Mohonk, and ultimately could have even impacted the City of New York in the Stockade area as twenty-three (23) billion gallons of water was released, water flowing over the dam faster than Niagara Falls at the time and taking another five (5) billion

from the New York Power Authority Dam. And the premise from the City of New York prior to that event was that their obligation was solely for drinking water, not for flood control and not with flood prevention.

And we have seen that very same scenario witnessed within the Watershed. I have Margaretville, Prattsville, and other areas that are within the Watershed and face similar potential impacts. We have Downsville below the Pepacton.

The second piece, striking example, applies to water quality and certainly, my office has been working very aggressively with this County, with the County Legislature, with the Executive, my colleagues, like Senator Bonacic and others, to address water quality on the Lower Esopus; where we hear reference to the waste channel, which has been, out of political correctness, renamed as some alternate phase, which is intended to reduce turbidity in the water supply so the use of flocculating agents in the Kensico is reduced.

And so, we dumped sedimentation and turbidity on our neighbors to make that sure water quality is maintained in the city at lowest possible cost. So, the last piece, again, which I will highlight today, is also the issue of land acquisition which right now has been helter-skelter and has had massive impacts on tax base and the ability for communities to grow and maintain themselves throughout the watershed.

So, in sum, and I know you have others waiting to testify, my belief is that we need a very long and extensive conversation with EPA about it's great experiment and that the parameters of the discussion should include the quality of life, the ability to make a living, the basic premise of the health and safety of people both within the Watershed and those who are now impacted by the actions of the city outside the Watershed.

So, with that, I thank the Chairman and the Committee for highlighting this issue. We do need to build it to a crescendo to a point where we command the attention of Federal regulators and this is a good start. So, thank you again and if the Committee has any question, I would be happy to take them.

Testimony of Gary Bellows, Supervisor, Town of Hurley

Thank you very kindly for holding this Hearing today. The last time I was here was in 1987, when the relatively newer floods started to happen and I have to admit, my home is one of the fourteen (14) homes in Hurley that get flooded. And in 1987, I can clearly remember Joe Boeick, who was the Chief Engineer for New York City, standing up and saying we are in the water supply business, not the flood control business. And that has stuck with me for all these twenty-six (26) years.

The Town Board of the Town of Hurley and its residents who pay their hard earned tax dollars to both the Town and State need the following items added to the New York City DEP FAD before we would support and agree to its passage:

- **The Ashokan Reservoir Water Levels:** The Ashokan must be kept at eighty percent (80%) of capacity throughout the year, with the exception of June, July, and August when eighty-five percent (85%) would be acceptable, unless weather patterns would indicate the possibility of a flood.
- **Year Round Releases:** The release channel would operate year round with a flow of fifty (50) million gallons a day, unless a major weather event was predicted, which would cause flooding, at which point, additional waters would be released.
- **Turbidity:** The Lower Esopus Creek must not be used by the New York City DEP as a dumping ground for sediment from the Ashokan or any other New York City DEP source. The turbidity must remain at acceptable levels determined by the New York State Health Department, the New York State DEC, and the U.S. EPA. These levels would prove not to cause further damage to the Lower Esopus or its wildlife.
- **Stream Remediation:** New York City DEP would provide the funding for the remediation of the Lower Esopus Creek and streambeds within one year of passage of the FAD. Examples would include clearing choke points created by flood erosion, fallen trees, turbidity deposits, creation of islands, and gravel mounds that slow and spread out water flows throughout the Esopus.
- **Replacement and Protection:** The New York City DEP will replace top soil which has been lost by flooding for both homeowners and the farming community in the Town of Hurley. It will provide the moneys needed to create buffer barriers at low elevations along the creek which would allow flood waters from the Ashokan, not to destroy residents' properties.
- **Buy-Up Properties:** The New York City DEP and no other source would buy all existing properties that have been previously flooded at their 2005 fair market price, if the homeowner wishes to sell. No monies would be deducted for any reason from the fair market value as residents have spent tens of thousands of dollars repairing their homes from the Ashokan flooding. The Town would enact a forever wild designation for all lands purchased by the New York City DEP.

- **Future Flooding:** If the mismanagement of the Watershed by the New York City DEP causes any additional flooding or damage in Hurley, the New York City DEP will provide the funding immediately to repair all properties, structures, and possessions which would result in no cash outlay by the property owner. The same condition would hold true for the whole Lower Esopus creek.

And in summary, the residents of the Town of Hurley have been damaged by the floods of the DEP in 1951, 1955, 1987, 2005, and 2011. It is time that these property owners be protected so they can live without fear of destruction in their daily lives.

Hello. I am Rose Marie Sullivan, Town of Ulster, specifically the Glenerie Lake park area which is just north of Lake Katrine.

My husband and I live on Glenerie Lake which is a three (3) mile part of the Lower Esopus. In August 2010, we started advertising our house for sale. Because of the location of our home on waterfront property, we should have had an easy sale. Three (3) years later, we're still here.

In October 2010, New York City DEP began releasing turbid water from the Ashokan Reservoir into the Esopus Creek and eventually Glenerie Lake. As a result of this increased water level and turbidity, there are now exposed tree roots, which causes the trees to fall into the creek and sediment is making the bottom and shore line slippery with eight (8) inches of slimy mud. The water is so muddy; it makes swimming and boating almost nonexistent. Anyone who comes to look at the property sees the brown water and walks away.

The mud has actually killed the lake. It has covered the bottom and sides to such an extent that no vegetation grows at the bottom anywhere. The vegetation is fish food, so without it - no fish. This had been a prime sportsmen draw for years. No more.

The lake has been a part of migratory bird routes for ever. But with no vegetation or fish to feed on the ducks, geese, swans, herons, occasional eagles, and whatever else, no longer stop by. And I think that is illegal. Perhaps we should call Ducks Unlimited and see if they can do anything for us.

On Route 28, there is a sanctuary on the north side of the road. This area is so heavily posted you're scared to even pull over by the side of the road to look at the beautiful water that is back in there. But the irony is three (3) to four (4) mile in the other direction, is the muddy Esopus. Where is the justice in that? They are protected, we are not.

How important is this to us? This is our Exxon-Valdes of two (2) decades ago and our personal Gulf Oil Spill of a couple of years ago. Like our problems, neither was caused by Mother Nature but manmade disasters and damage that did not stop at the water's edge – whole State's suffered. With the damage to the Esopus, our County will suffer.

The Sullivans have a legitimate claim, filed on June 18, 2011, with New York City. To this date, we have never had a word by phone or mail as to the status of this claim. Mr. Hein has even tried to get answers but even he has been ignored.

Things much change. What has been done to the Lower Esopus by New York City is premeditated, immoral, and illegal. Filtration avoidance is a disaster. It is a blatant disregard for nature and State residents' rights.

Thank you.

Testimony of Chris Allen, Resident & Ulster County Legislature Candidate,
Town of Saugerties, District 2

Hi. This is a good hearing on a good topic today. My name is Chris Allen. I am from Saugerties; running for Legislative District 2. My district includes Barkley Heights and the Village of Saugerties which runs through this area where the turbid waters are.

The Clean Water Act of 1972 is the established Federal law which governs water pollution and mandates that releases of large amounts of toxic substances cannot be released into bodies of water. The Act also sets standards that look out for the cleanliness and safety of surface waters used for sporting, recreational purposes. The intent of the act was also to set standards by which overall water pollution would be reduced by 1985 and surface waters would be at a cleanliness level by 1983 for sport and recreational activities.

These turbid releases by the New York City Watershed are in clear violation of these provisions established by the Clean Water Act of 1972. Any litigation should be pursuant with this in mind and under the premises that the turbid releases are in violation of Federal law; that Federal law always supersedes State law and that the actions of the State sanctioning agencies that allow the filtration avoidance by the New York City Watershed and the DEP that they are in clear violation of the Clean Water Act of 1972.

The Filtration Avoidance Determination was initially granted by the U.S. Environmental Protection Agency and it is in clear violation of the Clean Water Act and in contradiction of it.

The State's oversight of New York City Watershed would be superseded by the Clean Water Act of 1972. The County needs to get the Federal Government on board and seek litigation on this level concurrently with any County level litigation over flood plains and personal property damage caused by these turbid releases.

Many of these problems began after the DEC threatened to fine the DEP five (5) to six (6) years ago after they mandated that they cut down on the usage of alum. Alum is an aluminum compound that makes suspended soils coagulate with the water and then it settles to the bottom of the surface and in the process, it polluted the water after the DEC had told the DEP to stop this. This sediment has damaged the eco-system and the fish, in particular, bottom feeders, like catfish, shellfish, crawfish and stuff of that nature. Essentially, if there is litigation that is involved, the New York City Watershed is going to blame the turbulent waters on the excessive precipitation that we have had in 2009, when we had record rains, and with the two hurricanes that occurred. Their argument is that they did not create the turbidity and after they were disallowed to use the alum and that's when the turbidity was created. Their argument is that they could release the water into another waste water channel but that it would flood over the waste water banks.

So, we have to look to see what is the possible solution to the situation. Litigation is just going to force them to either build a filtration plant or to, perhaps, build the waste water walls higher. So, a filtration plant could have been build twenty (20) to twenty-five (25) years ago at an estimated cost of two hundred (200) to two hundred and fifty (250) million dollars. Now, over twenty (20) years later, those costs are in the billions of dollars.

So, the problem is that New York City was being penny-wise, pound-foolish and they choose not to build the filtration plant when the cost would have been two hundred (200) to two hundred and fifty (250) million dollars. Now the costs are in the billions of dollar range; so, they are going to argue that they cannot afford to do it.

So, it seems like the solutions are to build a filtration plant and to build the waste water walls higher in the other waste water channels so that they won't flood the other banks; so they can release them into another avenue; so it is not flooding the Lower Esopus.

Thank you very much.

Testimony of Mary O'Donnell, Resident & Member,
Town of Saugerties Conservation Advisory Commission

Thank you very much. Mary O'Donnell, Town of Saugerties; I am a member of the Saugerties Conservation Advisory Commission. I am here speaking on my own behalf but the Commission will be issuing a written statement to the State officials.

I am here this evening to challenge the assertion that the Lower Esopus Watershed is not part of the Catskill Watershed under FAD. The reason I am challenging it is because if you look at FAD, the 2007 FAD, it talks about Catskill Turbidity control. It talks about the different methods for turbidity control. It talks about the Ashokan Reservoir and measures that we can use to prevent the water coming in to the Ashokan from being polluted.

The whole FAD provision there is about turbidity control. So what are the measures that the DEP is using for turbidity control is release from the channel into the Esopus Creek. So, therefore, we cannot say "that the Esopus Creek Watershed is not part of the Catskill Watershed and therefore, we do not have to pay attention to it". As I said, it is about turbidity control.

Also, the Kensico Reservoir is talked about in FAD; that is not part of the Catskill Watershed either. And they are talking about the Alum in there. That is also not part of the Catskill Watershed but it is part of FAD.

I would suggest that the DEP be required to first of all, cease the releases from the West Basin into the creek, prohibit further releases from that channel into the Lower Esopus Creek, adopt alternative methods for turbidity control and be required to do remediation to the Lower Esopus Creek watershed to remediate any damages that they have caused through this method of turbidity control.

So, in conclusion, I thank you for the opportunity to address the committee and I look forward to your actions.

Testimony by Steve Bulger, District Director, Congressman Chris Gibson's Office,
Congressional District 19

Good evening everybody. Mr. Chairman, thank you. Thank you on behalf of the Congressman. He wanted me to personally thank you and the Legislature for holding this meeting; great job, it is needed and you are providing a real service here.

I was just talking to Frank here; I've got something that I would like to announce. I just got this from the Governor's office. This is a copy of the DEC Consent Order. So, if you will bear with me; we've all been waiting for this for quite some time, I would like to read it. I have some other comments but we will skip those because I think this is the priority right now. So, let me read this. This will be the first time I am reading it so I offer no opinion as to whether this is good, bad, or ugly.

This is the press release from DEC. It is entitled "DEC Announces Agreement To Improve Management Of Ashokan Reservoir Discharges Into The Lower Esopus And Nearly \$3.4 Million For Environmental Projects".

[Announcement Attached.]

Mr. Chairman, I can give you a copy of this. It is my only copy but we can get more made up.

I had other comments, which I will also submit here. I will not bother prolonging the talking here. But I will submit these for the record as well.

DEC ANNOUNCES AGREEMENT TO IMPROVE MANAGEMENT OF ASHOKAN RESERVOIR DISCHARGES INTO THE LOWER ESOPUS AND NEARLY \$3.4 MILLION FOR ENVIRONMENTAL PROJECTS

New York State Department of Environmental Conservation (DEC) Commissioner Joe Martens today announced an agreement with the New York City Department of Environmental Protection (NYC DEP) to reduce the impact of discharges from the Ashokan Reservoir into the Lower Esopus Creek, and advance additional initiatives that will protect the environment and promote recreational activities in Ulster County.

Under the agreement, New York City will perform a comprehensive environmental review of NYC DEP's releases from the Ashokan Reservoir, which are currently governed by DEC's Catskill Turbidity Control Program. DEC will be the lead agency for the review which, will be subject to full public participation. The Catskill Turbidity Control Program consists of management practices to control turbidity in the system, including management of the Ashokan Reservoir release channel, which balances multiple competing uses of water in the Ashokan Watershed.

New York City will also invest approximately \$3.4 million to fund environmentally beneficial projects in the Esopus Creek Watershed. This program will include a stream management plan for the Lower Esopus and \$2 million to implement that plan or related projects. Two major stream stabilization projects will be undertaken in the Ashokan Reservoir as part of a comprehensive program (that includes FAD projects) to reduce turbidity and erosion at its source. Fish stocking, installation of stream gauges and water quality monitoring will be undertaken on the Lower Esopus under this agreement. The sum of \$80,000 will be provided to support Ulster County with technical consulting services during the environmental review process.

Recreational opportunities in Ulster County will also be expanded through a \$2 million State Environmental Protection Fund (EPF) appropriation for the Ulster County Rail Trail, extending recreational trail opportunities to include a connection with the Walkway Over the Hudson with rail trails in Ulster and Dutchess counties. The proposed public recreation trail will start in Kingston and follow the Ulster & Delaware line westward to the Ashokan Reservoir, linking the Catskill Park with the Hudson River and Walkway Over the Hudson. The \$2 million in funding for this project was designated by Governor Andrew Cuomo in the 2013-14 State Budget.

"Protecting water quality is one of the primary goals of managing water systems and we are pleased that we have an order that will improve the management of the Ashokan system and reduce impacts on the Lower Esopus," Commissioner Martens said. "I commend the NYC DEP for working with us on a forward-looking order that will help to reduce turbidity, combined with additional funding for other related projects in the Esopus Creek Watershed, provide environmental benefits to communities and residents in the region, and also help to attract tourists and businesses. I also want to acknowledge the efforts of Ulster County Executive Mike Hein, who was a strong representative of his community throughout this process and a tireless advocate for local needs. DEC also appreciates the work of Congressman Chris Gibson to protect

the interest of his constituents while also supporting environmental improvements within the Esopus Creek Watershed.”

Under the agreement, which will be executed as a consent order, NYC DEP will be required to reduce the duration of any turbid releases to the Esopus Creek, flush the creek with clear water more frequently than in the previously-proposed order, limit the maximum release rate, and limit turbidity in releases that are intended to reduce storm flows downstream of the Ashokan Reservoir. The enforcement order includes a penalty if NYC DEP does not meet the order’s requirements.

The order also includes significant funding for environmentally beneficial projects in the Esopus Creek Watershed, such as stream restoration projects on the Upper and Lower Esopus Creek, development and implementation of a stream management plan for the Lower Esopus, installation and maintenance of new stream gauges, and fish stocking.

The interim reservoir release protocol now in place has been enhanced in response to public comments. This release protocol will be fully assessed and improved through the environmental impact review process, and will ultimately be incorporated into a regulatory permit.

The order complements programs set forth in the Filtration Avoidance Determination (FAD) including stream management programs in the Lower Esopus similar to projects undertaken in the watershed. The New York State Department of Health, in consultation with United States Environmental Protection Agency and DEC, has released a draft Filtration Avoidance Determination (FAD) for public comment. The draft FAD has identified the following projects and funding in the New York City Watershed, including the portion of Ulster County in the City’s watershed:

- \$50 million increase to continue NYC DEP’s land acquisition program.
- \$15 million for a flood buy-out program. This program will include properties that fall outside of the FEMA flood buy-out eligibility criteria. Additional funds can be shifted to this program from the \$50 million land acquisition allotment if flood buy-outs requests exceed the \$15 million allotment.
- \$17 million to support a local flood hazard mitigation grant program (structure relocation, flood proofing, elevation, flood plain reclamation).
- Seven major stream restoration/turbidity reduction projects in the Ashokan Watershed at an estimated \$3 million.
- \$20.6 million increase for the County Soil and Water Conservation Districts to address erosion and stream stabilization and local flood hazard mitigation planning and projects.
- \$23 million for Watershed Agricultural Council farm conservation easements.
- \$6 million for Watershed Agricultural Council forestry conservation.
- Nine stormwater retrofit projects annually, with potential funding available at approximately \$3.6 million.

##

Thank you, Mr. Chairman. I will be very brief. I think it is very interesting what Steve Bulger presented. It looks like the Consent Order finally is getting finalized and obviously, we all to see the details in it; of what's in there.

Following up with what Carl said, I think obviously, you are all aware of how complex this situation is and it is a problem we have been living with for a long time and unfortunately, there is not going to be a solution overnight.

Locally, what has been provided as part of the Consent Order, a means to get some immediate relief to some of the landowners and mitigate some of the worst damage that currently exists as a part of the prior releases.

But the real issue is going to be the long term solution; to make sure it doesn't continue to happen. And that is going to be, a long slot to try to figure that out.

I urge you to work with your Towns collectively. And participate in the process that is going to develop with the modification of the SPDES permit for the catalum process, which is the legal handle is here. I have always been reluctant to give legal advice in public, especially since our potential opponents might be listening. But you have been provided a golden opportunity, a legal opportunity through the DEC permitting process. It is the exact same process that the Coalition used as a means to force a resolution of its issues. It will require a commitment of resources on the County's part but it is worthwhile and it is the avenue that is by far the most successful for you, if you which to pursue.

I certainly appreciate that the frustration people have and a desire to try and get the attention of the City and the State by trying to challenge the FAD or bringing an Article 78 proceeding. I don't recommend that as a course of action. I don't think that is the way to get you what you want and I think it would certainly have unintended consequences for the rest of the Counties in the Watershed Towns; that is not really in our interest. But use the opportunity of this Consent Order and I know the Coalition would be happy to work with you as you look at that as a means of getting the redress of these serious grievances.

Thank you.

Testimony of Richard Halpert, Resident, Leggs Mills Road, Lake Katrine, Town of Ulster

I would like to thank the Legislature for bringing this meeting about. I am a homeowner. I do not have a speech prepared however, we have over the past two years experienced a growing peninsula in front of our home which takes away our waterfront and eventually, by the way it's growing, it will completely block us from what we had as a waterfront.

The other issue is the mud. We no longer swim in the water. We used to swim and it was perfectly fine.

I also want to speak as a Real Estate Agent/ Real Estate Salesperson. I have several clients that have seen the water at it's worse and just turned away from it; thinking that this was also in Glenerie Lake and up in Saugerties.

So, I would just like to express my disappointment at what has been happening and my gratitude for what you are trying to do.

Thank you.

Testimony of Steve Broskie, Resident, Sawmill Road, Lake Katrine, Town of Ulster

My name is Steve Broskie. I live in the Town of Ulster and I live directly on the Esopus Creek. I am very happy at what I have heard past speakers say today and that is probably doing to limit anything I have to say. Most of it sounds very productive; although, it may be slow.

I read the FAD as it was listed in the Daily Freeman and my only concern with the FAD, as I read it, is that it did not address the Lower Esopus as significantly as I think it should have and I would like to see that somehow have the FAD do that more directly.

And just as a citizen of Ulster County, Town of Ulster, I wanted to voice my opinions and concerns of this issue.

Thank you very much.

Testimony of Joanne Powers, Resident, Glenerie Boulevard, Saugerties

I am Joanne Powers and I own property on Glenerie Boulevard at 172 in Glenerie Lake Park. My family has been there since 1945 and I also would like to state that the condition of the river has been just abominable.

As Rose Marie said, we have no fish. The river is dead and I don't even see that this Consent decree is going to do very much. It is very vague in some places and not at all sure that New York City is going to do anything more than what they have said they are going to do in the past and then haven't done.

Thank you.

Testimony of Michael Warren, Supervisor, Town of Marbletown

Mr. Chairman, Michael Warren, the Supervisor of the Town of Marbletown; I want to really thank the Ulster County Legislature and yourself for growing this all together.

The past five years, I have been a lifelong resident down there, Tongore Park has been, when I was growing up in the 1950's, that was our swimming area. That is the recreation park for the Town of Marbletown.

It has been devastated by the DEP. We have had many, many issues with that; not only, that but also our crossing at Fordham Place Road, our farmers in that area, our homeowners in that area. The Esopus is permanently damaged.

The FAD, everything we have heard here today, does not address the remediation of the Lower Esopus.

We have heard time and time again about these studies that they were going to do for the Lower Esopus; that maybe ten thousand dollars (\$10,000) will throw a few more fish in the Esopus so someone can go fishing. The Esopus is dead. This is not going fix it.

Excuse me but this gets a little emotional after awhile. I have been sitting in meetings, going to Margaretville even. The Upper Watershed, the tens (10's) of millions, hundreds (100's) of millions of dollars that gets dedicated to preserving everything above the waste channel is there.

We are talking about three point four (3.4) million dollars in projects. Actually read it. Some of those projects really have nothing to do with the Lower Esopus. You know it is nice to announce that two (2) million dollars in rail trail but that has nothing to do with the Lower Esopus.

Last week, we sat there in another meeting at the Lower Esopus Working Group and this time the New York State Health Department was actually in the room. Now, DEP wanted to have this beautiful slide show with data that she said was 2008; it was actually from 2005. So it wasn't really addressing what we were doing. I finally stood up and said, hey, time out. You know you are just running out the clock. There is a couple of questions we need to have. Number one, this was from New York State Health Department, I said where in the FAD, if the waste channel cannot be used, what happens to the FAD. Guess what, that is an iatrical part of the FAD. However, nothing in the FAD addresses the Lower Esopus. The waste channel goes into the Lower Esopus. Okay, right then and it was like guess what, again we are on the low end of the stick. We are not getting the consideration. And, this goes back, let's talk about New York State, with the three men in the room, well guess what, we've got the three men in the room in this case. You've got DEP, Department of Health, and the DEC. Their paychecks all have the same signatures on them and guess what, we are the ones who get stuck with this. So, fortunately, and it absolutely right here today, Congressman Gibson's office has been stepped up and has the EPA involved because this part of the Clean Water Act. I mean, we cannot ignore this. And they are talking about the cadalum permitting, I am not going to go bother everybody here in what all these things are, the CSSO, the interim protocols and everything else. However, this is the time, today, this is the time, when the Lower Esopus

Group, the Coalition of Towns on the Lower Esopus, not the Upper Esopus, nothing against you guys, but we can actually make a difference.

We need to have the DEP fixed the damage that they have done. First of all, acknowledge that they have done; every single meeting, they say, "It wasn't us." Every single meeting; they need to acknowledge it, they need to fix it.

Now, they are not a bad group to work with. And the releases, somebody was saying that don't have any releases out of the waste channel; that's wrong. The Lower Esopus is very healthy when it was cleaned up, to get about forty (40) to fifty (50) million gallons a day of water going down. It's supported the Lower Esopus. No releases, we will have back with our stagnant swimming hole we use to have a few years ago before they started doing it, the interim protocol.

But, I'll just go back to, again, we're not getting the consideration, we're not getting the money, and they're not taking a responsibility for the Lower Esopus.

Thank you.

Testimony of Mary McNamara, Outreach Coordinator, LEWP: Lower Esopus Watershed Partnership

Good Evening. And again, thank you very much for holding this hearing. It is excellent, just excellent.

My name is Mary McNamara. I am an Outreach Coordinator with the Lower Esopus Watershed Partnership that formed in 2007 after the 2005 floods. It represents the seven (7) municipalities in the Lower Esopus Watershed plus two that are in the Sawkill Watershed.

I'm reading comments that were written by the Coordinator, Candice Balmer, who was not able to be here today.

Continuation of the City's Filtration Avoidance Determination is partly dependent upon successful turbidity reduction in the Ashokan Reservoir System. Use of the waste channel from the Ashokan Reservoir to the Lower Esopus Creek has emerged as one of the primary methods that have been approved under the FAD for reducing turbidity in the system.

The FAD is the overarching regulatory mechanism driving and authorizing turbid releases to the Lower Esopus. However, and there are one (1) or two (2) points that have changed due to the notice that just happened, use of the waste channel was approved without environmental impact study as required under the State Environmental Quality Review Act. Use of the waste channel, and of course, using the word waste channel is to make a point, as a primary turbidity reduction measure rose to the top of the list of turbidity control measures as both effective and cost effective, without assigning any cost to the recipients of a highly turbid discharges. The cost to the City is negligible.

Since 2011, the City has conducted high turbidity, high flow releases of unusual duration through the waste channel to the Lower Esopus Creek without evaluating impacts and involving the public through the environmental impact process.

Although it was constructed before the Ashokan Reservoir was officially open, the waste channel official does not exist under New York State law. In fact, it does not exist to the extent that the City is exempt from release requirements and the associated DEC oversight that apply to other City Reservoir supplies.

Thus, the FAD authorizes releases of contaminated water without the benefit of an environmental impact statement. The FAD authorizes releases through a structure that officially does not exist under New York State law. The FAD effectively ignores existing and potential impacts to the Creek and communities downstream of the Reservoir.

Therefore, we contend that it is obvious that the FAD is the regulatory authority under which impacts to the Lower Esopus and downstream communities must be addressed.

Currently, the FAD relegates authority over existing and potential downstream impacts to the City and to the DEC. The FAD assumes the impacts are addressed by the City's interim release protocol and the New York State DEC proposed Consent Order, which is now a Consent Order, against the City for violations associated with the SPDES permit authorizing alum addition to remove turbidity.

And finally, since the FAD authorizes a strategy that has and will continue to result in enormous negative downstream impacts, the FAD must specifically and directly address mitigation of these impacts without regulating oversight to after the fact enforcement by the DEC.

So, thank you very much and if you would like, I would hand this in.

Follow-up Testimony

Just to sort of reiterate the silent stakeholders in the community, these are the forty (40) species of fish that are found throughout the Lower Esopus Creek. I'm told I am missing four (4) but I think forty (40) is a pretty good number to begin with. They kind of bubble a lot but they don't come to meetings and they don't talk. So, there are many different ways to make your point. And so, each of these fish has a different need a different requirement; a different kind of stream need. So, there is subtlety in the stream. It is not just a ditch.

If you'd like you may also have these posters. (attached)

Thank you very much.

Fish OF THE LOWER ESOPUS CREEK

KEY (FRONT SIDE)

ROWS	1	2	3	4
1				ROCK BASS
2		CREEK CHUB	COMMON SHINER	ALEWIFE
3		BLUEBACK HERRING	CHAIN PICKEREL	YELLOW BULLHEAD
4	COMMON CARP	SATIN SHINER	BROWN TROUT	SMALLMOUTH BASS
5		LONGNOSE DACE	CUTLIPS MINNOW	BLUEGILL
6	STRIPED BASS	SLIMY SCULPIN	RAINBOW TROUT	LARGEMOUTH BASS
7		LOG PERCH	WHITE SUCKER	REDBREAST SUNFISH
8	CHANNEL CATFISH	GOLDFISH	BROWN BULLHEAD	BROOK TROUT
9		NORTHERN HOG SUCKER	EMERALD SHINER	GOLDEN SHINER
10		EASTERN BLACKNOSE DACE	RAINBOW SMELT	BLUNTNOSE MINNOW
11		YELLOW PERCH	BLACK CRAPPIE	TESSELATED DARTER
12		MARGINED MADTOM	WHITE CATFISH	FALLFISH
13		PUMPKINSEED	CISCO	WALLEYE
14				AMERICAN EEL

FISH OF THE LOWER ESOPUS CREEK

GROUP		NATIVE N	NOT X	TIDAL	RIFLES	POOLS	TEMP	VALLEY
ALEWIFE		N						
BASS	SMALLMOUTH		X					
	LARGEMOUTH		X					
	ROCK		--					
	STRIPED	N						
BLUEGILL			X					
BULLHEAD	BROWN	N						
	YELLOW	N						
CARP	COMMON		X					
CATFISH	CHANNEL		X					
CHUB	CREEK	N						
CISCO			--					
CRAPPIE	BLACK		X					
DACE	EASTERN BLACKNOSE	N						
	LONGNOSE	N						
DARTER	TESSELATED		X					
EEL	AMERICAN	N						
FALLFISH		N						
GOLDFISH			X					
HERRING	BLUEBACK	N						
MADTOM	MARGINED	N						
MINNOW	BLUNTNOSE		X					
	CUTLIPS	N						
PERCH	LOG		X					
	YELLOW	N						
PICKEREL	CHAIN	N						
PUMPKINSEED		N						
SCULPIN	SLIMY	N						
SHINER	COMMON	N						
	EMERALD		X					
	GOLDEN		--					
	SATINFIN	N						
SMELT	RAINBOW	N						
SUCKER	NORTHERN HOG	N						
	WHITE	N						
SUNFISH	REDBREAST	N						
TROUT	BROOK	N						
	BROWN		X					
	RAINBOW		X					
WALLEYE			X					

Testimony of John Morrow, Councilman, Town of Ulster

Good Evening Mr. Chairman, Ladies and Gentlemen of the Legislature. My name is John Morrow. I am a Councilman in the Town of Ulster and I wear many hats in that respect.

I happen to reside on the Creek in the Town of Ulster and I have lived there for about eleven (11) years. I just have some brief comments. I've spoken to many of the people that are here tonight and I am on a number of the committees including LEWP and the WAG Committee and so forth. I have been involved in this process for the last two and a half (2.5) years.

Some of the things that have not been looked at really is, if the Reservoir system was built to today, to modern standards, what would they do differently than they did a hundred (100) years ago? A hundred (100) years ago, when the Reservoir system was built, a lot of these considerations weren't taken into affect. In fact, I think that their intent at the time was pretty much to such the Esopus down and save all the water for the City; which is really kind of what they did for the last ninety (90) years until the cadalum issue arose and then they found that they weren't allowed by DEC to use cadalum as much in Kensico to clear up the water.

As a result, they ended up with this turbid water and now we have changing weather patterns and so forth and so on. And I think the FAD needs to address 2013 standards rather than a hundred (100) year old standard, which they have done in the past.

To me FAD, filtration avoidance, just the term itself is insulting. It says basically how can we do this not the right way, legally. And that is what filtration avoidance means. How can we avoid doing the right thing? And that is what we are looking at and faced with.

Like I said, I live on the Creek and I am a user of the Creek in a number of different ways, as a farmer, I use is recreationally, or did until the turbidity precluded anybody from really using it and I also use it as a small business. I teach sea plane flying of the Creek in the Esopus area.

And the up and down of the Creek makes it very difficult to use because of the debris floating down the Creek, makes it dangerous for boating, airplanes, and so forth, swimming, the high current flows.

That is just what I wanted to say. Thanks.

Testimony of Karen Lahey, Resident, Zena, Town of Woodstock

Hi. My name is Karen Lahey and I've lived in Zena in the Town of Woodstock for thirty-six (36) years. I started taking photos for fun in around 2004. And, my favorite place to take photos is at the Reservoir, the small Reservoir that the Lower Esopus flows into at the four corners of Zena Road and Sawkill Road.

This morning, every day, especially for the past ten (10) years, I have noticed that that Reservoir is filling in with land and in the Town of Kingston, for the past ten (10) years, there has been some serious flooding. And, I really don't know if there is a connection. If that is silt in there or not but I have a photo from 2004 when the Reservoir was full of water, 2008 when a small, little, tiny, thin land mass was forming and I took a picture of it today. I do not know if people ride past there but the entire Reservoir is filling in with land. And I do not think that the Creek can flow through there without flooding. And if that is showing in the Reservoir that it has got to be in every water source that goes through it.

So, I have these pictures here if anyone wants to see them. The last one is from today. (attached)

2004



2008



9/25/13



Testimony of Joy Ann Simmons, 318 Glenerie Boulevard, Saugerties

My name is Joy Ann Simmons. We live at 318 Glenerie Boulevard, in the Town of Ulster but a Saugerties address. We bought a house over here because we love Ulster County and the water is really bad over here.

Our Glenerie Lake is, I think, a sewer at this point. We have kayaks and stuff and we want to go into the water. We step into the water and you pull your foot out and it smells like sewer.

My kids took the kayaks down towards the waterfall that goes into Saugerties, the beach. They went down one of the little inlets and the blue pipe was throwing out raw sewage right into the water.

We are thinking about selling because we live in Millbrook and we have this place; this is where we wanted to retire but if this keeps happening we're getting out.

We did put a water system in because they did hook up to the water system. They were supposed to put in sewer system but it never happened.

Also, our wall, because of the water coming down off of the Ashokan, our wall fell into the Esopus from both hurricanes that we had. We thought it was going to come into our house and we are about twenty (20) feet above the water line. We had everything on top of our tables and everything else, all our furniture. Our wall fell in and no one has done anything about that either.

They have just decided to waiver and said we do not want to do it. New York City, they are just not going to take care of their own filtration. It really kills me. Most people in New York City just drink bottled water anyway. We would kill for that water and all they do is walk around with bottled water. They have no idea how good their water is.

And why are we the ones being asked to test the quality of the Lower Esopus. It should be the New York City Department of Health.

Ours is a pretty new house. Ours is only eleven (11) years old. There is a lot of old cabins on that road and you know some of them do not have septic systems. I do not understand in this day and age, that that can still happen.

Hi. I am Linda Fallon. I live at the same address, 318 Glenerie Boulevard. Like Joy said, we bought this house thinking we this is where we were going to retire.

When we first bought it, we were so excited because the water was just great. We went there every weekend; enjoyed just going out to look at it. We've been there for about five years and over the period of five years, we noticed that, okay, it gets brown after it rains but usually the next day, it was fine. Little by little, it got to be more brown than the clear, like-green water; worse and worse.

And then we started going to meetings in the area and finding out that we'd become the dumping ground for the Ashokan Reservoir. So, we are just very disappointed that nothing is done and we're just considered minute ants and we do not matter. Everything is for the benefit of New York City and for the benefit of the Ashokan.

It is so funny because we went on a historic walk, just last weekend at the Village of Hurley. They have their stories of the New York City Water Department and how they have such a notorious reputation of not really playing fair and no one being able to do anything about it.

We came here thinking we would hear maybe some good news or something. I was debating even to come because I do not think anything is going to happen for us.

Like Joy said, we might just decide just leave and hope that whoever wants to buy it doesn't know much about what is going on because yes, we were so shocked that we go into the water now that when we first got there, we put gravel down where we would launch the kayaks and it would be a nice place to step down into the water. And now after all this mud, there is about a foot of it, you sink down and you don't get your balance. And then the curious thing about it, last time that we went, just recently, pulling your foot out of it and smelling it and it smelled like an open septic tank. So I am saying, there is a lot more coming down here than just mud. It is sewer.

And even though we have lived there, we have had some high rains, and yes, it probably came up on people's septic tanks or leech fields before, it never left that debris. It never left that smell. And it never left that mud. So, it is a lot more.

Joy touched on our wall; which is a concrete wall. It was leaning somewhat when we bought it but as the water kept coming high all the time, and working on it, it finally just fell. Now we have these big, gigantic concrete blocks in the Esopus. It is going to be our natural deck of some sort.

It has been an adventure and I hope it gets better. That odor and that smell and that whatever did not happen until after mud.