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NEW YORK STATE ASSEMBLY
ASSEMBLY STANDING COMMITTEE
ON ENVIRONMENTAL CONSERVATION

ASSEMBLY STANDING COMMITTEE
ON GOVERNMENTAL OPERATIONS

Public Hearing on the Safety of New York State Dams

Thursday, February 9, 2006, 10:00 a.m.
Schenectady County Community College
Stockade Building, Room 101
78 Washington Avenue
Schenectady, New York

Proceedings - Dam Safety - 2-9-2006
FOR THE COMMITTEE ON ENVIRONMENTAL CONSERVATION
Chairperson, Thomas P. DiNapoli
Assemblyperson Aileen M. Gunther

FOR THE COMMITTEE ON GOVERNMENTAL OPERATIONS
Chairperson, RoAnn M. Destito

Assemblyperson Paul D. Tonko
Assemblyperson Kevin Cahill

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18 Peter D. Lopez (2 pages double sided)
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 2 (The hearing commenced 10:13
 3 a.m.)

4 CHAIRPERSON DiNAPOLI: Thank you
 5 for your patience as we get settled in and start
 6 our hearing. I'm Tom DiNapoli, Chair of the
 7 Assembly Standing Committee on Environmental
 8 Conservation.
 9 I'm joined by Assemblymember
 10 RoAnn Destito who chairs our government operations
 11 committee and does a great job in that capacity and
 12 we're very pleased to be hosted by our colleague,
 13 Assemblyman Paul Tonko. It was Assemblyman Tonko
 14 who first brought to our respective committees
 15 the -- the desire to have this meeting on Dam
 16 safety in New York State.

17 His request was echoed by
 18 Assemblymembers Aileen Gunther and Assemblymember
 19 Kevin Cahill both of whom I think we're going to be
 20 seeing before the day is out. It's a busy time of
 21 year for all of us so you -- I think you'll be
 22 seeing several colleagues coming and going today.
 23 But we certainly appreciate the participation of
 24 all of those who've agreed to provide testimony and

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 2 certainly obviously given the turn out the --
 3 the -- the interest of the -- of the citizens of
 4 the state of New York and this important issue.

5 So I welcome all of you. Given
 6 recent events concerning dam safety in New York
 7 State, including the Dam failure in Fort Ann this
 8 past summer and the emergency repairs being
 9 undertaken on the Gilboa Dam we certainly believe
 10 this hearing is timely.

11 The hearing location is also
 12 significant, Schenectady County Community College

13 along with the stockade district of Schenectady is
14 in the flood path of the Gilboa Dam. While
15 Schenectady's stockade district is about sixty
16 miles from Gilboa, failure of that dam could
17 severely impact the people and historic properties
18 of this community.

19 The stockade historic district is
20 one of the oldest and best preserved neighborhoods
21 in the country with roots dating back to a
22 seventeenth century Dutch colonial trading
23 settlement and while we certainly feel that
24 emergency officials are keeping a close eye on the

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2 dam if something were to happen residents of the
3 stockade would have only about an estimated ten
4 hours to get out.

5 Compared to the minutes that
6 residents just below Gilboa would have this may
7 seem like a significant amount of time but trying
8 to imagine the thousands of people having to move
9 themselves and their possessions -- minutes or
10 hours leaves all of us with a concern and certainly
11 gives us all pause.

12 We certainly want to avoid a
13 situation such as that.

14 In the Hudson Valley residents
15 have been subject to increasingly frequent flooding
16 which has caused -- caused millions of dollars
17 worth of damage to homes, businesses, roads,
18 bridges, sewage treatment plants and has even
19 resulted in the loss of human life.

20 While it is true that rivers will
21 flood regardless of our best preparations it is
22 imperative that we do our collective best to guard
23 against those damages that can be prevented. We
24 have an impressive list of -- of individuals

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2 testifying today, elected federal representatives,
3 state and New York City regulatory officials, local
4 government representatives, state and local
5 emergency management representatives and concerned
6 citizens on this important issue of dam safety in
7 New York.

8 With thousands of existing dams
9 in our state and many thousands of people living
10 and working in the path of these dams we must look
11 closely at our current system of dam regulation.
12 Today's hearing will help us to determine where
13 short comings in our system exist and help us to
14 focus on changes that need to be made and I really
15 want to state at the outset and I know I speak for
16 my fellow chair and all the Assemblymembers, we
17 really do appreciate the representatives from New
18 York State D.E.C. and New York City D.E.P. for
19 taking the time to participate in the hearing. It

20 shows how concerned they are about this issue as
21 well and we know that they're testimony is going to
22 be particularly important to our deliberations.

23 I now turn the mic over to my
24 colleague, Assemblywoman, RoAnn Destito, Chair of
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2 our Standing Committee on Governmental Operations.

3 CHAIRPERSON DESTITO: Thank you
4 very much, Chairman DiNapoli and Chairman Tonko.
5 It was Assemblyman Tonko that first brought the
6 issue of dam safety to both Tom DiNapoli and
7 myself's attention and dam safety is a serious
8 issue that impacts many communities across the
9 state and Paul and I like to talk to -- talk about
10 each other as the bookends of the Mohawk Valley.
11 I'm from the Utica-Rome area. I represent the
12 Utica-Rome area and of course, Paul is out here.
13 So we consider ourselves at -- at either end of the
14 Mohawk Valley.

15 ASSEMBLYPERSON TONKO: And we
16 adopted Tom.

17 CHAIRPERSON DESTITO: And we
18 adopted Tom DiNapoli from Long Island to be in the
19 middle here today. So it's appropriate that we're
20 sitting this way.

21 Recent dam failures and flooding
22 highlight -- highlighted by the Chairman raises a
23 number of public safety concerns that need to be
24 addressed as he discussed in his opening statement.

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2 My committee's role in the hearing involves
3 oversight of the state's disaster preparedness,
4 mitigation and response to natural and man-made
5 disasters.

6 In 1978 the state enacted Article
7 2B. of the executive law which sets forth the
8 policy of the state in dealing with disaster.
9 Article 2B. also created the disaster preparedness
10 commission which consists of twenty-six agency
11 heads including the Department of Environmental
12 Conservation whom we want to thank Commissioner for
13 being here and the State Emergency Management
14 Office, SEMO. And they both will be testifying
15 here today.

16 The commission has many
17 responsibilities including to study aspects of
18 disaster prevention response and recovery, prepare
19 state disaster plans and review them annually,
20 prepare and keep on current inventory of programs
21 related to prevention, minimization -- minimization
22 of damage readiness and recovery, coordinate the
23 state and local disaster preparedness operations
24 and assure that all state personal with direct

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2 responsibilities in the event of a disaster are
3 familiar with response and recovery plans and the
4 manner in which they shall carry out their
5 responsibilities and coordinate the federal, state
6 and local operations and personnel.

7 Today, we will examine the steps
8 the state is taking to prevent dam failure,
9 identify and address the vulnerabilities, mitigate
10 the damage should a failure occur and what steps
11 the state is taking to prepare communities to
12 respond to a failure. It is also important to
13 examine the level of coordination between the
14 agencies responsible for inspecting the dams and
15 those with responsibility of preventing, mitigating
16 and responding to disasters.

17 The Chair of the Disaster
18 Preparedness Commission is Jim McMahon and he could
19 not be here today but he notified me earlier on
20 that he would be submitting a written testimony
21 that will be added to our transcript which we do
22 have. Our staff will present it as official
23 testimony.

24 We also heard from the Canal

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2 Corporation who is also responsible for dams within
3 their system. They have submitted testimony and we
4 will provide that for the official record. Mr.
5 McMahon also noted that SEMO is the administrative
6 arm of the Disaster Prepared -- Preparedness
7 Commission and they are represented here today and
8 we will hear from them.

9 So I look forward to hearing from
10 everyone and I -- I appreciate the commissioners
11 from New York State as well as New York City
12 because I think it's important that we hear and
13 that the public hears from them so thank you.

14 Paul?

15 ASSEMBLYPERSON TONKO: Thank you.
16 Thank you, RoAnn. I'm Paul Tonko, I represent the
17 105th Assembly district. Throughout my tenure that
18 district has included Montgomery and Schenectady
19 Counties but for ten years -- my first ten years in
20 the state assembly it included Schoharie County so
21 this district knows well -- it's people knows well
22 the -- the damages that come with water-related
23 tragedies and the loss of life. Certainly through
24 the years we have dealt with many very difficult

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2 situations.

3 I -- at the forefront I want to thank
4 both Chairman DiNapoli and Chair Destito for not
5 only hosting this hearing today but their
6 outstanding willingness and concern to address the
7 issue and certainly they do a -- a tremendous job
8 in their respective roles and I'm hopeful that

9 today's hearing will produce yet more information
10 that will allow us to go forward and develop
11 policy and search for resources that will respond
12 to the given situation.

13 The activities today also were
14 made possible by a very devoted staff here at
15 Schenectady Community College and I would like to
16 thank them. In particular, Pat Gablooski (phonetic
17 spelling) and Mike Denaval (phonetic spelling) who
18 may be in the room. I don't see them but I want to
19 publicly acknowledge their assistance. I want to
20 thank everyone for attending today, in particular
21 those who will be offering testimony.

22 In July of 2005 the Hadlock Pond
23 Dam in Washington County failed, displacing
24 residents and causing serious damage to residents,

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2 other structures and certainly transportation
3 arteries. The immediate and related costs were
4 immeasurable. Apparently the Gilboa -- Gilboa Dam
5 in Schoharie County has been found structurally
6 deficient to a critical level. Failure of this dam
7 threatens numerous low-lying population centers.
8 The east-west transportation and commerce corridors
9 and also including in that path, the New York State
10 Thruway, routes five and five S. and the C.S.X.
11 rail line, an irreplaceable bit of historic
12 district area, chemical plants, this college,
13 hospitals and businesses, not to mention individual
14 housing parcels.

15 It's failure would cause
16 tremendous damage across -- across multiple
17 counties and sometimes that message isn't heard
18 well enough. This is one that spreads tremendously
19 quickly as a concern. Yet parties are just now
20 scrambling to develop and implement a solution to
21 repair the dam and the initial response to
22 emergency preparedness planning for the possibility
23 of a dam break was sluggish and less than
24 coordinated.

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2 The failure of the Hadlock Dam
3 and the deficiencies of structure and emergency
4 preparedness planning of the Gilboa Dam may be
5 symptomatic of a broader problem of dam safety
6 across New York State.

7 Additionally, over the last
8 decade we, at the state, have tragically
9 disinvested in critical infrastructure such as
10 highways, bridges and dams. We have reduced
11 manpower and dollars to inspect, maintain, repair,
12 and insure safety.

13 This, in my mind, amplifies the
14 immediate concern of safety of our dams. We have
15 all been painfully aware of water disasters that

16 are associated with national and local catastrophes
17 such as Katrina, floods that collapse our own
18 system's thruway bridge located in the 105th
19 assembly district back in 1987.

20 The Hadlock Pond Dam break and
21 now the recently discovered deficiencies of the
22 Gilboa Dam and the magnitude of damage that could
23 be caused by it's failure. So the loss of life,
24 ruination and destruction of property and the

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2 deluge of a dam failure can be both devastating and
3 certainly costly. It is imperative that we insure
4 the repair, maintenance, and improvement of dams,
5 across this great state, including our own Gilboa
6 Dam and have well-defined, coordinated and
7 communicated emergency plans in place in case of
8 failure.

9 Our state needs to commit to
10 resources and a collaborative effort amongst our
11 agencies and layers of government to provide the
12 safest and most effective and efficient outcome for
13 all of the residents and businesses and not for
14 profit in the communities along this stretch of
15 this great state. Thank you.

16 CHAIRPERSON DESTITO: Thank you.

17 MR. DINAPOLI: Thank you. Our
18 first witness is a very distinguished member of the
19 United States House of Representatives, Congressman
20 Michael McNulty, a graduate of I might point out of
21 the New York State Assembly. Welcome.

22 CONGRESSMAN McNULTY: Well, it's
23 nice to start the day seated in front of three old
24 friends and colleagues and I thank Chair DiNapoli,

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2 Chair Destito and Chair Tonko who was the Chair of
3 the all important Energy Committee who I think all
4 of you for giving me and others this opportunity to
5 testify today regarding dam safety and I'm going to
6 specifically talk about the problem that Paul
7 referred to. That's the Gilboa Dam which is
8 located in my Congressional district in Schoharie
9 County and provides water for New York City
10 residents.

11 Owned by the city of New York and
12 maintained by the New York City Department of
13 Environmental Protection or D.E.P., the Gilboa Dam
14 is seventy-eight years old and has been in poor and
15 deteriorating condition for several years. While
16 D.E.P. consultants can claim that the dam continues
17 to be safe under normal conditions there are
18 concerns about weakness in the bedrock beneath the
19 dam that could lead to a catastrophic failure under
20 extraordinary flood conditions.

21 In 1997 the D.E.P. claimed that
22 renovation of the Gilboa Dam was their number one

23 priority. Nearly a decade has passed and full
24 rehabilitation of the dam is still not scheduled to
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2 even begin until the year 2008. The lack of
3 attention given to the dam and the lack of concern
4 for the safety of my constituents and residents of
5 other upstate communities shown by the city of New
6 York is indefensible and unacceptable.

7 With the horror and devastation
8 brought about by Hurricane Katrina still fresh in
9 our minds where thousands of homes were destroyed
10 and hundreds of lives were lost due to the failure
11 of the levee system, the current threat of flooding
12 in the Schoharie Valley is especially unnerving for
13 my constituents. Not only would a structural
14 failure of the Gilboa Dam have disastrous results
15 for those who reside in low-lying areas along the
16 Schoharie Creek, but the path of the resulting
17 flood and its attendant destruction would also
18 extend through Schoharie and into Montgomery and as
19 the Chairman pointed out, Schenectady Counties.

20 The coordination and cooperation
21 among local, state and federal officials in recent
22 months has been reassuring. It is their
23 intervention that has caused the starting date for
24 the long term rehabilitation to be moved from 2010
0019

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2 to 2008.

3 I first became involved when I
4 received a phone call from former Assemblywoman and
5 former New York Secretary of State Gail Shaffer who
6 I'm proud to say is here today and will also offer
7 testimony. I subsequently received a letter from
8 the mayors of the villages of Schoharie,
9 Middleburgh and Esperance seeking my assistance and
10 in involving the Army Corps of Engineers in
11 assessing the stability of the dam and plotting the
12 course of action required for repairs. I am
13 grateful that the Corps has agreed to assist us and
14 I might also point at this particular time that
15 Congressman Hinchey who could not be here today is
16 working with me to get the Corps more involved in
17 helping on the overall issue of dam safety in New
18 York and he will be submitting testimony for your
19 record later in the week.

20 I've also met with Chairman Earl Van
21 Wormer and the Gilboa Supervisor Anthony VanGlad
22 and other members of the Schoharie County Board of
23 Supervisors, a number of village mayors and others.
24 I'm thankful for their outstanding leadership on
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2 this issue.

3 I met with D.E.P. Commissioner Emily

4 Lloyd who is also here today and her staff on
5 January 10th of this year to express my
6 disappointment with the lack of progress made in
7 the last decade on rehabilitation of the dam and to
8 try to convey to her the sense of uncertainty and
9 distress that my constituents have endured as a
10 result of her agency's neglect.
11 Looking forward, we also discussed D.E.P.'s updated
12 plans for the dam's rehabilitation both in the
13 short term and the long term.

14 I also sent a letter -- a letter to
15 New York City Mayor Michael Bloomberg which
16 included my concerns about the physical state of
17 the Gilboa Dam and D.E.P.'s unacceptable record of
18 negligence regarding its maintenance.

19 In the short term the dam must be
20 stabilized immediately. A notch will be installed
21 to help prevent the water from reaching dangerous
22 levels and steel anchors will be installed to
23 prevent the dam from sliding forward on its base.
24 It is essential that the time table for the short

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2 term repairs be met.

3 In the longer term as I explained
4 during my meeting with Commissioner Lloyd and in my
5 letter to Mayor Bloomberg it is my very strong
6 feeling that the city should replace the current
7 outdated dam structure with a modern, twenty-first
8 century dam, which, in my opinion, should include
9 flood gates.

10 Mr. Chairman, members of the
11 committee, one only needs to visit the Gilboa Dam
12 and to view its enormity to understand that a
13 failure would be catastrophic and that lives of
14 thousands of our fellow New Yorkers would be in
15 jeopardy.

16 The number one priority of
17 government at all levels is to provide for the
18 safety of our citizens. Rather than provide a
19 sense of security and assurance, D.E.P.'s record of
20 apathy and neglect at the Gilboa Dam has introduced
21 the stress of emergency evacuation planning and
22 submersion timelines into the lives of thousands of
23 residents who live in the path of a potential
24 flood.

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2 Let us not kid ourselves about
3 who is responsible here. Responsibility lies with
4 the city of New York and every day that goes by
5 puts people's lives at risk.

6 In my letter to Mayor Bloomberg I
7 invited him to see the Dam for himself so that he
8 may understand the nature of the threat to our
9 citizens. To date there has been no response.
10 Recent history has shown us that when you gamble

11 with Mother Nature, you lose. Mayor Bloomberg and
12 the city of New York need to realize that it's time
13 to stop gambling and to fix the dam now.

14 You may be assured that I will
15 continue to work with you and our partners at all
16 levels of government to return stability and safety
17 to the structure of the Gilboa Dam and to return
18 Normalcy and certainty to the lives of our
19 constituents.

20 And I thank you for allowing me
21 to testify. You have this.

22 (applause)

23 CHAIRPERSON DiNAPOLI: Thank you.
24 We've been joined by our colleague,

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2 Assemblymember Kevin Cahill from Ulster County,
3 Hudson Valley and as Congressman McNulty mentioned
4 your friend, Mr. Hinchey, can't join us today
5 unfortunately but he is submitting written
6 testimony that will be included as part of the
7 record.

8 And Congressman, you made
9 reference to -- and I know Congressman Hinchey has
10 also been involved with discussions with the Army
11 Corps about stepping up their involvement in New
12 York State on the issue of dam safety. Can you
13 just elaborate on that more as to whether they --
14 they --?

15 CONGRESSMAN McNULTY: Well, I was
16 very please, Mr. Chairman. I was very pleased with
17 their response. Initially I was worried because of
18 the fact that they do not have jurisdiction here,
19 that we would get into a bureaucratic discussion
20 about that and they -- we didn't get into that at
21 all. They said they wanted to help.

22 There are limits to what they can
23 do but they can go in and help assess and give us
24 guidance on -- on the remedial action necessary and

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2 they're doing that -- they're attending meetings
3 and so on. What Congressman Hinchey and I have
4 discussed is trying to get more resources to the
5 core and get some kind of an agreement possibly
6 with the state and the units of local government to
7 more formally put in place a mechanism whereby
8 they -- they can respond more substantially. So we
9 want to build upon that.

10 CHAIRPERSON DiNAPOLI: Right.
11 Well, maybe you'll keep us apprised as to how
12 those --

13 CONGRESSMAN McNULTY: We will --
14 CHAIRPERSON DiNAPOLI: -- efforts
15 go.

16 CONGRESSMAN McNULTY: -- we will
17 indeed.

18 CHAIRPERSON DiNAPOLI: And I -- I
19 gather from your testimony you -- you have not
20 received a formal reply to your letter to the Mayor
21 of the city of New York but when that comes if you
22 could share that with us as well, we'd appreciate
23 that.

24 CONGRESSMAN McNULTY: Yes. Well,
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2 let me -- let me comment on that for a second
3 because we need some results here with regard to
4 this particular situation. I know the hearing is
5 going to discuss a lot of different issues and some
6 general dam safety concerns. This is an immediate
7 concern and what I'm looking for from the city of
8 New York is that they have a sense of urgency about
9 this right now.

10 I do not see that. Now, I sent a
11 letter to the Mayor and I'm not upset because he
12 sent me back an unacceptable response. I'm upset
13 because I've gotten no response at all. I don't
14 even know if the Mayor's seen the letter.

15 Now the secretary -- Secretary
16 Shaffer is here. She'll testify later on but
17 she -- she shared with me a conversation she had
18 when she visited New York City last week. Last
19 Friday, less than a week ago, she was down there
20 and ran into our former colleague -- our former
21 Assembly colleague, Albert Copell who is now a
22 member of the New York City Council and is a member
23 of the Environmental Committee and she asked him to
24 keep an eye on this situation with the Gilboa Dam

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2 and he said what are you talking about? He doesn't
3 know anything about it. It has not been brought to
4 the committee's attention. Knew nothing of it
5 whatsoever. This is unacceptable. Absolutely
6 unacceptable. No response from the Mayor, no input
7 from the administration to the city council about
8 this.

9 And let me tell you something, if
10 there's ever a failure at that dam, they don't have
11 enough lawyers in Manhattan to defend the city of
12 New York against this liability --

13 CHAIRPERSON DiNAPOLI: Uh-huh.

14 CONGRESSMAN McNULTY: -- with --
15 with regard to what's going to happen here.
16 Because you, Mr. Chairman -- you pointed out the
17 salient fact that, you know, we're talking about
18 the Gilboa Dam. The Gilboa Dam is fifty-five miles
19 away from here and this area would be under water.

20 And I'm damn upset about it and I
21 don't think the city of New York is. And that's
22 unacceptable.

23 CHAIRPERSON DiNAPOLI: But if
24 that --.

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2 CONGRESSMAN McNULTY: And I'll
3 give you another -- one other thing I just want to
4 mention because I know you have a long list of
5 witnesses to get to.
6 Now there was a meeting of the
7 Schoharie County Board of Supervisors the day
8 before yesterday and in yesterday's -- I believe
9 this is the Gazette -- the Daily Gazette, there was
10 an article about that meeting. And the Board of
11 Supervisors -- and they're on this. They're trying
12 to do everything possible not only to prevent the
13 catastrophe but if a catastrophe occurs to get the
14 word out to residents to get the hell out of there.
15 Part of that's an alarm system that they're working
16 on.
17 Now the cost of this particular
18 alarm system -- the siren system is two hundred and
19 ninety-six thousand dollars, a piddling amount of
20 money compared to the -- the number of lives that
21 would be in jeopardy if there were a failure here.
22 So they went ahead with this and here's the
23 response from the representative of D.E.P.
24 D.E.P. has not committed to

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2 funding this project for the county, immediately
3 distancing themselves from any responsibility for
4 helping out even to alert citizens in the path of
5 that flood to the potential catastrophe. This is
6 absolutely unacceptable.
7 So we need to get the attention
8 of the city of New York, not just the
9 commissioner -- I've spoken to her. We need to get
10 the attention of the Mayor and the city council so
11 that they know what's at stake here. And frankly,
12 I don't want to be talking about these things,
13 about how we notify people of the disaster.
14 We don't want the disaster to
15 occur to begin with. So let's get the work done.
16 Let's have a sense of urgency. We have a sense of
17 urgency here in the upstate communities but it's
18 lacking in New York City and I want that changed.
19 ASSEMBLYPERSON TONKO: Speaking
20 of that lack of urgency from the federal and state
21 perspective, if that response isn't there by the
22 owner of the dam what do you envision should happen
23 from the overview process.
24 CONGRESSMAN McNULTY: Well, Paul,

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2 with your help and the help of Chair DiNapoli and
3 Chair Destito and Kevin and others we're going to
4 get the city's attention.
5 ASSEMBLYPERSON TONKO: Uh-huh.
6 CONGRESSMAN McNULTY: There's

7 going to be failure on this we're going to make
8 sure that we get their attention.
9 ASSEMBLYPERSON TONKO: I'm glad
10 you brought up --.
11 CONGRESSMAN McNULTY: If I have
12 to go down there and camp on the steps of city hall
13 I'm going to get the Mayor to respond to me.
14 ASSEMBLYPERSON TONKO: Uh-huh.
15 I -- I'm glad you brought up the -- the other part
16 of the puzzle so to speak and that being the
17 evacuation plan and the emergency preparedness,
18 signaling devices, alarm signals, whatever, a plan,
19 a strategy, these are very important parts of any
20 dam ownership and it's something that I think needs
21 to be strongly underscored here.
22 CONGRESSMAN McNULTY: Right.
23 ASSEMBLYPERSON TONKO: And
24 speaking from a state perspective I'm very

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2 concerned about the -- the very few inspectors we
3 have for the thousands of dams we have --
4 CONGRESSMAN McNULTY: Yeah.
5 ASSEMBLYPERSON TONKO: -- fifty
6 five hundred dams. So -- yet we -- I think the
7 advocacy is important.
8 CONGRESSMAN McNULTY: Right. And
9 you're correct, Paul, that that alert system and
10 alarm system and all of that is very important but
11 you also know because you know the area even better
12 than me because you represented it longer that if
13 that dam fails that you're not going to be able to
14 get everyone out of there. There is going to be a
15 very significant loss of life --
16 ASSEMBLYPERSON TONKO: Uh-huh.
17 CONGRESSMAN McNULTY: -- if that
18 dam breaks. There just isn't going to be enough
19 time under the most ideal of alert systems. So we
20 need to go back to our first priority -- is to make
21 sure --
22 ASSEMBLYPERSON TONKO: Yes.
23 CONGRESSMAN McNULTY: -- the dam
24 does not fail.

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2 ASSEMBLYPERSON TONKO: Uh-huh.
3 CONGRESSMAN McNULTY: And in
4 order for that to happen we need the total and
5 complete assurance of the city of New York that
6 they're doing everything possible to prevent that
7 from happening. Waiting nine years after they said
8 it was a top priority to do anything is not
9 acceptable.
10 ASSEMBLYPERSON TONKO: Which
11 study are you citing about the -- the weakness of
12 the ground layer?
13 CONGRESSMAN McNULTY: I don't --

14 ASSEMBLYPERSON TONKO: Is
15 there --
16 CONGRESSMAN McNULTY: -- I
17 don't --.
18 ASSEMBLYPERSON TONKO: -- is
19 there a geological study that you cite about the
20 base --
21 CONGRESSMAN McNULTY: About the
22 dam?
23 ASSEMBLYPERSON TONKO: -- area?
24 CONGRESSMAN McNULTY: This

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2 came --
3 ASSEMBLYPERSON TONKO: The base
4 area?
5 CONGRESSMAN McNULTY: -- this
6 came from the city.
7 ASSEMBLYPERSON TONKO: Okay.
8 So --.
9 CONGRESSMAN McNULTY: This
10 initially -- this initially came from the city.
11 They're the ones that put out the alert that there
12 was a problem with the dam.
13 ASSEMBLYPERSON TONKO: Okay. We
14 should --.
15 CONGRESSMAN McNULTY: And I want
16 a sense of urgency to follow that.
17 ASSEMBLYPERSON TONKO: Uh-huh.
18 CHAIRPERSON DiNAPOLI: Mr.
19 Cahill?
20 ASSEMBLYPERSON CAHILL:
21 Congressman, first of all, I apologize for walking
22 in in the middle of your presentation.
23 CONGRESSMAN McNULTY: It's good
24 to see you.

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2 ASSEMBLYPERSON CAHILL: And it's
3 good to see you again. We see a lot of each other.
4 You're a good friend of your -- your former home in
5 the state legislature and it's always good to see
6 you. Also I'd like to thank you for your strong
7 and -- and vocal advocacy. I know that Congressman
8 Hinchey wanted to be here as well. We've spoken
9 many -- many times and -- and we've spoken in
10 particular about his call for the involvement of
11 the Corps of Engineers and that's kind of what I
12 want to touch on right now.
13 I share your frustration with
14 the -- the apparent lack of awareness or maybe
15 insensitivity on the part of the administration of
16 the city beyond the Department of Environmental
17 Protection, which, by the way, I have to add that I
18 found to be very responsive and -- and very helpful
19 in -- in providing information, willing to conduct
20 meetings and -- and willing to keep an open mind on

21 these sorts of things but we all know that they
22 answer to a higher power and we have to get that
23 higher power involved.

24 CONGRESSMAN McNULTY: We want the

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2 attention of the higher power. I mean this is --
3 this situation involves a lot of lives. We should
4 have the attention and the acknowledgment by the
5 higher power of the urgency of this situation.

6 ASSEMBLYPERSON CAHILL: When
7 I --.

8 CONGRESSMAN McNULTY: I -- I -- I
9 really don't know how much they know about it.

10 ASSEMBLYPERSON CAHILL: When I
11 first met Mayor Bloomberg and -- and everybody was
12 meeting him for the first time in -- when he came
13 to visit us in Albany I said I -- I represent your
14 water.

15 Be nice to me.

16 CONGRESSMAN McNULTY: Yes.

17 ASSEMBLYPERSON CAHILL: And --
18 and that's the point I make with him every time I
19 see him. Congressman --.

20 CONGRESSMAN McNULTY: But if --
21 if somebody on the committee of jurisdiction on the
22 city council doesn't know about this, I'm not --
23 I'm not so sure the Mayor knows about it. And I'd
24 like somebody to at least tell me even if he

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2 doesn't respond to me in writing that he saw the
3 damn letter.

4 ASSEMBLYPERSON CAHILL: Uh-huh.
5 I -- I wanted to discuss what happened last spring
6 which was not necessarily a dam related problem but
7 it was a flood related problem having something to
8 do with the entire water system and it does involve
9 the Corps of Engineers and when the Corps of
10 Engineers goes in and creates a flood control
11 project they don't get rid of the water. They move
12 it from one place to another and what we witnessed
13 in our community, in the lower Esopus below the
14 reservoir system was that water coming up against
15 their flood control project and pushing out in the
16 other direction and then causing the flooding and
17 the loss of a thousand -- of a -- of a hundred
18 homes and literally thousands, and thousands, and
19 thousands of dollars worth of property.

20 In addition to the emergency
21 response you talked about, totally disjointed.
22 There was a total lack of communication all around
23 but what I witnessed was the Army Flood Control
24 Project working on the south bank of the creek and

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2 totally pushing all that water over the north bank

3 of the creek and creating a flood condition.
4 I was going to ask you and also
5 ask Congressman Hinchey, in your continuing

6 discussions with the Army Corps of Engineers and in
7 getting them involved and I appreciate that
8 immensely could you also consider looking into the
9 possibility of -- of having the Corps look to see
10 what their flood control projects have done that
11 have exacerbated the situation and to work
12 together.

13 One of the things that we
14 determined from last spring is that it really does
15 require everybody to work together, not just the --
16 the local governments with the emergency response
17 system and not just the city of New York with their
18 stewardship of their assets but also the Army Corps
19 and everyone else and -- and your efforts in that
20 regard would be very much appreciated to -- to --
21 to maybe sit on their steps too and I'll go down
22 and join you in that one.

23 CONGRESSMAN McNULTY: I'd be
24 happy to do that, Kevin and -- and you know how
0037

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2 closely I work with Maurice. We've been friends
3 and colleagues for quarter of a century. So yes,
4 I'll be happy to do that.
5 CHAIRPERSON DESTITO: Thank you.
6 No.

7 CHAIRPERSON DiNAPOLI: Thank you,
8 Congressman. Thank you for testifying.

9 CHAIRPERSON DESTITO: Thank you,
10 Congressman. Thank you.
11 (applause)

12 CHAIRPERSON DiNAPOLI: I think
13 our representative. Our next witness is Denise
14 Sheehan, Commissioner of the New York State
15 Department of Environmental Conservation. Ms.
16 Sheehan, perhaps you'd introduce your colleagues
17 that are with you as well?

18 MS. SHEEHAN: Sure.
19 (Off the record discussion)

20 CHAIRPERSON DiNAPOLI:
21 Commissioner, before you start Mr. Tonko has a
22 brief introduction.

23 ASSEMBLYPERSON TONKO: Yeah, I
24 just see the President of the community college --
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2 Schenectady Community College, President Gabe
3 Bazell (phonetic spelling). Thank you, president
4 for all of the assistance here on campus.
5 (Off-the-record discussion)

6 MS. SHEEHAN: All right. There we
7 go. You're not on -- you're not on those -- okay.
8 You're not on their list, no.

9 CHAIRPERSON DiNAPOLI: They're
10 fine till they see the whites of our eyes.

11 ASSEMBLYPERSON TONKO: Keep your
12 eyes shut.

13 MS. SHEEHAN: Well, good morning.
14 I -- yeah, I do introduce the folks that are with
15 me here this morning. Lynette Stark is the
16 Executive Deputy Commissioner of the Department of
17 Environmental Conservation. She was just named to
18 that position last week. She's been with the
19 Department a long time, however.

20 Ruth Warren is our new Deputy
21 Commissioner for Natural Resources and Water. She
22 joins the Department from the Department of
23 Agriculture and Markets. She also just started
24 yesterday.

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2 CHAIRPERSON DESTITO: Oh, boy.

3 MS. SHEEHAN: Then right behind
4 me is Sandy Allen whose our Director of Division of
5 Water.

6 CHAIRPERSON DiNAPOLI: There she
7 is.

8 MS. SHEEHAN: And -- let's see --
9 who else do I have here? Well, Alon Dornitz who
10 is the head of our Dam Safety section. Craig
11 Severs who is our Regional Water Engineer and
12 Blaise Constantakes who is our Regional Attorney
13 right here in Region Four which is Schenectady
14 County and the capitol region as well as parts of
15 the Catskill region.

16 Assemblyman DiNapoli,
17 Assemblywoman Destito, Assemblyman Tonko and
18 Assemblyman Cahill, I want to thank you for
19 providing me with the opportunity to testify at
20 today's hearing on dam safety. The issue is both
21 timely and important.

22 I do have a long testimony which
23 it's long because it covers all of the issues that
24 were in the hearing notice so we -- we do cover a

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2 lot of different topics and I -- so I hope that you
3 can indulge me.

4 ASSEMBLYPERSON TONKO: Yeah.

5 MS. SHEEHAN: Over the past year,
6 across the nation natural disasters such as
7 Hurricane's Katrina and Rita have focused national
8 attention on the need to evaluate the safety of our
9 water infrastructure such as dams. Flooding and
10 dam safety issues here in New York have also become
11 an increasing concern to our citizens. The New
12 York State Department of Environmental Conservation
13 welcomes this focus which is essential to
14 protecting the health and safety of our citizens,
15 personal property and natural resources.

16 The Department is committed to
17 working with national, state and local dam safety
18 and emergency management officials as well as the
19 New York State legislature and the United States
20 Congress to help address this important national
21 priority.

22 Article 15 of the Environmental
23 Conservation Law provides the statutory guidance
24 for many of the Department's water resource

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2 programs, including dam safety. This article
3 recognizes that quote, New York State has been
4 generously endowed with water resources which have
5 contributed and continued to contribute greatly to
6 the position of preeminence attained by New York in
7 population, agriculture, commerce, trade, industry
8 and outdoor recreation.

9 The water resources statute notes
10 as well the potentially detrimental impact which
11 human actions, including the diversion and
12 destruction of water courses, has had on aquatic
13 habitats and water supply. Accordingly, the
14 Department's dam safety program is designed both to
15 protect the public and safeguard property and to
16 ensure that natural resources are not detrimentally
17 affected.

18 The state legislature first
19 recognized the need for the state to regulate dams
20 in 1911, making the Department's mandate on dam
21 safety one of our oldest programs and actually
22 predating the creation of the department in 1970.
23 This statute provides that no person or local
24 public corporation can construct, reconstruct or

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2 repair a dam without a permit from the Department.
3 Current state law requires that dam owners must
4 operate and maintain dams in a safe condition. The
5 Department has the legal authority after hearing on
6 due notice to remove or repair a dam in order to
7 safeguard, life, property or the natural resources
8 of the state.

9 Recognizing the need for the
10 Department to ensure that owners properly maintain
11 dams, in 1999 the state legislature amended the dam
12 safety law to provide the Department with
13 additional authority over dam owners with respect
14 to inspections, monitoring, maintenance and
15 operation, emergency action planning, financial
16 security, record keeping and reporting.

17 Although the law did not require
18 the Department to develop regulations on these
19 issues the Department is committed to enhancing our
20 dam safety program and it has initiated the process
21 of promulgating new regulations to govern dams.

22 The Department proactively

23 implements the dam -- the dam safety program to
24 protect public health and safety. The Department

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2 is responsible for overseeing the safety of
3 private, municipal and state-owned dams and for the
4 permitting of construction work to be done for new
5 or modified dams.

6 The Department also has the
7 authority to inspect dams. The Federal Energy
8 Regulatory Commission, FERC, also licenses most
9 hydroelectric dams in New York State.

10 There are five thousand, five
11 hundred and seventy-five dams in New York State
12 including two hundred and fifty-one FERC dams.
13 These dams are classified as high, intermediate and
14 low hazard.

15 High hazard is defined as a dam
16 that may cause loss of life, serious property
17 damage, and or cause extensive economic loss in the
18 event of failure. As a result these dams are a
19 priority for the Department's oversight.

20 And intermediate hazard dam is
21 defined as a dam whose failure can damage property
22 or the environment or interrupt use or service of
23 relatively important public transportation or
24 utilities.

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2 A low hazard dam is one whose
3 failure may cause minor economic damage or
4 interrupt the use of local roads or minor
5 utilities.

6 Dam safety permits are required
7 for work on all dams except those that meet any of
8 the following criteria, a dam under fifteen feet
9 high that can impound under three million gallons,
10 a dam under six feet high regardless of impoundment
11 capacity and a dam that can impound less than one
12 million gallons, regardless of height.

13 While the safe operation of a dam
14 is the primary responsibility of the dam owner, the
15 Department's staff perform regular periodic
16 inspections of certain dams in addition to the dam
17 owners operational inspection activities. The
18 three hundred and eighty-four high hazard dams in
19 New York are inspected every two years and the
20 seven hundred and eighty intermediate hazard dams
21 have historically been inspected every four years.

22 Staff also perform unscheduled
23 inspections of dams as needed. Dams under
24 construction may be inspected more frequently. Dam

0045

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2 safety staff perform an average of three hundred
3 and fifty to four hundred dam inspections per year.
4 When dam safety staff identify significant

5 deficiencies they work to ensure that necessary
6 remedial measures are undertaken by the owner. The
7 nature and timing of these initiatives are in
8 proportion to the magnitude and eminence of the
9 threat. The Department is committed to act on any
10 emergency authorization requests within two days
11 and we meet this commitment effectively.

12 Dam safety staff conduct
13 technical reviews of new construction,
14 reconstruction, or repairs at dams. Dam safety
15 staff evaluate the safety aspects of the proposed
16 work and make changes when deemed necessary to
17 ensure that the structure will meet current safety
18 criteria. Their analysis include hydrology,
19 hydraulics, foundation, structural materials and
20 placement aspects. The scope and depth of review
21 is proportional to the structure's size and hazard
22 class.

23 The E.C.O. requires the owner of
24 a dam to safely maintain it. In addition, for any

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2 dam which the Department deems to be unsafe after
3 inspecting it, the law allows the Department to
4 take enforcement action against the owner including
5 ordering the repair of the dam.

6 In 2004 the Department was forced
7 to remove Lake Switzerland Dam, a high hazard dam
8 in Delaware County. This project was necessary to
9 protect public safety after the owner refused to
10 repair the dam.

11 I do want to mention -- I just
12 want to shift gears for a second and just talk
13 about a little bit about what we're planning with
14 respect to our new dam safety regulation. As I
15 noted above the Department is planning to release
16 draft regulations this Spring to enhance the dam
17 safety program. These regulations will strengthen
18 the effectiveness of the Department's dam safety
19 program by specifically defining the owner's
20 responsibility for submitting information to the
21 Department concerning record keeping, inspection
22 and maintenance, and requiring emergency action
23 plans for high hazard dams.

24 Included in the draft regulations

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2 will be penalties for providing false information
3 about a dam. In addition, the new regulations will
4 require the owner to provide financial security
5 which demonstrates the ability to properly maintain
6 the dam in a safe condition. As always public
7 comments on the draft regulations will be an
8 important component in completing these
9 regulations. The Department is interested in any
10 input that you may have on this matter. And once
11 the draft regulations become available we will

12 certainly share them with you.
13 Moving to dam safety staffing and
14 our funding levels.

15 As has been discussed concern has
16 been raised over the past year about the adequacy
17 of the Department staffing levels for dam safety
18 programs. At this time the total authorized number
19 of staff and the Department's dam safety section is
20 seven positions. Because of some recent staffing
21 changes we currently have two vacancies which we
22 are in the process of filling and we plan to fill
23 this month. These specialized staff, located in
24 the Department's Central Office are assisted by the

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2 Department's regional office engineers in the
3 implementation of the dam safety program.
4 We recognize the importance of
5 providing an effective dam safety program and
6 because 2005 was such a challenging year in New
7 York State as well as nationally with respect to
8 water infrastructure and flooding the 2006-7
9 executive budget recommends the establishment of
10 new dam safety permit fees to construct or
11 reconstruct dams and a fee for the annual operation
12 of the dam.

13 The executive budget proposal
14 recommends the creation of five new dam safety
15 positions to be supported by these fees. New
16 technical positions will be dedicated to expanded
17 state-wide field inspection activities including a
18 dedicated emergency manager.

19 To pay for these positions the
20 executive budget establishes a dam permit fee of
21 five hundred dollars. This flat rate will be
22 required for a construction or repair work done at
23 a dam. The executive budget also calls for an
24 annual fee on dam owners of five hundred dollars.

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2 This fee will be assessed on all dams in New York
3 State -- in New York State except for municipally
4 owned structures and farms with dams. These fees
5 are projected to generate revenue totaling nearly
6 eight hundred (sic) million annually.

7 Providing the Department with a
8 new source of funds to inspect dams and ensure
9 compliance with safety standards will be a
10 tremendous investment in public safety and I
11 welcome your support for it.

12 Many dams in New York State are
13 municipally owned and operated and can be costly
14 for local governments to maintain properly.
15 Recognizing the importance of assisting local
16 officials with the cost of dam maintenance,
17 Governor Pataki and the state legislature dedicated
18 fifteen million from the Clean Water/Clean Air Bond

19 Act to municipal dam infrastructure activities.
20 These funds are used to eliminate hazardous
21 conditions, provide exceptional and unique
22 environmental, aesthetic and or recreational public
23 benefits or enhance the safety of thirty-nine dam
24 structures. To date, approximately eight point

0050

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2 nine million of these bond act funds have been
3 allocated to dam safety projects across the state.
4 Remaining bond act funds will be used by the
5 Department to assist municipalities in meeting
6 their responsibility of ensuring safe operation of
7 municipally owned dams.

8 Now just -- shifting our
9 attention to dams in the New York City watershed
10 region, much attention has been focused lately on
11 dams in the New York City -- which the New York
12 City Department of Environmental Protection owns in
13 the New York City Watershed. These dams are an
14 essential component of the city's overall drinking
15 water supply program which relies upon reservoirs
16 located on either side of the Hudson River.

17 Although safe operations of these
18 dams is the primary responsibility of New York City
19 I would like to comment on the Department's role in
20 overseeing D.E.P.'s activities.

21 D.E.P. owns twenty high hazard
22 dams in the New York City watershed. Of these
23 dams, fourteen are located east of the Hudson River
24 and six are west of the Hudson. In the early

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2 1980's with the Department's support, D.E.P.
3 commenced an assessment of all of it's dams to
4 ensure that they comply with safety standards for
5 existing dams. D.E.P.'s goal is to bring all of
6 its dams into compliance with the standards for new
7 dams within the next decade. D.E.P. has completed
8 its review of most of its east of Hudson dams and a
9 preliminary review of its west of Hudson dams. In
10 the west of Hudson, the Gilboa Dam has been
11 identified by D.E.P. as not meeting D.E.C.
12 stability criteria.

13 D.E.P.'s program to assess the
14 status of its dams and to undertake any necessary
15 repairs or rehabilitation has been comprehensive.
16 We are working with the city to ensure that defects
17 found at Gilboa are fully, effectively and
18 expeditiously addressed.

19 Before I begin a more detailed
20 discussion of the Gilboa Dam, I would like to
21 mention that while D.E.P. is responsible for
22 inspecting its dams on a weekly basis the
23 Department inspects them as well in accordance with
24 our state-wide schedule for inspections of high,

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2 intermediate, and low-hazard dams.

3 D.E.P. is not required to submit
4 its weekly inspection reports to us, but the
5 Department does require regular inspection and
6 maintenance of the dams. The Department is
7 concerned about recent reports that a city employee
8 may have falsified weekly inspection reports and we
9 have communicated concerns to D.E.P. in a recent
10 letter from myself to Commissioner White on this
11 topic.

12 Shifting to the specifics at
13 Gilboa, as part of its system wide evaluation
14 program D.E.P. has found that the Gilboa Dam
15 suffers from weaknesses which relate generally to
16 the dam's age and original design and construction.
17 While the city's intention to upgrade the Gilboa
18 Dam is appropriate the Department is ensuring that
19 concerns over inspection, maintenance and repair
20 practices at it and other D.E.P. dams are being
21 fully addressed.

22 In October of 2005 the Department
23 determined that the city's plan to remediate the
24 Gilboa Dam was not adequate and in a letter to

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2 D.E.P. Commissioner Lloyd I requested that D.E.P.
3 develop and submit to the Department a monitoring
4 plan for the Gilboa Dam that would stay in place
5 until the long term remedial work on the dam is
6 complete. D.E.P. agreed with this request and also
7 agreed to accelerate its schedule for interim
8 remedial measures at the dam. On November 14th,
9 2005 D.E.P. submitted an interim monitoring plan to
10 the Department which includes regular inspections,
11 instrument observations and other measurements.
12 This monitoring plan will remain in place until
13 long term remedial work on the dam is complete.

14 D.E.P. is working closely with
15 the Department to develop a schedule for the
16 interim remedial measures which will be undertaken
17 this year, while continuing to expedite the
18 long-term remedial efforts which will bring the dam
19 into conformance with the state's safety criteria
20 for existing dams. Wet weather conditions have
21 made progress on these measures difficult. The
22 Department and others continue to monitor weather
23 conditions and their impact on the Gilboa Dam on a
24 daily basis.

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2 As an important component of the
3 remedial efforts at the Gilboa Dam, D.E.P. has been
4 working with local officers -- local officials, the
5 New York State Emergency Management Office, SEMO,
6 the New York State Power Authority and the
7 Department to update its emergency action plan for

8 Gilboa. D.E.P. is meeting with local first
9 responders and public officials to review the
10 E.A.P. and to refine the plan's notification flow
11 chart. State agencies at the request of SEMO have
12 also been meeting to discuss their coordinating
13 response to flooding in the Schoharie Valley.

14 I also note -- I note that in the
15 hearing request you had asked that we touch upon
16 flooding as well, so the next part of my testimony
17 addresses the specifics of flooding and what the
18 Department's role is with respect to that.

19 As I mentioned at the beginning
20 of my testimony dam safety -- dam safety activities
21 require the Department to consider numerous
22 environmental and health safety factors including
23 the New York City reservoir system.

24 In 1954 the United States Supreme
0055

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2 Court established the overall framework which
3 governs the releases of water from the city's
4 reservoirs along the Delaware River in a -- in a
5 manner which is designed to balance New York City's
6 need for an adequate supply of drinking water and
7 the riparian rights of downstream owners.

8 In order to -- to promote flood
9 protection, preserve water supplies and manage
10 river habitats the Department works with local
11 officials and our partners at D.E.P., the Delaware
12 River Basin Commission, the Delaware River Master
13 appointed by the Supreme Court and other states,
14 including New Jersey, Pennsylvania and Delaware to
15 reduce flood risks. Assessment and management of
16 the flows of the New York City reservoir system and
17 downstream rivers is a primary means of reaching
18 these goals.

19 The New York City watershed dams
20 were constructed to create reservoirs and ensure a
21 reliable water supply. These dams were not
22 physically constructed to operate as flood control
23 structures. Flood-control dams or impoundments can
24 be lowered very quickly in anticipation of large
0056

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2 storms or run-off events.

3 The New York City water supply
4 reservoirs do not have this capability. In order
5 to provide a significant level of flood protection
6 the valves and control structures would need to
7 significantly be modified or the reservoirs would
8 need to be lowered in anticipation of storms weeks
9 in advance. If the reservoirs are lowered in
10 advance of an anticipated storm and the storm track
11 goes elsewhere the adequacy of water supply
12 potentially could be compromised.

13 The Department along with D.E.P.

14 and other interstate partners are actively
15 discussing alternative ways of managing the
16 reservoirs in order to try to provide a greater
17 level of flood mitigation while continuing to
18 assure the adequacy of water supply.

19 For the past two years the
20 Department, D.E.P., and the interstate partners
21 have instituted a program that has mitigated the
22 potential flooding consequences of snow melt below
23 the Pepachment line. The program requires D.E.P.
24 to monitor the snow pack depth and then create a

0057

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2 void within the reservoir equal to one half of the
3 water equivalent. This program is now also in
4 place for the Never -- Neversink reservoir. The
5 Department and D.E.P. are actively discussing
6 implementing similar snow pack release programs for
7 other D.E.P. reservoirs as well.

8 In addition, the Department and
9 D.E.P. are exploring with the interstate partners
10 other release programs that will create voids
11 within the Delaware Reservoir System when water
12 levels are statistically and abnormally high.

13 The Department as a member of the
14 Delaware River Basin Commission is working on basin
15 wide flood plain hazard mitigation planning. This
16 effort will provide valuable information to
17 Delaware Basin communities such as requiring the
18 development of hazard plans, developing priorities
19 for damage prevention where hazards exist, and
20 planning how to mitigate flooding in areas prone to
21 damage.

22 The Department has also embarked
23 on a statewide flood mapping program, with a focus
24 on the New York City watershed. The mapping effort

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2 will develop elevation data, new hydraulic and
3 hydrologic analyses, new floodplain mapping, and
4 training and outreach tools in communities. It
5 will help the Department, D.E.P., and local
6 communities in establishing, updating and updating
7 our knowledge of potential flood prone areas for
8 local planning efforts and decision making.

9 If flooding does occur despite
10 these efforts, the Department works with partners
11 like SEMO and local officials to assist residents
12 in the impacted communities.

13 The Department, while recognizing
14 the importance of all of the state's natural and
15 human-made surface water supplies, acts proactively
16 to advise New Yorkers of means to avoid serious
17 damages that can occur in a flood. New York is one
18 of the first two states to comprehensively map its
19 flood -- flood-prone areas, with a special emphasis
20 on flood-prone New York City watershed region. We

21 have advocated for it and secured federal funds to
22 implement precise, G.I.S. maps for flood-prone
23 regions of the state.

24 Our G.I.S. mapping program

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2 involves the development of a three dimensional
3 color infrared computer model of various sections
4 of the state. This initiative will enable
5 communities and developers to pin point in fine
6 detail the areas that are -- are most prone to
7 floods. The maps have applications that will
8 benefit other state agencies as well. For example,
9 they can be used to model transportation networks,
10 identify sensitive agricultural areas, or target
11 new economic development enhancing their cost
12 effectiveness.

13 In conclusion, Assemblyman
14 DiNapoli, Assemblywoman Destito, Assemblyman Tonko,
15 Assemblyman Cahill, I want to thank you again for
16 providing me with the opportunity to share with you
17 the Department's dam safety priorities as well as
18 some of our flood-prone -- our flood plain work.

19 The Department's efforts to help
20 ensure that the dams of New York State are
21 maintained in a safe condition are critical to
22 protecting the people of New York, our communities,
23 and the State's plentiful natural resources.

24 Through the continued efforts of

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2 our dedicated staff and the exploration of new
3 opportunities such as partnerships and innovative
4 new technologies we will continue to address the
5 concerns of the state's citizens. And I'm happy to
6 answer any of your questions.

7 CHAIRPERSON DiNAPOLI: Thank --
8 thank you very much for that very thorough
9 testimony. I -- I have a few questions but perhaps
10 I'll start off since he's still sitting here.
11 You -- you heard Congressman McNulty's very
12 impassioned testimony and concern for his
13 constituency with regard to the Gilboa Dam
14 situation and I appreciate you making specific
15 reference to that in your comments.

16 Do you have any words to -- to
17 react to what you heard the Congressman outline?
18 Is there more that you feel the D.E.C. could or
19 should be doing at this point in terms of
20 monitoring what's going on with that specific
21 situation? I know you outlined --

22 MS. SHEEHAN: Uh-huh.

23 CHAIRPERSON DiNAPOLI: -- what
24 had been going on --

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2 MS. SHEEHAN: Yeah.

3 CHAIRPERSON DiNAPOLI: -- you
4 know, prior but obviously there's still a sense of
5 concern and -- and immediacy that we hear from
6 Congressman McNulty and is there more that from the
7 state perspective we could be doing to help move
8 that situation along?

9 MS. SHEEHAN: Well, let me first
10 say that I obviously share the -- the Congressman's
11 concerns. The Department is dealing with this
12 matter and -- and -- very seriously. I also live
13 in Schenectady County so I share Assemblyman
14 Tonko's concerns about the repercussions down
15 river.

16 Overall we are -- given that
17 there are -- are weather related restrictions right
18 now occurring at the dam we believe that the
19 interim measures that the city has put in place are
20 an important -- were an important first step.

21 We'd like to see the emergency
22 action plan get finalized soon. Obviously that's a
23 process that involves both SEMO and the local
24 officials so getting a final plan in place that is

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2 well communicated to residents is key.

3 But shifting back to the question
4 of the work at the dam, I think one -- one of the
5 difficulties in communicating to people -- you
6 know, when you look at dam it looks like a simple
7 structure.

8 There are a lot -- there is a lot
9 of design work that's required to ensure that the
10 measures that you're taking are the appropriate
11 measures. We've worked with the city to ensure
12 that we are on the most expeditious track we can
13 be on and -- and that they're moving as rapidly as
14 they possibly can. We've put in -- they've put in
15 a boom to avoid debris hitting the dam. That was
16 an important measure. They upgraded the -- on the
17 daily monitoring at the dam. We are also there on
18 a regular basis.

19 The -- the things that's going to
20 be key -- very helpful, I think, will be the
21 installation of the siphons and the -- there is
22 notch work that still has to be done at the dam.
23 We're also working on -- on -- on the -- on the
24 tunnel aspects at -- at the -- at the Shandaken

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2 Tunnel for the release of water to ensure that we
3 can reduce the levels and the pressure against the
4 dam.

5 Oh, I do want to also mention one
6 of the things that Congressman McNulty mentioned
7 in -- in terms of elevating this to the Mayor's
8 attention, the Governor has -- obviously has -- it
9 has his attention. The Governor has contacted the

10 Mayor directly about the importance of this dam --
11 at the -- the work at Gilboa as well as the other
12 city-owned dams.

13 So from the state's perspective
14 we have elevated it to the -- to the Mayor's
15 attention. With respect to the Congressman's
16 comments on the -- the Army Corps of Engineers.
17 They -- they -- they were invited to participate in
18 the review of the work at Gilboa. We certainly
19 welcome that. We welcome any assistance that the
20 Corps would like to bring.

21 From the state's perspective we
22 also have -- in addition to our own fine staff we
23 did -- we have hired a -- a really internationally
24 renowned firm called U.R.F. (phonetic spelling) to

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2 assist us in our review. Given the magnitude of
3 this dam and, you know, the -- its importance as a
4 high hazard dam we wanted to make sure that we have
5 as many eyes as possible, you know, looking at this
6 and ensuring that all the steps that we are taking
7 are appropriate and that they're being taken as
8 quickly as they possibly can be.

9 So from an engineering
10 perspective I -- I believe that -- that the
11 engineering world believes that all the possible
12 steps are being taken that can be taken right now
13 and we're very anxious to get from the city their
14 long term remedial plans which will -- and -- and a
15 schedule for achieving that so that we do meet the
16 time frames that are essential but in this interim
17 time frame before that long-term remediation can
18 take place, you know, we have to make sure that
19 we're doing everything we can on an interim basis
20 to ensure that it -- that it remains safe.

21 So I -- with the assistance of
22 the Corps I -- I can tell you that the city has
23 brought in, you know, their -- all of their
24 experts. They've hired additional experts. The

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2 state's involved. The state has hired additional
3 experts so there are a lot of eyes on this dam and
4 it -- it's being subject to a -- to a tremendous
5 amount of scrutiny.

6 CHAIRPERSON DiNAPOLI: Has -- has
7 the Army Corps taken you up on that offer and --
8 and examined the plans at this point?

9 MS. SHEEHAN: They've been
10 involved in the meetings and discussions and
11 they -- all of those plans have been shared with
12 them so they've been involved.

13 CHAIRPERSON DiNAPOLI: And how
14 often -- I know you said you had staff regularly
15 inspecting the site from your Department in
16 addition to getting the inspection reports from

17 D.E.P. How often is regular? Do you have your
18 folks there on site looking at what's going on?
19 MS. SHEEHAN: At Gilboa?
20 CHAIRPERSON DiNAPOLI: Yeah.
21 MS. SHEEHAN: How often are we
22 there, Fred?
23 UNIDENTIFIED SPEAKER:
24 October --.

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2 UNIDENTIFIED SPEAKER : So
3 others --.
4 MS. SHEEHAN: I'm sorry?
5 THE REPORTER: Oh, I -- I thought
6 they were both --.
7 MS. SHEEHAN: About once a week.
8 CHAIRPERSON DiNAPOLI: Oh.
9 MS. SHEEHAN: Fred is our water
10 engineer so we're there at least once a week. And
11 we can monitor it on the -- on-line as well.
12 CHAIRPERSON DiNAPOLI: Now Gilboa
13 raises, I guess -- using it as an example -- a
14 larger question that comes up in my mind and your
15 testimony touches on it but perhaps just to
16 clarify, D.E.C. has the ultimate authority over dam
17 safety, dam inspections, over D.E.P.?
18 I know you made reference to --
19 you know, there are situations where if you feel an
20 owner is not responding appropriately you can order
21 repairs. That -- you would have that authority --
22 MS. SHEEHAN: Yes.
23 CHAIRPERSON DiNAPOLI: -- in the
24 case of Gilboa or any of the D.E.P. --

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2 MS. SHEEHAN: Correct.
3 CHAIRPERSON DiNAPOLI: --
4 programs in the state?
5 MS. SHEEHAN: Yes. If -- if we
6 got to the situation where we -- where we made a
7 request that was not followed through we would
8 enter it -- we would pursue an order. At this
9 point we've been working -- they've been working
10 cooperatively with us so we have not had to pursue
11 an order.
12 CHAIRPERSON DiNAPOLI: In cases
13 where you do have to pursue an order -- I know you
14 made reference to --
15 MS. SHEEHAN: Lake Switzerland.
16 CHAIRPERSON DiNAPOLI: -- Lake
17 Switzerland, I think. Does the owner then
18 reimburse the state for --?
19 MS. SHEEHAN: We have the
20 authority to recoup our funds assuming it can be
21 recouped so in -- in -- obviously in a lot of cases
22 the -- the individual or dam owner does not have
23 resources that the Department can -- can recoup but

24 we do have the authority to pursue it and we do.

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2 Obviously, as -- as in many
3 cases, you know, as you know, Assemblyman, we often
4 have to deal with the fact that the owner does not
5 have any resources that we can seize or -- or, you
6 know, we would get reimbursed by the state.

7 CHAIRPERSON DiNAPOLI: In terms
8 of the inspections that you undertake and obviously
9 the priority is on the high hazard dams --

10 MS. SHEEHAN: Right.

11 CHAIRPERSON DiNAPOLI: -- and as
12 you testified the category refers to not a weakness
13 of the infrastructure, the dam but the potential of
14 destruction that could happen, you know, just to
15 clarify that point, it -- and obviously then the
16 priority is on the high hazard and the intermediate
17 hazard dams.

18 MS. SHEEHAN: Yes. Yeah.

19 CHAIRPERSON DiNAPOLI: With --
20 with your current level of inspections how -- can
21 you cite a number of dams that you would consider
22 to be deficient at this point?

23 MS. SHEEHAN: The question always
24 comes to what do we mean? So we have a number of

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2 dams where we have determined that the spillway
3 needs improvements. We have a number of dams that
4 have -- that have gotten permits from us to do
5 remedial work. We have a number of dams that are
6 under an order with the -- with the state to do
7 that work.

8 We also have a number of dams
9 where we need to get information about that dam --
10 about the spillway at a dam. So when you -- using
11 that as my guide --

12 CHAIRPERSON DiNAPOLI: Uh-huh.

13 MS. SHEEHAN: -- there are
14 roughly fifty-one that would -- would meet the
15 definition of deficient.

16 CHAIRPERSON DiNAPOLI: And then
17 how -- how do you come up with a plan of action to
18 address those deficiencies.

19 MS. SHEEHAN: Well, to --

20 CHAIRPERSON DiNAPOLI: Is there a
21 schedule now for those fifty-one -- a time frame
22 that you've established?

23 MS. SHEEHAN: -- well, they're
24 all -- they're all different so obviously those

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2 that are under order -- if they're under an order
3 with us there's typically a time schedule in that
4 order for the owner to take action. Ones where --
5 where there are permits already been issued and

6 again, the permit will lay out when we expect the
7 work to be completed.

8 With respect to those that we
9 need more information on that can be dependent upon
10 when the owner provides us with that information,
11 whether we have to do ourselves. So in answer to
12 your question, it can vary depending on the -- the
13 particular circumstances that we face with a
14 particular dam.

15 CHAIRPERSON DiNAPOLI: When you
16 order a correction or you're working with an owner
17 for -- for an improvement the final sign off as to
18 the adequacy of the repair work or renovation work
19 that has been done, is that your responsibility, is
20 that something that the owner provides or how is
21 that process completed then?

22 MS. SHEEHAN: Typically under a
23 permit with the Department because if you're doing
24 work on a dam you do need to get a permit from us.

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2 That's -- our current permitting authority is only
3 for reconstruction, construction or repair. So
4 under that permit the Department is -- is required
5 to come in and inspect the work.

6 If -- if -- if a dam, for
7 example, if -- was -- if a -- if a reservoir was
8 reduced so work could be done it typically will
9 require that the Department does a final inspection
10 before that reservoir or lake is refilled. That's
11 standard procedure and standard requirements in our
12 permits. So the Department does look -- do a final
13 check against that permit, that the work was
14 completed consistent with the permit. That's
15 what's required in the permit.

16 CHAIRPERSON DiNAPOLI: And that
17 would apply to the D.E.P. dams as well as --

18 MS. SHEEHAN: Absolutely.

19 CHAIRPERSON DiNAPOLI: --
20 Government as well known to --.

21 MS. SHEEHAN: Yeah, that the work
22 was done consistently with what was permitted.

23 CHAIRPERSON DiNAPOLI: So just to
24 clarify again in terms of the -- the

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2 responsibility -- D.E.C. versus D.E.P. in terms of
3 the D.E.P. dams and the inspection, the high hazard
4 D.E.P. dams are on your regular list.

5 MS. SHEEHAN: Yeah.

6 CHAIRPERSON DiNAPOLI: I think
7 every two years you try to do that.

8 MS. SHEEHAN: Yes.

9 CHAIRPERSON DiNAPOLI: So that's
10 not -- that inspection responsibility is not
11 delegated to D.E.P. You have your folks doing that
12 directly.

13 MS. SHEEHAN: Yes. And just --
14 just to put a fine point on it though. I mean, the
15 statute is clear and -- and clearly makes it the
16 requirement of the owner to maintain and -- and
17 safely operate the dam. So as part of that it's --
18 it's anticipated that an owner will be doing their
19 own inspections, their own operation and
20 maintenance.

21 The state, as an oversight rule,
22 does go out and do state inspections so I don't
23 want you to leave the -- with the impression that
24 that's the only inspection that we would expect to

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2 go on. So the city, as the owner, has the ultimate
3 responsibility of doing, you know, regular, you
4 know, monthly, weekly inspections and ensuring that
5 it's operated and maintained safely, that's per --
6 per the statute. The Department's role is to do an
7 oversight of that.

8 CHAIRPERSON DiNAPOLI: In a
9 situation like Gilboa where I think you said the
10 city is doing weekly inspections can you require
11 that that -- those inspections be shared with you
12 or do -- do they share now their more regular
13 inspections with you?

14 MS. SHEEHAN: At this point we do
15 not have a -- we do not -- we have not required
16 people to submit those reports. It -- at Gilboa we
17 are working hand in hand with them so that
18 information is being -- is being shared regularly.

19 What we would like to do in our
20 regulation is make it more of a routine basis that
21 all dam owners -- that we can require them to
22 submit inspection reports to us, that those
23 inspections be performed by a licensed engineer and
24 then as a result by -- by submitting something to

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2 the state if that -- if that document is falsified
3 or it contains, you know, false information, the
4 Department could take enforcement action against a
5 dam owner for -- for submitting false information.

6 So what we're trying to do with
7 our regulation is -- is really scrutinize the
8 process that dam owners must submit information to
9 the Department and really beef up and strengthen
10 the requirement that owners do regular inspections.
11 So that it would be an enhancement of just -- of
12 the state's oversight in addition.

13 CHAIRPERSON DiNAPOLI: Uh-huh.
14 Ms. Destito has a question.

15 CHAIRPERSON DESTITO: Yeah, I'm
16 going to just go in a different direction.

17 MS. SHEEHAN: Okay.

18 CHAIRPERSON DESTITO: I know you
19 talked about the emergency action plan and -- and

20 the Director of Homeland Security did present his
21 testimony but I have a question on -- do hydro dams
22 or regular dams require any early warning signs --
23 any early warning mechanisms -- siren mechanisms?

24 MS. SHEEHAN: I -- I don't know

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2 the specific answer to your question.

3 CHAIRPERSON DESTITO: Okay.

4 MS. SHEEHAN: I do now that we
5 are required -- high hazard dams and FERC licensed
6 dams are required to have an emergency action plan,
7 typically that will include -- depending on the
8 type of dam I would -- I would venture to guess
9 that there were -- probably be different types of
10 warning systems built into that.

11 CHAIRPERSON DESTITO: Okay. And
12 what is your role in the emergency action plan with
13 SEMO? I know we're going to hear from SEMO but
14 what is your role in that emergency planning with
15 the locals?

16 MS. SHEEHAN: We are actually --
17 we can require it.

18 CHAIRPERSON DESTITO: Okay.

19 MS. SHEEHAN: It's the
20 Department's authority that requires the creation
21 of that plan.

22 CHAIRPERSON DESTITO: Okay.

23 MS. SHEEHAN: So we will be part
24 of the approval of that plan. The Department will

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2 be working with SEMO and the local emergency
3 management officials as well as the city on the
4 approval of that plan. So it's under our statutory
5 authority the city has to obtain a permit from us
6 for the work so it's under that purview that we
7 request and require an emergency action plan.

8 CHAIRPERSON DESTITO: So

9 Commissioner, I guess for the Congressman's --

10 would -- for his -- his answer would you in the
11 emergency action plan be able to require an owner
12 in a high hazard dam with your imprimatur to --
13 would you be able to require them to have an early
14 warning sign -- an early warning detection system?
15 And would you be able to require them to pay for
16 it?

17 MS. SHEEHAN: I think it -- we
18 would be deciding that in conjunction with the
19 local officials as well as SEMO as to whether that
20 is the appropriate tool. I wouldn't be -- the
21 Department and I wouldn't make that decision in a
22 vacuum.

23 CHAIRPERSON DESTITO: You'd make
24 it together?

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2 MS. SHEEHAN: Yes.
3 CHAIRPERSON DESTITO: In a
4 planning process?
5 MS. SHEEHAN: Absolutely.
6 CHAIRPERSON DESTITO: Okay. But
7 it is a possibility that with the locals --
8 MS. SHEEHAN: Uh-huh.
9 CHAIRPERSON DESTITO: -- the
10 state and the owner you would be able to do that?
11 MS. SHEEHAN: Yeah. I would --
12 I -- obviously would be working with the emergency
13 management professionals to determine what the
14 appropriate method of informing residents would be.
15 CHAIRPERSON DESTITO: Thank you.
16 MS. SHEEHAN: Obviously you want
17 it to be as effective as possible so --.
18 CHAIRPERSON DESTITO: Thank you.
19 CHAIRPERSON DESTITO: Thanks.
20 CHAIRPERSON DiNAPOLI: Mr. Tonko?
21
22 ASSEMBLYPERSON TONKO:
23 Commissioner, thank you for joining us today. This
24 obviously is a heavy-duty issue and so we
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2 appreciate your involvement. So many times in
3 government we're told if it ain't broke, don't fix
4 it. But here we're told it's broke and we need to
5 fix it. And this one goes before your tenure as
6 Commissioner so I can't help but wonder after
7 hearing the Congressman address the issue of his
8 district and the dam, if deficiencies were cited
9 that were of grave concern years ago --
10 MS. SHEEHAN: Uh-huh.
11 ASSEMBLYPERSON TONKO: -- did it
12 take scrutiny to drive a response? And again, this
13 is going back before your tenure, so why would we
14 wait to this point to begin a plan of action?
15 MS. SHEEHAN: I -- to answer your
16 question, this past fall -- it was after D.E.P. had
17 done a review of, you know, these are the -- the
18 new state standards so it's our state standards
19 that all the evidence must be there, new higher
20 level standards. So a review of the condition of
21 the dam versus those standards and there are
22 certain technical evaluations that get done as far
23 as the safety factors, that -- that evaluation was
24 completed this fall.
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2 When that -- once that evaluation
3 was completed and it demonstrated that there were
4 significant deficiencies that's when all of these
5 things began to happen, which, I believe is -- is
6 totally and wholly appropriate. So it was this
7 evaluation that -- that basically said the safety

8 factors were not being met and we would need to
9 do -- take immediate interim measures is -- is what
10 prompted all the -- the changes this fall, prompted
11 the city to basically -- you know, institute these
12 interim measures.

13 We required that the emergency
14 action plan be updated. So again, it was
15 immediately following that evaluation.

16 ASSEMBLYPERSON TONKO: But I hear
17 a lot of talk about self-inspection,
18 self-monitoring --

19 MS. SHEEHAN: Yeah.

20 ASSEMBLYPERSON TONKO: -- and if
21 they knew of deficiencies and didn't take action
22 what good are those ancillary pieces if -- if the
23 stewardship -- self-imposed stewardship didn't --

24 MS. SHEEHAN: Right.

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2 ASSEMBLYPERSON TONKO: -- move
3 them to fix deficiencies how comforted can the
4 people of this region be that they're out there
5 doing this repeated inspection and then overlay on
6 that the -- the -- the concern of falsifying
7 reports or at least the allegations of falsifying
8 reports, how comforted can we feel about that kind
9 of fox watching the chicken coop?

10 MS. SHEEHAN: Well, obviously,
11 that's not what the D.E.C. has in mind. You know,
12 we -- through our proposal we definitely want to
13 strengthen the state's oversight and ensure that
14 any -- any inspections that are done are done
15 appropriately and are done by licensed
16 professionals and speaking directly to the -- the
17 falsifying. So I just -- I really --

18 ASSEMBLYPERSON TONKO: Uh-huh.

19 MS. SHEEHAN: -- I -- I do want
20 to address that. Throughout I -- I believe since
21 '97 and I -- our staff obviously -- we were
22 listening to the Congressman as well. There have
23 been different measures taken by the city so
24 it's -- I -- I don't -- I don't think it's -- I --

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2 I don't know that it's totally accurate if it's to
3 suggest they haven't been doing anything.

4 I mean, I -- we -- there's always
5 work going on at the dam to address certain, you
6 know, whatever deficiencies are noted. What
7 happened this past fall though was a specific
8 analysis with respect to the safety rating that
9 indicated that it was -- it did not meet the -- the
10 state safety ratings so additional measures have to
11 be put in place.

12 ASSEMBLYPERSON TONKO: So is it
13 less safe than it was when they first discovered
14 some weaknesses?

15 MS. SHEEHAN: I -- I -- well, I'm
16 not sure I can -- I'm not sure of your question in
17 terms of --.

18 ASSEMBLYPERSON TONKO: Well, they
19 initially found deficiencies and then began to go
20 to work on them. Are we -- are they less deficient
21 than they were when they initially discovered the
22 weaknesses or have -- has the wedge grown wider?

23 MS. SHEEHAN: Well, we know that
24 we have to enter into long term remedial measures.

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2 That has been established. That additional, you
3 know, a great deal of -- of remedial work is going
4 to be needed at the dam. So that's the direct
5 answer. We know a lot of work has to be done at
6 the dam.

7 The interim measures are ensuring
8 that the stability is maintained until that work
9 can be designed and constructed.

10 ASSEMBLYPERSON TONKO: I heard
11 you respond to Chairman DiNapoli about the
12 authority that the state, specifically, the
13 Department -- your Department has. Is there room
14 for statutory change to strengthen your authority?
15 I --

16 MS. SHEEHAN: Well --.

17 ASSEMBLYPERSON TONKO: -- even
18 with recommendations you're making --

19 MS. SHEEHAN: Uh-huh.

20 ASSEMBLYPERSON TONKO: -- is it
21 giving you enough clout? It seems to me like
22 either we allow a little leeway or time and I'm
23 wondering do we need to be stronger from the
24 state's perspective in terms of authority that we

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2 placed in the agency's lap to get a reasonable
3 outcome. It seems like you might have been
4 restricted with the amount of authority you need.

5 MS. SHEEHAN: Well, I -- we
6 certainly welcome a dialogue with the legislature
7 on -- if there -- if you want to talk about some
8 legislative ideas in this area.

9 ASSEMBLYPERSON TONKO: But could
10 you recommend any? Is there -- is there a more
11 forceful or effective approach you could have? Are
12 there certain loopholes that allow them to escape
13 your demands?

14 MS. SHEEHAN: Well, what we're
15 very focused on is the -- what we talked about
16 already --

17 ASSEMBLYPERSON TONKO: Uh-huh.

18 MS. SHEEHAN: -- which is -- is
19 placing very specific requirements on dam owners to
20 perform inspections, to submit that information to
21 the Department so -- so that there is more

22 responsibility on owners and that's more clearly
23 placed. We intend to do that through regulation
24 but obviously that could also be done statutorily.

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2 We think that will provide us with a lot of -- of
3 enhanced oversight over owners.

4 ASSEMBLYPERSON TONKO: Just the
5 fact that, you know, inspections aren't statutorily
6 required or in a sense regulatory -- regulatorily
7 required, should there be more definition --

8 MS. SHEEHAN: As far as
9 requirements for --?

10 ASSEMBLYPERSON TONKO: -- as to
11 requirement --?

12 MS. SHEEHAN: That's our
13 intention, yes. Is to lay that out specifically in
14 the regulation.

15 ASSEMBLYPERSON TONKO: But we're
16 going -- to do that though we need the resources.
17 I look at the number of inspectors in several
18 states --

19 MS. SHEEHAN: Yeah.

20 ASSEMBLYPERSON TONKO: -- and I
21 hear this ambitious plan to add or at least a plan
22 to add --

23 MS. SHEEHAN: Uh-huh.

24 ASSEMBLYPERSON TONKO: -- I don't

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2 know if it's ambitious or not. I mean, when you
3 look at whatever it's -- whether it's four or seven
4 or an added infinitesimal amount of inspectors the
5 fact that we have over five thousand dams. And
6 when I look at stats that have as many as sixty to
7 seventy employees -- inspectors for twelve hundred
8 dams in California --

9 MS. SHEEHAN: Uh-huh.

10 ASSEMBLYPERSON TONKO: -- or --
11 or look at the stats in New Jersey or Pennsylvania,
12 they're overwhelming compared to this state.

13 MS. SHEEHAN: Well, I -- I -- and
14 I'm familiar with those other state comparisons as
15 well, Assemblyman. Obviously our proposal to -- to
16 increase our staffing -- specific staffing for dam
17 safety inspectors to twelve would be an -- an
18 enhancement. It's our intention to use those staff
19 to ensure that high hazard dams are inspected more
20 frequently than -- than every two years and
21 likewise with intermediate hazard dams so that both
22 of those dams would be reviewed more frequently as
23 well as increasing our knowledge base on low hazard
24 dams and -- and ensuring that they are

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2 appropriately classified.

3 ASSEMBLYPERSON TONKO: But you

4 would target them to the high hazards?
5 MS. SHEEHAN: Yeah. Yeah.
6 ASSEMBLYPERSON TONKO: Now when
7 you look at that quotient to whatever we want to
8 call it, a inspector -- dams per inspector --
9 MS. SHEEHAN: Uh-huh.
10 ASSEMBLYPERSON TONKO: --
11 inspectors per dam or whatever. With the healthier
12 ratio that exists in other states what -- what is
13 lost in the process here in New York? What are we
14 forsaking because of our human infrastructure count
15 versus other states. Something's got to give so --
16 maybe that's the wrong bit of rhetoric here -- but
17 something's lost in the process.
18 MS. SHEEHAN: Well, I --
19 ASSEMBLYPERSON TONKO: What is
20 it?
21 MS. SHEEHAN: -- and first I
22 would say that it's very difficult and we do it all
23 the time in -- in -- at the Department, comparing
24 yourself to other states because people count

0087

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2 things differently, so I would just say that up
3 front.
4 You know, for example, as far as
5 our -- the number of dams that are -- are -- could
6 be listed as deficient, you know, New Jersey has a
7 much higher number than New York State, et cetera.
8 So I'm -- I'm leery of doing a -- a comparison of
9 state to state because I don't think that it's
10 necessary -- necessarily apples to apples.
11 We know, obviously, by increasing
12 the number of inspectors we can get out to the
13 field more and -- and visit more dams on a regular
14 basis and that's what we would like to do. I
15 also -- I do want to impress upon you too though
16 that in addition to those specific dam safety staff
17 there are a hundred and twenty water engineers in
18 the field who also assist in that process and --
19 and are -- are part of the review and --
20 ASSEMBLYPERSON TONKO: Uh-huh.
21 MS. SHEEHAN: -- we'll -- you
22 know, if there is a complaint about a specific
23 structure they can be a part of that process in
24 responding. So that's what I mean about -- you

0088

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2 know, you need to be careful about looking at those
3 other state numbers because these are. You know
4 when we're -- when we talk about the seven and what
5 we want to become twelve, those will be specific
6 dam safety inspectors that are trained and -- and
7 devoted one hundred percent to that effort.
8 And I -- I'm not sure that all
9 the states in answering -- in providing information
10 are -- are just categorizing and just --

11 ASSEMBLYPERSON TONKO: But --
12 MS. SHEEHAN: -- and you --.
13 ASSEMBLYPERSON TONKO: -- I'm
14 sorry.
15 MS. SHEEHAN: No, it's okay. Go
16 ahead.
17 ASSEMBLYPERSON TONKO: I was --
18 I'm -- I'm thinking of the deficiency numbers and
19 was it fifty plus -- fifty-one?
20 CHAIRPERSON DESTITO: Fifty-one,
21 yeah.
22 ASSEMBLYPERSON TONKO: Are --
23 are -- are deemed deficient. That alone like
24 requires full time attention from the state of New

0089

1 Proceedings - Dam Safety - 2-9-2006
2 York to stay on top of the situation. Are -- are
3 they under order, any of those --
4 MS. SHEEHAN: Some of them are.
5 ASSEMBLYPERSON TONKO: -- beyond
6 Gilboa or-- ?
7 MS. SHEEHAN: Right. Some of
8 them are.
9 CHAIRPERSON DiNAPOLI: Do you
10 have a number on that by the way?
11 MS. SHEEHAN: I --.
12 CHAIRPERSON DiNAPOLI: Or could
13 you supply us with a number --
14 MS. SHEEHAN: Sure.
15 CHAIRPERSON DiNAPOLI: --
16 under --?
17 MS. SHEEHAN: Yeah, we can do
18 that.
19 ASSEMBLYPERSON TONKO: All right.
20 And now you said that the Governor contacted --
21 phoned, I believe --
22 MS. SHEEHAN: Yes.
23 ASSEMBLYPERSON TONKO: -- Mayor
24 Bloomberg --

0090

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2 MS. SHEEHAN: Correct.
3 ASSEMBLYPERSON TONKO: -- about
4 the -- the situations -- the condition of the dam
5 or -- or --?
6 MS. SHEEHAN: Both the condition
7 at Gilboa as well as the overall scrutiny on
8 city-owned dams.
9 ASSEMBLYPERSON TONKO: And what
10 was the response from the Mayor?
11 MS. SHEEHAN: I -- all I know is
12 that it -- it clearly got his attention and the
13 Mayor's office has been very involved and
14 Commissioner Lloyd and I do speak on a regular
15 basis.
16 ASSEMBLYPERSON TONKO: Uh-huh.

17 MS. SHEEHAN: She understands how
18 important this is to the state and -- and I -- I
19 believe she's been very responsive to the state.

20 ASSEMBLYPERSON TONKO: Now having
21 witnessed in 1987 -- literally witnessed the flow
22 of water at the juncture of the Schoharie crick to
23 the Mohawk River in the April of '87 and -- and
24 seeing what damage was caused and loss of life was
0091

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2 caused by the flow of water from a rain storm and a
3 meltdown of the snow bank -- of the -- the snow
4 cover, if you add to that the breaking of the --
5 you know, the failure of the dam, you know, it --
6 it's just -- it -- it's just very, very
7 frightening --

8 MS. SHEEHAN: Yes.
9 ASSEMBLYPERSON TONKO: -- and I
10 just don't -- it seems to me like there needs to be
11 a higher sense of urgency. I know that there's
12 this monitoring going on. Again, I'm not so
13 comfortable with that, knowing that there's this
14 delay factor in responding to weaknesses -- what
15 could we do in law to just demand more of the
16 owner? It -- it seems like, you know, having a
17 schedule for repair is almost frightening. We need
18 like to know that the work is there and it's major
19 and it's -- it's already underway.

20 MS. SHEEHAN: Well, we do have --
21 we have requested and have received a plan from
22 them for interim remedial measures.

23 ASSEMBLYPERSON TONKO: Now, does
24 that plan have to be reviewed yet or has it --?
0092

1 Proceedings - Dam Safety - 2-9-2006
2 MS. SHEEHAN: It -- it is under
3 review and has been reviewed so many of the steps
4 have been undertaken already and obviously we're
5 working with the city on managing the water levels
6 in the reservoir to help reduce those. You know,
7 obviously it's all part of the system so when you
8 reduce water levels in the reservoir you have to be
9 mindful of the downstream potential impacts.

10 In addition to the monitoring
11 that I discussed there are other specific physical
12 measures that are being taken which because of
13 weather have -- they have not been able to get in
14 and do the work on but there'll be the installation
15 of siphons, a notch will be installed in the dam.
16 They have been able to deploy the boom to keep
17 debris from hitting the dam. There's a plan to
18 redo anchoring of the dam.

19 So it -- in addition to that
20 on-going monitoring there will be additional steps
21 taken from -- you know, actual physical
22 installation of additional measures to protect the
23 dam.

24 ASSEMBLYPERSON TONKO: And are
0093

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2 there any parties raised the concern about the
3 notching? Have they brought -- have anyone --
4 any --?

5 MS. SHEEHAN: Not to my
6 knowledge.

7 ASSEMBLYPERSON TONKO: Okay.
8 Because there is some concern that's been expressed
9 with that whole concept as to whether it creates
10 some new problems.

11 In terms of the
12 inter-coordination that Chair Destito quizzed you
13 about, I hear that -- from many in the area that I
14 represent that the -- the response to
15 preparedness -- emergency preparedness and the
16 coordination of all of the agencies involved has
17 not been as strong as it should be.

18 MS. SHEEHAN: Uh-huh.

19 ASSEMBLYPERSON TONKO: In fact,
20 many have deemed it sluggish.

21 MS. SHEEHAN: Uh-huh.

22 ASSEMBLYPERSON TONKO:
23 Recommendations you can offer this panel about
24 improving that?

0094
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2 MS. SHEEHAN: I -- I know Tom
3 Fargione is here from SEMO so as -- as a -- the key
4 partner in state emergency management planning I --
5 I would defer to him as far as specific
6 recommendations. Obviously, the goal is to have
7 the comfort of the local emergency planning
8 officials as well.

9 And when you have that many
10 people in the room who need to -- who we want to
11 make part of the process it can tend to take a
12 longer period of time. But from the Department's
13 perspective we definitely will take that -- that
14 advice and -- and try to get this wrapped up.

15 We do -- we are using the plan.
16 If -- if, God forbid, something was to happen, the
17 plan that has been -- that has been put in place is
18 the one that we would use but obviously we want to
19 make sure that everybody fully understands it and
20 that the process of completing that is really
21 critical.

22
23 ASSEMBLYPERSON TONKO: Uh-huh. Is
24 there every input that's received -- I'm going back

0095
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2 to the -- the physical structure and the strength
3 and repair and redesign -- is there ever a
4 coordination with civil engineers, D.O.T. outside
5 volunteerism efforts that are made to -- to offer

6 yet another opinion or advice?
7 As -- as an engineer in politics
8 I -- I think we make the world spin?
9 MS. SHEEHAN: Yes. And -- and
10 actually part of the SEMO process does bring in
11 other state agencies that could potentially have a
12 role.
13 ASSEMBLYPERSON TONKO: And have
14 they had input on this repair effort or inspection
15 or improvement?
16 MS. SHEEHAN: Yes. Through all
17 the state agencies that have a role in SEMO, the
18 New York Power Authority also has been -- has been
19 involved in the review and obviously, has their own
20 Army of engineers. So I -- I -- I mentioned
21 again -- I mentioned before that we did bring in
22 additional experts so --
23 ASSEMBLYPERSON TONKO: Uh-huh.
24 MS. SHEEHAN: -- we -- we

0096

1 Proceedings - Dam Safety - 2-9-2006
2 shared --
3 ASSEMBLYPERSON TONKO: Included
4 several engineers.
5 MS. SHEEHAN: -- our interest in
6 getting additional review.
7 ASSEMBLYPERSON TONKO:
8 Specifically with civil engineers or --?
9 MS. SHEEHAN: Okay. Yes.
10 ASSEMBLYPERSON TONKO: Okay. And
11 again, associated to the question of Chair Destito,
12 the alarm systems -- the evacuation plans, and what
13 have you, all of the -- the related technology that
14 needs to be a -- a part of, I think, of a high
15 hazard level dam.
16 Should that be part of a
17 permitting process. I -- I know that she offered
18 about reviewing it but should it be guaranteed
19 before a -- a permit is granted?
20 MS. SHEEHAN: That's what we do.
21 We do require a --
22 ASSEMBLYPERSON TONKO: If all --
23 but --.
24 MS. SHEEHAN: -- we do require an

0097

1 Proceedings - Dam Safety - 2-9-2006
2 E.A.P. as part of the permitting process.
3 ASSEMBLYPERSON TONKO: And -- and
4 reauthorizations of permits? I -- I -- did --?
5 MS. SHEEHAN: Well, right now we
6 only do permits for repair, reconstruction and
7 construction of a dam. It's not --
8 ASSEMBLYPERSON TONKO: Okay. So
9 when this --.
10 MS. SHEEHAN: -- it's not -- we
11 don't have a permit to operate yet.
12 ASSEMBLYPERSON TONKO: Okay. So

13 when this repair is done will there be guarantees
14 to the counties along the -- the flood path -- will
15 there be guarantees that those counties will get
16 all of the resources they need --

17 MS. SHEEHAN: I'm sorry.

18 ASSEMBLYPERSON TONKO: -- for
19 evacuation purposes or emergency preparedness?

20 MS. SHEEHAN: The plan itself
21 is -- you know, who pays for it? I can't really
22 direct -- I can't really answer. Obviously --.

23 ASSEMBLYPERSON TONKO: Well --
24 well, I guess my question then would be should the

0098

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2 owner -- the permit holder be required to do that?

3 MS. SHEEHAN: We can take a look
4 at that?

5 ASSEMBLYPERSON TONKO: I mean,
6 what you would find here today with a lot of people
7 who are in charge of addressing public safety will
8 tell you they don't have the resources in their
9 local budgets as a local resident -- you know
10 that --

11 MS. SHEEHAN: Sure.

12 ASSEMBLYPERSON TONKO: -- the
13 property tax hit is incredible.

14 MS. SHEEHAN: Uh-huh.

15 ASSEMBLYPERSON TONKO: And all
16 they're asking for is the ability to do the best
17 effort to evacuate. I agree with the Congressman
18 that the main concern is the safety of that
19 infrastructure --

20 MS. SHEEHAN: Uh-huh.

21 ASSEMBLYPERSON TONKO: -- and the
22 repair and maintenance --

23 MS. SHEEHAN: Yeah.

24 ASSEMBLYPERSON TONKO: -- but if

0099

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2 after that there is a failure it would be
3 unacceptable then to look back and say we didn't do
4 all that we could do.

5 MS. SHEEHAN: Uh-huh.

6 ASSEMBLYPERSON TONKO: I think
7 Katrina has hopefully taught us something. Thank
8 you.

9 MS. SHEEHAN: Yeah, thank you,
10 Assemblyman.

11 CHAIRPERSON DiNAPOLI: Mr.
12 Cahill?

13 ASSEMBLYPERSON CAHILL: Thank
14 you.

15 CHAIRPERSON DESTITO: Oh, I'm
16 sorry.

17 ASSEMBLYPERSON CAHILL: That's
18 okay. Welcome aboard, Commissioner. Thank you for
19 your testimony too. I have a couple of questions.

20 I'd like to start with asking you to explain the
21 difference or if there is no difference, explain
22 that part, between the regular inspections that the
23 D.E.P. performs, the ones that have been
24 controversial about the xeroxing of reports and the

0100

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2 kind of inspections that the D.E.C. conducts and
3 tell me if they're interrelated in any way.
4 MS. SHEEHAN: I -- I can't speak
5 to the type of inspections that D.E.P. does on a
6 weekly basis so --.
7 ASSEMBLYPERSON CAHILL: So you
8 don't use those reports that the D.E.P. uses?
9 MS. SHEEHAN: No.
10 ASSEMBLYPERSON CAHILL: They're
11 not something that gets turned into you --
12 MS. SHEEHAN: No.
13 ASSEMBLYPERSON CAHILL: -- and
14 that you rely on for your purposes?
15 MS. SHEEHAN: No. No.
16 ASSEMBLYPERSON CAHILL: Okay. So
17 what are you inspections?
18 MS. SHEEHAN: Our inspections
19 basically entail a number of different things,
20 depending on obviously the type of dam -- I
21 mentioned a little bit in my testimony but we look,

22 obviously, at the -- the condition of the dam,
23 the -- the hydrology, the hydraulics, the -- the
24 spillway capability that -- whether -- whether or

0101

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2 not there's -- you know, you look for obvious
3 things -- the engineers look for obvious things,
4 like are there any -- are there any obvious
5 deficiencies?
6 You know, they take measurements.
7 They -- they -- you know, it's a full slate of
8 different activities that our engineers perform.
9 ASSEMBLYPERSON CAHILL: They do a
10 visual inspection and that's a big part of what
11 they do. They --
12 MS. SHEEHAN: Yes.
13 ASSEMBLYPERSON CAHILL: -- they
14 take a look at the thing? And how frequently do
15 those inspections take place?
16 MS. SHEEHAN: For high hazard
17 dams we try to do those -- one -- once every two
18 years --
19 ASSEMBLYPERSON CAHILL: Okay.
20 MS. SHEEHAN: -- and intermediate
21 we do once every four years.
22 ASSEMBLYPERSON CAHILL: Okay.
23 And lower than that, do you inspect them all?
24 MS. SHEEHAN: The low hazard dams

0102

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2 are on a -- on a -- basically on a complaints basis
3 or based on a -- more of a -- it's not as routine.
4 It's not as scheduled as the high and intermediate.
5 ASSEMBLYPERSON CAHILL: And when
6 the D.E.C. conducts a visual inspection of the dam
7 how is that recorded? How is that memorialized?
8 MS. SHEEHAN: We obviously keep
9 an inspection report and we maintain -- we maintain
10 a database.
11 ASSEMBLYPERSON CAHILL: And is
12 there any obligation on the part of the dam owners
13 and D.E.P. included in this -- is there any
14 obligation on the dam owners to report to you, to
15 your agency when they notice some variation in
16 their visual observations if that's what they're
17 doing? Is there any other obligation upon the
18 owners to report to you when they see something
19 different in that two year window or that four year
20 window?
21 MS. SHEEHAN: There isn't a legal
22 authority -- a legal requirement, no.
23 ASSEMBLYPERSON CAHILL: There is
24 no legal requirement?

0103

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2 MS. SHEEHAN: No.
3 ASSEMBLYPERSON CAHILL: Can you
4 explain to me how the hazard levels are determined
5 by the state of New York. You made some indication
6 that the reporting mechanisms are different for
7 every state. There's a federal registry of dams
8 and New York has a two thirds of those dams or
9 maybe a little bit -- a little bit less than two
10 thirds of those dams in the northeast anyway.
11 MS. SHEEHAN: Uh-huh.
12 ASSEMBLYPERSON CAHILL: I'm more
13 concerned about how the hazard level is determined.
14 What do you D.E.C. consider to be the risk that you
15 are trying to avert or the -- the matter that
16 you're regulating? Is it only is the dam going to
17 break?
18 Is that the issue?
19 MS. SHEEHAN: No -- no -- no,
20 that -- it has nothing to do with that, in fact.
21 It has -- the hazard classification is determined
22 based on if there was a failure what -- what could
23 potentially be damaged down stream. So a high
24 hazard dam -- and if you just give me a second --

0104

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2 ASSEMBLYPERSON CAHILL: Go ahead.
3 MS. SHEEHAN: -- I'll give you
4 the definition again. It's right -- it's actually
5 in the testimony. A high hazard dam is a dam that
6 may cause loss of life, serious property damage --.
7 ASSEMBLYPERSON CAHILL: If

8 there's a failure. This is all premised on if
9 there is a failure?
10 MS. SHEEHAN: Right.
11 ASSEMBLYPERSON CAHILL: Okay.
12 MS. SHEEHAN: Serious property
13 damage and or cause extensive economic loss in the
14 even of failure.
15 ASSEMBLYPERSON CAHILL: In the
16 event of failure.
17 MS. SHEEHAN: So it -- the
18 classifications have to do with if it fails what's
19 the potential implications?
20 ASSEMBLYPERSON CAHILL: So it's
21 a -- it's a physical analysis of the structure as
22 opposed to an analysis of how that dam is operated,
23 how the dam owner operates the dam?
24 MS. SHEEHAN: Correct.

0105

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2 ASSEMBLYPERSON CAHILL: So if a
3 dam owner, for example, operates a facility in such
4 a way that creates an on-going risk of a hazard of
5 flooding -- no structural problem, it's just the
6 way they use their dam, is that considered
7 something under your jurisdiction and something
8 that you ought to be inspecting and ought to be
9 keeping an eye out for?
10 MS. SHEEHAN: If -- if a dam was
11 being misoperated then the Department would step
12 in.
13 ASSEMBLYPERSON CAHILL:
14 Misoperated in what regard?
15 MS. SHEEHAN: As in the way that
16 you just described.
17 ASSEMBLYPERSON CAHILL: Okay.
18 So -- so -- for example, just to use the D.E.P. as
19 an example, if water levels are kept at a certain
20 height and not releases in a timely fashion in
21 order to preserve capacity and that creates a
22 condition that can subsequently lead to -- lead to
23 flooding later on -- without a dam failure is that
24 under your jurisdiction in terms of what you

0106

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2 consider a hazardous dam?
3 MS. SHEEHAN: I -- I don't know
4 if we're maybe not understanding each other with
5 respect to the classification. Obviously, we
6 talked -- I talked a lot about how we try to manage
7 the -- the voids in the reservoirs to help reduce
8 potential flooding downstream.
9 ASSEMBLYPERSON CAHILL: Right.
10 MS. SHEEHAN: So there's a lot
11 of -- there are a lot of different things that the
12 Department does.
13 ASSEMBLYPERSON CAHILL: I guess
14 I'm trying to get to regulatory authority and --

15 and --
16 MS. SHEEHAN: Uh-huh.
17 ASSEMBLYPERSON CAHILL: -- your
18 office -- you know, the practices of the agency in
19 determining --
20 MS. SHEEHAN: Yeah.
21 ASSEMBLYPERSON CAHILL: -- what
22 is hazardous. I -- I -- I don't want to wait for
23 Katrina in other words --
24 MS. SHEEHAN: Nobody does.

0107

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2 ASSEMBLYPERSON CAHILL: -- you
3 know? And -- and I don't want to wait for a -- a
4 situation -- I don't want a situation created where
5 my communities are constantly under concern about
6 whether they're going to be flooded if it rains for
7 another -- you know, if -- if there's another inch
8 of rain over a twenty-four hour period.
9 We've had -- we have dramatically
10 different weather than we used to have. We have
11 different criteria that we use to determine what we
12 need, for example, in terms of water supply in New
13 York City. And by the way, it's very important
14 thing that we keep New York City supplied with
15 water. It's half of our population is getting
16 water from this system and it's very significant.
17 But on the other hand there has to be a balance
18 somewhere.

19 MS. SHEEHAN: Uh-huh.
20 ASSEMBLYPERSON CAHILL: If those
21 communities --
22 MS. SHEEHAN: Yes.
23 ASSEMBLYPERSON CAHILL: -- those
24 host communities are being constantly barraged by a

0108

1 Proceedings - Dam Safety - 2-9-2006
2 concern for day to day flooding without a
3 failure -- without a physical failure of the dam,
4 don't you think that's something you're agency
5 ought to be regulating in the same fashion that you
6 would whether there's a loose anchor.

7 We are -- I -- I -- I believe I
8 spoke to that somewhat with respect to our -- what
9 we're trying to do in the watershed system to
10 manage the reservoir levels especially during the
11 snow -- the spring melt. So working with D.E.P. we
12 were -- we were able to put in a snow pack release
13 program in the Pepacton. We -- we have agreed on
14 a -- on a similar program for the Neversink. We're
15 also working with them right now on the Ashokan
16 to -- to do the same thing, recognizing though the
17 physical limitations of those reservoirs but also
18 recognizing the implications that you just
19 suggested.

20 ASSEMBLYPERSON CAHILL: Okay.
21 MS. SHEEHAN: Also keeping in

22 mind that we are part of the Delaware River Basin
23 Commission and the -- and National Compacts --
24 Federal Compacts that specifically have a role in
0109

1 Proceedings - Dam Safety - 2-9-2006
2 regulating the release of water from those
3 reservoirs and the implications to those -- those
4 other states that are -- that all like to blame New
5 York when they get flooded.

6 So it is part -- as -- as much as
7 there's a system within New York, there's also a --
8 the Delaware River Basin System is one that really
9 needs to be looked at in -- in totality and -- and
10 we as part of that have a responsibility to as
11 well.

12 So it's -- it's very difficult --
13 it -- it is very difficult and complex process and
14 we are very sensitive, obviously, to the
15 implications to the local communities in New York
16 State but we also have to be mindful of this larger
17 system for the -- for the whole Delaware River
18 Basin.

19 ASSEMBLYPERSON CAHILL: Uh-huh.
20 MS. SHEEHAN: So I -- I do
21 believe that we -- through the programs that we've
22 got in Pepacton and the Neversink and what we will
23 hopefully be able to put in place in the Ashokan
24 that you're going to see the improvement in terms
0110

1 Proceedings - Dam Safety - 2-9-2006
2 of doing a better job in terms of water releases
3 and mitigating flooding.

4 ASSEMBLYPERSON CAHILL: I -- I
5 think what I'm -- I -- I guess if there's a -- a
6 thread underneath what I'm talking about here, the
7 people in my community don't much care what the
8 initials of your agency are, E.P.A., D.E.C.,
9 D.E.P., Corps of -- it doesn't matter. They want
10 to know where the buck stops. They want to know
11 who's going to ultimately be responsible for
12 protecting their life and their property and what
13 we've determined so far is that there a lot of
14 people passing the buck around here.

15 It seems to me that we've given
16 your agency the regulatory authority to protect the
17 property and -- and life and health and safety of
18 our residents and that -- that authority is used in
19 a very limited way. Not only is it used in a
20 limited way on a -- on a daily basis of determining
21 the operational hazards of a functioning dam and
22 reservoir system but it's also being used in a very
23 limited way in the inspections and you -- you have
24 four, five, six, seven inspectors for five thousand
0111

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2 dams in New York State.

3 MS. SHEEHAN: Uh-huh.

4 ASSEMBLYPERSON CAHILL: Now I
5 realize that dams are of different
6 characterizations and there's a lot of dams you
7 don't have to worry about, at all. I mean, they
8 break. So what? But there's a lot of dams you do
9 have to worry about and -- and -- and -- and
10 there's also a lot of water systems associated with
11 those dams.

12 We've talked specifically today
13 about -- mostly about the D.E.P. dams --

14 MS. SHEEHAN: Uh-huh.

15 ASSEMBLYPERSON CAHILL: -- and
16 you started out your testimony by pointing out that
17 these dams were intended and designed and built for
18 the purposes of retaining water --

19 MS. SHEEHAN: That's right.

20 ASSEMBLYPERSON CAHILL: -- not
21 for flood control purposes. Are you as the D.E.C.
22 going to go forward and make any recommendations
23 that these dams be modified to be retro-fitted to
24 become more appropriate in a -- in a flood control

0112

1 Proceedings - Dam Safety - 2-9-2006
2 situation. Are you going to ask that dams be
3 re-engineered so that they can prevent floods so
4 that they can be used to -- to -- to ameliorate
5 floods down the road?

6 MS. SHEEHAN: We haven't made
7 that specific request at this --

8 ASSEMBLYPERSON CAHILL: Why not?

9 MS. SHEEHAN: -- at this specific
10 time. Primarily because what we've been trying to
11 do is deal with that issue through the flood --
12 through the avoid mitigation that I've already
13 described. We're looking for different ways we can
14 address that issue --.

15 ASSEMBLYPERSON CAHILL: Right. So
16 here we are with Gilboa and we're in the middle of
17 trying to fix a dam because we're worried that it's
18 going to break and then we decide okay, now let's
19 build a notch, now let's build a waste channel, now
20 let's build a siphon.

21 To me those things should have
22 been in place before -- before we started thinking
23 whether it was hazardous and if you are the
24 regulatory authority -- if you're the police

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2 here --

3 MS. SHEEHAN: Uh-huh.

4 ASSEMBLYPERSON CAHILL: -- I
5 think you're the ones that maybe ought to be
6 thinking about telling them to do that sort of
7 thing. Would you consider that?

8 MS. SHEEHAN: To have them
9 reconstruct it totally? I mean, obviously, I --.

10 ASSEMBLYPERSON CAHILL: Not just

11 Gilboa. How about as a policy of -- of D.E.C.,
12 that -- that it's not just whether the dam is going
13 to break that you're regulating. It's what the --
14 what the potential operational uses of that dam
15 could be that could mitigate potential flooding in
16 the future.

17 In other words --

18 MS. SHEEHAN: I can --

19 ASSEMBLYPERSON CAHILL: -- make
20 them into flood control dams as well.

21 MS. SHEEHAN: -- well, that -- I
22 mean, obviously there's a -- there's a series of
23 things that you have to be looked at in that -- in
24 that context and if a dam -- I mean, I don't -- if

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2 a dam is not being operated safely, that's one
3 thing. If a dam needs to be reconstructed, that's
4 another thing and when we do that reconstruction it
5 should look at -- at all of those issues.

6 The other dams in the west of
7 Hudson have not been identified as having -- or as
8 not meeting the standards for safety or -- or as
9 being deficient. So it would be -- I -- I think we
10 would be a hard pressed position legally and
11 statutorily to demand something at that dam at this
12 point in time.

13 If we know that we can manage
14 it -- if we can manage the water levels in such a
15 way as to prevent flooding without those I -- I
16 think we have a responsibility to -- to address it
17 that way first. Obviously at Gilboa when we look
18 at the long term remedial plans we're going to be
19 looking at all of the issues that you've just
20 raised because we know that they -- they
21 structurally have to be addressed.

22 ASSEMBLYPERSON CAHILL: You just
23 said if we -- if we can do those things but if you
24 can do those things and you're not doing those

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2 things or the proprietors are not doing those
3 things isn't that a time where we ought to be
4 stepping in and regulating?

5 I mean, you can do it but -- but
6 we didn't do it in the case of Gilboa. We haven't
7 done it in the case of the other dams and what's
8 going to happen when we go through and we find a
9 deficiency in other dam and then we have to go
10 through all these emergency procedures to -- to
11 ameliorate the flooding conditions or the potential
12 flooding conditions there simultaneous with trying
13 to conduct the repairs.

14 I mean, to me the logic of this
15 thing is that this is -- this is stuff that should
16 have been taken care of before. If you're only
17 defining the hazard as the potential physical

18 breach of the dam then yeah, I can see that. But
19 to me and to the communities that I represent and
20 most of my colleagues represent this is a daily
21 ongoing concern.

22 It's not just the catastrophe.
23 It's not just the headline.

24 MS. SHEEHAN: Right.

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2 ASSEMBLYPERSON CAHILL: It's the
3 day to day existence that we -- that we experience
4 and we're looking for relief from that. We don't
5 want to sit around and just have to wonder whether
6 it's going to be a bad rain and that's going to
7 take out a neighborhood. We don't want that.

8 MS. SHEEHAN: No, and nobody
9 does. I mean, we certainly don't also. And in --
10 you know, in addition one of the things that's also
11 important for those -- the communities that you
12 represent is the flood plain issues which I also
13 described in detail.

14 I mean, one of the things that we
15 really have to be -- we -- we need to be honest
16 about is whether or not people have built in a
17 flood plain --

18 ASSEMBLYPERSON CAHILL: Uh-huh.

19 MS. SHEEHAN: -- and what we are
20 going to do about that as -- as a state and as
21 local communities. So -- I mean, it -- it really
22 does have to be looked at very comprehensively as
23 a -- you know, as an issue.

24 ASSEMBLYPERSON CAHILL: And --

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2 just that -- going back to something that
3 Assemblyman Tonko raised before about the staffing
4 of those; do you really think that twelve people
5 can do it?

6 MS. SHEEHAN: Well, as I said
7 obviously the twelve are specifically dam safety
8 experts. In addition we have water safety -- water
9 engineers that are part of that program.

10 ASSEMBLYPERSON CAHILL: So did --
11 is -- is --.

12 MS. SHEEHAN: So the
13 additional -- it'd be additional -- I believe an
14 additional twelve will help us get to high hazard
15 dams and do inspections annually as well as be able
16 to do intermediate hazard dam inspections more
17 frequently than every four years.

18 ASSEMBLYPERSON CAHILL: And in --
19 in doing a beefed inspection program on the part of
20 the D.E.C. have you considered the addition of
21 other modern technology here in the twenty-first
22 century of, you know, ongoing electronic monitoring
23 of -- of high hazard dams and -- and adding those
24 elements so --

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2 MS. SHEEHAN: Yeah.

3 ASSEMBLYPERSON CAHILL: -- that
4 it doesn't -- we don't have to wait two years or
5 four years for that?

6 MS. SHEEHAN: Yes. Yes.

7 ASSEMBLYPERSON CAHILL: And is
8 that part of the proposal that's being advanced in
9 this -- of beefing up that aspect of it as well?

10 MS. SHEEHAN: Well, we are in the
11 process of doing that -- a lot of that now and we
12 would like to do more of that as well. In
13 addition -- obviously it's a question of who will
14 bear the cost but it would certainly assist the
15 department in a -- our ability to look at something
16 on-line would certainly be helpful.

17 ASSEMBLYPERSON CAHILL: One --
18 one final point and that has to do with the
19 emergency response if and when a catastrophe is
20 eminent or -- or does occur. You indicated that
21 the D.E.C. was ready to step up to the plate in
22 that regard as well.

23 In what fashion do you see the
24 D. -- what role do you see the D.E.C. playing in --

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2 in emergency response when a catastrophe does
3 strike?

4 MS. SHEEHAN: As we -- as we have
5 for every -- every major event of a natural
6 resource type we've been involved and it --
7 obviously, it depends on the type of incident that
8 occurs. We -- the Department was very involved in
9 lower Manhattan after the World Trade Center in
10 testing air, water quality and in helping manage
11 solid waste.

12 Every -- if there's a major
13 flooding event the Department is involved. We work
14 with local governments and that's part of the SEMO
15 team, to bring whatever resources and expertise we
16 have to bear to address that emergency.

17 So it -- it's -- it's dependent
18 obviously on the emergency but the Department
19 obviously has biologists, meteorologists, air --
20 air-monitoring experts, water quality experts and
21 we -- we are brought into the process -- our --
22 our -- our division of law enforcement, our forest
23 rangers are -- are all part of that effort.

24 ASSEMBLYPERSON CAHILL: Well,

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2 thank you. I look forward to seeing you down in
3 region three sometime.

4 MS. SHEEHAN: Okay.

5 CHAIRPERSON DiNAPOLI: Destito
6 has another question. Also we've been joined by

7 Assemblywoman Aileen Gunther who's a very active
8 member of our Environmental Conservation Committee
9 and was one of the key movers behind convening this
10 panel today. Well, Aileen, I know you had a long
11 way to get here.

12 Ms. Destito?

13 CHAIRPERSON DESTITO: Yes.

14 Commissioner, I just have one clarifying --
15 clarifying question. Canal corporation ownership
16 of dams, are you the inspector of those dams also
17 or are they responsible themselves?

18 MS. SHEEHAN: We oversee all
19 dams.

20 CHAIRPERSON DESTITO: All dams?
21 So whoever owns the --?

22 MS. SHEEHAN: -- now has -- the
23 canals has the primary responsibility for ensuring
24 that they're investing in their dams and

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2 maintaining them properly so budgetarily they're
3 responsible for making sure those upgrades are
4 happening and that they monitor them just like any
5 other owner.

6 CHAIRPERSON DESTITO: Okay.

7 MS. SHEEHAN: The Department also
8 has dams that we own --

9 CHAIRPERSON DESTITO: Right.

10 MS. SHEEHAN: -- that we -- that
11 we're directly responsible for. There are -- there
12 are actually a number of state agencies that own
13 dams and Canals is one of those.

14 CHAIRPERSON DESTITO: Right.

15 And -- but you're ultimately responsible for the
16 safety and should something happen and is that part
17 of -- I mean, I guess I'm talking about from the
18 perspective of the communities and the disaster
19 preparedness so that would -- Canal Corporation
20 would just fit in there as the owner of the dam and
21 you would be overseeing the --

22 MS. SHEEHAN: Right.

23 CHAIRPERSON DESTITO: -- the
24 disaster preparedness.

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2 MS. SHEEHAN: I -- the only thing
3 I would correct in what you just said --

4 CHAIRPERSON DESTITO: Okay.

5 MS. SHEEHAN: -- was that the
6 Canals has the primary responsibility of
7 maintaining and operating their dams safely.

8 CHAIRPERSON DESTITO: Okay.

9 MS. SHEEHAN: We would inspect
10 them to ensure that they are doing that.

11 CHAIRPERSON DESTITO: Okay. You
12 would inspect them in the same way --

13 MS. SHEEHAN: We would.

14 CHAIRPERSON DESTITO: -- that you
15 described in your --?
16 MS. SHEEHAN: The same way we
17 would over the city or any other private owner.
18 CHAIRPERSON DESTITO: Okay. So
19 they're -- they're classified the same way, high
20 hazard, intermediate and low?
21 MS. SHEEHAN: I -- I -- I think
22 Canals had -- might have a variety. I -- I don't
23 know -- we can get you the inventory of canals --
24 CHAIRPERSON DESTITO: Okay.

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2 MS. SHEEHAN: -- dams, if you're
3 interested.
4 CHAIRPERSON DESTITO: Yes, I am.
5 MS. SHEEHAN: And how many are
6 high hazard --
7 CHAIRPERSON DESTITO: Thank you.
8 MS. SHEEHAN: -- and
9 intermediate.
10 CHAIRPERSON DESTITO: Thank you
11 very much. Appreciate that.
12 MS. SHEEHAN: Sure.
13 CHAIRPERSON DESTITO: Thank you.
14 That's all the questions I have.
15 MS. SHEEHAN: Thank you.
16 CHAIRPERSON DiNAPOLI: Mr. Tonko?
17 ASSEMBLYPERSON TONKO: Just one
18 clarifying question.
19 MS. SHEEHAN: That's okay.
20 ASSEMBLYPERSON TONKO: On the
21 order process -- procedure?
22 MS. SHEEHAN: Yes.
23 ASSEMBLYPERSON TONKO: What
24 specifically happens with an order that's issued by

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2 the agency to the dam owner?
3 MS. SHEEHAN: Owner? What
4 specifically happens?
5 ASSEMBLYPERSON TONKO: Well,
6 how -- how -- what's the process --?
7 MS. SHEEHAN: Well, it's
8 basically just like all the Department's other
9 regulatory functions. If we find that action is
10 necessary we notify an owner or a facility operator
11 that we've noted deficiencies that they haven't
12 addressed. You know, we typically try to do it --
13 you know, we try to get people to act voluntarily.
14 ASSEMBLYPERSON TONKO: But just
15 formal paperwork --
16 MS. SHEEHAN: Yes. It's a legal
17 document.
18 ASSEMBLYPERSON TONKO: --
19 paperwork that's -- like a document that's
20 delivered --

21 MS. SHEEHAN: Yeah.
22 ASSEMBLYPERSON TONKO: -- to the
23 owner?

24 MS. SHEEHAN: Correct. And then

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2 we work with them and we -- they have an
3 opportunity to go to a hearing if they object with
4 the -- entering into a --.

5 ASSEMBLYPERSON TONKO: So in a
6 case -- specifically with Gilboa Dam, have they
7 been issued an order --

8 MS. SHEEHAN: No.

9 ASSEMBLYPERSON TONKO: -- by the
10 Department?

11 MS. SHEEHAN: No.

12 ASSEMBLYPERSON TONKO: They have
13 not. Why not?

14 MS. SHEEHAN: No. Because they
15 are cooperating with our requests.

16 ASSEMBLYPERSON TONKO: In this
17 scenario what -- can you just share a hypothetical
18 what might have happened or not happened that would
19 have motivated the Department to issue an order?

20 MS. SHEEHAN: If they had failed
21 to respond to our request for the things -- the
22 multiple things we've asked them for, update of
23 their emergency action plan, the -- the -- the
24 planning and implementation of interim remedial

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2 measures and now we're waiting for -- from -- for
3 them -- waiting for them to give us their long term
4 remedial work plan.

5 ASSEMBLYPERSON TONKO: So does
6 that say then that the -- is it an unspoken
7 assessment by the Department that the time frame
8 that's elapsing is -- is within acceptable --?

9 MS. SHEEHAN: Yes. Yeah. We
10 felt that we -- they were -- the Department
11 regularly regulates the city certainly and -- and
12 has -- is not shy about taking enforcement action
13 when it's necessary. At this point we -- they are
14 responding to our requests timely.

15 If it -- if we got to the point
16 where they didn't or -- or it was ignored or, you
17 know, that -- it wasn't -- it didn't meet our --
18 our expectations that it's certainly available to
19 us but that also would be subject to, you know, all
20 of the other legal requirements that we not be
21 arbitrary and capricious. If the city is
22 demonstrating that they are working cooperatively
23 with us they -- you know, they could object to that
24 action as well.

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2 So at this point we are

3 getting -- we are -- what we've asked for we have
4 gotten and -- and the city is cooperating.
5 ASSEMBLYPERSON TONKO: Okay.
6 What is the next threshold of time into the future
7 for some sort of commitment or --?
8 MS. SHEEHAN: Well, what we need
9 to do now obviously is implement these additional
10 interim remedial measures, which we've talked about
11 and I'm sure --.
12 ASSEMBLYPERSON TONKO: And that
13 comes by what date certain?
14 MS. SHEEHAN: Well, it has been
15 delayed because of the inability -- because of
16 weather -- because of the rain for them to do the
17 work so -- and then the next piece of information
18 that we've asked for is their long term remedial
19 plan so that should --.
20 ASSEMBLYPERSON TONKO: And then

21 what about the implementation of those long term
22 remedial plans?
23 MS. SHEEHAN: That will be a
24 schedule that they will submit to us and that we
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2 will hold them to. The long term remedial plan
3 will be -- who to schedule which will -- and -- you
4 know, we need to be frank about this, a large part
5 of that is going to be analysis and design and --
6 and that, you know, while on its face may seem like
7 a long process it's a very critical part of the
8 process to ensure that the measures that are
9 selected are appropriate.
10 ASSEMBLYPERSON TONKO: So when
11 should anyone living in that immediate vicinity or
12 along the flood plain -- the path of the flood
13 plain expect that all of the improvements will be
14 completed?
15 MS. SHEEHAN: My understanding is
16 that the city intends to start construction on the
17 long term remedial efforts in 2008.
18 ASSEMBLYPERSON TONKO: 2008.
19 MS. SHEEHAN: Correct.
20 ASSEMBLYPERSON TONKO: That could
21 many of a tough weather pattern.
22 MS. SHEEHAN: Well, that's why
23 the interim remedial measures are so important,
24 that the --.

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2 ASSEMBLYPERSON TONKO: Excuse me,
3 I -- I can't -- oh, I'm sorry. I don't want to --.
4 MS. SHEEHAN: No, I mean, it's
5 because I -- and I think -- and I -- certainly
6 Commissioner Lloyd will delineate them as well but
7 these -- they are -- they are significant interim
8 remedial measures and they are designed to shore up

9 the dam but the long term there has to be the
10 appropriate analysis and design done that -- it's
11 essential that that be done.

12 ASSEMBLYPERSON TONKO: And
13 there's no way to expedite that analysis and design
14 work?

15 MS. SHEEHAN: Well, we -- we
16 believe we have. I mean, originally we were -- the
17 city was talking about 2010 so we -- obviously
18 through all of your attention as well as ours and
19 the city's obvious interest in addressing this have
20 moved that up to 2008. If there is any way -- I
21 mean, certainly, from the Department's perspective
22 we will -- we -- this is obviously the -- the
23 highest priority so we'll get our expedited review
24 but at the same time it has to be thorough because

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2 that's as essential as doing it timely.

3 ASSEMBLYPERSON TONKO: Thank you.

4 CHAIRPERSON DiNAPOLI: You're
5 almost done. Following up on -- on a point you
6 raised in your testimony and then Mr. Cahill picked
7 up on it and it is a point that Ms. Gunther has
8 brought to our committee's attention on -- on other
9 occasions as well. So I just want to clarify --

10 MS. SHEEHAN: Sure.

11 CHAIRPERSON DiNAPOLI: -- for the
12 record --.

13 MS. SHEEHAN: I also -- I also
14 have to clarify that I misspoke when I read my --
15 my testimony that I -- that the fees would bring in
16 eight hundred million, which it'll bring in eight
17 hundred thousand. Sorry.

18 CHAIRPERSON DESTITO: We got
19 that.

20 CHAIRPERSON DiNAPOLI: Mr. Cahill
21 we like that.

22 MS. SHEEHAN: -- for -- for the
23 record I need to correct that.

24 CHAIRPERSON DiNAPOLI: Okay.

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2 Done. On -- on page six you -- you state New York
3 City watershed dams were constructed to create
4 reservoirs and ensure reliable water supply. These
5 dams were not physically constructed to operate as
6 flood control structures.

7 MS. SHEEHAN: Right.

8 CHAIRPERSON DiNAPOLI: You go on
9 to say in order to provide a significant level of
10 one protection the valves, the control structures
11 would need to be significantly modified and so on.

12 MS. SHEEHAN: Right.

13 CHAIRPERSON DiNAPOLI: So just to
14 clarify the point if D.E.C. decided and I -- I
15 understand you -- you -- you outlined the -- the

16 tension or difficulty in -- in being asked to both
17 of those apparent but it -- should D.E.C. decide
18 that flood protection was an important concern
19 would you have the statutory authority to order
20 modifications to the New York City watershed dams?

21 MS. SHEEHAN: I -- I think we
22 would have to -- I -- I -- I'm -- my hesitation is
23 that legally I just -- I -- it -- I don't know how
24 we would be able to make that strong of a case to

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2 do that. Obviously, especially if you've -- if
3 you've worked with the city and if we were
4 successful in trying to manage the flood issues a
5 different way I -- I -- I just don't know how we
6 would fare from our -- from a legal standpoint in
7 terms of requiring that.

8 Certainly to the extent that --
9 that changes can be made and -- and this -- I --
10 I -- we would be willing to explore that and we
11 will and we have. But I don't know that we would
12 have a strong case for ordering it.

13 CHAIRPERSON DiNAPOLI: Because of
14 a lack of authority?

15 MS. SHEEHAN: I -- I -- yeah,
16 I -- I would have to say from a perspective of
17 if -- if the city has done everything that they can
18 responsibly be asked to do and is operating the dam
19 pursuant to dam safety criteria it -- you know,
20 you're requiring them to do something with a
21 structure that it was never envisioned to do. So
22 I -- I -- we'd have to really look at that and --
23 from a legal perspective.

24 CHAIRPERSON DiNAPOLI: Would --

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2 would you have the authority then to order a
3 release to prevent flooding?

4 MS. SHEEHAN: Typically, the
5 release program, again, this goes back to the --
6 the Delaware River Master and you know, the -- the
7 state is restricted. A part of the compact -- the
8 D.R.B.C. compact and -- and what we can do. And
9 we -- we have been able to work with the other
10 states to -- to provide some relief on -- in that
11 regard so -- and we're going to keep -- well,
12 obviously we'll -- we will continue to do that.

13 We -- our -- we share the
14 concerns of the Assembly with respect to flooding
15 in those communities.

16 CHAIRPERSON DESTITO: Aileen has
17 a question.

18 MS. SHEEHAN: Hello,
19 Assemblywoman. How are you?

20 ASSEMBLYPERSON GUNTHER: The
21 process that we have in place now regarding
22 releases I think that, you know, what we've done in

23 the past is not working in the present. After
24 seeing the destruction in both Sullivan --

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2 MS. SHEEHAN: Uh-huh.

3 ASSEMBLYPERSON GUNTHER: --

4 Ulster and Orange County last year --

5 MS. SHEEHAN: Right.

6 ASSEMBLYPERSON GUNTHER: -- we

7 know that the way it's been operated it's not
8 working at this point in time and right now the
9 Neversink Reservoir is over a hundred percent
10 capacity.

11 MS. SHEEHAN: Right.

12 ASSEMBLYPERSON GUNTHER: It's one
13 hundred point six as I read it the other day and we
14 know that the rainy season is coming and we know
15 that -- that at this point in time that there is no
16 plan in place to do anymore releases. And I -- and
17 I know that you have the D.I.B.C. There are four
18 states involved. They've been to my office and
19 there doesn't seem to be any movement on what we
20 can do to change the flooding or what will we do to
21 mitigate it at this point. You know, we talk about
22 snow banking.

23 MS. SHEEHAN: Yes.

24 ASSEMBLYPERSON GUNTHER: Some of

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2 the -- some of the pilot programs that you've been
3 doing but it doesn't seem -- nothing is going on in
4 my area, I know that for sure so I'm wondering what
5 we can do to expedite the process or to make some
6 changes so that we won't have another spring like
7 we saw last year.

8 MS. SHEEHAN: Well, obviously,
9 we'll -- we are in the process now of monitoring
10 the levels in the reservoirs as well and if we
11 have --.

12 ASSEMBLYPERSON GUNTHER: Well, I
13 understand that but at this point it's at one
14 hundred point six.

15 MS. SHEEHAN: Yes, I know.

16 ASSEMBLYPERSON GUNTHER: And I'm
17 not being combat -- but I know that the D.E.P. is
18 regulating those releases. I know they have to
19 have collaborative agreement with the four
20 states --

21 MS. SHEEHAN: Right.

22 ASSEMBLYPERSON GUNTHER: -- but
23 at this point I don't see that there -- since all
24 of the damage of last year there hasn't been any

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2 changes or the process hasn't changed at all.

3 MS. SHEEHAN: Well, we were able

4 to get the snow release program in place for the

5 Neversink so that's a critical change and it -- it
6 will be something that we're going to make sure --
7 obviously that we monitor. We go back to the
8 states, we go back to the River Master. It --
9 it's -- the state cannot unilaterally take an
10 action like that.

11 So -- but where we do see the
12 opportunity obviously we will -- we will have -- we
13 will try to manage additional releases. That's --
14 we -- we do have limitations on what the state can
15 order in that regard.

16 ASSEMBLYPERSON GUNTHER: Because
17 in the -- in the tail end -- and this -- you know,
18 I'm not an expert on the subject but after all of
19 the flooding of last year -- you know, water is
20 such a precious natural resource and what we're
21 doing with all this flooding is literally
22 contaminating the water each and every time. So I
23 know the D.E.P. wants to -- to save as much water
24 and it is a very valuable natural resource but by

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2 last year the oil, the tanks, what we saw in the
3 streams, it's polluting, polluting, polluting.
4 So it's really -- by not
5 releasing and saying that, you know, we can't build
6 around there. You know, we can't cut down trees.
7 We abide by all the rules and regulations but yet
8 what they're doing is really not protecting that
9 natural resource.

10 MS. SHEEHAN: I -- I don't --.

11 ASSEMBLYPERSON GUNTHER: An
12 observation of a novice.

13 MS. SHEEHAN: No, I -- I --
14 clearly one of the things that we also try to do
15 and I -- I'm not sure if you were here yet when we
16 talked about this but one of the important parts
17 that the Department has in addition to trying to
18 manage -- manage the reservoir releases and -- and
19 do that in a way that better protects communities
20 we are part of a more comprehensive effort among
21 the Delaware River Basin states -- it -- to help
22 manage that resource in a way that helps prevent
23 flooding in those communities and then add to that
24 very importantly is -- is the flood plain mapping

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2 and ensuring -- and that local governments have
3 information about the -- what is an area that's
4 flood prone to ensure that people build in those
5 areas, to help relocate people who are in an area
6 and that's directly -- that -- that gets directly
7 to your point about, you know, the things that were
8 floating in the flood stages last year.

9 I mean, part of the problem is
10 that there are still a lot of facilities in the
11 flood plain and we -- we do need to address that.

12 That is a very difficult issue but it's an
13 important one in terms of resolving it.

14 ASSEMBLYPERSON GUNTHER: It is,
15 and -- and the money does not come quickly. So we
16 try to move people out of the flood plains but they
17 need money to do it --

18 MS. SHEEHAN: Right.

19 ASSEMBLYPERSON GUNTHER: -- and
20 it's -- in Livingston Manor they get -- they were
21 able to maybe buy out six homes. Myers Grove --
22 I -- I see Mark House out -- out in the audience.
23 How -- how many homes were condemned -- I -- I
24 twenty-two? More than that but the point is -- is

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2 Mark has been pleading with the Federal Government
3 to come in and offer us some -- some monies to buy
4 these folks out and beyond that, you know, when I
5 look at the zoning and, you know, they -- why were
6 they ever -- ever able to build in the flood plain
7 to begin with.

8 I often thought that you need
9 special insurance but yet they didn't have that
10 insurance. So who's to blame here and, you know,
11 and it -- it seems like we haven't watched
12 carefully at what we've been doing as far as
13 development, as far as training of -- of zoning
14 boards and now there are so many people suffering
15 for our negligence.

16 MS. SHEEHAN: Well, we do --
17 when -- when it comes to the state's role it -- we
18 do -- we do the mapping and we provide that mapping
19 information to local governments who, as you know,
20 in New York State it is a home rule state so who
21 are armed with that information and we certainly
22 work with communities to explain what it means or
23 what it shows and -- and -- and help them make
24 decisions from a planning perspective.

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2 So -- I -- we've been very
3 proactive on -- in terms of flood plain mapping and
4 trying to share that information, especially in the
5 watershed region.

6 ASSEMBLYPERSON GUNTHER: The only
7 other comment that I would have about the D.E.C. is
8 that, you know, it took us a very long time to get
9 the permits that we needed to clean some of the --
10 the streams and the waterways and that's -- you
11 know, time is of the essence and I know that you're
12 staffing is not up to par but anything that you can
13 do to get the permits in place in a -- in a more
14 efficient way we would -- we would be very
15 appreciative.

16 MS. SHEEHAN: I -- I
17 appreciate -- I -- we will do that, Assemblywoman.
18 I -- I would just say that we do have -- and

19 typically we do come up with a general permit that
20 we can provide to public works departments. It's
21 an important -- we do have to manage the resource
22 too however because after the floods of 1996 there
23 was a lot of destruction to trout spawning streams
24 so the Department while we recognize and share your
0141

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2 concern about getting those permits out for public
3 works purposes, reopening roads, we try to be
4 careful with -- you know, oversight of the stream
5 work to ensure that we don't do more damage in the
6 process.

7 So to the extent that there's an
8 explanation for why in some cases it takes longer
9 that -- that's the answer.

10 CHAIRPERSON DiNAPOLI: In terms
11 of your high hazard dam category do you have a
12 number of how many of those are -- are D.E.P. dams?

13 MS. SHEEHAN: Okay. I -- I'm
14 trying -- twenty high hazard? D.E.P. has twenty
15 high hazard dams.

16 CHAIRPERSON DiNAPOLI: And -- and
17 you mentioned -- you -- you -- and you mentioned in
18 the -- in your testimony, is that the budget
19 proposal -- there's going to be a new annual fee
20 of -- on dam owners of five hundred dollars.
21 That's part of the fees to help finance --

22 MS. SHEEHAN: The program.

23 CHAIRPERSON DiNAPOLI: -- the
24 program in terms of dam safety. Would D.E.P. be
0142

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2 exempted from that or would they be included in
3 that?

4 MS. SHEEHAN: As a municipally
5 owned they wouldn't have to pay.

6 CHAIRPERSON DiNAPOLI: They would
7 not have to pay? Okay.

8 MS. SHEEHAN: That's the
9 proposal.

10 CHAIRPERSON DiNAPOLI: Right.
11 Well, I just wanted to clarify. And I'm -- one
12 question on Gilboa, in terms of the dam safety
13 standards that you're utilizing to analyze what's
14 happening there are those standards out there,
15 published, you know, through your regulations or --
16 how would one check that?

17 MS. SHEEHAN: That's a good
18 question. Yeah. They're on our website.

19 CHAIRPERSON DiNAPOLI: They're on
20 your website -- on D.E.C. website. Okay. All
21 right.

22 CHAIRPERSON DESTITO: Thank you.

23 CHAIRPERSON DiNAPOLI: Tonko
24 want's to know if they are like all the other dams
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1 Proceedings - Dam Safety - 2-9-2006
2 as well.
3 MS. SHEEHAN: All of our -- our
4 safety criteria are applied to dams -- all dams.
5 ASSEMBLYPERSON TONKO: It's the
6 same improvements or whatever the -- the connection
7 that you're doing with Gilboa is extrapolated
8 across --?
9 MS. SHEEHAN: Everybody has to
10 meet those standards. So everybody is going
11 through that same review.
12 CHAIRPERSON DESTITO: That's it.
13 CHAIRPERSON DiNAPOLI: Okay.
14 CHAIRPERSON DESTITO: Thank you,
15 Commissioner.
16 CHAIRPERSON DiNAPOLI: Okay.
17 Thank you, Commissioner.
18 MS. SHEEHAN: Thank you very
19 much. And to your staff.
20 CHAIRPERSON DiNAPOLI: We
21 appreciate your patience and forbearance with our
22 questions.
23 MS. SHEEHAN: Oh, please.
24 We're -- as I said, we welcome it.

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2 CHAIRPERSON DiNAPOLI: Thank you.
3 Thank you very much. We're -- we're next going to
4 call forward Emily Lloyd, Commissioner, New York
5 City Department of Environmental Protection.
6 (Off-the-record discussion)
7 CHAIRPERSON DiNAPOLI: Good
8 afternoon, Commissioner Lloyd. Thank you for being
9 with us. Obviously your testimony is very timely
10 and important to us and if you could also introduce
11 your colleagues who join you today that would be
12 helpful to us as well.
13 MS. LLOYD: Thank you very much.
14 Good morning Chairwoman Destito and Chairman
15 DiNapoli and Assemblymembers Tonko and Cahill and
16 Gunther.
17 I am joined by Deputy
18 Commissioner Al Lopez to my right and Deputy
19 Commissioner Mike Principe to my left and Director
20 of our west of Hudson operations Paul Rush to my
21 far left.
22 CHAIRPERSON DiNAPOLI:
23 Commissioner, could you just pull that mic -- that
24 big one there a little closer? That would be

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2 helpful. Thank you.
3 MS. LLOYD: Is that the --? Can
4 you hear it?
5 CHAIRPERSON DiNAPOLI: Yeah.
6 CHAIRPERSON DESTITO: Yeah,
7 that's it. Thank you.

8 MS. LLOYD: Thank you for the
9 opportunity to testify today on the matter of dam
10 safety. I do want to be clear that the Mayor is
11 aware of the issues at Gilboa, is adamant that we
12 give it our most urgent efforts both in terms of
13 making the emergency repairs, getting the full
14 reconstruction done and making sure that there is a
15 good preparedness plan in place.

16 And Deputy Mayor Dan Doctoroff is
17 planning a trip up to visit Gilboa and is
18 scheduling that now, probably sometime in the next
19 couple of weeks. So it certainly does have the
20 attention of the highest levels of -- of government
21 and we will brief our colleagues at the city
22 council. They have not started hearings yet. We
23 have not sat down for our first briefing of the
24 year. Most of this developed after they -- after

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2 the end of their session last year but we will
3 certainly greet them about this as soon as we have
4 our issues for the year briefing which usually
5 happens sometime in mid-February so they will be
6 aware of that.

7 Bear with me, I have the same
8 request that Commissioner Sheehan did. I've tried
9 to answer a large number of questions in my
10 testimony that have been posed to me by members of
11 the legislature and others. So it's somewhat
12 detailed but I will try to go through it quickly.

13 CHAIRPERSON DESTITO: Thank you.

14 MS. LLOYD: In case there's
15 anyone who does not know this at this point, D.E.C.
16 owns and operates the regional water supply system
17 that provides approximately one point three billion
18 gallons of water daily. In addition to providing
19 potable water to all of New York City, D.E.P. also
20 provides water for one million residents in
21 Yonkers, New Rochelle, Scarsdale, Tarrytown,
22 Greenburgh, Hawthorne, Harrison, Pleasantville,
23 Ossining, New Castle, Briarcliff Manor, Croton,
24 Katonah, Yorktown, Montrose, Peekskill, Graymoor,

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2 Cold Spring, Carmel, New Windsor, Newburgh,
3 Marlborough, and New Paltz among others.

4 D.E.P. supplies water to
5 approximately half of New York State's residents
6 and the businesses, health care facilities,
7 firehouses and schools in their community,
8 including the largest concentration of hospitals,
9 clinics, laboratories, and universities in the
10 country.

11 I mention this because I hear so
12 often that the entire D.E.P. water supply system
13 exists so that someone in New York City can turn on
14 a tap and get clean water. Certainly, we hope

15 that's true but that description always sounds to
16 me like someone wanting to run a bubble bath on a
17 whim.

18 Yes. Our system provides water for
19 millions of residents to use as they see fit but in
20 fact, they have reduced their consumption very
21 significantly over the past few years through
22 efforts initiated by the city.

23 But it also supports the
24 industries, hospitals, emergency responders and the

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2 people that they employ, the care -- and cared for
3 and -- and the people they -- that employ care for
4 and protect, half the people in New York State.

5 Our system contains twenty dams
6 owned and operated by D.E.P., located throughout
7 the two thousand square mile watershed. In
8 addition to the twenty dams there are six earthen
9 dikes at the Ashokan Reservoir in Ulster County
10 that act as small dams although they are usually
11 considered in a separate category.

12 Some of you have expressed
13 concern about the stability of our dams and so
14 there are charts attached to my statement that
15 identify all D.E.P.'s dams as well as their age,
16 their condition, and recent activity at the dam.

17 I hope that they will -- will
18 substitute fact for speculation and relieve some
19 concerns in the area and -- yes, you have those.
20 And we have them as boards also if people in
21 attendance at some point would like to look at them
22 as well. It lists all of the dams and gives the
23 particulars though.

24 As you can see from the charts,

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2 with the exception of the Cannonsville Dam, our
3 dams are at least fifty years old. Maintaining
4 such a large collection of dams and other
5 waterworks of that age in good condition requires
6 vigilant and substantial investment. We take this
7 responsibility very seriously. In the past five
8 years alone D.E.P. has invested approximately one
9 hundred million dollars in dam repair or
10 reconstruction throughout the watershed. And in
11 the next ten years, D.E.P. projects to spend
12 another four hundred and twenty million dollars.

13 Like many municipalities across
14 the country New York City receives practically no
15 state or federal grants to offset the cost of
16 maintaining vital but aging water infrastructure.
17 So the five hundred and twenty million dollars I
18 just mentioned will be financed by user fees paid
19 by our customers.

20 For a snapshot of the overall
21 condition of D.E.P.'s dams I refer you to the

22 charts. They divide our dams in two categories,
23 dams east of the Hudson River in Westchester and
24 Putnam Counties -- and that's on the sheet that has

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1 Proceedings - Dam Safety - 2-9-2006
2 green across the top -- and those west of the
3 Hudson River in Ulster, Delaware, Sullivan and
4 Schoharie Counties.
5 D.E.P. has fourteen dams east of
6 the Hudson River in Westchester and Putnam. Most
7 of those dams are part of the Croton system, the
8 oldest of the three systems that together make up
9 D.E.P.'s watershed. Because these dams are the
10 oldest in our system they were the first targets of
11 a systematic dam reconstruction program that D.E.P.
12 began in 1992.

13 Although New York State does not
14 require that existing dams be renovating to make
15 new dam standards D.E.P. determined that regardless
16 of cost the goal of it's reconstruction program
17 should be to reconstruct or rehabilitate all twenty
18 of our dams so that they can meet the safe -- same
19 safety standard as a new dam.

20 Of the fourteen dams located east
21 of the Hudson River twelve now meet new dam
22 standards. Two remaining, Croton Falls and New
23 Croton Dam are now the subject of evaluation and
24 design by our engineering consultants. They are

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2 scheduled for reconstruction beginning this summer.
3 Although they do not currently meet standards, the
4 Croton Falls and New Croton Dams are not a cause
5 for immediate concern because they are rated
6 nonetheless as very stable. They are rated to
7 withstand a five hundred year storm event. By
8 comparison Hurricane Floyd was the equivalent of a
9 two hundred year storm event.

10 D.E.P.'s remaining six dams are
11 west of the Hudson River. With the exception of
12 Gilboa, five of them actually already meet new dam
13 standards for stability -- and that's the piece of
14 paper with blue across the top. The remedial work
15 recommended by our consultants for those dams is
16 work not related to the stability of the dams. It
17 consists mostly of cleaning and re-pointing
18 masonry, sealing, patching, repairing the inlet and
19 outlet facilities. All of this work is scheduled
20 to be done -- done by 2012.

21 The sixth dam is Gilboa Dam.
22 Beginning in 2003 our engineering consultants were
23 doing inspection, evaluation and design work at
24 Gilboa in preparation for it's reconstruction. By

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2 late 2005 analysis had progressed to the point
3 where consultants and staff became concerned about

4 the continuing erosion of the spill way and the
5 lack of exact data about rock conditions beneath
6 the dam, especially in light of several extreme
7 weather events.

8 D.E.P. asked its consultants to
9 evaluate the existing dam in light of the worst
10 flood of record, in 1996, and to perform a series
11 of calculations to tell us whether the dam had an
12 acceptable margin of safety, pending the repairs.

13 Using worst case assumptions on
14 bedrock stability and assuming reservoir elevations
15 that actually occurred during the 1996 flood,
16 calculations showed the existing dam had an
17 unacceptable margin of safety, not much above the
18 storm of record in '96.

19 D.E.P. immediately disclosed the
20 results of this analysis to our regulators, to
21 emergency response agencies, to elected officials
22 and to the public at large in the communities
23 downstream of the Gilboa Dam. D.E.P. also
24 immediately began implementing short and longer

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2 term measures to assure the safety of the dam. At
3 the same time we began an intensive effort with
4 state and local emergency responders to assure that
5 the emergency action plan was complete and well
6 understood.

7 The centerpiece of that is an
8 agreement about at what alert level -- at what
9 level -- what elevation of the water in Schoharie,
10 the counties -- especially Schoharie County that's
11 so close -- would start to evacuate. Obviously, we
12 would not be considering waiting until we were
13 within a few minutes of feeling that the dam was at
14 risk. So the monitoring is set up and we can
15 discuss this in more detail in a few minutes. So
16 that several hours ahead of time, probably about
17 twelve, we, along with the Schoharie elected
18 officials who are monitoring the levels decide that
19 it is getting to the point where people should
20 start evacuating so there would be ample time and a
21 decision is made by the local officials to issue
22 that alert and to start moving people out.

23 Another central component of our
24 emergency response plan at Gilboa is removing water

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2 from the Schoharie Reservoir as quickly as
3 possible, both to reduce pressure on the dam and to
4 allow for emergency repairs to proceed.

5 First, D.E.P. has ratcheted the
6 gates to the Shandaken Tunnel up to allow as much
7 water to be pulled down as possible -- down towards

8 to the Ashokan Reservoir and that water then goes
9 onto New York City. To get more water out of the

10 Schoharie Reservoir from its north end, D.E.P. has
11 designed and will install both a Siphon and a Notch
12 in the dam. Both of these projects are underway.
13 They were designed under emergency contracts. They
14 were reviewed in working sessions that included
15 D.E.C., SEMO, the Army Corps of Engineers and
16 others so that we could all get together and make
17 sure we had the best thinking, the best critique of
18 what was being proposed. We had one of those
19 around the siphon and emerged we think with a very
20 good plan and with the concurrence of those other
21 parties.

22 The same is true with the notch
23 and I believe on January 23rd we had the final one
24 of those which is around the design of the anchors

0155

1 Proceedings - Dam Safety - 2-9-2006
2 to be installed around the base of the dam.

3 The siphon and the notch projects
4 are underway. The contracts have been let and --
5 and -- in the case of the siphon the work is
6 actually begun and it may have in terms of the
7 notch or it is not?

8 UNIDENTIFIED SPEAKER: They're
9 mobilized.

10 MS. LLOYD: They're mobilized.
11 They are literally standing by seven days a week
12 waiting for it to be dry enough to go in and do
13 work. So on the siphon they go in, they work as
14 they can, then they pull out when it gets too wet.
15 In the case of the notch they are mobilized and
16 they have to wait until the water gets a little
17 lower. Once the siphon starts to operate -- this
18 is the purpose of the siphon -- it will add a way
19 for us to reduce the level even though we continue
20 to have the -- the warmest weather on record. It
21 will allow us to pull water out more quickly with
22 the siphon so we can get down to a level where we
23 can start to create the notch and we can discuss it
24 in more detail but yes, we've had many opinions --

0156

1 Proceedings - Dam Safety - 2-9-2006
2 critiques of the notch about it's safeness and feel
3 that we have the best thinking of the best
4 companies and experts in the country, that this is
5 a good way to go and its design safe and will be
6 effective.

7 At this point we hope to complete
8 the siphons by early March and the notch by
9 mid-March but that is weather permitting. We will
10 have to proceed as -- as the weather allows us to.

11 As soon as the dam is no longer
12 spilling our contractor will be able to being the
13 construction of the post-tensioned anchoring cables
14 that will be drilled through the dam and into the
15 bedrock below. While the notch and the siphons can
16 greatly improve the safety of the Gilboa Dam by

17 allowing us to reduce the elevation of the
18 reservoir and thus, the pressure on the dam the
19 cables will strengthen the dam structure so that it
20 actually meets safety standards for existing dams.

21 Design of the cables is underway
22 and nearing completion as I said. Weather
23 permitting the cable work is expected to begin by
24 the end of February and to be completed by the end

0157

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2 of September although we hope that the most
3 critical anchors will be in place by July.
4 Although these anchors are expected to bring Gilboa
5 to dam standards the reconstruction -- I'm sorry --
6 to dam standards the two hundred million dollar
7 overall reconstruction project that will bring
8 Gilboa up to dam standards for newly built dams has
9 been advanced by two years and will now begin as
10 soon as design is complete in 2008.

11 In the unlikely event of a dam
12 failure which we all fervently hope is not going to
13 happen and -- and all of us, we know, including all
14 of you are doing everything we can to avoid --

15 Schoharie County will bear the
16 preponderance of the impact and it is therefore
17 been the primary focus of D.E.P.'s emergency
18 planning outreach, although we have also reached to
19 the other counties farther downstream.

20 D.E.P. greatly appreciates the
21 cooperation of many Schoharie County officials
22 including the county's Emergency Management
23 Director, Judith Cary, as well as town supervisors,
24 sheriffs, and other emergency response personnel.

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1 Proceedings - Dam Safety - 2-9-2006
2 In addition to sharing information and
3 participating in joint emergency planning
4 exercises, where circumstances warrant D.E.P. has
5 provided more concrete assistance to county
6 emergency management officials. For example, to
7 improve emergency notification in counties
8 downstream we've distributed approximately seven
9 hundred emergency radios. Those are to supplement
10 the reverse nine one one system that the county has
11 in place which is less than a hundred percent
12 effective and now we are working, as we were aware
13 the signals are not -- are -- are less than perfect
14 to reach all of the locations where recipients have
15 radios and we are working to improve those signals
16 so that more of those radios will be as helpful as
17 we want them to be. And another fifteen hundred of
18 those radios have been made available to Schoharie
19 County officials for distribution to additional
20 residents.

21 To close communications gaps
22 among emergency response personnel, D.P.E. --
23 D.P.A. -- D.E.P. has done several things including

24 providing some fax machines and we are also -- we
0159

1 Proceedings - Dam Safety - 2-9-2006
2 do stand ready to fund a system of emergency
3 response sirens that Schoharie County is purchasing
4 although that system has not been selected and we
5 have been participating with them in the
6 conversations about how to make those most
7 effective and what would be in the -- that very
8 difficult topography the most effective form of
9 alarm and -- and placement -- to get in place to --
10 to reach as many people as possible.

11 As I said given the topography we
12 believe that ultimately what will be effective is
13 not one thing but having layers of things so that
14 you reach as many people as possible and there are
15 still additional things that are being discussed
16 and considered.

17 I know the committee is concerned
18 by newspaper articles -- shifting gears slightly
19 here -- reporting that some weekly inspection
20 reports on dams submitted to -- during 2004 and 5
21 contained photocopied sections. These reports --
22 can I have some water? Thank you. Thank you.

23 Terrible.
24 These reports on an internal

0160

1 Proceedings - Dam Safety - 2-9-2006
2 D.E.P. procedure instituted in 2002 for the purpose
3 of visually identifying non-structural maintenance
4 problem. They are not used for evaluating the
5 stability of a dam or for -- for reporting to New
6 York State. Nonetheless the apparent practice by
7 one D.E.P. employee of photocopying sections is
8 totally inappropriate. None of the reports filed
9 by eight other field staff contain photocopied
10 material. All staff members involved in the
11 reports have been retrained. D.E.P. has received
12 within the last day a preliminary report on the
13 incident. We have suspended two workers that were
14 involved, pending disciplinary proceedings which
15 have been initiated against them.

16 The issue of dam safety has
17 become intertwined with another issue of concern
18 for the committee, flooding around the streams and
19 rivers in the Catskills region. The remainder of
20 my statement is directed at that issue.

21 As long as floodplains in the
22 Catskills have been inhabited, flooding has been a
23 concern in the area. Photographs taken before the
24 creation of the Delaware System which shows severe

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2 flooding along Catskills streams and river
3 reservoirs provide ample evidence that seasonal
4 flooding is a serious, often tragic feature of that
5 region.

6 Unfortunately, we know that in
7 the Catskills as in New York City, the frequency
8 and intensity of rainstorms in the last ten or even
9 twenty years has far exceeded what models based on
10 historical rainfall patterns would have lead us to
11 believe. Unfortunately, these new weather patterns
12 also indicate that there will be more frequent,
13 more intense periods of drought.

14 This change in rainfall patterns
15 combined with an increase in the number of dwelling
16 units being built in flood plains has seriously
17 aggravated a flooding problem that has always
18 existed.

19 Although hydrological data shows
20 that D.E.P.'s reservoirs generally serve to
21 mitigate flooding simply because they are large
22 basins that capture and hold water -- the goal of
23 our water supply as it's been said many times
24 today, must be to store water against inevitable,

0162

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2 sudden and perhaps more frequent now dry periods.

3 For example, in the spring of
4 2005 at the point where two large storms struck in
5 rapid succession the cities reservoirs were full
6 and spilling with the exception of the Pepacton
7 Reservoir for we had deliberately created a void to
8 hold spring runoff.

9 However, by October 2005 the
10 reservoir system as a whole was down to sixty-one
11 percent of capacity, twelve percentage points below
12 normal. The Cannonsville reservoir was at only
13 twenty-six percent of its capacity. Schoharie was
14 at thirty-three percent and Pepacton was fifty-six
15 percent of capacity.

16 Given this kind of
17 unpredictability -- and needless to say the
18 Delaware System was just a few days away from going
19 on to a drought alert -- given this kind of
20 unpredictability and given the importance of our
21 system to the well-being of half the population of
22 New York State as well as many residents of other
23 states D.E.P. would be most prudent to keep it's
24 reservoirs as full as possible.

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2 This is obviously counter to the
3 goal of a flood control system and because these
4 two types of water management systems have
5 different goals, they also have different hardware
6 and different operating strategies.

7 For example, the release works at
8 our reservoirs are not large enough to allow them
9 to empty quickly in anticipation of a severe storm.
10 By contrast, at a flood control reservoir, water
11 levels would be maintained at a lower level all

12 together and or the release works would be designed
13 to allow the reservoir to be lowered much more
14 quickly in response to weather forecasts.

15 The city's ability to release
16 water in the interest of maximum flood mitigation
17 is also greatly complicated as -- as Commissioner
18 Sheehan mentioned by certain state and federal
19 requirement. In the interest of maintaining a
20 healthy fish population, New York State requires
21 D.E.P. to store water that can be released at
22 various times during the year to control flow and
23 temperature in streams below our dam.

24 In addition, releases from our
0164

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2 Delaware System Reservoirs are controlled by a
3 complex set of court decisions, interstate
4 agreements and rules and regulations administered
5 by other government agencies, principally the
6 Delaware River Master and the Delaware River Basin
7 Commission and I believe only fully understood by
8 Deputy Commissioner Mike Principe.

9 D.E.P. is not at all indifferent
10 to the disruption and devastation that intense
11 rainstorms inflict on the most vulnerable
12 floodplain residents. In fact, D.E.P. has been
13 very active and involved in identifying strategies
14 that can reduce flooding and help watershed
15 residents and would like to be more -- more so.
16 Even though our reservoirs were not designed as
17 part of the flood control system, in reality they
18 already provide in many cases significant flood
19 mitigation.

20 For example, during April 2005
21 the Cannonsville Reservoir absorbed thirty-eight
22 percent of the rainfall and runoff flowing in that
23 otherwise would have worsened flooding. In the
24 same storm the Pepacton Reservoir reduced the peak

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2 outflow by thirty percent, in the Neversink
3 Reservoir the peak outflow was reduced by twenty
4 percent and the Ashokan Reservoir reduced the peak
5 outflow by forty percent.

6 So in the spring 2005 storms the
7 flooding experienced by communities downstream of
8 the reservoirs would have been much more severe if
9 the reservoirs did not exist.

10 Beyond the natural flood
11 mitigation that our reservoirs provide, D.E.P. has
12 actively pursued other strategies for reservoir
13 management that would limit the damaged caused by
14 flooding -- not without trepidation because of what
15 we foresee as a very serious primary mandate of
16 making water available. Nonetheless we understand
17 that we -- if we can make a contribution to flood
18 abatement we certainly want to do that.

19 Some of our activities are
20 mentioned below. In 2003, D.E.P. initiated the
21 creation of a spill reduction program at the
22 Pepacton Reservoir that was eventually approved by
23 New York State, the D.R.B.C. and other relevant
24 entities. The purpose of the program is to limit

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1 Proceedings - Dam Safety - 2-9-2006
2 springtime flooding along the east branch of the
3 Delaware by allowing D.E.P. to make releases from
4 the Pepacton Reservoir proportionate to the snow
5 pack.

6 By making releases D.E.P. can
7 create a void at Pepacton that can be used to
8 absorb springtime runoff and prevent it from
9 flowing downstream into the east branch.

10 At a 2005 workshop attended by
11 D.R.B.C., the National Weather Service, the U.S.
12 Geological Survey and the U.S. Army Corps of
13 Engineers, D.E.P. initiated discussions on the idea
14 of implementing a similar program at the Neversink
15 Reservoir. Since that workshop after discussions
16 with all the relevant parties, D.E.P. received
17 approval to expand the Pepacton spill reduction
18 effort to the Neversink Reservoir.

19 In addition, D.E.P. and the
20 Delaware -- the parties have recently agreed to a
21 new void program. This program takes into account
22 the unusual situation that exists this year in
23 which the reservoirs are full and there is only a
24 minimal snow pack in the watershed. During the

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2 winter and spring months by using advanced weather
3 forecasting information D.E.P. will maintain a
4 sufficient void, close to five percent, in
5 Neversink and Pepacton to capture a storm that
6 delivers and inch of rain within a six hour period
7 without being able to rely on snow pack to restore
8 that water.

9 At the Ashokan Reservoir, D.E.P.
10 is working to temporarily reactivate a reservoir
11 release that will allow the city to create and
12 maintain a void similar to those programs currently
13 in effect at the Neversink and Pepacton Reservoirs.
14 Making this channel available for use requires
15 making certain modifications to the SUNY Field
16 Campus downstream from the Reservoir.

17 D.E.P. has been working closely
18 with campus administrators and expects to begin
19 work next week on construction of a protective
20 berm. We expect the channel to be operational by
21 mid-March 2006. We are also working with SUNY to
22 put in place a permanent for utilization of the
23 waste channel.

24 As part of the city's long term

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2 plan, D.E.P. is considering raising the spillway
3 elevation at select reservoirs specifically to
4 create extra capacity that can be used to capture
5 high runoff events while preserving the city's
6 allocation of water.

7 Obviously, raising spillway
8 elevations is a major capital project and will
9 require very careful design and assessment of
10 impacts to properties along the shores of the
11 reservoir. However, D.E.P. is committed to working
12 with the state and other interested parties to move
13 this effort of study and analysis ahead.

14 D.E.P. will make all reasonable
15 efforts to adapt its reservoir operation so as to
16 improve our ability to provide flood mitigation.
17 But D.E.P. efforts need to be complimented by a
18 full and objective assessment of development in
19 flood-prone zones. Because having accurate
20 information on flood inundation areas is important,
21 D.E.P. has already agreed to fund up -- updates to
22 New York State flood plain maps below certain
23 reservoirs. We are already actively engaged in
24 scientific efforts to predict the most likely

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2 emerging weather patterns and we will work the many
3 other government agencies involved to frame coping
4 strategies as quickly as possible.

5 We look forward to using that
6 information as part of the cooperative --
7 cooperative flood control effort and involving all
8 the relevant state, federal and local agencies
9 including the U.S. Army Corps of Engineers, the
10 U.S. Geological Survey, the New York State
11 Department of Environmental Conservation, the Soil
12 and Water Conservation Service, and, perhaps most
13 importantly, the effected counties and towns.

14 Finally, on the topic of
15 flooding, I'm compelled to mention a bill before
16 the legislature that would have a devastating
17 impact on New York City's reservoir operations. S.
18 1768/A. 17 -- 7836 mandates that in anticipation of
19 any rainstorm or snow melt water in the city's
20 reservoir should be lowered so that no significant
21 overflow of the reservoir takes place.

22 This poses two problems. First,
23 as I've already mentioned the city's reservoirs are
24 not equipped with the size of release works that

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2 would allow us to void a significant amount of
3 water based on a few days or a week's notice when a
4 storm is relatively certain to occur.

5 Second, even if the reservoirs
6 did have larger release works, directing the city
7 to release water because of frequently inaccurate

8 or inexact weather forecasts puts at grave risk our
9 ability to provide clean water for the public
10 health and safety of half of New York State's
11 population. In short, enactment of this
12 legislation could cripple our ability to operate
13 our water supply system and I urge the legislature
14 not to enact it and rather to work with us on some
15 of these other approaches.

16 Thank you for the opportunity to
17 address the Committee on these important matters
18 and we are, of course, happy to address your
19 questions and hear your comments.

20 CHAIRPERSON DiNAPOLI: Thank you
21 very much, Commissioner for that very detailed
22 testimony. And obviously, you're pointing out a
23 lot of steps that your agency is taking. One --
24 one thought before we get into specific questions,

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2 you know, perhaps you might consider some ways in
3 which to enhance the level of communication between
4 the city and -- as an example Congressman McNulty's
5 office -- you certainly heard of his great concern
6 and I think some of that was based on lack of -- of
7 currency as far as sharing information.

8 Obviously, you've indicated the
9 Mayor is aware of the situation and you've got a
10 Deputy Mayor coming to visit and that information
11 seems to have not been heard before by the
12 Congressman. I -- it would obviously help everyone
13 if communication could be enhanced so that's just
14 a -- a thought.

15 MS. LLOYD: I think -- I think
16 it's a very good recommendation. Mayor Bloomberg
17 is famously delegating and obviously his
18 commissioners appreciate that and tend not to press
19 him to be otherwise but I can see that there's some
20 situations like this where people really need to
21 know firsthand of his concern and I -- I will try
22 to take steps to make sure that happens.

23 CHAIRPERSON DiNAPOLI: Okay. You
24 want to start questions?

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2 CHAIRPERSON DESTITO: No, you go
3 ahead.

4 CHAIRPERSON DiNAPOLI: Oh, okay.
5 Mr. Tonko?

6 ASSEMBLYPERSON TONKO:
7 Commissioner, how are you?

8 MS. LLOYD: Fine, thank you.

9 ASSEMBLYPERSON TONKO: Thank you
10 for the team's effort here at the table. We
11 appreciate the flow of communication. The -- the
12 fifteen year window that you portrayed in
13 economics, the five years of recent past history of
14 a hundred million, was it? And then going forward

15 with four hundred and twenty million? Can you cite
16 patterns going back five to ten years? What --
17 what was the five year history before the one
18 hundred million dollar investment?

19 MS. LLOYD: I -- can you --?

20 THE REPORTER: Excuse me. Can
21 you identify yourself, sir?

22 MS. LLOYD: I -- you need --.

23 MR. PRINCIPE: Yes, I'm Mike
24 Principe, Deputy Commissioner for Water Supply.

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2 The -- this -- this effort that's portrayed on
3 these charts is really -- is really the first
4 effort that the city has done in terms of -- of
5 reconsidering the status of the dams in a -- in a
6 very specific way by putting out assessment
7 contracts.

8 In fact, the -- when I -- when I
9 first started with the city twenty-four years ago
10 they were just starting that first round of
11 assessments on our east of Hudson dams which ended
12 up yielding the design contracts which ended up
13 putting in place the -- the restoration of those
14 dams which nine of which have been completed.

15 So the -- the -- the amount of
16 dollars that are going in -- had -- have gone into
17 capital reconstruction, really, this is the first
18 round that the city has undertaken through the
19 history of these dams because they're -- they're
20 pretty much designed for fifty to a hundred year
21 life span.

22 ASSEMBLYPERSON TONKO: Yeah.

23 Well, before we get into those concerns --

24 MR. PRINCIPE: Yeah.

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2 ASSEMBLYPERSON TONKO: -- let the
3 record indicate that the witness chose the
4 unnumbered microphone when he --.

5 MR. PRINCIPE: Will I move?

6 ASSEMBLYPERSON TONKO: No -- no,
7 I'm just -- my attempts at humor.

8 ASSEMBLYPERSON GUNTHER: People
9 usually always are.

10 ASSEMBLYPERSON TONKO: That --
11 okay. That tells something -- that's something
12 very serious then that -- that's indicated because
13 if you had a fifty year dam but we're looking at,
14 for instance, with Gilboa a much older dam,
15 eighty -- eighty year dam?

16 Pardon me? Is -- is that
17 correct?

18 (Off the record)

19 ASSEMBLYPERSON TONKO: Okay. So
20 I would indicate --.

21 MR. PRINCIPE: I shouldn't -- I

22 shouldn't have said fifty. It's -- these dams --
23 I -- I -- I don't have the exact number on the
24 longevity but they're designed -- these -- these
0175

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2 capital assessments that were done were based on
3 the cycle of reassessment so whatever -- whatever
4 the age of the -- the Croton dams were over -- some
5 of them were over a hundred years old at the time
6 so --.
7 ASSEMBLYPERSON TONKO: So I don't
8 think I knew --
9 MS. LLOYD: If --
10 ASSEMBLYPERSON TONKO: -- I'm
11 sorry.
12 MS. LLOYD: -- if I could say --
13 MR. PRINCIPE: Yeah.
14 MS. LLOYD: -- that there were
15 also -- there -- there was work done on the dam
16 along the way. For example, someone mentioned a
17 study that had been done on Gilboa a few years
18 back. That resulted in a repair to the spillway.
19 It didn't go untended so we would have to go back
20 and pull out a coherent list of things that had
21 been looked at. They were not -- we didn't build
22 them, fill them with water and go away for fifty
23 years. They are -- have been maintained but I
24 think in terms of a very broad assessment to -- to

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2 ask ourselves the question the -- the dams are
3 getting old now and we want them to be as good as
4 brand new dams, what would we have to do with
5 the --
6 ASSEMBLYPERSON TONKO: Well --.
7 MS. LLOYD: -- with the broad
8 undertaking between the late nineties and the early
9 two thousands.
10 ASSEMBLYPERSON TONKO: And from
11 what you've indicated over two hundred million
12 would be spent on the Gilboa Dam?
13 MS. LLOYD: Yes, that's correct.
14 ASSEMBLYPERSON TONKO: So about
15 half of your going forward plan is absorbed by
16 Gilboa.
17 MS. LLOYD: That's right.
18 Because there are two -- there are three dams that
19 are still -- still have major construction going
20 on. Gilboa is about two hundred million and the
21 two east of Hudson are seventy-five and fifty?
22 UNIDENTIFIED SPEAKER: Yeah,
23 seventy-five and fifty.
24 MS. LLOYD: Yeah.

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2 THE REPORTER: Yeah. I'm sorry.
3 If you could tell who you're going to speak to if

4 they could identify themselves and use -- use the
5 microphone?

6 MS. LLOYD: I'm sorry. Emily
7 Lloyd again.

8 THE REPORTER: -- okay.

9 MS. LLOYD: Gilboa is the --
10 is -- is the largest reconstruction requiring about
11 two hundred million dollars and the other two
12 upgrades those are the two dams east of Hudson that
13 need upgrades but they're -- but are already at a
14 five hundred year storm level will cost about
15 seventy-five and about fifty million dollars, those
16 two.

17 ASSEMBLYPERSON TONKO: Now, if
18 new deficiencies arise within your collection of
19 dams is there a reassurance that there's a reserve?
20 There's going to be the appropriate fiscal response
21 in terms of their improvement or the repair or
22 the -- the -- you know, the result?

23 MS. LLOYD: D.E. -- D.E.P. is
24 fortunate in having a robust capital capacity

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2 because it is -- it is based on water and sewer
3 rates that we receive from users so we are able to
4 address the urgency and if it's necessary we raise
5 fees which obviously is not the most popular thing
6 to do but which we do as -- as required and have
7 done in the past to meet significant capital
8 demands.

9 ASSEMBLYPERSON TONKO: There is,
10 as you heard, an exchange -- a long exchange
11 between the Commissioner of D.E.C. and this panel
12 and the issue of the order, specifically concerning
13 Gilboa that wasn't issued by D.E.C. to the city of
14 New York. Was there discussion about the potential
15 of that order coming to New York City?

16 MS. LLOYD: There was at one
17 point a conversation, I believe between a couple of
18 staff members over whether or not this would fall
19 into that category and the conclusion that it would
20 not fall into that category because in general an
21 order occurs when the -- when the E.E.P. has not
22 been able for one reason or another or has chosen
23 for one reason or another not to act as quickly as
24 D.E.C. would like us to on some action.

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2 In this case --.

3 ASSEMBLYPERSON TONKO: So it
4 is -- is it totally a function of timely response
5 or severity of a deficiency?

6 MS. LLOYD: I would say it would
7 be timeliness and adequacy of response would be
8 what would drive -- that an order assumes that we
9 need to be made to do something we're not already
10 doing.

11 ASSEMBLYPERSON TONKO: But as a
12 municipality or as an agency of that municipality
13 you never felt threatened or the lack -- for the
14 lack of a better word of an order pending?

15 MS. LLOYD: Well, certainly I
16 felt certain that if we did not do things as
17 quickly and as -- with as much quality and
18 attention to concerns that people had that D.E.C.
19 wanted to see that they would not hesitate to issue
20 an order.

21 ASSEMBLYPERSON TONKO: But it
22 wasn't discussed as -- as being at your doorstep?

23 MS. LLOYD: We both -- for --
24 because it was the right thing to do we moved

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2 very -- very quickly every step of the way and
3 never felt that -- never felt that it was -- that
4 it needed to be right behind us. We certainly were
5 aware that if we had stopped to catch our breath it
6 would have been.

7 ASSEMBLYPERSON TONKO: Uh-huh.
8 And you talk about siphons and notching and anchors
9 and a number of technical retrofits. Can you in --
10 in layman terms express what some of the highest
11 order of deficiencies are with this Gilboa Dam? In
12 plain English that would -- for the record?

13 MS. LLOYD: Paul, would you like
14 to do that?

15 MR. RUSH: Sure.

16 CHAIRPERSON DiNAPOLI: Just
17 identify yourself again, for the stenographer.

18 MR. RUSH: Paul Rush. The
19 highest level of deficiencies at Gilboa Dam --
20 the -- the one is -- the greatest concern is the
21 factor of safety against a sliding failure. That's
22 the information that came to our attention after
23 the consultants analysis back in October which
24 Commissioner Sheehan mentioned and Commissioner

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2 Lloyd had mentioned.

3 That's the primary safe -- safety
4 issue. There are other issues regarding
5 maintenance -- maintenance concerns about the facia
6 stone on top of the dam that's eroded away. But
7 even with the loss of stone although aesthetically
8 it doesn't look good, doesn't present a great
9 appearance of -- of a well-maintained dam that does
10 not pose a safety risk. The safety risk is the
11 sliding factor of safety.

12 ASSEMBLYPERSON TONKO: Okay. And

13 again, that highest order of priority is -- is that
14 what -- that first weakness you cited -- right --
15 when you -- that is your major concern?

16 MR. RUSH: That -- that is the

17 major concern -- that is the -- that is the only
18 problem that exists that it brings the dam outside
19 of the New York State standards for -- for existing
20 dams. That's the safety danger is the sliding
21 factor of safety and that's what the anchoring is
22 going to -- will address and will bring up to state
23 standards for existing dams in the first phase and
24 long term, get it up to standard for new dams.

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2 ASSEMBLYPERSON TONKO: Has there
3 ever been a pricing out of what a new
4 infrastructure would cost? Has the city ever done
5 that? The Department ever done that?

6 And obviously, you know, with the
7 question is the implication that it would be state
8 of the art.

9 MR. LOPEZ: My name is Al Lopez.
10 I'm Deputy Commissioner of Engineering, Design and
11 Construction.

12 To answer your question it's --
13 it's -- it's -- the reconstruction that will take
14 place will bring the dam to the standards of a new
15 structure -- of a new dam, so as the Commissioner
16 mentioned in -- in her testimony there are state
17 standards that are in place for existing dams and
18 there are a higher level of standards for new dams,
19 for new construction.

20 D.E.P. adopted the policy quite
21 awhile ago because it -- you know, with -- with the
22 east of Hudson and now with the west of Hudson, so
23 across the board, not just for Gilboa -- to pursue
24 a new dam standard as opposed to going to an

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2 existing dam standard. So to answer your question
3 the two hundred million dollars in effect gets us
4 the equivalent of a new dam standard --

5 ASSEMBLYPERSON TONKO: Uh-huh.

6 MR. LOPEZ: -- a new design.

7 ASSEMBLYPERSON TONKO: I just
8 think of transportation infrastructure where there
9 are life expectancies -- useful life placed upon
10 construction. It's automatic -- it's routinely --
11 it's not unusual to have it removed while a new
12 replacement bridge for instance exists -- for
13 example might be put into play.

14 An eighty year old structure with
15 the improvements that you cite are -- convinced me
16 it's not a band aid approach to public safety
17 and -- and the work that you need to accomplish.

18 MR. LOPEZ: It's the engineering
19 approach. We've had the best engineers that are
20 available look at this approach. Commissioner
21 Sheehan mentioned that certainly the state also
22 hired engineers to examine our approach.

23 When you look at massive

24 structures, large structures and you mentioned a
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2 bridge, you might build a new bridge next to it,
3 you're usually talking about a replacement of
4 smaller capital type facilities. When you look at
5 very large facilities and I'll go to New York which
6 are the ones that I'm familiar with. Golden Gate
7 Bridge in San Francisco, the Verrazano Bridge in
8 New York, the George Washington Bridge, you don't
9 build a replacement. You make sure that you keep
10 it to the standards that are required based on
11 engineering judgments and so with this dam as well,
12 because of its size we are looking to keep it at
13 the standard of new engineering judgments and --
14 and so we are building it to new dam standards.

15 ASSEMBLYPERSON TONKO: Were those
16 standards the same that were -- and I don't know if
17 you'd be the appropriate person to ask. But we'd
18 look at Hadlock Dam that was relatively new and
19 were those the same standards, would you know, that
20 would -- would --?

21 MR. LOPEZ: I can't speak to
22 those -- can't speak to those.

23 ASSEMBLYPERSON TONKO: The agency
24 had permitted a new dam that gave way so how good
0185

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2 are these standards? Are they as rigid as they
3 need to be?

4 MS. LLOYD: Yeah. Do you want to
5 do it?

6 They are. The -- the new dam
7 standards are that a dam would have the stability
8 to withstand probable maximum flood which is a
9 calculation made for each dam specifically based on
10 the size of the watershed that flows into it, the
11 size of the particular reservoir, the configuration
12 of the dam, the -- the width and capacity of the
13 spillway, all dealing with how much pressure would
14 be built up under the worst weather conditions that
15 could be envisioned in that particular location.

16 So it is a worst case scenario
17 and new dams are required to be able to withstand
18 that kind of a storm and flood. So I -- I don't
19 know -- I'm not familiar with the dam -- what
20 happened at the dam you mentioned but the -- the
21 new standards are massively strong.

22 ASSEMBLYPERSON TONKO: The -- the
23 alerting systems. The signaling that you spoke of,
24 I believe was -- you've referenced primarily or
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2 singularly Schoharie County and certainly having
3 represented them for ten years in the State
4 Assembly -- you may get redistricted but your --
5 your heart stays with the communities you

6 represented -- they deserve that kind of attention
7 but downstream, Montgomery, Schenectady Counties
8 for example, have been impacted by the flow of
9 the -- of the creek from that dam and the
10 tributaries -- tributaries that feed to that system
11 with enough force that many equate it to the C.F.S.
12 flow of Niagara Falls in a creek that you can walk
13 through many summers in ankle deep water.

14 Why -- is there a plan within
15 your management of that facility to include other
16 counties and providing resources they need?

17 MS. LLOYD: We have I believe --
18 as -- as we felt was appropriate and certainly the
19 greatest anxiety and concern appropriately was in
20 Schoharie where many people live just minutes away
21 from the dam -- were they not to be evacuated prior
22 to a failure. So we focus very intensely on
23 working with the emergency -- emergency managers
24 and the sheriffs and others to support their

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2 efforts to be able to contact and evacuate.

3 But yes, I think subsequent to
4 that early, very intensive work with Schoharie
5 which is continuing, I believe that there have been
6 meetings with the representatives of other counties
7 and we are in conversation with them as well.
8 Where there is the potential for inundation we are
9 available to discuss all kinds of things we might
10 be able to do.

11 Under the emergency -- under the
12 emergency conditions that we are currently working
13 legally it is -- the most possible thing for us to
14 do is to provide some kind of equipment that, you
15 know, binds together the outreach of -- it is --
16 would be a much more complicated and outside the
17 same sphere of -- kind of negotiation to do other
18 kinds of assistance so we've encouraged people to
19 discuss with those -- those kinds of things.

20 Let us, you know, try to make
21 sure that the -- the links can link up with each
22 other within the local system because other things
23 will be more complicated and take longer. But I
24 know that Paul has been to some of those meetings

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2 or perhaps Mike and might want to mention that?
3 Paul?

4 MR. RUSH: Paul Rush. We had --
5 I've been up here in this same room meeting with
6 staff from Schenectady County invitation of Jill
7 Ryan and Bill Van Hoesen and have kept them up to
8 date on what's going on. And the -- we have not
9 received -- I'm not aware of any specific resources
10 request from Schenectady County or Montgomery
11 County and if they're -- if they're there I'm
12 sure --

13 ASSEMBLYPERSON TONKO: Uh-huh.
14 MR. RUSH: -- I'm sure they could
15 be addressed.

16 ASSEMBLYPERSON TONKO: Well, you
17 know, that in our meeting we had brought people
18 together with the two of you and others to -- to
19 echo our concerns because what you have are
20 communities that need to have a plan in place.
21 It's essential and to have resources available and
22 these are fiscally strapped communities that can
23 ill-afford any additional property tax burden and I
24 just believe, you know, with the lessons learned

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2 from Katrina, you know, when residents were blamed
3 for -- being blamed for the -- for their -- for
4 having not evacuated when, in fact, there can be
5 assistance from government.

6 I think there has to be a good
7 plan in place and all of the resources at our
8 fingertips and I for one would encourage the state
9 of New York to require that before any
10 reauthorizations of permits are allowed or any
11 approvals are signed off that communities are dealt
12 with in -- in -- in the best outcome possible. I
13 just think that -- that needs to be part of this
14 package.

15 MR. PRINCIPE: Can I just add to
16 what Paul said -- Mike Principe -- we -- at -- at
17 our meeting I believe Mr. Ryan had requested a
18 worse case scenario analysis --

19 ASSEMBLYPERSON TONKO: Uh-huh.

20 MR. PRINCIPE: -- and we have
21 asked our consulting firm to actually do that and
22 we are in the process and -- of finishing that up
23 and we will make that available in -- in -- in the
24 sense of a five hundred year flood, given a dam

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2 failure, how --

3 ASSEMBLYPERSON TONKO: Uh-huh.

4 MR. PRINCIPE: -- how that will
5 effect the junction of Schoharie Creek and the
6 Mohawk River so we are doing that also.

7 ASSEMBLYPERSON TONKO: Okay. And
8 then just back to the infrastructure itself, the
9 useful life that's measured on this facility --
10 what -- is there an assigned value to useful life
11 on this -- on this infrastructure?

12 MR. RUSH: Paul Rush. That --
13 that's a question that's been asked quite a bit
14 lately. I've been trying to research what the
15 actual thought was in the designers at the time
16 they built this system, what the useful life was.
17 We've heard numbers, fifty years, a hundred years
18 thrown around.

19 The only reference I could find

20 yesterday was looking back at what was written by
21 the Board of Water Supply annual report from 1905
22 at the address by J. Waldo Smith who was president
23 of -- president of the board who referred to the
24 start of the construction of the Catskill system as
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2 the construction of the new world wonder that could
3 be -- to be compared with the waterworks of the
4 city of Rome and to be the most extensive project
5 that's been undertaken to date since then.

6 That for us the context of the --
7 the engineers were thinking of the importance of
8 their work and what they put into building this
9 system. I haven't been able to find in the records
10 what they were thinking of the -- for an actual
11 design life of it. As you know any engineering
12 structure needs to be maintained and the life can
13 be extended for as long as possible.

14 Example is the B. fifty-two, the
15 B. fifty-two stopped production, I think, in the
16 late nineteen fifties and we're still flying B.
17 fifty-twos to this day out of -- I think East town
18 Barkley, Louisiana. That piece of equipment was
19 maintained and the life was extended.

20 So the context of what the --
21 what they were thinking then or to assign a value
22 is that -- it's pretty difficult but that's where
23 the engineers were coming from from the Board when
24 they designed and built the system.

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2 ASSEMBLYPERSON TONKO: I would
3 think especially with large capacity dams. That
4 there would be some order of useful life and if you
5 can get back to us on what that would look like and
6 what you're related plans are in terms of what
7 happens at that juncture. If you're retrofitting
8 this dam tells me that we -- we extend its useful
9 life I have to believe at some point in time that
10 that process is over and a new bit of
11 infrastructure is required and your thoughts on
12 that and how you're setting aside the dollars to
13 some day address that?

14 MS. LLOYD: We have been
15 discussing as we come to the end of this cycle of
16 renovations and strengthenings of the dams, that we
17 need to lay out now what the maintenance and
18 reassessment cycle would be. And so this is -- has
19 been on our minds so we will be -- we will be happy
20 to share that with you. But I do think -- I do
21 think from what the engineers have told me the
22 nature of the dam as long as it is not -- as long
23 as it is not breached in some way can compact and
24 actually strengthen over time over -- over the many

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2 years. So that's why the idea of digging it out
3 and throwing it away and starting all over again
4 doesn't really make sense unless it's been damaged
5 in some way.
6 But we can send you -- we will
7 send you all that information including the
8 comments of our engineers on that and I hope we'll
9 be able to put together an interesting and
10 informative package that will answer your concerns.
11 ASSEMBLYPERSON TONKO:
12 Absolutely. The -- it's interesting that -- I --
13 I -- from what I'm hearing you state with these
14 improvements it actually brings it around to a
15 better outcome than had existed for some time?
16 MS. LLOYD: Yes. Uh-huh.
17 MR. PRINCIPE: As part of the --
18 the way that this -- this project was rolled out I
19 described as twenty to fifty year assessment and --
20 and construction -- the -- when looking to bring
21 these dams up to the -- the standard for new dam
22 which is the probable maximum flood -- the one in
23 ten thousand year event, each dam was evaluated in
24 terms of its structural integrity, borings were
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2 done -- exploratory work was done on the dam just
3 to look at its stability but also in terms of its
4 spillway capacity and many of the dams we have done
5 on -- on the east side of the Hudson River involve
6 actually building new spillway structures, adding
7 fuse plug dams that would actually give under --
8 under the probable maximum flood.
9 So yes, these major improvements
10 and -- and in some cases major reconstruction and
11 that's -- on -- on the Gilboa Dam we'll -- we'll be
12 looking at -- at its similar work, particularly on
13 the spillway given that it -- it -- it -- it's a --
14 it spills so frequently -- its north facing has a
15 lot of exposure. The whole design of that spillway
16 is -- is integral and that's why 2008 date -- we --
17 we need the time to get this design done
18 appropriately so that -- so the spillway will
19 actually have a longer life span than it had --
20 this is not the first time that spillway is being
21 redone. It was redone I -- I -- I don't know. Was
22 it in the fifties, Paul, or --? It was -- it was
23 done earlier and then since then needs to be redone
24 now.

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2 ASSEMBLYPERSON TONKO: And -- and
3 how long would that improvement take?
4 MR. PRINCIPE: The work on the
5 spillway? I don't know. The 2008 to --.
6 ASSEMBLYPERSON TONKO: That piece
7 itself would take till 2008?

8 MS. LLOYD: It -- it'll take --
9 ASSEMBLYPERSON TONKO: Again, I
10 mean, would --?
11 MS. LLOYD: -- a design but it'll
12 be ready to -- for construction in 2008 --
13 ASSEMBLYPERSON TONKO: 2008.
14 Right.
15 MS. LLOYD: -- and it will
16 probably take about five years is my guess?
17 CHAIRPERSON DiNAPOLI: Five
18 years?
19 MS. LLOYD: Uh-huh. It will
20 include several other things around the -- around
21 the entire reservoir -- dam.
22 ASSEMBLYPERSON TONKO: You
23 mentioned, Commissioner, that -- that the agency or
24 the city has -- or your engineering team has

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2 responded to the critiquing of the notching?
3 MS. LLOYD: Uh-huh.
4 ASSEMBLYPERSON TONKO: So there
5 must be some concerns expressed to you if you then
6 responded to it? What were some of the concerns --
7 MS. LLOYD: I'm not --
8 ASSEMBLYPERSON TONKO: -- or the
9 criticisms that --?
10 MS. LLOYD: -- I'm not sure I
11 spoke exactly precisely but I -- let me ask who was
12 in the -- who was in the workshop?
13 MR. RUSH: Paul Rush. Some of
14 the questions and -- and concerns regarding the
15 notching and moving forward expressed at the design
16 workshop concerned the integrity of the concrete.
17 If we go and take off the top stone and start going
18 through the concrete, what would happen if we find
19 soft concrete in the dam itself? What if -- what
20 quality of concrete actually exists there and what
21 measures are going to be taken to ensure that if
22 there is soft concrete on the notch there is a
23 problem that the -- and engineer will identify that
24 and that will be addressed properly.

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2 And the way -- the way that is
3 going to be addressed, there's an engineer who's
4 going to be out in the field from our consultant at
5 all times during the consult -- during the
6 construction process, observing the work, and
7 observing the concrete and seeing if that does
8 actually happen, that you have poor concrete.
9 The concrete that you're going
10 through is the -- the high -- the -- the concrete
11 that's as close to the top of the ground -- it's
12 exposed to weather. It's -- it's expected that
13 that concrete may have areas where there -- where
14 there are cracks. It may not be the same quality

15 that exists deep inside the dam.
16 The testing that's -- that was
17 done -- the limited testing that was done by G.Z.A.
18 shows that the concrete in the dam itself ranges
19 from three thousand P.S.I. to about five thousand
20 P.S.I. which is good quality concrete but there is
21 a possibility as we go across the top of the -- top
22 of the dam in an area where -- that we didn't do
23 borings that there could be -- there could be a
24 spot where -- where the concrete isn't the quality

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2 we -- we expected and if that happens we have to be
3 prepared to address that.

4 ASSEMBLYPERSON TONKO: What --
5 what kind of addressing do you provide then if --
6 if you hit these areas of weaker concrete?

7 MR. RUSH: If you hit an area --
8 hit an area of weaker concrete -- I'm not -- I'm
9 not working as a consulting engineer on that -- I'd
10 imagine we'd have to come up with a way to
11 strengthen that concrete. And off the top of my
12 head I would think you would want to get down to an
13 area where you have sound -- where you have sound
14 concrete again and then -- then make a patch to
15 tie -- to tie it in properly and up to code to make
16 sure it withstands the long -- the long term.

17 ASSEMBLYPERSON TONKO: You heard
18 Assemblymembers Gunther and Cahill talk about flood
19 control or -- or regulation of water flow. If the
20 notching occurs are there equal issues of -- of
21 water flow control that arise out of the -- does it
22 create perhaps a --a new sub-layer of problem or
23 concern?

24 MR. RUSH: What -- what the

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2 notch -- what the notch will -- will do was to
3 design two hundred and twenty feet by five and half
4 feet deep while the capacity about seven thousand
5 five hundred cubic feet per second. For the storms
6 less than the two year recurrence event the notch
7 will actually provide better attenuation of flows
8 than the existing spillway does since you're going
9 over -- right now the spillway -- the effective
10 length at all times is one thousand three hundred
11 feet --

12 ASSEMBLYPERSON TONKO: Uh-huh.

13 MR. RUSH: -- you cut that
14 spillway down to about two hundred and twenty feet
15 for the smaller -- for the smaller storms you'll
16 actually provide more attenuation of flows that
17 would exist otherwise.

18 ASSEMBLYPERSON TONKO: Thank you.

19 Okay. Okay.

20 CHAIRPERSON DiNAPOLI: Ms.

21 Gunther?

22 ASSEMBLYPERSON GUNTHER: I have
23 just a few comments, Commissioner Lloyd. First of
24 all, the section of your testimony regarding the

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2 newspaper articles and I would have to say I -- I
3 read in your testimony that you have initiated
4 disciplinary proceedings which coming from a
5 hospital background what I would say this is not
6 about an individual -- an individual that's worked
7 at the D.E.P. for many, many years that has really
8 come up the ranks and not too far up the ranks.
9 This is about a procedure that really is
10 meaningless, obviously. If you were -- if -- if I
11 in my position in the hospital gave the same piece
12 of paper in day in and day out and nobody said a
13 word it meant maybe nobody was reading it or
14 perhaps it wasn't that important and even though
15 you say it's an internal monitor -- well, please
16 tell me what for if nobody was looking at it.

17 And I -- to me, you know, we're
18 all being paid to protect or, you know, to come
19 up -- be innovative and giving the same piece of
20 paper month after month and then disciplining
21 one person on the lower rung of the ladder, you
22 know, to me I think that you should look at a --
23 a -- a process or a procedure, not one individual
24 man because I don't think that's really fair.

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2 I think that those reports --
3 either they went, you know, like paper airplanes in
4 the building or nobody was reading them but to --
5 to crucify one individual, I think that the bucks
6 stop at the very top, not at the bottom. So that's
7 number one on the agenda. And you know, he is a
8 local liberty fellow that's been there forever, you
9 know, trying to do the best job and I really think
10 don't crucify one person. Look at your process and
11 look at your procedure and I think that's
12 important -- very, very important.

13 And we know how important those
14 inspections are because we have a privately owned
15 dam, the Swinging Bridge Dam that one morning when
16 someone inspected that dam there was a nine foot
17 sinkhole and that just shows how important
18 inspections are, first and foremost.

19 I also was reading the part about
20 the releases and how important it was for the
21 fishing industry. The U.D.C. and Trout Unlimited
22 were -- came into my office several times to tell
23 me that they felt the releases as far as the
24 fishing industry were inappropriate. They were

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2 really -- they had to do moratoriums on sections of
3 the river because the water was not cold enough.

4 What happens is the fish go to
5 one area and if you throw a line in you can, you
6 know, pick off one trout after the other. So I
7 don't know if those releases are really helping the
8 fishing -- the fishing industry.

9 And the last part I guess I
10 wanted to comment on was that is my legislation
11 regarding the releases. It's assembly bill 7836
12 and I share that legislation with Senator John
13 Bonacic and I think that my duty as a
14 representative of Orange and Sullivan County is to
15 protect the people, not the water.

16 Your duty is to protect the water
17 and to make sure that it's appropriate for drinking
18 but my duty, if I'm not going to have help from the
19 D.E.P. is to protect the residents of Sullivan and
20 Orange County and last year the reservoir was over
21 capacity. You -- we anticipated the day before
22 that we were going to have a major -- major storm
23 and had we started taking action and I now see that
24 you are doing the same snow banking as they are

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2 doing Pepacton, which I don't see much snow in
3 Sullivan County right now though we are one hundred
4 point six over capacity.

5 So if you could tell if the rains
6 start I know that there will be no void because
7 there is no snow melt. So it's over at one hundred
8 point six so what can we do to assure the
9 residents -- the frightened residents -- the broke
10 residents -- the homeless residents of Orange and
11 Sullivan County that these reservoirs will not add
12 to the difficulties of flooding.

13 And I know they're not the only
14 reason because there is development -- I understand
15 all that, but anything we can do to save a home I
16 think is important.

17 MR. PRINCIPE: Mike Principe.
18 I -- I guess I'll -- I'll respond to the --.

19 ASSEMBLYPERSON GUNTHER:
20 Inspection first? I started on that.

21 MR. PRINCIPE: Well, I'll -- when
22 I'm at -- why don't I take --.

23 ASSEMBLYPERSON GUNTHER: Because
24 you know that like that it was kind of funny. You

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2 know, that was like a little bit of ridiculous
3 newspaper article which is kind of offensive in a
4 way.

5 MS. LLOYD: On the inspection I'm
6 afraid I don't -- I don't agree with you. I think
7 that the inspections that were going on that were
8 being carried out has -- was appropriate by most
9 people -- were going up to their supervisors and
10 being screened to monitor for problems that were

11 developing.

12 ASSEMBLYPERSON GUNTHER: But yet
13 you felt you had to discipline the employee?

14 MS. LLOYD: I think that -- we
15 don't discuss in tremendous detail how -- how we do
16 this but it was more than one employee and I think
17 we addressed the -- the -- the people who were not
18 taking this process serious, notwithstanding the
19 fact that most people were.

20 So I -- I think that was
21 important to do. I think that it was a very
22 important undertaking to do those weekly
23 inspections. It was -- it was instituted by Paul
24 Rush. He takes it seriously. We do use it to

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2 monitor and I think that -- that what we did was
3 appropriate. I'm always saddened when an
4 individual is involved in something like this,
5 obviously, but I think that it is very important
6 that people carry out their responsibilities in the
7 way they've been directed.

8 MR. PRINCIPE: Mike Principe.
9 It -- it's interesting that you brought up the --
10 the fisheries releases within the context of the
11 flooding because it's a -- it's a good example of
12 really two programs that conflict with each other.
13 As -- as -- as Commissioner Sheehan mentioned there
14 are requirements under the Environmental
15 Conservation Law for New York City to make releases
16 mainly in the summer months for the fishery
17 conservation releases.

18 And particularly on the Delaware
19 River we also work with the Delaware River Basin
20 Commission and the downstream parties, the states
21 New Jersey, Pennsylvania and Delaware to meter out
22 a certain amount of water that's been made
23 available for fishery releases and we -- and we've
24 implemented just a few years ago a three year

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2 program which actually increased releases on the

3 Neversink River and the east branch of the Delaware
4 River.

5 It's not perfect but it's based
6 on data that we've been getting back. It's shown
7 that the fisheries have improved on those two
8 branches of the river and we're looking to put in
9 place a long term program there. So there's been a
10 lot of progress made in terms of the fishery
11 releases.

12 The -- as far as the -- the flood
13 mitigation approach this year is an interesting
14 year in that we -- yes, we -- we do not have the
15 snow pack which we based the program on and we
16 extended the snow pack program over to Neversink

17 and we did -- we have made releases under that
18 program while we did have -- have snow pack, both
19 in Pepacton and Neversink.

20 But recognizing the fact that we
21 have full reservoirs and we're going into the
22 spring when we'll have higher run off --

23 ASSEMBLYPERSON GUNTHER: Uh-huh.

24 MR. PRINCIPE: -- the fact that

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2 we do not have snow pack in a certain way and the
3 reservoirs of -- are -- are full, it's already
4 given us that run off. So we're looking more at --
5 at -- at rainfall and how that will add to the
6 spillage and potential damage downstream and we
7 have a program that's in proposal stage that's just
8 about to be approved with the downstream states
9 that we worked on over the last week and a half
10 which will now allow for creating a void in that
11 reservoir based on a predicted --

12 ASSEMBLYPERSON GUNTHER:

13 Precipitation.

14 MR. PRINCIPE: -- rainfall event.

15 And that will create a void anywhere from four to
16 five percent. We use weather service forecast.
17 It's -- it's one of the ways we could operate the
18 system and create a void with -- with some
19 assurance that we will have refill on June 1st and
20 there -- there are other ways to do this. We just
21 feel in the short term this is the quickest way we
22 could put a program in place like that.

23 MR. RUSH: I -- I could address
24 a -- Paul Rush. I could address a little bit more

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2 on this snow pack program. As of this week there
3 were three hundred and eight-nine million gallons
4 of water in the Neversink watershed. That's mostly
5 in the Ulster County portion of it and the higher
6 elevations.

7 We had been making releases out
8 of the Neversink in addition to the spill.

9 ASSEMBLYPERSON GUNTHER: Uh-huh.

10 MR. RUSH: We're restricted not
11 to go over seven hundred, fifty cubic feet per
12 second for the combined release in the spill which
13 we've been complying with. The others -- the other
14 provision we have to comply with is not to exceed
15 six feet at the Bridgeville gauge. And right now
16 we've been just above six feet so we haven't been
17 making releases.

18 ASSEMBLYPERSON GUNTHER: Uh-huh.

19 MR. RUSH: Right now, the
20 reservoir is about three and a half inches over the
21 top and it is -- it is filling. As soon as the
22 flow drops down below the requirement at
23 Bridgeville we'll be able to start making releases

24 again in the snow pack program.

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2 ASSEMBLYPERSON GUNTHER: Thank,

3 Paul.

4 CHAIRPERSON DiNAPOLI: Mr.

5 Cahill?

6 ASSEMBLYPERSON CAHILL: Thank

7 you, Mr. Chairman. I -- I can read your body

8 language so I'll try to make my questions quick

9 and --

10 CHAIRPERSON DiNAPOLI: I bet you
11 transparent.

12 ASSEMBLYPERSON CAHILL: -- elicit
13 answers that are equally quick.

14 Commissioner, thank you for
15 coming. Dr. Principe, the others on the panel,
16 thank you so much for being here today and also for
17 reaching out in our communities the way you have.
18 I will say that you have been responsive to our
19 requests to -- to inform our local officials -- to
20 inform our local volunteer and governmental groups
21 as to what -- what you're anticipating to occur as
22 a result of the Gilboa repair and I also thank you
23 for your continuing invitation to continue to that
24 sort of thing.

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2 I want to start with the -- with
3 the scandal. I want to start with the photocopying
4 of -- of reports and the falsifying of reports, the
5 dummifying of reports, the -- these reports that have
6 been blasted all over the paper. Can you explain
7 to me whether there was any element of that process
8 that was consistent with existing D.E.P. policy at
9 the time it was done?

10 MS. LLOYD: No. Paul, shall I
11 ask you to speak to that?

12 MR. RUSH: After -- after I took
13 over as District Engineer for Delaware District in
14 December 2001, one area I thought that we -- we
15 should pay more attention to were our dams. I
16 thought it was important to establish weekly
17 inspections of the dams and document those weekly
18 inspections.

19 Consequently a form was developed
20 and was used for personnel to go into the field to
21 do weekly inspections of the dams. The dams -- the
22 dams themselves, things don't change very much at
23 a -- at a dam and the intent of the form was to
24 pick up on eminent problems. It wasn't intended to

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2 be a list of corrected maintenance or delayed
3 maintenance that's going to be done as part of the
4 rehabilitation. The intent was to pick up on
5 problems by personnel who's not an engineer. This

6 is just to make sure that we're going out there,
7 being proactive, taking a look at the dam and
8 making sure that someone -- someone does that.

9 The -- the person who did the
10 regular inspections, the one out of the eight on
11 this -- on my staff who did inspections, who had
12 the ones put in the newspaper, what he had done is
13 he had written down a list of items and this is my
14 understanding -- I haven't read the Department
15 investigation report -- he write down -- wrote down
16 a list of items that were repetitive items, things
17 that had been put on deferred maintenance or things
18 that exist almost all the time at an -- at an
19 earthen dam such as small animal burrows that may
20 have to be repaired later on.

21 Instead writing out that list
22 each time he wrote it out once and photocopied and
23 used that same report over and over again.

24 ASSEMBLYPERSON CAHILL: Was he --
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2 did he do the inspections?

3 MR. RUSH: I'm confident that he
4 did do the inspections. I think that the D.O.I.
5 investigation will -- will say that he did do the
6 inspections. What he was doing was akin to cutting
7 and paste on a computer sheet. If you're working
8 on a Word or Excel file, he did it using a
9 photocopier.

10 I think the damage that's done by
11 doing this is it creates the impression that you're
12 not going out -- there to do your -- doing the --
13 doing the right thing.

14 ASSEMBLYPERSON CAHILL: There was
15 a -- there certainly was a loss of confidence in
16 the general public as a result of the reaction to
17 that revelation.

18 MR. RUSH: Yes, sir.

19 ASSEMBLYPERSON CAHILL: And I'm
20 trying to make clear that -- find out and if you
21 want to make clear, you can, that at no time was
22 the -- the life, health and safety of our
23 communities put at risk as a result of that
24 practice.

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2 MR. RUSH: Absolutely not.

3 ASSEMBLYPERSON CAHILL: Okay.
4 And -- and was it consistent or inconsistent or was
5 there no policy on whether you could use
6 photocopied or --?

7 MR. RUSH: There was no clear
8 policy -- I never stated in the policy that you
9 cannot use photocopying for these -- for these
10 forms. It was not my intent that they be
11 photocopied but it was not my -- I mean, I did not

12 have a -- it was something I didn't think of to put
13 out as part of the form.

14 ASSEMBLYPERSON CAHILL:
15 Commissioner Sheehan indicated that she was not in
16 a position to distinguish or compare and contrast
17 if you will the inspections that are done by your
18 agency, these weekly inspections and the other
19 inspections and the inspections that are -- that
20 are the charge of the D.E.C. to conduct.

21 Can someone here enlighten me as
22 to just a fundamental or a basic difference in
23 those two types of inspections and again, we're
24 worried about the xeroxing of a weekly inspection

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2 and we're talking about high hazard dams that get
3 inspected once every two years by the state agency.

4 Can you distinguish what these
5 two inspections are, whether they're interrelated
6 in any way?

7 MR. RUSH: The -- the D. -- the
8 D. -- the D.E.C. inspections in the high hazard
9 dams -- Paul Rush, again.

10 The D.E.C. inspections done every
11 two years is a regulatory inspection where a staff
12 from the central office in Albany comes out to the
13 dam and does a thorough walk through of the dam,
14 asks questions, asks about our records, asks about
15 our practices, spends at least a half a day or not
16 more on the dam and he's accompanied by one of the
17 engineers on -- on my staff, typically the second
18 engineer.

19 ASSEMBLYPERSON CAHILL: So let
20 me -- let me stop you right there. He asked for
21 the records of -- he or she or they asked for the
22 records of -- of your inspection?

23 MR. RUSH: Some -- they'll ask
24 questions about the -- questions about our

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2 inspection practices, whether we're inspecting,
3 whether we actually -- whether they ask for
4 specific records and turn them over. I'm not
5 certain that that's done on --.

6 ASSEMBLYPERSON CAHILL: Would
7 these biweekly inspection papers be one of the
8 things that the D.E.C. might regularly or --?

9 MR. RUSH: No, we would never --.

10 ASSEMBLYPERSON CAHILL: You would
11 never -- they would never be asked for?

12 MR. RUSH: I mean, they -- they

13 ask us whether we're doing regular inspections
14 we'll -- we'll tell them. I don't think they've
15 ever asked to see -- see any copies of our regular
16 weekly inspections.

17 ASSEMBLYPERSON CAHILL: Is there
18 any way you can find out if they were ever asked --
19 I mean, first -- and -- with some level of
20 certainty whether they were ever asked to --
21 MR. RUSH: I --
22 ASSEMBLYPERSON CAHILL: -- reveal
23 those document to --
24 MR. RUSH: -- yes.

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2 ASSEMBLYPERSON CAHILL: -- D.E.C.
3 and if so, whether those xeroxed copied documents
4 were presented to the D.E.C. and how they reacted
5 to it?
6 MR. RUSH: I -- I can find -- I
7 can find out whether it was ever asked or if we
8 ever --
9 ASSEMBLYPERSON CAHILL: Okay.
10 Thanks.
11 MR. RUSH: -- gave copies to the
12 D.E.C.

13 ASSEMBLYPERSON CAHILL: So the
14 difference is that you're -- you're biweekly
15 inspections or lay-person inspections, visual, sort
16 of -- just -- is there anything out there that's
17 dramatically different that you can see with the
18 naked eye?
19 MR. RUSH: The weekly inspections
20 by the naked -- naked eye by -- by staff members
21 who are not -- who are not engineers, the intent is
22 to pick up on obvious problems that need to be
23 investigated further or to pick on obvious problems
24 that would require triggering of an emergency

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2 action plan.
3 ASSEMBLYPERSON CAHILL: And
4 have -- have those reports caused you to do any of
5 those things? Have you uncovered anything using
6 those?
7 MR. RUSH: Oh, we've uncovered
8 things that required us to go out with engineers
9 and investigate -- investigate items. We've also
10 referred items to a consultant -- a consultant
11 engineers for further investigation. I just think
12 it's an important tool that -- that they provide
13 and the staff that we'd have going out there, take
14 a look to see if there's a change and most times
15 there's not a change in conditions but if -- if
16 there is and it's something of concern and meets
17 criteria in the form we will investigate it.
18 ASSEMBLYPERSON CAHILL: There are
19 several other pieces of legislation pending and I
20 don't know who's going to answer -- probably
21 Commissioner is going to want to take this one.
22 Thank you very much.
23 There's several other pieces of

24 legislation pending pertaining to the increasing

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2 oversight -- the cooperation or the authority of
3 one agency over another this -- in the case of the
4 New York State D.E.C. over D.E.P. in the inspection
5 process, the disclosure of those reports not just
6 to D.E.C. on a regular basis but also to other
7 municipalities and widely disbursing this
8 information.

9 Does the -- does the Department
10 of Environmental Protection have any position on
11 those particular pieces of legislation?

12 MS. LLOYD: Well, I think I would
13 obviously want to look at them in the flesh because
14 those things can often contain a lot of small parts
15 that can be of concern but on principal D.E.C. is
16 our regulator in many, many different ways. That's
17 a relationship that we're very accustomed to and I
18 think that as long as it does not create an
19 unreasonable burden in terms of the information
20 being provided that we think is disproportionate to
21 its value and I can't imagine that would be the
22 case. I don't think we would particularly have a
23 problem with that.

24 I did want to mention that we do

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2 have in addition to obviously the weekly reports as
3 we've been talking about. In this discussion today
4 we have done a series of these larger more in-depth
5 engineering evaluations and we are going to make
6 available the -- those evaluations for the west of
7 Hudson dams. The east of Hudson were done in a
8 different way. They were more informally -- more
9 integrated in the design but the west of Hudson
10 seem to be more of concern.

11 Our staff is in the process of
12 going through and redacting the things that got
13 through. Because of our security policies we are
14 required to redact details about the locations of
15 entryways and that kinds of things. But we are
16 going to have those ready some time next week along
17 with a summary of findings and we will make those
18 available if people would like them.

19 In terms of the legislation I
20 think the other pieces largely go to D.E.C. and
21 they're oversight and as I said that is a
22 well-established working relationship not always --
23 we don't always see eye to eye. We have on
24 occasion had a consent order. But we are quite

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2 comfortable in that relationship and we're -- you
3 know, think we could probably work within a context
4 that was prescribed that way.

5 ASSEMBLYPERSON CAHILL: I want to

6 roll back the clock to September 11th, 2001 and
7 then a week later, September 18th, 2001 I think it
8 was or thereabouts when the -- when the Mayor of
9 the city of New York invited a delegation of
10 legislators to go down and inspect the World Trade
11 Center site and then brought us back to the command
12 center where an extensive discussion was taken --
13 taken place about precautions that were underway to
14 secure New York City post-terrorist attack and a
15 very, very significant part of the presentation,
16 believe it or not, that you were the Commissioner
17 of -- of that agency at the time but a very
18 significant part of the presentation was concerning
19 the watershed.

20 MS. LLOYD: Uh-huh.

21 ASSEMBLYPERSON CAHILL: In fact,
22 I would say a third of what the Mayor talked to us
23 about that afternoon was about the watershed and
24 not about New York City proper. There was a great

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2 deal of concern over the access to D.E.P. property
3 and -- and information about D.E.P. property and
4 what could be gleaned by the general public.
5 Are you at all concerned that --
6 that further detailing where the weaknesses are in
7 your dam system would basically play into the hands
8 of those folks who we're trying to protect
9 ourselves against most of all?

10 MS. LLOYD: Well, I think that
11 we -- that's exactly what we try to look at. And
12 if we think that there is information that would be
13 so specific that it would say -- you couldn't do
14 damage any place else but put a firecracker here
15 and it might make a real problem, we would redact
16 that. But anything that goes to the general
17 strength of the dam that we are addressing with a
18 program we think on the balance between what we
19 hold back for reasons of security and what the
20 public has a need and a right to know we generally
21 try to be generous and erring on the side of -- of
22 what the public needs to know.

23 We did a great deal of work right
24 after 9-11 with a consultant that was acquired for

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2 us through the Army Corps. It was a consultant
3 with very high security clearance and very
4 excellent security credentials. They laid out for
5 us the kinds of things that we should withdraw from
6 the public eye. We have tried to do that as
7 effectively as possible.

8 ASSEMBLYPERSON CAHILL: Too
9 effectively in some instances, Commissioner.

10 MS. LLOYD: Well, maybe. I don't
11 know. But we have -- we have tried to at the same
12 time maintain a fair degree of transparency. So --

13 and as I said it's always -- it's always a balance.
14 But we take the things that were identified as
15 possible sources of risk and then we work with New
16 York Police Department to help look at those
17 vulnerabilities and look at them in the context of
18 how much real risk they think is posed and to come
19 up with a hierarchy of whether it is reasonable for
20 us to do and I think we feel that we are in a -- a
21 prudent but not paranoid place on that right now
22 and we're trying to walk that line.

23 ASSEMBLYPERSON CAHILL: The --
24 you made mention in your testimony that there are
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2 things that -- that differentiate a flood control
3 dam from a -- a water containment dam. You
4 indicated that the release works are not -- are not
5 set up to release water quickly. That the levels
6 are higher than would be in a flood control dam.
7 Would the agency be amenable to
8 modifications of the existing dams and existing
9 structures to make them more likely to attenuate
10 floods and -- and less likely to contribute to
11 flooding?

12 MS. LLOYD: I think -- I think
13 that is certainly exactly what we have on our
14 agenda in terms of -- of looking at our reservoirs
15 and our dams and seeing if there is more that we
16 can do that would allow us to develop that role
17 without jeopardizing the -- the water supply issues
18 that we worry about so much.

19 ASSEMBLYPERSON CAHILL: It
20 seems -- it seems from the testimony, particularly
21 Dr. Principe, that -- that the weather patterns
22 have changed dramatically. That -- that the
23 predictability of the level of the water is not
24 what it used to be. Although, you know, I can tell
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2 you fifteen years ago when Ed Cox came up and stood
3 there and prayed for rain. It was -- it was an
4 interesting visual. But the -- the -- the idea
5 that the -- that the -- that the floods can come
6 quicker and more severe than ever before and the
7 droughts --

8 MS. LLOYD: Yeah.
9 ASSEMBLYPERSON CAHILL: -- can
10 become quicker and more severe than ever before I
11 think kind of calls out for changing the way you
12 look at your dams and the way you look at your
13 structures to accommodate if nothing else, Mother
14 Nature, the change in weather patterns that we
15 have. So I would hope that you would take that
16 into consideration as you modernize all your
17 facilities.

18 MS. LLOYD: We are looking at
19 that very carefully. The -- we do -- and -- and

20 looking at it with our partners in particular,
21 D.E.C. and the Army Corps. especially when it comes
22 to how you deal with floods they are -- would have
23 to be a very active partner in that.

24 ASSEMBLYPERSON CAHILL: And --
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2 and Congressman McNulty and Congressman Hinchey
3 have also gone to great lengths to bring
4 cooperation from the Army Corps of Engineers. I
5 would just -- for the record I want to ask you to
6 state whether you welcome that cooperation and
7 therefore participation.

8 MS. LLOYD: We -- I'm going to be
9 totally candid. We welcome it enormously. We
10 solicited it. They have been tremendously helpful.
11 They've come to all of those working sessions but
12 to date, and I do not object to this, I'm perfectly
13 happy to do it, it is -- it is been -- it is been
14 on our bill and so we are very happy that they're
15 available but we would also love if -- if -- if
16 they were available at a lower cost.

17 ASSEMBLYPERSON CAHILL: Well,
18 Congressman Hinchey has told me that the advocacy
19 that the -- that these two gentlemen have done to
20 get the Army Corps on board was pretty -- pretty
21 Herculean and that the next step is --

22 MS. LLOYD: That's right and I
23 don't want to -- I don't --

24 ASSEMBLYPERSON CAHILL: -- and
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2 the next step is getting the -- the --

3 MS. LLOYD: -- I don't want --

4 ASSEMBLYPERSON CAHILL: -- to
5 support --.

6 MS. LLOYD: -- we're happy to
7 have them there and we're more than happy to pay
8 them. If some day they -- they have a paycheck
9 from other sources as well that would be terrific.

10 ASSEMBLYPERSON CAHILL: We have
11 high hopes for next January --

12 MS. LLOYD: Yeah.

13 ASSEMBLYPERSON CAHILL: --
14 that'll happen.

15 MS. LLOYD: That's great. That's
16 great.

17 ASSEMBLYPERSON CAHILL: The --
18 the -- the next question that is sort of covering
19 some of the things that I've already covered but in
20 a more general way and that is whether you're open
21 to additional regulation. I think you've indicated
22 you are. You're open to additional cooperation
23 from the higher authorities in the federal
24 government, the Corps of Engineers, and that sort

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2 of thing, are you also open to further the channels
3 of communication with the local entities, the local
4 governments and local volunteer organizations?

5 You mentioned the radios. It's
6 my understanding the radios are not functioning
7 right now and you -- you alluded to the fact that
8 the signals might not be perfect. I hope that that
9 gets fixed before this --

10 MS. LLOYD: Yeah.

11 ASSEMBLYPERSON CAHILL: -- this
12 hearing ends today.

13 MS. LLOYD: We always -- we
14 always knew that -- that -- that it would be
15 spotty. We've had several tests and we're trying
16 to -- we are strengthening the signal. We're
17 working on that and we're also trying to get people
18 to call a number and let us know if they're not
19 getting a signal so we are trying to do that
20 outreach.

21 But as I said we only saw this as
22 one of several redundant efforts. You know you
23 won't reach everybody by just one way.

24 ASSEMBLYPERSON CAHILL: Right.

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2 MS. LLOYD: And so we saw it as a
3 supplementing --

4 ASSEMBLYPERSON CAHILL: We -- we
5 found that out in the spring.

6 MS. LLOYD: -- and then in
7 addition, as I said, there are a couple of other
8 ideas floating around and we're game for all of
9 them.

10 ASSEMBLYPERSON CAHILL: Another
11 question is what specific -- and I want you to be
12 as specific as you can. What resources will be
13 available from D.E.P. or are available or are you
14 prepared to offer to provide for local volunteer
15 and governmental entities for their flood victim
16 and emergency response efforts other than radios?

17 MS. LLOYD: Well, what we have
18 been -- what we have been offering with Schoharie
19 is they -- they also wanted assistance through a
20 consultant in post-emergency planning and we are
21 involved with that. I think that what we really
22 want -- it's very hard for me to just -- to just
23 put out a laundry list and say check the ones you
24 want -- what we really want is to have an on-going

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2 conversation with the local emergency responders
3 and see what kinds of things they need and see
4 where we can fill in the holes.

5 Those groups, we find, are --
6 appropriately feel very responsible. They know
7 they're neighborhood. They know they're community.
8 They know they're residence pretty well and they

9 really don't want us tromping around, go -- get in
10 between them and their residents.

11 ASSEMBLYPERSON CAHILL: Correct.

12 MS. LLOYD: So we need to work
13 with them to find out what kinds of things we can
14 provide and how we can be helpful. I think the
15 sirens are a great example. I think that, you
16 know, we have found two or three things that we
17 hope will contribute and then working with them in
18 the table top exercises, trying to identify where
19 those missing links are, I think is -- is

20 extraordinarily important.

21 And I guess the third part that I
22 think is so important is having SEMO and ourselves
23 and the county people all working together because
24 another lesson of Katrina was that those

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2 relationships just weren't established to happen
3 easily in an emergency environment.

4 So the more we all get together
5 and talk about things, and do table top exercises
6 and work on solving the problems, the more smoothly
7 things would go if, God forbid, we ever actually
8 had to deal with an emergency.

9 ASSEMBLYPERSON CAHILL:
10 Commissioner, I -- I -- I -- I used this analogy
11 with you before but we're neighbors. The -- the
12 water supply system is a very significant part of
13 the area that I represent and the area that I live
14 in and neighbors -- at least I want to be a good
15 neighbor and I think my neighbors want to be good
16 neighbors and -- but we also want you to be a good
17 neighbor.

18 MS. LLOYD: Uh-huh.

19 ASSEMBLYPERSON CAHILL: And if I
20 can draw an analogy to a neighbor who has a tree
21 that's pushing against the foundation of their
22 house and tying roots around their -- their water
23 system under their house and they have to take that
24 tree down, one of the things that they do before

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2 they take that tree down is maybe they go up and
3 they clip the branches that are going to fall on
4 the other person's yard and then they notify them
5 not to have the kids out on the swings so that when
6 the tree comes down it doesn't fall on them and
7 then when all is said and done, they go over to
8 that neighbors' yard and they clean up after their
9 mess.

10 I think that's what's going on
11 with Gilboa right now. I do think that you should
12 have gone up and clipped the branches before you
13 started to cut the tree down. You should have put
14 the -- the siphon in and -- and the notch in and

15 the waste channel in before you started the --
16 the -- this whole process so that the lowering of
17 the rest -- the notch, of course, you couldn't do
18 until you lowered the dam but -- but on the other
19 things too attenuate any possible impact lower
20 downstream.

21 But I would ask that in the
22 future you -- you demonstrate that kind of
23 sensitivity to the communities that are your hosts
24 and your neighbors and -- and my hope is that over

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2 the course of the remaining time that -- that I'm a
3 representative of those communities that we can do
4 all we can to foster a two way relationship.

5 One final note, the mention of J.
6 Waldo Smith, a lot of people don't realize that the
7 New York City Water System was built by Tammany
8 Hall and Boss Tweed and J. Waldo Smith was one of
9 those -- was one those guys that worked for that
10 machine.

11 MS. LLOYD: Okay.

12 ASSEMBLYPERSON CAHILL: So thanks
13 for bringing the history into it. Thank you.

14 MS. LLOYD: Thank you. Thank
15 you.

16 CHAIRPERSON DiNAPOLI: A quick
17 question on the -- the weekly inspections, it

18 sounded like, I guess, Mr. Rush was saying
19 non-engineering folks are involved with those
20 inspections generally. So my question is how often
21 do you -- particularly with a -- for the high
22 hazard dams does D.E.P. have those inspections
23 conducted by engineers? Is there a regular
24 schedule in terms of more trained people doing

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2 those instructions.

3 MR. RUSH: But there's a root --
4 in addition to weekly inspections there's regular
5 inspections conducted by the section engineers for
6 the area -- for the responsible area -- for the
7 responsible areas.

8 CHAIRPERSON DiNAPOLI:
9 Regular --?

10 MR. RUSH: Regular in terms
11 of --.

12 CHAIRPERSON DiNAPOLI: Is there
13 a --?

14 MR. RUSH: There is an
15 inspection frequency on this is semi-annually but
16 I'd have to verify what that is uniformly
17 across -- across the board at all our facilities.

18 CHAIRPERSON DiNAPOLI: Okay.

19 Thank you.

20 CHAIRPERSON DESTITO: I just have

21 one final question. It shouldn't take very long.
22 Are any of you aware of the state-wide wireless
23 network that's being built by the state agencies --
24 by the O.F.T.? Are you in contact with the

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2 agencies because I just left an area that my -- my
3 committee oversees and it's a concern that in
4 building this I would hope that communication on
5 these types of natural disasters that can happen it
6 will be effective for what you're looking for.

7 MS. LLOYD: Right. I believe
8 that the D.E.P. police have been working to tap
9 into that --

10 CHAIRPERSON DESTITO: Okay.

11 MS. LLOYD: -- as part of our
12 network of communication.

13 CHAIRPERSON DESTITO: I'll follow
14 up with --

15 MS. LLOYD: Yeah.

16 CHAIRPERSON DESTITO: -- when we
17 talk to him too.

18 MS. LLOYD: And we're very --
19 we're very eager to improve our communication in
20 the watershed.

21 CHAIRPERSON DESTITO: Because
22 that would alleviate the problem of coverage?

23 MS. LLOYD: Yes.

24 CHAIRPERSON DESTITO: Thank you.

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2 MS. LLOYD: That's right.

3 CHAIRPERSON DESTITO: Thank you.

4 MS. LLOYD: Thank you.

5 CHAIRPERSON DiNAPOLI: Mr. Tonko?

6 ASSEMBLYPERSON TONKO: Just again

7 to reinforce the useful life measurement, if you
8 could get back with any -- with any kind of
9 measurements for your specific facilities or any
10 related information. The two hundred and five
11 million -- is that the long-term plan? Is that the
12 calculation -- the cost of the --?

13 MS. LLOYD: Two hundred
14 approximately for the -- yes, for the project.

15 ASSEMBLYPERSON TONKO: Two
16 hundred five million. And am I interpreting
17 your -- your information here correctly that that
18 goes entirely for the siphon and the notching?

19 MS. LLOYD: No -- no -- no. This
20 is for the --

21 ASSEMBLYPERSON TONKO: Okay.

22 So --.

23 MS. LLOYD: -- this is for the
24 complete restoration.

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2 ASSEMBLYPERSON TONKO: So what

3 does the two o five cover then? What's with --
4 what does that include, the two o five million?
5 MS. LLOYD: Well, I don't think
6 we have a complete plan yet but it will in addition
7 to the anchors there will be a rebuilding of the
8 spill way. There certainly will be some kind of
9 release gate involved. There would be probably a
10 replacement or a restoration of the seven in-gates
11 as the go into the Shandaken Tunnel and -- and
12 numerous other pieces such as that.

13 So we can give you some more
14 detail.

15 ASSEMBLYPERSON TONKO: So you
16 initiate that in 2008?

17 MS. LLOYD: That's right. And
18 some of the -- some of the work we're -- we're
19 doing now will be part of that -- are covered in
20 that two hundred million dollars and we're just
21 doing it fast or some of the emergency work we're
22 doing will not be out of that two hundred million
23 dollars. It will be things that we would not have
24 done otherwise. For example, the notch, that we

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2 will pay for from other sources.

3 ASSEMBLYPERSON TONKO: Thank you.

4 MS. LLOYD: Uh-huh. Yeah.

5 ASSEMBLYPERSON TONKO: Pardon me?

6 MR. PRINCIPE: The -- the notch
7 will actually be -- when the spillway is restored
8 the notch will be removed and restored back to its
9 original condition. So the notch is just a
10 temporary measure so we could -- we could effect
11 the anchoring. The anchoring -- that entire
12 spillway is slated for anchoring in the long term
13 plan so that's -- that's part of it.

14 MR. LOPEZ: I -- and just to add
15 to that, you know, the notch also enables the --
16 the anchoring to take place and the notch will be
17 essential as part of the construction activities --
18 the long term construction activities. And just --
19 just on a couple of numbers, the interim work is
20 about twenty-seven million dollars. For two
21 hundred and five million dollars is the full
22 reconstruction as Commissioner mentioned, re-facing
23 new blocks and a lot of -- a lot more work there.

24 ASSEMBLYPERSON TONKO: Thank you.

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2 CHAIRPERSON DiNAPOLI:
3 Commissioner, thanks to you and your staff for your
4 patience and the time that you've given us and we
5 appreciate your effort very much. Thanks for all
6 you do.

7 MS. LLOYD: Thank you for giving
8 us the opportunity to speak with you.

9 CHAIRPERSON DiNAPOLI: Thank -- I

10 appreciate your forthcoming remarks.
11 What we're going to do next --
12 we're going to call Thomas Fargione from the State
13 Emergency Management Office and we're going to take
14 a break after that testimony.

15 (Off-the-record discussion)
16 CHAIRPERSON DiNAPOLI: Okay.
17 Thomas Fargione, Deputy Director, State Emergency
18 Management Office. Thank you for your patience and
19 being with us.

20 ASSEMBLYPERSON TONKO: Get a
21 little order here.

22 MR. FARGIONE: Ready?
23 CHAIRPERSON DiNAPOLI: Ready.
24 Because when you start they're all going to be

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2 quiet.

3 MR. FARGIONE: Oh, I've been -- I
4 know better than that.

5 Good afternoon. My name is Tom
6 Fargione. I'm the Deputy Director for Preparedness
7 at the New York City Emergency Management Office.
8 I'd like to take this time to thank both Committees
9 for the opportunity to address some very important
10 preparedness issues. I'd also like to -- to send
11 the regrets of Director Gibbs -- couldn't be here
12 today -- couldn't change his schedule -- while
13 the -- he asked me to bring his testimony.

14 I've been Deputy Director of SEMO
15 since 2003 and I oversee all readiness activities
16 at SEMO including Emergency Planning at both the
17 state and local levels, the Training and Exercise
18 program, and the state's Radiological Emergency
19 Preparedness Program in addition to -- in addition
20 to helping coordinate the State's response to
21 emergencies throughout the Empire State
22 operations -- this is also in my venue.

23 With more than thirty-four years
24 experience in law enforcement as an emergency

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2 responder I also oversee the deployment and
3 operational activities of the State's Incident
4 Management Assistance Team.

5 I know my time is limited so I'll
6 be very brief here.

7 When Governor Pataki first came
8 into office he set protecting the health and safety
9 of the citizens of this state as his number one
10 priority. That continues to this day as the
11 governor has done much to enhance the state's level
12 of preparedness and its ability to respond to and
13 recover from events.

14 To do this effectively there
15 needs to be a solid basis for this preparedness to

16 work from and that's our emergency planning
17 process. We view plans as living documents. We
18 adjust them and refine them as is required in a
19 situation's merit. They're not something we just
20 write and leave on a shelf. They serve as a guide
21 to any of the situations where we might face and
22 are adaptable. They're strategic overall
23 documents. In New York State we practice all
24 hazards planning and work on things regardless of

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2 whether they may be man-made or natural cause.
3 The New York State Comprehensive
4 Emergency Management Plan -- you'll here it
5 referred to as our C.E.M.P. -- is essentially our
6 playbook. In early 2005 we revised the state plan
7 and we made it one of the most modern and up to
8 date state guide's to preparedness and response.
9 We didn't accomplish this in a vacuum. As you well
10 know, Executive Law, Article 2 B. authorizes the
11 state and local governments to undertake emergency
12 preparedness activities.

13 SEMO supports local governments
14 preparedness efforts by providing technical
15 assistance through the delivery of planning,
16 training, and mitigation programs.

17 Executive Law, Article 2-B. also
18 created the New York State Disaster Preparedness
19 Commission which provides the foundation for the
20 state's multi-agency, comprehensive emergency
21 management program. Twenty-three state agencies
22 and one voluntary organization, the Red Cross, are
23 members of the commission and its chaired by James
24 W. McMahon, Director of the State Office of

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2 Homeland Security. All agencies had direct
3 involvement in developing and revising our state
4 comprehensive emergency management plan, its
5 annexes and its appendixes.

6 It was through C.E.M.P. and its
7 accompany -- and it's accompanying annexes that the
8 state agencies responded to the failure of the
9 Hadlock Pond Dam in the town of
10 Fort Ann, Warren County in July of '05. Personnel
11 from agencies such as the Department of
12 Transportation, the Division of State Police, the
13 Capital District's Search and Rescue Team under the
14 auspices of the State Office of Fire Prevention and
15 Control. Obviously D.E.C. responded to it to
16 protect the lives of those immediately impacted by
17 the dam failure.

18 Additionally the state utilized a
19 new but highly effective resource, our Incident
20 Management Assistance Team or IMAT. The IMAT is
21 comprised of professional staff from state and
22 county agencies, local government, includes the

23 state police, O.F.P.C., Department of Health and
24 the Environmental Conservation as well as SEMO and
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2 are highly trained in command and control functions
3 as it relates to response and recovery.

4 Counties have been apprised of
5 this resource. In the event of an emergency such
6 as the dam failure the team can be deployed to work
7 for local government to ensure that incident is
8 being managed to appropriate conclusion. In the
9 case of the Hadlock Dam, the IMAT was deployed
10 within two hours of the dam's failure on the night
11 of July 2nd.

12 The team quickly put a system in
13 place to manage the incident to effective recovery.
14 The team was demobilized five days later as the
15 situation was stabilized and actual operational
16 control was returned to local governmental
17 officials.

18 In response to the Committee's
19 focus on preparedness activities regarding dams in
20 New York State I would like to briefly outline the
21 actions taken by SEMO on behalf of the state
22 regarding the Gilboa Dam in Schoharie County.

23 Since the concerns over the
24 structural integrity of the dam owned by the New
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2 York City Department of Environmental Protection
3 first surfaced in October of '05 SEMO has been
4 meeting with Schoharie County authorities on a
5 regular basis supporting the counties planning and
6 preparedness efforts in concert with appropriate
7 state agencies such as the state police, the
8 Department of Transportation, D.E.C. a host of
9 state agencies and including significant help from
10 D.E.P. as a consultant and as the responsible
11 party.

12 SEMO additionally recognized the
13 impact a dam failure could have on the downstream
14 counties and is working on a regional approach to
15 develop the appropriate planning response and
16 recovery strategies.

17 On January 5th, 2006, SEMO held
18 an informational meeting with all six counties in
19 the region, Schoharie, Montgomery, Schenectady,
20 Saratoga, Albany and Rensselaer to discuss the
21 current status of the dam, the local and state
22 planning process, the inundation maps and their
23 shortfalls as well as hearing county concerns and
24 needs.

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2 SEMO Regional staff continues to
3 work with and support the counties in this effort.
4 SEMO Geographic Information Systems or G.I.S. staff

5 provides mapping to all potentially impacted
6 counties to assist in this process.
7 Earlier that same day, SEMO
8 coordinated a state agency meeting to discuss the
9 activities taken to date, the respective roles of
10 the numerous state agencies, their
11 responsibilities, and began identifying what
12 resources are available and hear other concerns
13 associated with dam failure.

14 The agencies included state
15 police, Department of Environmental Conversation,
16 the Thruway Authority, the Canals Corporation, the
17 Department of Transportation, Office of Fire
18 Prevention and Control, Department of Public
19 Service, New York State Power Authority, State Ed.,
20 Office of Homeland Security and the Division of
21 Military and Naval Affairs. These agencies have
22 continued to meet internally as well as informally
23 with others since then and will be meeting later
24 this month as we continue to develop a state-wide

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2 concept of operations. And we're not just looking
3 at this as dam failure even though that's certainly
4 the worst case scenario also broadening this
5 approach and working with local government so that
6 this, in fact, is a flood plan -- something that we
7 can address plans -- or flooding issues that are
8 not necessarily contributed to or caused by
9 catastrophic dam failure.

10 Additionally, SEMO has provided
11 training to Schoharie County personnel on the
12 Emergency Alert System and provided vendor support
13 to the county to install E.A.S. equipment. We have
14 also provided technical guidance to Schoharie
15 County on solutions for communications and resource
16 tracking.

17 SEMO's G.I.S. Personnel have been
18 working with G.I.S. departments of the Department
19 of Environmental Protection, the National Weather
20 Service, the Department of Environmental
21 Conservation, Canals Corps, Schoharie County as
22 well as other counties to ensure the base line
23 G.I.S. data is the same and accurate to support
24 uniform planning efforts.

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2 And SEMO public information
3 personnel have been working with Schoharie County
4 providing training and technical assistance
5 regarding public information statements and
6 literature.

7 I must emphasize that the
8 activities I enumerated are part of an on-going
9 effort f SEMO and state agencies. SEMO Director
10 Gibb asked me to assure that SEMO, as the staff arm
11 of the D.P.C. remains committed to assisting local

12 governments and coordinating state activities so
13 that we may do anything possible to protect lives
14 and property in Schoharie County and throughout the
15 impact region.

16 I would like to again, thank the
17 Committee for this opportunity to appear before you
18 and I'm prepared to answer any questions you may
19 have.

20 CHAIRPERSON DiNAPOLI: Thank you.

21 Ms. Destito?

22 CHAIRPERSON DESTITO: Yes, thank
23 you.

24 Thank you very much and I want to

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2 thank Mr. McMahon for his testimony that he
3 submitted and it will be placed in the record.

4 Please discuss the relationship
5 for me between SEMO and D.P.C. I understand
6 with -- through the provisions of Article 2-B. that
7 you are the staffing agency; is that correct?

8 MR. FARGIONE: Yes, ma'am. We
9 are the -- the staff arm or the action arm of the
10 D.P.C. State -- we do have an operational role per
11 se at SEMO. We have no statutory authority or
12 regulatory authority other than what is provided
13 under 2-B. or --

14 CHAIRPERSON DESTITO: Under 2-B.?

15 MR. FARGIONE: -- or some of the
16 other acts that be -- came before that Civil
17 Defense Act and some of those other things. But
18 again, we are the coordinators and we -- in that
19 name bring together the state agencies and ensure
20 that all the operational plans that are in place
21 relative to a state agencies response are
22 coordinated and we have an overall concept of
23 operations that represents the state plan.

24 CHAIRPERSON DESTITO: Okay. But

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2 in the past SEMO has chaired the D.P.C. and now
3 we've -- we've changed that and made the chair the
4 Office of Homeland Security. Has that made for any
5 problems or has the changed worked smoothly, not
6 being the chair of the -- the D.P.C., the Disaster
7 Preparedness Commission and having Office of
8 Homeland Security being the chair, has that been a
9 problem or does it portray any problems or --?

10 MR. FARGIONE: I -- I don't see
11 any problems. Certainly we -- we have had past
12 chairs of the D.P.C. that were not the Director of
13 SEMO and it worked fine. We have a great
14 relationship with the Office of Homeland Security
15 and Director McMahon and we work in concert.

16 What this also does under the
17 current construct is allow the issues of Homeland
18 Security and the traditional response to things

19 including terrorism to come together and -- and
20 to -- to -- to better incorporate into an overall
21 planning process that will, you know, mitigate,
22 prepare, prevent and then respond and cover for
23 many of these instances.

24 CHAIRPERSON DESTITO: And that --

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2 that integration appears seamless now -- the fact
3 that, you know, we have disasters that are local
4 and -- and we have disasters that are caused by
5 terrorism and you know, man-made natural so on, you
6 believe it's seamless?

7 MR. FARGIONE: I believe we're
8 getting there. Yes, it -- it is. What we've done
9 is we've been able to -- to take under this current
10 construct the issues that are attendant to
11 terrorism and coming from a law enforcement
12 background I understand the issues they have
13 relative to security of their processes, security
14 of their information. But we have been able to
15 find a way to get the information that we need so
16 that what goes on at O.H.S. is in fact supported by
17 what we do as the staff arm for the D.P.C. and what
18 we do as the agency that brings together -- it's
19 the quarterback, if you will, the coordination
20 agency for the state response.

21 So prevention of terrorist events
22 is -- is an O.H.S. issue and we support as required
23 but response to any event is a D.P.C. concern and
24 we are the staff arm of the coordination.

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2 CHAIRPERSON DESTITO: Right. And
3 that's my concern. My concern is that the natural
4 disasters, the flooding that my colleagues have
5 talked about or the potential flooding and the
6 preparation of our local governments to react to
7 these types of natural disasters or dam safety
8 disasters, that type of thing or -- are you
9 prepared to -- to coordinate and -- and help with
10 those activities?

11 MR. FARGIONE: Absolutely.

12 CHAIRPERSON DESTITO: And you
13 have -- do you feel your role is partially in the
14 area of dam safety in -- in the natural disaster of
15 that being compromised?

16 MR. FARGIONE: Relative to the
17 science of it, no. That is for the experts and --

18 CHAIRPERSON DESTITO: Right.

19 MR. FARGIONE: -- the -- the
20 agencies that have regulatory oversight authority.
21 For us, it's all about the information. It's about
22 falls information. It's about analyzing it because
23 there -- there -- there's a big picture consequence
24 to any of these types of events that we have to

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2 look at. So whereas individual agencies have a
3 very specific and narrow profile, which is
4 appropriate -- that's what they were charged to
5 do -- it's incumbent upon as at SEMO, bringing
6 together the appropriate folks so that we can
7 prepare for state government the large picture so
8 that we can provide the briefing to the governor
9 and his staff so that they can make the appropriate
10 decisions, whether we're making them through that
11 group or through any number of other mechanisms
12 that we use to -- to formulate policy, identify
13 critical resources and -- and effect a state
14 response.

15 CHAIRPERSON DESTITO: I -- well,
16 three hundred and eighty-four dams are classified
17 in high hazard -- that are high hazard dams.
18 Knowing that there are three hundred and
19 eighty-four high hazard dams in New York State and
20 they're only expected -- inspected every two years
21 according to D.E.C. -- we did hear from the New
22 York City Department -- regulatory department that
23 they inspect on a more regular basis.

24 But for the most part these

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2 hazard dams -- high hazard dams are inspected every
3 two years. Do you -- what role does SEMO play in
4 addressing these disaster risks. I mean, do you
5 work around the state with -- with local
6 governments and -- and people to discuss the plans?

7 MR. FARGIONE: Our primary role
8 in that respect and maybe our most important role
9 apart from coordinating state response -- in
10 factoring all of those things that you mentioned
11 and others into how we prepared a state response is
12 to work with local governments because essentially
13 the first actions are going to be local
14 governmental actions --

15 CHAIRPERSON DESTITO: Right.

16 MR. FARGIONE: -- and
17 particularly in a catastrophic situation with no
18 forewarning. Having said that we work with them
19 and -- and the local communities are aware of the
20 dams -- or most of the dams, certainly the high
21 hazard dams in their areas and we work with those
22 local communities so that they're plans are robust,
23 they're inter-operable and that they as best they
24 can will be able to work in -- in, you know,

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2 conjunction with -- do it with the state response
3 and with whatever federal response may be
4 appropriate or necessary.

5 CHAIRPERSON DESTITO: I have one
6 more question. You might have been in the room
7 when I asked the Commissioner from New York City

8 whether or not the state-wide wireless network
9 was --

10 MR. FARGIONE: Yes, I was.

11 CHAIRPERSON DESTITO: --

12 something that was considered as a possibility for
13 these disaster preparedness plans. Our -- is the
14 state wide wireless network discussed with the
15 locals, especially in these high hazard dam areas
16 as a warning system, as -- as an ability and not to
17 worry about coverage because it's supposed to be
18 ninety-five or ninety-seven percent coverage. So
19 we wouldn't have to worry about coverage. And is
20 the state wide wireless network being -- is the
21 outreach being done to these areas that needs to be
22 done to talk about the implementation of the -- of
23 the state wide wireless network?

24 MR. FARGIONE: I know there's

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2 outreach being done that's very much specific to
3 that by O.F.T., Dave Cook and his team have been
4 out there --

5 CHAIRPERSON DESTITO: Right.

6 MR. FARGIONE: -- doing a lot of
7 work with that. We look at it and certainly
8 support the initiative but we also have to look at
9 where we are right now and a question we ask
10 ourselves everyday is all of our planning and
11 future concepts notwithstanding what do I do if the
12 balloon goes up now?

13 So what -- we've looked at that
14 and we've developed a tremendous infrastructure --
15 probably right now one of a kind in this country,
16 California may be on board shortly -- where we can
17 develop through R.I.T. folks and bring some
18 intercommunicable ability to local government until
19 such time as a state wireless system is more
20 broadly available to local governments to tie in
21 and even then there maybe some folks who opt not to
22 participate and we're still going to have a broad
23 range of frequencies out there that need to be able
24 to be connected so that we can talk together as

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2 well as be able to bring some things that we have
3 come to use and depend upon for our response which
4 is internet access, computer systems, phone service
5 and we can now bring that to an area through the
6 miracle of satellites and all the things that go
7 into that -- and -- and I'm very proud of -- of --
8 of that capability that we and some other state
9 agencies have developed.

10 CHAIRPERSON DESTITO: So do you
11 believe -- and I'll specifically talk about the
12 lower dam -- do you believe that in the Gilboa Dam
13 area and the Schoharie County area that they have
14 in place in their plan -- not only in their plan

15 but in place a communication system that should
16 something happen, the locals and the first
17 responders will be able to reach the state agencies
18 and -- and if appropriate the federal government?

19 MR. FARGIONE: We have to look at
20 that in two ways, A., a warning system -- there are
21 issues. You've heard them addressed today.

22 CHAIRPERSON DESTITO: Right.

23 MR. FARGIONE: They have to do a
24 topography and they have to deal with radio

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2 frequencies -- and our folks are working with their
3 folks to see what we can do in the interim to -- to
4 try to build a -- a better system that will reach
5 more folks. That's just a function of geography,
6 much of it.

7 The other end is how do we
8 communicate if there's a -- a situation. And I
9 believe that with the work we've done now we have
10 the methodology to interface the radio systems that
11 are available so that while it certainly won't be
12 perfect we'll be able to be able to talk to each
13 other at a command and control level which is going
14 to be critical and then build those systems out as
15 we -- we stabilize the situation.

16 CHAIRPERSON DESTITO: Well, with
17 all due respect I understand that the state wide
18 wireless network is not there at this time in
19 Schoharie County but I would hope that and it's
20 been my mantra in all of the meetings that I've
21 gone to that the locals and where we have
22 problems -- the locals really have to be aware of
23 what's available and how they can access it and I
24 believe that if you look at the disasters that have

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2 happened around the country, the hurricanes,
3 Katrina and Rita and also unfortunately on
4 September 11th, 2001 it was communication that
5 really posed the biggest problem.

6 MR. FARGIONE: I'm in firm
7 agreement with you and as I said the locals have
8 been briefed on a regular basis by O.F.T. We
9 factor that into our planning as we discuss it with
10 them. I'm not in any way discounting it. We
11 support that initiative completely.

12 CHAIRPERSON DESTITO: No, I'm not
13 asking you if you support it. I guess I'm asking
14 whether or not in these areas we should put a
15 priority where we have these high hazard dams --
16 where we've identified certainly in the Gilboa
17 area, maybe we should take a look at making it a
18 high priority -- that it is fit out -- that it's
19 built out in those areas where we have had
20 experience.

21 MR. FARGIONE: And that's a

22 discussion we could have with O.F.T. because I know
23 that --

24 CHAIRPERSON DESTITO: I think we
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2 should.

3 MR. FARGIONE: -- a lot of what
4 they do -- done is bound by contract and in fact
5 you folks could probably have --

6 CHAIRPERSON DESTITO: Right.

7 MR. FARGIONE: -- tremendous
8 input into that and I -- I mean that is absolutely
9 correct and then we could examine how that would
10 work within that -- that topography and -- and
11 anything we could do to increase it in those areas,
12 I would be -- I would fully agree we need to
13 examine.

14 CHAIRPERSON DESTITO: Thank you.

15 MR. FARGIONE: Your very welcome.

16 CHAIRPERSON DiNAPOLI: Ms.

17 Gunther?

18 ASSEMBLYPERSON GUNTHER: First of
19 all, I -- I -- Thomas, I want to congratulate you
20 on the great work that you've done in Sullivan
21 County. I just -- and Orange County -- I just
22 checked with the super -- supervisor, Mark House
23 and we were really happy about the way you
24 responded.

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2 MR. FARGIONE: Thank you.

3 ASSEMBLYPERSON GUNTHER: The --
4 the few -- the two things I guess, in Sullivan
5 County we have just created a flood management plan
6 and I think that's the one and only in the state of
7 New York, the -- a flood management plan and
8 they've really -- they've done a great job.

9 But I think on a state wide basis
10 one of the things I think is important is to have
11 a -- a flood management plan and I think that would
12 make life a lot easier for you because I think that
13 even though we do education in commands us, you
14 know, for preparedness, I think this has to be part
15 of that whole training that we're doing across New
16 York State.

17 The other comment I would have
18 is, you know, hopefully I -- I'm -- I'm a pretty
19 new Assemblyperson and I think one of the most
20 important things that we can do for an office like
21 yours is provide good funding and I don't think
22 there's enough funding. Incidents only happen
23 occasionally and I think that training has to be
24 continuous, new people are coming in all the time

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2 so I would hope that the legislature would increase
3 the funding because what you're doing is so

4 important across New York State and we thank you in
5 Sullivan and Orange County.

6 MR. FARGIONE: Thank you and just
7 to -- to respond to your -- your thought about the
8 flood plain planning.

9 ASSEMBLYPERSON GUNTHER: There
10 isn't a state wide flood management plan. I -- I
11 don't know if you're aware of it but there isn't
12 one --

13 MR. FARGIONE: Right.

14 ASSEMBLYPERSON GUNTHER: -- and I
15 think that that's very, very important that after
16 what we've seen in the last year -- and I know
17 Sullivan County did theirs but there's not a state
18 wide and I think that that's something we should
19 work on.

20 MR. FARGIONE: And that's
21 something we -- we've addressed it as we could with
22 mitigation programs as the law allows and as the --
23 the regulatory agencies and FEMA allowed.

24 ASSEMBLYPERSON GUNTHER: Right.

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2 MR. FARGIONE: But you're right,
3 something like that needs to be looked at and I
4 will engage D.E.C. and those agencies. That would
5 not be a plan that we would rate other than the
6 larger part of the annex. That would come from

7 specific people that have that -- that background
8 knowledge and expertise and we would fit into the
9 larger picture. So I will bring that forward --.

10 ASSEMBLYPERSON GUNTHER: Where
11 would this fit in bioterrorism --

12 MR. FARGIONE: Absolutely.

13 ASSEMBLYPERSON GUNTHER: --
14 emergency preparedness. If you know -- if you
15 know -- if you can talk the talk and it -- and it
16 works with each and every -- each and every
17 incidents -- natural -- whether natural or
18 terrorism so I think that's important, the funding
19 and also that we get together and do have the state
20 wide flood management plan.

21 MR. FARGIONE: And we'll bring it
22 together -- the agencies again as we look at the
23 C.E.M.P. and I'll -- I'll bring that up to the --
24 to the agencies that have that authority and see if

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2 we can't build something like that into the future.

3 ASSEMBLYPERSON GUNTHER: Thank
4 you.

5 MR. FARGIONE: You're very
6 welcome.

7 CHAIRPERSON DiNAPOLI: Mr.
8 Cahill?

9 ASSEMBLYPERSON CAHILL: Thank

10 you, Mr. DiNapoli. Very quickly, sir, Assemblyman
11 Tonko and I have proposed in the house and Senator
12 Little in the Senate to expand the -- the -- the
13 legislative mandate of your agency to include dam
14 failure and dam collapse. I just wanted to know if
15 your agency had an official position on -- on that
16 very minor technical change that could have
17 relatively large significance in how we go about
18 planning for possible disaster.

19 MR. FARGIONE: I -- I think I
20 would have to see exactly what that would entail.
21 Again --.

22 ASSEMBLYPERSON CAHILL: I -- I
23 can tell you very briefly what it would entail.

24 MR. FARGIONE: Would you please?

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2 ASSEMBLYPERSON CAHILL: Your --
3 your -- your mandate comes from a statute that
4 specifies different calamities that might occur and
5 all we did was add dam failure, dam collapse to it
6 as one of those calamities.

7 MR. FARGIONE: Okay. If that's
8 the case then -- then certainly we would address
9 it. Obviously it becomes a matter to do it
10 properly of having sufficient subject matter
11 expertise that would be assigned along with that as
12 we have in our other plans, like the Red Plan and
13 some of the other plans. So again, without knowing
14 what the -- the downhill effect would be relative
15 to the agency and our ability to do it I would be
16 cautiously optimistic about -- about engaging in
17 that. We -- we would have to have the technical
18 support that would be required because I wouldn't
19 want to engage or take on something we couldn't do
20 properly.

21 ASSEMBLYPERSON CAHILL: Would you
22 agree that a -- a dam failure, a dam collapse is
23 something that would be of significant emergency --
24 that it is something that SEMO would want to have

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2 clear and -- and absolute legislative authority to
3 handle?

4 MR. FARGIONE: I think that all
5 of those types of emergencies certainly fall to the
6 area that we already have a mandate to coordinate.
7 That the ownership of each of those types of things
8 again would have to be attended to having a subject
9 matter experts. But I'm not disagreeing with you.
10 In -- in -- in a larger sense we already look
11 everyday at those issues and as we put together
12 this large state plan say, what do we do if -- what
13 do if we have to bring to the table? So --.

14 ASSEMBLYPERSON CAHILL: We --
15 we've heard testimony today that -- that the D.E.P.
16 dams at least are twenty-five years older than they

17 were ever supposed to be in many instances,
18 sometimes fifty years older than they were ever
19 supposed to be and then we know from some of the
20 materials that were prepared by -- by the staffs
21 here -- the able staffs here that -- that the
22 advent of dam collapses is either in the first year
23 or after fifty years. So we have a -- we have a --
24 an increasing possibility of an emergency on that

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2 basis and also it's been alluded to by several
3 people testifying today that weather patterns have
4 changed and therefore put brand new stresses on our
5 existing dams and -- and we have an increasing
6 likelihood of problems in this regard so I would
7 that your agency would be prepared to -- to accept
8 a -- a more specific and absolute mandate on this
9 subject and then to develop the expertise to not
10 only deal with an emergency when it occurs but to
11 do all that your agency does to prevent those
12 emergencies from occurring in the first place.

13 MR. FARGIONE: Absolutely.
14 And -- and anything that -- that is deemed to be
15 within our area or should be within our area we
16 will, you know, take on and do as we -- we've tried
17 to do now which is do it appropriately and
18 professionally and -- and in concert with our --
19 our partners and our stake holders at local and
20 federal level.

21 ASSEMBLYPERSON CAHILL: Okay.
22 Thank you.

23 MR. FARGIONE: Thank you, sir.
24 CHAIRPERSON DiNAPOLI: Mr. Tonko?

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2 ASSEMBLYPERSON TONKO: Deputy
3 Director, you might have heard in my opening
4 comments some criticism about a sluggishness in the
5 response --

6 MR. FARGIONE: Yes, sir.
7 ASSEMBLYPERSON TONKO: -- from
8 SEMO. That comes from first hand exchange that
9 I -- I keep very close to many in my counties that
10 I represent and in neighboring counties and I have
11 to say that the assessment of -- of the agencies'
12 involvement, its coordinator, status, it's lead
13 agent status was again, sluggish at best or if not,
14 very sporadic and not -- almost missing in action
15 at times and that was a very troublesome assessment
16 that came my way.

17 And you look at the -- the -- the
18 quick nature of the flow of water and the
19 evacuation measures that would have to be taken. I
20 just want to state clearly on the record that, you
21 know, it seems to me that, you know, taking it from
22 those who are in the service community -- the
23 response community there is great room for

24 improvement and the need for that improvement.

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2 MR. FARGIONE: Well, with all due
3 respect I -- I would disagree with that assessment.
4 We have been engaged in this since it first came
5 to our attention. I -- I won't say the people
6 don't have a different perception and sometimes
7 those issues are relative to -- to what we can and
8 we cannot do, what we can and we can't provide and
9 sometimes that colors people's idea of whether in
10 fact we're providing the service that we're
11 supposed to provide.

12 We have worked with these
13 communities. We have certainly, in many ways, gone
14 beyond what we typically would be allowed to do --
15 in fact, funding some things out of our budget to
16 support local government. We have worked with
17 them. We've helped them look at their -- their
18 E.O.C.'s and look at their plans and to -- to --
19 to, in fact, see that they are as -- as robust as
20 need to be.

21 So I don't know what more we
22 could have done. We have been engaged in this
23 since it first came to light. We have assigned
24 people. We have a special ops team that has worked

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2 on this along with other projects --
3 ASSEMBLYPERSON TONKO: Sure.
4 MR. FARGIONE: -- on a regular
5 basis. So again, without knowing specifically
6 where people found us lacking -- you know, I've got
7 staff assigned to this. We've had state agencies
8 that have been in every meeting we've been invited
9 to that have provided input and guidance as is
10 requested. We've provided our finest resources.
11 We have supported the counties. We have been their
12 advocate with D.E.P. and with other regulatory
13 agencies relative to this process.

14 So, again, without something
15 specific to respond to, with all due respect I
16 would have to disagree with that.

17 ASSEMBLYPERSON TONKO: The -- I
18 know that even the cause of concern through
19 communities, if there were a -- a flood situation
20 or a dam collapse. It doesn't just begin and end
21 in -- in one community or county and travels its
22 course and I know that it took -- it took time to
23 get response to some of the counties I represent
24 and to have them involved in the discussion.

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2 And I -- I just -- I find that
3 peculiar, that, you know, given the history of a
4 bridge collapse because of a flooding --

5 MR. FARGIONE: Uh-huh.

6 ASSEMBLYPERSON TONKO: -- that
7 there wouldn't be a broader concept of where your
8 involvement begins and ends.

9 MR. FARGIONE: Again, our
10 regional folks were talking to all the communities
11 involved in this. We spent a lot of time with
12 Schoharie County but we were in conversation with
13 Montgomery County and -- and excuse me, with
14 Schenectady County, with Albany, with -- with
15 Rensselaer and we've brought them into the planning
16 process.

17 But the immediate threat was to
18 Schoharie County and -- and they requested a -- you
19 know, a lot of support which we were more than --
20 willing to provide and did provide to the -- to the
21 best of our ability. So again, there may be
22 some -- some misconceptions and -- certainly,
23 everybody has their own perception of what's good
24 and bad but from -- from our point of view -- and

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2 I'm not saying we can't be better. We could always
3 be better. We work everyday to get better but I'll
4 tell you quite frankly, we -- we engaged these
5 communities and have spent a significant amount of
6 time with those that requested it.

7 Also the whole roll of issues are
8 also very real to us and -- and we work around them
9 and with them everyday so, you know, the -- the
10 initial response is -- is local. We do everything
11 we can to support the local governments.

12 So again, I'm not suggesting
13 it -- it couldn't be better and it would be better
14 in the future but I -- I think it was certainly not
15 as it was represented to you.

16 ASSEMBLYPERSON TONKO: Well, let
17 me just formally indicate on record that I have
18 great concern and would welcome any kind of
19 reinforcement you can provide to change my opinion
20 of the performance of the agency.

21 MR. FARGIONE: Certainly.

22 CHAIRPERSON DiNAPOLI: Thank you
23 very much.

24 CHAIRPERSON DESTITO: Thank you

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2 very much.

3 CHAIRPERSON DiNAPOLI: Thank you.
4 Thank you.

5 CHAIRPERSON DESTITO: Thank you.

6 CHAIRPERSON DiNAPOLI: We're
7 going to take a break. We'll reconvene at two
8 forty-five?

9 (Off the record)

10

11 CHAIRPERSON DiNAPOLI: Okay.
12 Thank you for all of your patience. Obviously we
13 had a lot the more that could be said in as brief
14 times as possible a lot of important testimony to
15 offer. We don't want to leave anybody off the list
16 and obviously the more that can be said in as brief
17 a time as possible the more likely it is we'll get
18 to everybody.

19 So we're very pleased -- our
20 first panel is Honorable Michael Berardi,
21 Legislator, Ulster County Legislature and Honorable
22 Susan Savage, Chair of the Schenectady County
23 Legislature.

24 How nice to be in your community.

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2 MR. BERARDI: Well, thank you
3 very much and -- well, first I want to thank the
4 Committee for -- for hearing us and having us here
5 today as well as Assemblyman Cahill who was
6 certainly kind enough to invite me and allow me to
7 come up.

8 Before I enter into my remarks I
9 just want to very quickly remind the Committee that
10 Ulster County is in a -- a little bit of a
11 different sort of situation than Schoharie County
12 in that whereas we would hope and pray that
13 Schoharie County will never have to be subject to a
14 flood, in Ulster County we are almost providing the
15 most immediate solution so that that doesn't
16 happen.

17 The -- so the prospect of
18 flooding in Ulster is fairly eminent. I don't
19 think I would bet upon it but -- and -- and the
20 reason being is that they're alleviating the water
21 behind the Gilboa Dam through the Shandaken Tunnel.
22 You guys heard that over and over.

23 Now, the alleviation of water
24 into the Shandaken Tunnel does not automatically

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2 mean there will be flooding. However, but what it
3 does it brings up all of the water levels
4 throughout the entire Esopus Creek as well as our
5 reservoirs and what it does it increases the
6 likelihood of a flood event in, of course, the
7 spring when the big thaw happens.

8 So if -- I'll just very shortly
9 just say if -- if the -- if the alleviation notch
10 in the dam and the siphon and the alleviation
11 channel below the Ashokan Dam does not do the job,
12 Ulster County will be slammed and it'll be almost
13 the same as what happened last -- last April and I
14 hope that never happens but I think this Committee
15 needs to know that there's a sort of a little bit
16 of a different situation in Ulster County.

17 So with that, last April Ulster

18 County residents in the Esopus Creek watershed
19 experienced flood conditions far surpassing those
20 documented in the past. Among those hit the
21 hardest were communities located downstream from
22 the Ashokan Reservoir in the lower Esopus Creek
23 Valley.

24 In the town of Ulster and Hurley,
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2 entire communities were reported homeless. A
3 seventy-five lot family trailer park near the New
4 York State Thruway was totally destroyed leaving
5 behind an environmental mishap of spilled heating
6 oil, raw sewage, and water soaked mobile homes.
7 As homes in the lower Esopus were
8 being rehabilitated, yet another possible flood
9 threat has been brought to bear on the safety and
10 well being of these homesteads. The Gilboa Dam
11 situation came to everyone's attention without
12 warning and before complete recovery from the April
13 2005 flood event.

14 At present those residents of
15 these communities have only the depleted resources
16 of local government, the Red Cross, volunteer fire
17 fighting companies and local benevolent
18 organizations to draw upon in combating the
19 redundancy of another flood.

20 Both state and federal
21 governmental agencies offer rebuilding and
22 reimbursement programs but nothing to meet the
23 immediacy of sudden food, home and clothing loss.
24 At this late hour what this crippled lower Esopus

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2 Creek Region lacks are the resources to develop an
3 emergency preparedness plan to deal with the very
4 real possibility that as water is drained from
5 behind the Gilboa Dam through the Shandaken Tunnel
6 into an already at capacity Ashokan Reservoir,
7 another spring flood is close at hand.

8 Last Thursday Assemblyman Kevin
9 Cahill put together a meeting of Ulster County town
10 supervisors and legislators along with the Red
11 Cross, volunteer firefighters and county planning
12 and emergency officials to meet with the New York
13 D.E.P. officials, to evaluate our capacity to

14 provide humanitarian relief to flood victims in the
15 Esopus watershed.

16 These areas were identified as
17 lacking adequate resources.

18 Number one; early warning high
19 water prediction methods.

20 Two; evacuation efforts.

21 Three; temporary housing to
22 displaced flood victims.

23 Four; counseling the emotional

24 trauma of sudden home loss.

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2 In all four areas we fall short
3 and remain vulnerable to the worse and the clock is
4 ticking.

5 I offer no testimony to the
6 causes of flooding in the Esopus Creek watershed
7 but respectfully call on this Committee to focus on
8 the food, clothing and shelter impacts of improper
9 water management fallout on the lives of New York
10 State residents who depend on us to look out for
11 their best interest. Thank you.

12 CHAIRPERSON DiNAPOLI: Thank you.

13 MS. SAVAGE: Thank you. Good
14 afternoon, Chairman DiNapoli, Chairwoman Destito
15 and Assemblymembers Cahill and Gunther.

16 First of all, I'd like to welcome
17 you to Schenectady County and on behalf of the
18 Schenectady County Legislature I want to thank you
19 for being here today in your interest in this
20 matter, which is critically important to our
21 residents.

22 Assemblyman Tonko, thank you for
23 all you have already done to help provide us --
24 provide for us communication and bring our concerns

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2 to these two committees and also to the entire
3 state legislature and the appropriate state
4 agencies.

5 First, I'd like to provide the
6 Committee with a picture of the potential scenario
7 Schenectady County would face if the dam were to

8 fail. New York City D.E.P. informs us that a rain
9 event exceeding the seventy year storm similar to
10 that which occurred in the late nineties poses a
11 significant threat to Gilboa.

12 My purpose in outlining this
13 scenario is not to be an alarmist but rather to
14 convey to the Committee why this issue is of utmost
15 concern to us and why it warrants significant
16 attention by all levels of government and why we
17 are requesting a strategic well led state response.

18 Within three to four hours of dam
19 failure a hundred home owners would have to be
20 evacuated in the town of Duanesburg along the
21 Schoharie Creek. The impact along the Schoharie
22 Creek from the potential wall of water could damage
23 every bridge from the Gilboa Dam to Fort Hunter
24 essentially severing east and west along the

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2 Schoharie Creek.

3 The D.E.C. approved dam failure
4 emergency action plan provided by the city of New

5 York D.E.P. outlines the impact of dam failure for
6 the Schoharie Creek but that ends at Fort Hunter.
7 This plan does not address the impact to the Mohawk
8 River. Schenectady County had to request those
9 impacts be calculated and provided to us.

10 Within eight to twelve hours of a
11 dam failure the impact along the Mohawk River would
12 be devastating. Under the assumption of a dam
13 failure it is estimated that three to four thousand
14 people would have to be evacuated. The parking lot
15 you parked your cars in this morning would be under
16 thirteen feet of water. This room would contain
17 between three to five feet of water and I'm just a
18 little over five feet so you can imagine where that
19 water level would be if that were to happen today.

20 In the city of Schenectady the
21 historic stockade neighborhood would have three
22 hundred and fifty buildings impacted by flood
23 waters and the water level on front street could
24 reach nine feet. General Electric would be under

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2 multiple feet of water. In the village of Scotia
3 just across the river in the district I represent
4 over two hundred and fifty buildings would be
5 impacted by the flood waters.

6 Critical services that would
7 impact public health and safety would also be
8 impacted. A significant section of the county
9 would lose electrical service. The water well
10 fields serving the city of Schenectady, the towns
11 of Rotterdam, Glenville and Niskayuna would be
12 underwater. More significantly the infrastructure
13 that operates the water systems could be affected
14 for days leaving much of the county without water.
15 Our combined storm water, sanitary sewer systems
16 would fail.

17 As we've learned from the
18 devastation experienced in New Orleans, severe
19 flooding can cause contamination of our water
20 system and can have long term negative impacts.
21 The collateral damage to the well fields and
22 pumping stations could threaten one of Schenectady
23 County's greatest assets, the Great Flats Aquifer
24 which is our sole source aquifer.

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2 Based on our recent experience
3 and input from our local officials and residents
4 I'd like to offer the following series of
5 recommendations.

6 Although D.E.P. has provided us
7 with planning data which depicts modeling of a dam
8 failure including various storm level -- storm
9 events we feel that future plans need to include a
10 more in-depth analysis of the impact on watersheds.
11 We recommend standardizing the data provided to

12 communities located downstreams from these
13 structures.

14 Presently New York City D.E.P.
15 plan outlines a chain of notification which we
16 request be amended. We believe it's important that
17 Schenectady County be notified directly by New York
18 City D.E.P. so our emergency responders can react
19 as quickly as possible to a dam failure.

20 Counties and municipalities
21 planning for this scenario face a complex and
22 massive issue. Coordination across county lines is
23 vital and localities could benefit greatly from an
24 enhanced state coordination role. It would also be

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2 helpful for localities to have an identified lead
3 agency for communications purposes. A potential
4 emergency of this magnitude will require quick
5 response from state agencies including the
6 Department of Environmental Conservation, the State
7 Emergency Management Office, the Canal Corporation,
8 the Thruway Authority and the Department of
9 Transportation as well as the State Police and
10 others.

11 We request that SEMO take a
12 stronger coordinating role between the impacted
13 counties especially as it relates to evacuation.
14 There needs to be coordination of an evacuation
15 patterns so we are not evacuating from one impacted
16 county to another.

17 We request and we understand the
18 steps the Canal Corporation can take to lessen the
19 impact to communities along the Mohawk if the dam
20 were to fail. This will assist us in our planning.

21 We recommend that the enforcement
22 role of the Department of Environmental
23 Conservation enhances efforts to ensure timely
24 preventative action relating to the structural

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2 improvements of New York's dams.

3 At the series of public hearings
4 we have been holding throughout the county a number

5 of public officials and residents have asked what
6 entity would be responsible for assisting with
7 damages? Is it the dam owner or would FEMA step
8 in?

9 In summary we are requesting
10 strong state leadership in this area. This issue
11 is far greater than the impact on any one of the
12 counties and we need your help in order to manage
13 together.

14 I would like to thank the
15 Committee for your interest in this topic and for
16 the opportunity to provide testimony to you today.

17 CHAIRPERSON DiNAPOLI: Thank you.

18 CHAIRPERSON DESTITO: Thank you,
19 Susan.
20 CHAIRPERSON DiNAPOLI: Thank you
21 both.

22 ASSEMBLYPERSON TONKO: Just a
23 quick question to either of you about resources --
24 quantification of that number -- of what might be

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2 needed? Is there any way you can feed this
3 Committee information on what you think would be
4 required in terms of alarm systems or --
5 MS. SAVAGE: We can. If --
6 ASSEMBLYPERSON TONKO: --
7 technology or radios perhaps?
8 MS. SAVAGE: -- if it -- at the
9 current time one of the things that we're greatly
10 concerned about is that communication system.
11 Under the current plan we would be notified by
12 Schoharie County. That's why we're here today to
13 ask that one of the state agencies take a lead
14 role.

15 We're concerned about how this
16 will work, the operation of radios, where systems
17 don't match -- are really not equipped to handle
18 this kind of emergency right now and that may be
19 one of the ways in which you can help. Our
20 emergency management team lead by Bill Van Hoesen
21 has been working, you know, since we learned of
22 this, you know, the level that we'd reached in
23 October.

24 So we feel although we're

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2 prepared that we had to do a lot of the work on our
3 own. We had to come to you when we had questions
4 that we could not get answered by the state
5 agencies -- questions that we kept asking and could
6 not get answers to -- at a time when there was a
7 significant threat that that dam could break at any
8 minute.

9 ASSEMBLYPERSON TONKO: Uh-huh.
10 It -- the whole coordination activity within the
11 state is something that we will work on. I -- I --
12 I can pledge you that we'll do that.

13 MR. BERARDI: The -- the problem
14 from the Ulster County's perspective is the -- is
15 the early warning part of it. Now, unlike
16 Schoharie where there is a -- an abrupt event that
17 is going to cause this -- in Ulster County every
18 time it rains people worry about it. And at
19 present we have a series of monitoring devices
20 along the Esopus Creek and they have to be read
21 manually and then there's a -- kind of a rude
22 correlation that takes place between all different
23 monitoring devices.

24 So what's going to happen depends

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2 upon who reads the devices so early warning and
3 evacuation and the -- the lady -- Emily Lloyd from
4 the D.E.P., she had -- I have to correct her. She
5 said that they feel like they're intruding upon us
6 in helping us with the evacuation and the early
7 warning and that's really not the case.
8 I mean, the Red Cross identified
9 in Kevin's meeting that -- that evacuation and
10 communication to different residents come down to a
11 very manual process. You can give them radios but
12 most people almost want us to knock on their door.
13 And -- and you know how it is in this business, you
14 know, you can't -- you know, it's -- it's what they
15 want. It's not what might not be the best thing
16 for everyone. So it's a very -- you have to knock
17 on doors, call people up. We need bodies. It's --
18 it's a -- it's a very, very, you know, labor
19 intensive process and we need all the help we can
20 get and right now we don't have enough.
21 CHAIRPERSON DESTITO: I have one
22 question since I have two county legislature
23 representatives here. Have either one of your
24 legislatures been contacted by O.F.T., the Office

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2 for Technology of New York State with -- with
3 regard to the state wide wireless network. Are you
4 aware of what I'm talking about? You're the chair
5 so --.
6 MS. SAVAGE: Yeah, we are -- we
7 are -- have been working on that issue for about
8 the past six months and we're in the very early
9 planning stages.
10 CHAIRPERSON DESTITO: Okay.
11 MS. SAVAGE: And the system you
12 described is really something that we need to
13 utilize and that counties across this area really
14 need to be a part of.
15 CHAIRPERSON DESTITO: Right.
16 MS. SAVAGE: And I think as -- as
17 you pointed out earlier that would really take us a
18 long way in the ability to communicate with each
19 other --
20 CHAIRPERSON DESTITO: Right.
21 And --
22 MS. SAVAGE: -- and the state
23 officials.
24 CHAIRPERSON DESTITO: -- that's

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2 when the incident command system would actually
3 work because they'd be able to contact -- there
4 would be a communication device to talk to people
5 and you wouldn't have to worry about Schoharie
6 County getting in touch with you.

7 MS. SAVAGE: Right.
8 CHAIRPERSON DESTITO: You could
9 get in touch with the person that you need to get
10 in touch with.
11 MS. SAVAGE: Right.
12 CHAIRPERSON DESTITO: So --.
13 MS. SAVAGE: We -- we understand
14 that and we hope to -- you know, to be in that
15 process as quickly as possible and this situation
16 has moved us along significantly.
17 CHAIRPERSON DESTITO: Right. And
18 we will -- my office will talk with the Office for
19 Technology and discuss these issues and -- and this
20 hearing with them.
21 MS. SAVAGE: Thank you.
22 CHAIRPERSON DESTITO: You're
23 welcome.
24 MS. SAVAGE: That would be much

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2 appreciated.
3 CHAIRPERSON DESTITO: And you're
4 not aware of it?
5 MR. BERARDI: I -- I'm not aware
6 of it. I'm -- I -- I chair public works so we're
7 more concerned about plowing roads --
8 CHAIRPERSON DESTITO: Right.
9 MR. BERARDI: -- and filling
10 potholes and -- however --.
11 CHAIRPERSON DESTITO: Would the
12 emergency management --
13 MR. BERARDI: Emergency
14 management --.
15 CHAIRPERSON DESTITO: -- is there
16 an emergency management committee --
17 MR. BERARDI: Of course.
18 CHAIRPERSON DESTITO: -- that you
19 deal -- that you have or --?
20 MR. BERARDI: The D.E.P.
21 identified this new software and they referred to
22 it as LiDAR and -- and what it does, it projects
23 along a stream bed for almost miles at a time and
24 it provides monitoring and early warning and -- and

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2 they were willing to help us institute that but
3 that outreach came from the D.E.P.
4 CHAIRPERSON DESTITO: Okay.
5 Thank you very much.
6 MS. SAVAGE: Our -- our Director
7 of Emergency Management will come before the
8 Committee a little bit later on and could also
9 answer your questions in more depth.
10 CHAIRPERSON DESTITO: Thank you.
11 ASSEMBLYPERSON CAHILL: I want to
12 thank you both for coming here and doing two
13 things; one is to demonstrate to us how very

14 interconnected this entire state is. You know,
15 they said water is the great unifier and it's
16 always been the case in New York and you're proving
17 it still again today.

18 And the other thing that you've
19 proven to us is that we're damned if we do and
20 we're damned if we don't so we -- we got a problem
21 here. But -- but clearly what you've both pointed
22 out to us --.

23 CHAIRPERSON DiNAPOLI: We -- we
24 hear you -- that --.

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2 (Laughter)

3 ASSEMBLYPERSON CAHILL: Clearly
4 what you're telling us is that -- is that you need
5 more coordination and participation by the state
6 and you want to see us get involved more in --
7 in -- in what you need to do to get the job done.

8 I wanted to also point out Mr. --
9 Mr. and Madam Chairman that our Emergency
10 Management Director, Arthur Sneider (phonetic
11 spelling) could not be here today but he has
12 submitted written testimony and I'm aware of the
13 fact that -- of course, Mike and others in the
14 County Legislature have been on -- on the street on
15 this thing and on their feet dealing with this
16 every single day.

17 You heard us talking earlier
18 today to the various other officers in the -- in --
19 that run the D.E.P. and the D.E.C. and you heard
20 Congressman McNulty speak and -- and SEMO. If
21 there was a wish list that you could put out there
22 what would that wish list look like?

23 I know we've heard about
24 communication being a critical component and Mike,

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2 I think it's important what you said is that it's
3 not really what -- what we think works best may not
4 be what the public can actually do. We witnessed
5 that last spring in our flood.

6 MR. BERARDI: Yeah.

7 ASSEMBLYPERSON CAHILL: What
8 would you wish for if -- if we could make this work
9 either in terms of new state law and regulation,
10 getting rid of state law and regulation, new
11 equipment and supplies -- what's your wish list?

12 MS. SAVAGE: Clearly supplies and
13 resources for evacuation should we need them would
14 be an important component but I think what we're
15 really asking the Committee today is -- is a
16 different kind of resource; to use the positions
17 that you hold to help convey to those state
18 agencies that were here today that they need to
19 have a sense of urgency that I think has been
20 lacking during the whole course of this discussion.

21 Congressman McNulty talked about
22 it first this morning and I think that that's the
23 frustration that we all feel on the state level,
24 that there's meetings and there's planning and the

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2 dam will be repaired two or four years down the
3 line but this is something that we live under every
4 day. Every time it rains we look out the window
5 and think is it -- that dam going to be able to
6 hold and if it doesn't -- you know, what kinds of
7 things are we going to have to deal with.

8 So for us here we're planning,
9 we're thinking, we're doing. This has been a
10 critical situation for at least five months so if
11 you could continue to impress upon the state
12 agencies that although Gilboa is very far away from
13 New York City it is going to have a tremendous
14 impact on all of our lives in upstate New York and
15 they need to have that same sense of concern and
16 urgency that all of us along the Mohawk feel.

17 And so, if you can continue to
18 use your presence to make that happen I think that
19 that'll be the most important part of the equation.

20 MR. BERARDI: For myself, it
21 would be temporary housing. At the last flood
22 event we -- we got lucky. There was a Catholic
23 facility that had just closed down and they were
24 able to accommodate some of those people from the

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2 trailer park that I had mentioned in my statement.
3 Well, at present that home has
4 been sold. It's currently not within our inventory
5 of housing and we have a couple of V.F.W.'s and --
6 and facilities of sort and -- and -- and that would
7 be at the top of my list because like I had said
8 it -- you know, the immediacy of a flood event you
9 get right down to the very basics, you know, food,
10 clean clothing, place to shower and lay down and --
11 and -- and that's -- I'm sure Susan would echo that
12 as well. That -- you know, and -- and we lacked
13 that so that would be something -- I know it's
14 hard -- that's a big Christmas gift, Santa, but
15 that would be something that -- that I would look
16 for.

17 ASSEMBLYPERSON CAHILL: One last
18 question and -- and if you don't want to answer it,
19 I understand and before I -- before I ask the
20 question, Mr. Chairman, I have to ask to be excused
21 after this. I have two other appointments later
22 on, one in Albany and then one later on where I
23 live. But I -- my last question to you is --.

24 CHAIRPERSON DESTITO: Sure.

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2 CHAIRPERSON DiNAPOLI: Well, you

3 didn't even let me respond to your request.
4 ASSEMBLYPERSON CAHILL: No -- no,
5 my question -- when --
6 CHAIRPERSON DESTITO: Vis-a-vis
7 with me --.
8 ASSEMBLYPERSON CAHILL: -- when
9 I -- when I'm at the door you respond.
10 CHAIRPERSON DiNAPOLI: I'll mail
11 you a response.
12 ASSEMBLYPERSON CAHILL: The --
13 and the -- and honestly don't feel like you have to
14 answer this if you don't want to; are you satisfied
15 with the responses that you've received so far from
16 the state and city -- New York agencies that are
17 involved in this project.
18 MR. BERARDI: A hundred percent.
19 ASSEMBLYPERSON CAHILL: Okay.
20 MR. BERARDI: I'm -- I'm
21 satisfied. The problem has been that it -- it --
22 it -- in only in October of last year that this
23 came about and they've done all they could.
24 They've -- they've been -- they've been willing to

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2 come to our -- to our town halls. We've had
3 meetings but I get the impression that they have a
4 very limited inventory of things that can help us
5 for those basic needs that I spoke about earlier.
6 You know, like we had the meeting
7 that Kevin put together -- they said whatever you
8 need just write us a letter but it was for -- it
9 was for boats and things that really weren't
10 addressing those basic components of a -- of a
11 flood relief effort on a humanitarian level.
12 MS. SAVAGE: I would have to say
13 that we are not satisfied at this point. We have
14 had to be very proactive. We only were included in
15 the planning because we requested that we needed to
16 be. There seemed to be a -- a misunderstanding in
17 the beginning that -- the impact that this would
18 have on the Mohawk River.
19 You know, they talked about
20 there's going to be ninety-six billion gallons of
21 water that could be released and the early planning
22 seemed to think that that water was going to reach
23 the Mohawk and somehow --

24 ASSEMBLYPERSON CAHILL:

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2 Evaporate.
3 MS. SAVAGE: -- evaporate. And
4 that was our initial concern. Our -- and our
5 frustration remains because if this were to happen
6 at this point in time our communities would be
7 devastated and there is not the communication
8 system in place and there is not the planning that
9 includes all the communities that needs to be done.

10 ASSEMBLYPERSON CAHILL: Thank
11 you.
12 CHAIRPERSON DESTITO: Thank you.
13 CHAIRPERSON DiNAPOLI: Paul --?
14 CHAIRPERSON DESTITO: Oh, Paul?
15 ASSEMBLYPERSON TONKO: No, that's
16 okay.
17 CHAIRPERSON DESTITO: Oh.
18 CHAIRPERSON DiNAPOLI: Thank you.
19 MS. SAVAGE: Thank you very much.
20 CHAIRPERSON DiNAPOLI: You're
21 testimony was very helpful to us.
22 MR. BERARDI: Thank you very
23 much.
24 CHAIRPERSON DiNAPOLI: And --

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2 thank you. And thanks to Mr. Cahill for your
3 participation --
4 MS. SAVAGE: Yes, thank you.
5 CHAIRPERSON DiNAPOLI: -- and
6 help in bringing together this panel.
7 (Off-the-record discussion)
8 CHAIRPERSON DiNAPOLI: Next we
9 have William Van Hoesen, Director, Schenectady
10 County Emergency Management and Karen Miller,
11 Public Information Officer, Schoharie County.
12 ASSEMBLYPERSON CAHILL: Gary
13 Nestol -- Gary Nestoe. Gary Nestol.
14 CHAIRPERSON DiNAPOLI: Oh, and
15 Gary --
16 ASSEMBLYPERSON CAHILL: Nestoe.
17 CHAIRPERSON DiNAPOLI: -- Nestoe,
18 Director of Montgomery County Emergency Management.
19 ASSEMBLYPERSON CAHILL: And Mr.
20 Chairman, happy birthday to you.
21 CHAIRPERSON DiNAPOLI: And thank
22 you, Mr. Cahill.
23 CHAIRPERSON DESTITO: Drive
24 carefully.

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2 CHAIRPERSON DiNAPOLI: Good
3 afternoon.
4 CHAIRPERSON DESTITO: Good
5 afternoon. Who wants to go first?
6 CHAIRPERSON DiNAPOLI: Who wants
7 to go first?
8 CHAIRPERSON DESTITO: We -- we
9 think Karen should go first.
10 CHAIRPERSON DiNAPOLI: Okay,
11 Karen should go first.
12 MS. MILLER: Thank you very much.
13 And -- and I'd like to thank you all for inviting
14 me to come here today. I would like to take a

15 moment to introduce Brian Largeteau. He is our
16 acting Director of Emergency Management today.
17 And I'll just start.

18 My name is Karen Miller. I am a
19 life long resident of the town of Schoharie and
20 Schoharie Clerk of the Board. I also serve as
21 Public Information Officer on behalf of Earl Van
22 Wormer the third, Chairman of the Schoharie
23 Board -- Board of Supervisors. I'm going to speak
24 to you today about dam safety and how it has

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2 impacted Schoharie County creating issues that have
3 generated a situation that many of you may have
4 heard about.

5 The potential for failure of the
6 Gilboa Dam has a had a major impact on Schoharie
7 County. A great deal of undue stress has been
8 placed on the residents of Schoharie County in the
9 flood area along the valley as they fear for the
10 possible loss of their homes, businesses,
11 livestock, pets and most important, their lives and
12 the lives of their families and friends.

13 Since being notified by the
14 Department of Environmental Protection that the
15 Gilboa Dam not only does not meet current standards
16 for dam safety but is also considered to be a
17 potential risk during a high -- a major high water
18 event Schoharie County has been impacted on many
19 levels.

20 Hundreds of man hours have been
21 spent to put together emergency evacuation plans,
22 which include specific routes and shelters for
23 effected areas. Inundation should the dam fail,
24 would be much more wide spread than the flooding

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2 Schoharie County has dealt with in the past.
3 For this reason current plans have had to be
4 revised and expanded. It has been a painstaking
5 process as much coordination has had to take place
6 between fire departments, Sheriff's departments,
7 the Emergency Management office, the schools, the
8 Red Cross, and the list goes on and on.
9 While this plan has been in progress time and
10 energy have been taken away from previously
11 scheduled projects which are now on hold
12 indefinitely.

13 The potential failure for the
14 Gilboa Dam is having and will continue to have an
15 economic impact on the county. Projects are on
16 hold that would help the county progress into the
17 future. Businesses that may have considered the
18 potential of this area are also on hold and the
19 sale of homes in the flood zones is practically
20 non-existent.

21 All of this is taking place with

22 only a potential for failure, can you imagine
23 the -- the -- the economic impact should the dam
24 actually fail? Schoharie County is currently

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2 incurring costs which would not normally be
3 incurred to help insure the safety of our
4 residents. These costs will be billed to D.E.P.
5 even though to date we have no written commitment
6 from them as to how much will be covered.

7 Should the dam fail the
8 devastation to the homes, farms, businesses, et
9 cetera, along this route would be absolutely
10 astronomical. Where will the economy of Schoharie
11 County be at that point? We are a small rural area
12 with a limited tax base.

13 The hope, by many, is that once
14 the dam is secure life for those of us in Schoharie
15 County who are in the inundation will go back to
16 normal. However, all of that remains hinged on
17 D.E.P. and their future plans for refurbishing the
18 dam. So as not to lay blame all in one area, it
19 also depends on D.E.C. and their ability to monitor
20 the dam in Schoharie County on a regular basis.
21 Inspections and communications of the findings
22 during these inspections are key in the process of
23 keeping Schoharie County the wonderful rural
24 community that it is.

0303

1 Proceedings - Dam Safety - 2-9-2006
2 Let me give a you a little
3 background on our -- on the dams in our county.
4 There are approximately one hundred and thirty-two
5 dams that could impact Schoharie County, including
6 dams in Greene and Albany Counties. Schoharie
7 County is home to seven high hazard dams. Of that,
8 six are publicly owned and one is held privately.
9 Four are used for water -- public water supply, two
10 for hydro-electric power generation and one for
11 recreation.

12 Additionally, there are eighteen
13 moderate hazard dams in our county. Schoharie
14 County has been told that inspections were
15 performed annually by the New York State Department
16 of Environmental Conservation on high hazard dams
17 and every other year on the moderate hazard dams.

18 Emergency action plans are in
19 place for the Blenheim-Gilboa Lower Reservoir Dam
20 and Upper Reservoir Dam as well as the Gilboa Dam.
21 The remaining structures do not have emergency
22 action plans.

23 The New York Power Authority as
24 owner of the Blenheim-Gilboa Lower and Upper

0304

1 Proceedings - Dam Safety - 2-9-2006
2 Reservoir Dams is regulated by the Federal
3 Emergency Regulatory Commission as well as various

4 state agencies. The Power Authority does, on an a
5 regular -- on an annual basis, meet with the
6 Schoharie County Emergency Manager, Sheriff, Fire
7 Coordinator and other effected counties as well as
8 other involved agencies including the New York
9 State Police and the New York Thruway Authority to
10 review the plan, update information, and discuss
11 how the emergency action plan is to be used in the
12 event of a dam failure or other emergency
13 situation. There have also been -- there has also
14 been scheduled exercises to determine if there are
15 weaknesses or gaps in the plan.

16 The city of New York distributed
17 a -- a draft emergency action plan for the Gilboa
18 Dam in 2001. There was no follow up on the plan on
19 behalf of the city. We attempted a one way
20 conversation that failed. There has not been,
21 until recently in October of 2005 any further
22 communication relating to the emergency action
23 plan. Prior to this time there have been no --
24 been no meetings established by the city to gather

0305

1 Proceedings - Dam Safety - 2-9-2006
2 feedback from the -- from the counties nor were
3 there exercises conducted to identify potential
4 weaknesses in the plan.

5 Outreach from the county to try
6 to encourage communication, whether for emergency
7 action plan or rehabilitation of the dam structure
8 began in earnest when the city of New York first
9 proposed its watershed regulation in September of
10 1990. The structure, which had been completed in
11 1927 was already over sixty years old at that point
12 and had had -- and had been a matter of concern
13 even at that time.

14 Our county Flood Control
15 Committee requested regular updates from the New
16 York City Department of Environmental Protection.
17 Occasionally these updates were -- would occur.
18 Using regional coalitions, including the Catskill
19 Watershed Corporation, the Coalition of Watershed
20 towns and the Watershed Policy and Partnership
21 Council, we attempted to make our concerns heard.

22 Repeatedly, our request for
23 communication and updates on fell on deaf ears. We
24 included our state representatives, Senator Seward

0306

1 Proceedings - Dam Safety - 2-9-2006
2 and Assemblyman Hooker in a dialogue with the Army
3 Corps of Engineers to look at the dam and explore
4 options for flood control. Now, despite these
5 attempts, the world is watching to see what happens
6 next.

7 It is the responsibility of the
8 dam owners to tell us where the damage is likely to
9 occur and the county's responsibility to plan for
10 readiness, response, recovery, and mitigation. We

11 are now in a situation where we as the county have
12 to respond to an elevated threat of potential dam
13 failure with a dam owner that has only recently
14 been willing to dialogue with us about the extent
15 of the potential damage.

16 By our estimation and using the
17 inundation maps dated October of 2001 included in
18 the final emergency action plan from August 2005,
19 thousands of lives would be at risk and severely
20 affected, with impacts to over twenty three hundred
21 structures in our county. Residences, businesses,
22 and farms would be permanently damaged. Schools,
23 government centers, fire hazards and ambulance
24 squads would all be inundated. Interstates, the

0307

1 Proceedings - Dam Safety - 2-9-2006
2 electric grid, telephone connections, and rail
3 traffic would be bisected. The devastation does
4 not stop at the Schoharie County line.

5 We are spending many man hours
6 refining our emergency action plan to be in
7 readiness for the potential dam failure. We are
8 also making plans for response, recovery, and
9 mitigation, all of which is no small undertaking.
10 Our citizen's lives are at risk while we are trying
11 to prepare for a -- for disasters of tremendous
12 magnitude that is almost unimaginable.

13 We would not, in all likelihood,
14 be in this situation if an effective emergency
15 action plan, on the part of the city of New York
16 was in place and if, like other dam owners, regular
17 meetings and exercises happened. We are also
18 concerned about the lack of communication from the
19 New York State Department Environmental
20 Conservation.

21 Reporting back to the county
22 emergency -- emergency managers on the dam safety
23 inspectors -- inspections would help maintain
24 communications between the counties and the dam

0308

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2 owners. We are also painfully aware that our other
3 high hazard dams do not have emergency action
4 plans. Dam safety is a nationwide issue that has
5 recently been brought to light due to the actual
6 failures and publicity around potential failures.
7 It is an issue that has been swept under the rug
8 for too long. Dam owners need to be held
9 responsible for the operations and maintenance of
10 their dams, and regulatory agencies need to be the
11 watch dogs we expect them to be.

12 Schoharie County, like many
13 counties across the state does not have the
14 resources to do their own dam safety inspections.
15 As our situation proves, one county alone cannot
16 bring enough force to bear to make dam owners
17 responsible.

18 I'd like to thank you for letting
19 me come today and thank you for your support.

20 CHAIRPERSON DiNAPOLI: Okay.
21 Thank you. Who's next?

22 MR. VAN HOESEN: Hi. I'm Bill
23 Van Hoesen. I'm the Director of Emergency
24 Management for Schenectady County. I'd like to say
0309

1 Proceedings - Dam Safety - 2-9-2006
2 that I'm one of the individuals that indicated that
3 the state agencies' response is less than
4 enthusiastic and I'll try to explain that in my
5 comments.

6 I have pared my comments down to
7 try to stick to the five minute rule and so it may
8 not be exactly word for word in my written
9 comments.

10 CHAIRPERSON DESTITO: Go ahead.

11 MR. VAN HOESEN: I'm William Van
12 Hoesen, Director of the Schenectady County Office
13 of Emergency Management. Chairman DiNapoli and
14 Chairwoman Destito, I welcome you and the Assembly
15 Committee Members to Schenectady County and thank
16 you for the opportunity to speak on this critically
17 important subject.

18 I speak only as a knowledgeable
19 emergency service and emergency management
20 professional. My specific remarks will be focused

21 on our recent history with the Gilboa Dam situation
22 and my experiences with that.

23 The Schenectady County Community
24 College is a recognized leader in public safety
0310

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2 education. Many of the emergency response command
3 officers in the nine county in the nine county
4 Albany capitol district urban region were educated
5 here. Ironically, Schenectady County Community
6 College is also a property that would be flooded if
7 a catastrophic Gilboa Dam failure occurred
8 fifty-seven miles away from here. This is
9 certainly a -- a serious situation.

10 Schenectady County is striving to
11 develop a small county model for emergency
12 preparedness and response. We are applying a team
13 work approach. Our community agencies and our
14 county agencies must work together to achieve
15 public safety and responder safety to catastrophic
16 regional emergencies. Few agencies have the
17 personnel and or equipment resources necessary to
18 be NIMS compliant or to implement the NIMS, ICS
19 model to effectively manage a dam failure event.

20 We attended a meeting at the New
21 York City Department of Environmental Protection's
22 Police Station at Gilboa, New York on October 27th,
23 2005. Throughout a difficult to follow and

24 sometimes heated discussion everyone present was
0311

1 Proceedings - Dam Safety - 2-9-2006
2 advised by New York City D.E.P. to prepare for a
3 worst case scenario of dam failure and to
4 operationalize your emergency flood plans.
5 After the meeting we examined and
6 photographed the dam. No signs of failure were
7 visible in the approximately twelve hundred foot
8 long masonry dam but the overflow of the nineteen
9 and a half billion gallon reservoir was certainly
10 impressive. All the overflow water from this dam
11 enters the Schoharie Creek and flows northward
12 through the Schoharie Valley and it's major
13 communities. The Schoharie Creek is a major
14 tributary to the Mohawk River.

15 An examination of data for areas
16 we are knowledgeable of revealed conflicts between
17 topographical inundation map data and the written
18 data. In either case it was clear that both flood
19 elevations and flow data were bigger than we had
20 experienced in memorable history.

21 New York City D.E.P. emergency
22 action plan did not provide any inundation maps or
23 flood modeling data for the Mohawk Valley. That
24 afternoon, the decision to alert emergency

0312
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2 responder agencies was made. Multiple factors lead
3 to this decision. Some of them are in m written
4 comment.

5 Since initially alerting response
6 agencies on 10-27-2005 the Schenectady County
7 Office of Emergency Management has participated in
8 fifty formal meetings and numerous conversations on
9 Gilboa Dam safety. Most of these have been with
10 responder agencies. I must re-emphasize
11 Schenectady County's role in a multi-agency,
12 multi-jurisdictional, regional catastrophic
13 emergency preparation response and recovery.

14 It is in providing guidance and
15 coordination. Dam safety is a quality of life
16 issue for all our communities. As a small county
17 we utilize a team work approach to achieving this
18 role. To date, fourteen Schenectady County
19 agencies and or committees have participated in
20 Gilboa Dam safety preparation and I list those in
21 my written comments too.

22 Without the leadership of the
23 Schenectady County legislature and the county
24 manager we would have been unable to prepare to

0313
1 Proceedings - Dam Safety - 2-9-2006
2 meet the burdens of the Gilboa Dam situation that
3 has placed on our residents, our response agencies
4 and the Schenectady County Office of Emergency
5 Management.

6 I congratulate them for their
7 leadership and foresight on this issue.
8 This proactive -- this proactive
9 attitude and support will be needed in any county
10 faced with a dam safety problem. I respectfully
11 offer suggestions based on Schenectady County's
12 Office of Emergency Management's Gilboa Dam
13 experience.

14 First of all, standardization of
15 information to be provided by dam owners. How it
16 should be provided, what type of format, what
17 terminology is appropriate -- these are all
18 questions that need to be addressed.

19 Two, a state agency responsible
20 for insuring there are plans for coordination
21 preparation, response and recovery activities for
22 multi-county, multi-state agency events needs to be
23 identified.

24 Three, a clarification of

0314

1 Proceedings - Dam Safety - 2-9-2006
2 recently implemented Homeland Security FEMA
3 disaster funding policy on dam failure needs to be
4 a priority of overall dam safety. A dam failure is
5 a disaster to a community's critical infrastructure
6 and to the residents who are effected by it.

7 We need immediate help and
8 long-term funding to rebuild our critical
9 infrastructure. We need to know if Homeland
10 Security FEMA funding can be expected.

11 I wish to thank Assemblyman Paul
12 Tonko for helping acquire specific inundation data
13 for the Mohawk Valley and assisting us with other
14 issues. I also wish to thank state Senator Hugh
15 Farley for locating funding that allowed us to
16 strengthen our staff and provide public information
17 in a timely manner. And in closing, I thank you,
18 the New York State Assembly's Committees on
19 Environmental Conversation and Governmental
20 Operations for your leadership on this critical
21 issue.

22 Thank you all for your concern
23 for our safety.

24 CHAIRPERSON DiNAPOLI: Thank you.

0315

1 Proceedings - Dam Safety - 2-9-2006
2 CHAIRPERSON DESTITO: Thank you.
3 ASSEMBLYPERSON TONKO: Gary, are
4 you testifying? Okay. Okay.
5 CHAIRPERSON DiNAPOLI: Questions?
6 ASSEMBLYPERSON TONKO: Just out
7 of curiosity you've been here I believe all of you
8 all day. You've given a good assessment from your
9 perspective -- from your station in this whole
10 operation. But would of made mentioned today that
11 caused you to comment in terms of the plans of
12 the -- of D.E.P. of New York City or the overview

13 tasks of any of the agencies that have testified?
14 MS. MILLER: One thing that I
15 felt kind of came to light is that there needs
16 to -- there truly needs to be more coordination and
17 communication between the agencies. It seems
18 somewhat obvious to me today that -- that the
19 D.E.P. and the D.E.C. need to work more closely
20 together and I think in doing that we would all
21 benefit.
22 ASSEMBLYPERSON TONKO: The -- the
23 county, you -- you've been doing these improvements
24 or addressing some of the local concerns in the
0316

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2 county and forwarding those vouchers, is it, to --
3 to -- what are we talking about in terms of
4 economic impact here?
5 CHAIRPERSON DiNAPOLI: Ms.
6 Miller, do me a favor. Just take the microphone a
7 little closer.
8 THE REPORTER: Thanks.
9 MS. MILLER: Obviously lots of
10 man hours have been going into this project.
11 ASSEMBLYPERSON TONKO: Uh-huh.
12 MS. MILLER: And we've been --
13 were doing all kinds of preparation for early
14 warning systems. All that has been discussed with
15 D.E.P. So far they have come forward and helped us
16 out with fax machines and the new radios. There
17 were some tags that were purchased because of -- of
18 the fire department, so that they could go door to
19 door.
20 They would -- it would help
21 acknowledge who's been contacted, who has not.
22 Those things have been -- have been committed to
23 and taken care of. Our next step is our early
24 warning systems. We -- I mean, I got the
0317

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2 impression today from Commissioner Lloyd that the
3 sirens probably will be taken care of but we
4 have -- we have no long standing commitment from
5 them, nothing in writing.
6 ASSEMBLYPERSON TONKO: Okay.
7 MS. MILLER: Everything is kind
8 of on a -- you know, day to day basis and you know,
9 the county needs to move forward. We -- we can't
10 wait for them.
11 ASSEMBLYPERSON TONKO: Uh-huh.
12 And as it becomes more and more apparent that
13 it's -- as was mentioned by your -- your neighbor
14 and partner in Schenectady -- by Mr. Van Hoesen
15 that this really continues to grow --
16 MS. MILLER: Oh, yeah.
17 ASSEMBLYPERSON TONKO: -- in
18 terms of the area impacted and I don't know if

19 there were reassurances today enough -- I -- I
20 didn't hear them --

21 MS. MILLER: No.

22 ASSEMBLYPERSON TONKO: -- about
23 responding to the -- the local impact for these
24 activities.

0318

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2 MS. MILLER: I -- I guess some of
3 what I'm concerned about too is -- I mean,
4 they're -- they've been very cooperative to this
5 point and most probably we'd seen a lot of them.
6 You know, they've been fairly good with information
7 and contacts. You know, the -- the money is going
8 to be iffy but so far it's working.

9 But what's going to -- the
10 after -- the after effects -- should that dam fail
11 it's going to be unbelievable.

12 ASSEMBLYPERSON TONKO: I mean,
13 having witnessed what happens just with a flood
14 it's devastating. The coordination of state
15 agencies in terms of the -- from the evacuation
16 perspective, I have stated on the record here out
17 of concern that I needed to share publicly because
18 of so much input that I've received concerning the
19 lack of coordination and sluggish response -- to
20 use that term again --.

21 MR. VAN HOESEN: Well, I -- I --
22 I say that it's less than enthusiastic and -- and
23 SEMO is a great agency. D.E.C. is a great agency
24 but every time someone sat here and you asked them

0319

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2 a question there was a little pause in there -- the
3 answer -- and they kind of sat there thinking about
4 well, is that really in my bailiwick or am -- am I
5 really that -- did -- did anybody sit here today
6 and say that they are the lead agency on this?
7 I -- I don't know.

8 ASSEMBLYPERSON TONKO: I didn't
9 hear it.

10 MR. VAN HOESEN: I heard -- I
11 heard a lot of -- I heard a lot of people saying
12 that they had responsibilities. I've been to
13 meetings. This is the action plan. I went to a
14 meeting that New York City D.E.P. held after this
15 was distributed, there was a whole row of state
16 agencies sitting there. D.E.C. pointed at every
17 one of them and said do you except this? They all
18 accept it. And we constantly hear that there's no
19 data for the Mohawk Valley so how could we -- how
20 could we start activating plans.

21 This is -- this is -- this is one
22 of -- this is a page from that thing and -- and I'm
23 sorry I didn't make copies of it for you but let me
24 just quote something. This is -- this is no data.

0320

1 Proceedings - Dam Safety - 2-9-2006
2 There is where the Schoharie County -- Schoharie
3 Creek meets the Mohawk Valley and it's at the
4 location that Paul mentioned where the -- the
5 Thruway bridge collapsed --

6 CHAIRPERSON DESTITO: Clonic
7 Street.

8 MR. VAN HOESEN: -- in '87. The
9 back water on the Mohawk Valley at an elevation of
10 two hundred and eighty two feet will -- will back
11 up approximately eight point eight miles upstream.
12 That means it's going to stop the flow on the
13 Mohawk and back the river up all the way to
14 Fultonville. That's -- that's a lot of water
15 coming at somebody.

16 Over here it tells us that we're
17 going to see a discharge of eighty five thousand
18 six hundred cubic feet per second at that location.
19 That's a fair weather information block. The --
20 that's why I -- I mentioned that we need to have a
21 clarification on what's going on. When you look at
22 a topographical map it shows you something far
23 beyond that --

24 ASSEMBLYPERSON TONKO: Uh-huh.

0321

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2 MR. VAN HOESEN: -- but all these
3 little blocks that you can look at real quick like
4 and pick up were all designed on a fair weather
5 event. Everything we were told at these meetings
6 was this is going to happen in a -- in a major
7 weather event. So that would be something on top
8 of it.

9 The -- the five hundred -- over
10 here (indicating) it says downstream limit of dam
11 breach study you published FEMA five hundred year
12 maps for approximate inundation areas. The only
13 reason they were allowed to put that block on there
14 was because they were within two feet of the
15 elevation of the five hundred year flood maps that
16 FEMA did twenty-five years ago. So they were two
17 feet above the five hundred year map of the five
18 hundred year inundation --

19 ASSEMBLYPERSON TONKO: Uh-huh.

20 MR. VAN HOESEN: -- for Mohawk
21 Valley when they -- when they chose this to stop
22 giving us data. And that's -- and that's -- and
23 that's a critical issue. We need -- we need to
24 know what information, we need to know

0322

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2 standardization, we need to know what's coming
3 through in these things.
4 The response here goes down into
5 it's a local problem. Oh, the county guy will
6 handle that. The -- the county guy should do this.

7 The --.
8 ASSEMBLYPERSON TONKO: Where are
9 the resources?
10 MR. VAN HOESEN: Yeah. Where --
11 where are the resources for? Where -- here --
12 here's Gary sitting here. You know, how big is
13 your staff, Gary?
14 MR. NESTOE: About two.
15 MR. VAN HOESEN: Yeah. You know,
16 this is -- this is -- this is -- this is where
17 we're coming from. We -- if we had a regional
18 group that came to us from the state and said yeah,
19 we're going to sit down with you guys and we're
20 going to try to help you set this up, that would be
21 fantastic, but we didn't see that.
22 ASSEMBLYPERSON TONKO: Should
23 there be -- I'm sorry.
24 MR. VAN HOESEN: Go ahead.

0323

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2 ASSEMBLYPERSON TONKO: Should
3 there be a pressure applied at the point of -- of
4 permitting or signing off on improvements? Should
5 there be some sort of guarantee that's associated
6 with that --
7 MR. VAN HOESEN: I -- I think --
8 ASSEMBLYPERSON TONKO: -- for
9 local government?
10 MR. VAN HOESEN: -- I think you
11 have -- I think there's things in place. The --
12 the D.E.C. chairman said that any high risk dam in
13 New York State has to have an emergency action
14 plan. I'd never seen this document and -- and
15 they've only seen a draft of it four years ago --
16 five years ago.
17 When -- when -- when the Power
18 Authority Dam at Gilboa-Blenheim does their thing I
19 get five copies -- I get six copies of that. We
20 had to fight to get this copy out of the meeting
21 that we went to.
22 ASSEMBLYPERSON TONKO: So --
23 so --.
24 MR. VAN HOESEN: Somebody else

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2 gave us this copy.
3 ASSEMBLYPERSON TONKO: Well,
4 obviously they've received approvals in the past so
5 should there be more prescription in law? Should
6 there be more definition in the language of the law
7 that -- that accompanies their authority?
8 MR. VAN HOESEN: There -- there
9 has to be some. If -- if SEMO is going to be the
10 lead agency on that, that's great. That's --
11 that's fantastic. They're -- they're -- they're
12 good people and they do a good job. But they're --
13 the -- who's in charge here today, right? I came

14 here and I -- I know who's in charge, right? I've
15 been to fifty something meetings and that's all
16 over in Montgomery County. We've been to meetings
17 in Schoharie County. We've been to meetings in our
18 county. I've done five public hearings. I've done
19 two technical committee meetings in my county. I
20 did a technical committee meeting here in this --
21 in this facility and New York State's been up in
22 front four times.

23 ASSEMBLYPERSON TONKO: Uh-huh.
24 And that's how gaps are allowed to occur and they

0325

1 Proceedings - Dam Safety - 2-9-2006
2 could be --
3 MR. VAN HOESEN: When -- you --
4 you -- you --
5 ASSEMBLYPERSON TONKO: -- very,
6 very critical.
7 MR. VAN HOESEN: -- you need
8 to -- these agencies need to know that somebody's
9 the lead agency --
10 CHAIRPERSON DESTITO: Right.
11 MR. VAN HOESEN: -- and
12 somebody's -- somebody's responsible for that.
13 CHAIRPERSON DESTITO: You done?
14 ASSEMBLYPERSON TONKO: Yeah.
15 CHAIRPERSON DESTITO: Let me ask
16 you, Bill -- and anyone can answer or you all can
17 answer, if you'd like. When we created the Office
18 of Homeland Security we actually made them or
19 actually the administration made them the Chairman
20 of the D.H.P., the Disaster Preparedness Program
21 Commission and SEMO is the staff.

22 And you heard the SEMO gentlemen
23 say that he was the staffing and Article 2-B. is
24 the only thing that allows him and gives him his

0326

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2 mission. Do you -- and you may or may not want to
3 answer this -- but do you believe that there is a
4 disconnect now with the Office of Homeland Security
5 taking the lead and not really providing the
6 services of these disaster preparedness plans and
7 that there now is a disconnect for emergency
8 management planning?

9 MR. VAN HOESEN: I started in
10 this position in August. I -- I -- and I don't
11 pretend that I -- I know every if and and but in
12 the law but I was at the Disaster Preparedness
13 Commission Conference when I received word that
14 they were holding the meeting at -- at Gilboa the
15 next day.

16 They're -- you know, I kind of
17 thought that they were going to be the guy.
18 They -- they represent twenty-six out of twenty-six
19 state agencies. That wasn't the case, you know.
20 I -- I don't know if they're disconnected from

21 Homeland Security. I don't know exactly how all
22 that works. The -- I mentioned Homeland Security
23 and FEMA here in -- in relationship to the
24 Washington County event and -- and the reason why

0327

1 Proceedings - Dam Safety - 2-9-2006
2 New York State was denied federal funding for the
3 June, July storm deprivations was because FEMA
4 would not recognize the dam failure at Washington
5 County.

6 Is that the case here? Is -- is
7 that -- is that what's going on here, is that -- is
8 that they're not going to recognize this dam
9 failure? That -- that doesn't make any sense.

10 ASSEMBLYPERSON TONKO: No.

11 MR. VAN HOESEN: It's a -- it's
12 a -- it's a disaster one way you -- one way you
13 look at it. The gentlemen was here from Ulster
14 County, you know, that's -- that's a disaster.

15 CHAIRPERSON DESTITO: Yeah.

16 MR. VAN HOESEN: These -- these
17 people are on the verge of -- of -- of possibly
18 having county government wiped out in Schoharie
19 County. That's a disaster. We're -- right now --
20 we started out with one county -- everybody

21 mentions one county. We're up to six. Congressman
22 McNulty left. I -- I hate to tell him but, you
23 know what? It's possible that water is going to go
24 to Green Island.

0328

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2 At least the debris and -- and
3 all the other stuff that's going to get washed out
4 of the Schoharie Valley and -- and -- and the
5 Mohawk Valley. When Susan says we're going to lose
6 our sewer, we're -- we're -- that's going to be raw
7 sewage going into the Mohawk Valley and going into
8 the Hudson River.

9 The -- we're looking at the
10 potential of a hundred and twenty thousand
11 residents without water. You want -- you want to
12 do the ancient mariner, water, water everywhere but
13 not a drop to drink? That -- that -- that's what's
14 going on here.

15 ASSEMBLYPERSON TONKO: Uh-huh.

16 MR. VAN HOESEN: We're -- we're
17 effected and -- and I -- you know, we -- we took a
18 proactive approach. We jumped on board. I have
19 seven hundred and fifty volunteer fire and E.M.S.
20 personnel. It takes time to get the word out to
21 these people. We're looking at something beyond
22 what they've ever seen before.

23 We got the word out to them as
24 quickly as we possibly could. We got their command

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2 stats involved. We got their -- their leadership
3 involved and -- and we've gone down through all the
4 agencies. These -- these guys have done the same
5 thing.
6 CHAIRPERSON DESTITO: And I just
7 had one question because I'm trying to ask everyone
8 involved in county and local government. The
9 statewide wireless network, are you aware of it?
10 MR. VAN HOESEN: Oh, yes.
11 CHAIRPERSON DESTITO: You are?
12 Okay.
13 MS. MILLER: No.
14 CHAIRPERSON DESTITO: No.
15 MR. LARGETEAU: No.
16 CHAIRPERSON DESTITO: No.
17 MR. NESTOE: I am. I'm on the
18 committee.
19 CHAIRPERSON DESTITO: Okay.
20 Great. Oh, you are. Okay. All right.
21 MR. LARGETEAU: Brian Largeteau.
22 THE REPORTER: How do you spell
23 your last name, sir?
24 MR. LARGETEAU:

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2 L-A-R-G-E-T-E-A-U.
3 THE REPORTER: Okay.
4 CHAIRPERSON DESTITO: And his --
5 okay. Gary?
6 MR. NESTOE: Gary Nestoe.
7 THE REPORTER: Gary Nestoe. How
8 do you spell your last name?
9 MR. NESTOE: N-E-S-T-O-E.
10 THE REPORTER: Thank you,
11 CHAIRPERSON DESTITO: Thank you.
12 CHAIRPERSON DiNAPOLI: Thank you
13 very much.
14 MS. MILLER: Thank you.
15 CHAIRPERSON DiNAPOLI: Thank you.
16 Appreciate it. Next we have Honorable James
17 Galligan, Supervisor, Town of Forestburgh.
18 Honorable Mark House, Supervisor, Town of Deerpark.
19 Honorable John --
20 CHAIRPERSON DESTITO: LiGreci.
21 CHAIRPERSON DiNAPOLI: --
22 LiGreci, the Town of Cumberland.
23 MR. LIGRECI: Lumberland.
24 CHAIRPERSON DESTITO: Oh, I'm

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2 sorry. Just --.
3 CHAIRPERSON DiNAPOLI: I'm sorry.
4 What is it?
5 MR. LIGRECI: Lumberland.
6 CHAIRPERSON DESTITO: Lumberland.
7 CHAIRPERSON DiNAPOLI: Oh, I'm
8 sorry. With and L, it's Lumberland. You're right.

9 MR. LIGRECI: There's no gap
10 there.

11 (Off-the-record discussion)

12 CHAIRPERSON DiNAPOLI: So why
13 don't you -- Mr. Galligan, if you'd go first?

14 MR. GALLIGAN: Okay. Yeah, I'm
15 Jim Galligan, Supervisor of the Town of Forestburgh
16 and I'm here today to express my concern about the
17 condition of the many public and private -- we have
18 spoke a lot about the privately owned dams that
19 threaten the present day safety of the residents in
20 my town and obviously many -- many other towns.
21 I'm also very concerned about the economic impact
22 these dams could have on the residents and
23 businesses if they fail or are lowered below usable
24 levels. I also must mention that the recreational

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2 activities generated by these dams have major
3 impact not only on the businesses located directly
4 on their lakes but on the businesses many miles
5 away from them.

6 My own example is my wife and I
7 ran a little general store about ten miles from a
8 lake which is pretty near empty. We generated
9 quite a bit of business from it especially during
10 the summer months. We sold it. The new owner now
11 has considerable problems because we have a lake
12 that's half empty, Swinging Bridge Lake, and it's
13 effecting just his revenue and obviously the impact
14 on the community.

15 At this time Forestburgh is
16 threatened by two large dams, one on the Swinging
17 Bridge Dam which is located on the Mongaup River
18 and is owned by the Mirant, New York-Gen
19 Corporation and is used to generate electricity.
20 The lake is surrounded by many homes and several
21 businesses. It is used for recreational purposes.
22 In May of 2005 this dam was compromised nearly
23 causing a major disaster. The lake had to be
24 lowered leaving all the homes and businesses around

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2 high and dry. Fortunately the breach was
3 discovered by employees of the Mirant Corporation
4 and with the assistance of many town, county
5 officials and the local fire departments a near
6 disaster was averted.

7 Representatives from Mirant
8 assured the public officials and the residents that
9 the dam would be repaired and fully operational by
10 March of 2006. As you can see by the attached
11 letter -- and I won't read it to you -- the
12 attached letter from Mirant to the Federal Energy
13 Regulatory Commission, this repair would not be --
14 will not be completed by March if ever.

15 They wrote, I also wish to

16 underscore that New York-Gen remains under Chapter
17 eleven bankruptcy protection and has limited funds.
18 This letter goes on to say New York-Gen is
19 currently evaluating all options with respect to
20 the future of the Swinging Bridge Project including
21 the possibility of surrendering the FERC license
22 for the Swinging Bridge Project which is -- and
23 associated hydroelectric projects on the Mongaup
24 River, and there's three of them on that river.

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2 The second dam that worries me is the Neversink Dam
3 which is located on the Neversink River and is part
4 of the New York City watershed. The Neversink
5 River flows -- flows through Forestburgh and had

6 major flooding in 2005 and less serious flooding
7 more recently. When it comes to privately owned
8 dams my concern is lack of information about the
9 condition of each dam and who is responsible to
10 remain -- to maintain them.

11 Even though all these dams
12 seriously impact the safety and the economy of the
13 town of Forestburgh and many other -- and many
14 other towns, cities, and villages, very little
15 information concerning the condition of the dams is
16 shared with the local public officials.

17 I want to encourage the elected
18 officials for the state of New York to enact laws
19 and regulations that will accomplish the following.
20 I sort of brought my wish list with me, okay?

21 CHAIRPERSON DESTITO: Go ahead.

22 MR. GALLIGAN: Guarantee that
23 local officials receive accurate information about
24 the inspections and maintenance of the dams.

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2 Guarantee that local governments are involved in a
3 developing workable, emergency plans in the event
4 of a failure of a dam or dams.

5 Guarantee that the local
6 governments have the resources necessary to prepare
7 for the implementation of an emergency plan.
8 Make resources available to business and
9 land-owners to cover their economic loss in the
10 event that the dam fails as a result of poor
11 maintenance or inspections.

12 Assure that the tax base is
13 protected in the event the dams are abandoned by
14 their owners and assure that funds are available
15 for the long-term maintenance and inspections of
16 dams in the event that the dams are abandoned.
17 I understand that there is proposed legislation
18 before you that would require the New York City --
19 the New York Department of Environmental Protection
20 and the State -- and the State Department of
21 Environmental Conservation to improve inspections

22 and maintenance of dams in the -- in the city
23 Catskill watershed.

24 I encourage its passage. I

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2 recommend that you expand this to include all major
3 dams in New York State. I also encourage the
4 passage of legislation that would make funds
5 available to local emergency service organizations
6 to impact and carry out emergency plans needed to
7 cope with the potential needs of the community
8 should they fail.

9 And I want to add I was listening
10 to Commissioner Sheehan and she talked about -- she
11 spoke about the FERC requirement, that all dams
12 have a -- an emergency action plan. Again, there's
13 three of these dams that all have FERC licenses on
14 this Mongaup River that I mentioned. I've been in
15 my community since the day I was born, active in
16 our volunteer fire company and other organizations
17 and the town -- we never once have been spoken to,
18 asked our opinion, involved in a drill or anything
19 about any kind of an emergency plans. And it
20 really was just through the good graces of the
21 county and that -- that sinkhole in the dam was
22 not -- did not happen a weekend when they didn't
23 even have anybody on the dam to inspect it. And
24 again, the county was able to kick in with our

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2 emergency service person but there was no real
3 flood plan but we -- we were able to avert it.

4 And my last comment is to talk
5 about how you do it. I've had a lot of experience
6 working in nursing homes. Every nursing home has
7 to have an emergency plan if you want to keep your
8 license. They don't take your word for it, okay?
9 You have to have documentation that you -- you have
10 everybody who might be involved has to sign off on
11 it as an agreement between all these people and you
12 have to exercise that plan annually to make sure
13 it's going to work. I don't know why it might --
14 something like that might not be able to implement
15 to these but I just think there's -- and then
16 who -- sitting here today, who's the lead agency,
17 okay?

18 But maybe you guys have to decide
19 who the lead agency is but then give them the
20 authority to carry out their responsibility.

21 CHAIRPERSON DiNAPOLI: Thank you.
22 So Mark House?

23 MR. HOUSE: Thank you. First,
24 my -- my wife would like to thank this committee

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2 for allowing me the opportunity to say dam
3 inspection, dam water level and dam safety and not

4 have it be a pejorative term.
5 Be as it may, I would like to
6 thank you for the opportunity to -- to just voice
7 some of the views and concerns of the town of
8 Deerpark. I'll confine my remarks really to the
9 Neversink River and the Neversink Reservoir Dam as
10 this is the most significant issue to the residents
11 of Deerpark.

12 I think it's interesting to point
13 out that Assemblyman Cahill pointedly asked our --
14 our D.E.C. chairperson if they had enough
15 inspectors and I caught that there were twelve or
16 would be twelve.

17 CHAIRPERSON DiNAPOLI: Would be
18 twelve.

19 CHAIRPERSON DESTITO: Uh-huh.
20 Would be -- would be.

21 MR. HOUSE: Would be twelve.
22 Well, if there were twelve inspectors to be able to
23 cover the dams in the state of New York those
24 twelve inspectors would have to inspect -- and I

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2 love numbers. I was in insurance so that's why I
3 did this. Those inspectors would have to inspect
4 sixteen dams a day three hundred and sixty-five
5 days a year.

6 CHAIRPERSON DESTITO: Days a
7 week. Right. Daily.

8 MR. HOUSE: I don't know. It
9 boggles the mind. My response to you would have
10 been sure, I need you to fund a hundred inspectors.
11 I -- but that's just me. Okay.

12 I have lived adjacent to the
13 Neversink River in Oakland Valley for almost
14 nineteen years now. In that time there has been
15 but one instance of that river overflowing its
16 banks in my area and that occurred this past April
17 of 2005.

18 In the past nineteen years the
19 town of Deerpark has seen no less than five
20 significant flooding events within the lower area
21 of the Neversink River. Two of these events were
22 resultant from the waters of the Delaware River
23 literally back-flowing into the Neversink. It's
24 important to note that -- that the Delaware

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2 River -- whenever they talk about the U.D.C., Upper
3 Delaware Commission and those four state agreements
4 they're talking about the Delaware River. They're
5 not talking about the Neversink River. Those
6 rivers have a confluence within the town of
7 Deerpark so I have to deal with both of them, okay?

8 This, in fact -- that backflow is
9 the expected type of flood that we get. It's a low
10 flood. It's a spring time flood. It's usually

11 manageable, okay? However, in the past two years
12 the floods that have come have been a direct result
13 of flow of water from the Neversink River.

14 At each flood occurrence the
15 water levels at the Neversink Reservoir was either
16 at or approaching one hundred percent. The only
17 reason we got away this January without a serious
18 flood is because we did not have a significant snow
19 pack. In fact with the amount of rain fall we had
20 in January we shouldn't even have had a concern
21 about a flood. I should have been worried about
22 puddles on the road but we came within inches of
23 having another major flood event, okay?

24 And in the packet I gave you I
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2 actually have there from the D.E.P.'s own webpage,
3 the current water levels in the reservoirs. It
4 boggles the mind that the Schoharie Reservoir is
5 over a hundred percent capacity. I just -- I don't
6 understand that with what I've heard today. But
7 right on there is an example of the true arrogance
8 of the D.E.P. where it says current system status
9 is normal and then down below it says current
10 ninety-nine point two for the entire system. Oh,
11 by the way, in parentheses, normal is eighty-two
12 percent. When did ninety-nine become normal when
13 eighty-two was normal?

14 I -- I mean, that -- the
15 arrogance inherent in that system is just
16 mind-boggling, okay?

17 Each of the events occurred at a
18 time when there was significant snow pack above the
19 reservoir and followed by an early season warming
20 period. Sound familiar? We sound like we're there
21 again. With all due respect to the D.E.P., who in
22 their right mind maintains reservoir levels at or
23 above a hundred percent over winter months prior to
24 spring thaw, particularly above a dam that -- that

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2 as they readily will admit was not designed to
3 allow for the release of water to curtail or ease
4 potential flooding.

5 In my mind there really are but
6 four potential solutions to this recurring
7 disaster:

8 Number one; re-engineer the
9 Neversink Dam to build in proper and effective
10 flood control to lessen the likelihood of a
11 significant and damaging flood.

12 Number two; contact the Army
13 Corps in order to deepen the Neversink River in the
14 hopes that it will keep within its banks so that
15 the -- when the inevitable next flood occurs we
16 have a chance of avoiding the damage.

17 Number three; identify the

18 low-lying areas of development along the river in
19 areas of repetitive loss and buy them out and end
20 the problem. And once and for all set strict
21 reservoir level standards that the D.E.P. must
22 follow that will prevent the warehousing of water
23 that is the current management system.

24 I think I should note to you that
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2 I do live on the Neversink. My house is over two
3 hundred years old. This is the first time in the
4 recorded history of this house that it's been this
5 close to flooding. So you tell me is it the river
6 or is it the dam above the river that's causing the
7 problem?

8 Because of the events of the last
9 two years many of us who live in the areas effected
10 by the floods have had our lives changed and not in
11 positive ways. Whenever there is even a small
12 amount of rain my office is deluged with calls from
13 residents wanting to know is the dam safe? Is
14 there going to be another flood? Did it break and
15 et cetera?

16 If there's a heavy rain during
17 the night invariably it wakes me up. My first
18 response is to go to the computer, check the
19 reservoir levels and the flow readings available on
20 the internet and possibly go back to bed or stay up
21 and be ready to go to town hall for the next
22 disaster. All of us live in fear that the next
23 storm will in fact destroy our homes and
24 properties. It is not reasonable to expect anyone

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2 to live under such conditions.
3 What the residents of Deerpark
4 want is what all Americans want and that's the
5 right to live without the fear of imminent disaster
6 and destruction to our property and families. We
7 expect and we will settle for no less.

8 Thank you.
9 CHAIRPERSON DiNAPOLI: Thank you.
10 MR. LIGRECI: Ladies and
11 gentlemen, I -- I would like to give you a
12 different approach because there's -- there's a
13 considerable amount of -- of --.

14 CHAIRPERSON DiNAPOLI: Could you
15 just say your name again?

16 CHAIRPERSON DESTITO: Yeah.

17 MR. LIGRECI: Okay. John
18 LiGreci, Supervisor, Town of Lumberland.

19 THE REPORTER: How do you spell
20 your last name, sir?

21 MR. LIGRECI: It's L-I, capital
22 G, R-E-C-I.

23 THE REPORTER: Okay.

24 MR. LIGRECI: We have a two fold

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2 problem and one has been briefly addressed but the
3 other problem is we are in the area where we were
4 along the ninety-seven corridor, which is the
5 Delaware water gap. When we have rain storms that
6 Delaware corridor which is the Delaware River along
7 ninety-seven raises as high as twenty-one --
8 twenty-one to twenty-seven the last time, feet --
9 feet above normal level.

10 Now in this situation it creates
11 another problem, if the dams do not give and they
12 hold -- well, when that happens and you have dam --
13 an area where you're living around dams, well, who
14 controls the release of the water to make surges go
15 into the Delaware which is already exceeding by
16 twenty-seven feet the limit?

17 Well, we had -- the last incident
18 was in January. I received a call from the State
19 Police to let me know that the wall was in the
20 process of releasing water and there would -- will
21 be a ten foot wave coming along the ninety-seven
22 corridor which was already twenty-seven feet
23 where -- where it should be.

24 Prior to that I received a call

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2 from Mirant Swinging Bridge which is the Mongaup
3 Valley that they were in the process of releasing
4 water. The question I had was well, gee, if both
5 of them are going to release the water what's going
6 to happen when it hits the ninety-seven two
7 different ways? Will there be a backlash upstream?
8 Will -- will Port Jervis get knocked out? What
9 will happen?

10 Well, when I called up Mirant and
11 I had mentioned it to them the engineer told me oh,
12 they are. I wasn't aware. Well, I'll check it out
13 and I'll get back to you. Well, when you're in a
14 situation with twenty-seven feet above the level
15 already you really don't want to hear that you'll
16 get back to me when in the process of that you're
17 supposed to be releasing water at the same time
18 that another dam is releasing water. That's just
19 strictly not acceptable.

20 My question is and no one can
21 seem to answer this well, who is in -- who is
22 responsible in an emergency situation to control
23 the releases of water in a dam when you have a
24 flood situation already? The answer is no one and

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2 that's the -- that's the scary part. So this also
3 with your -- your group here needs to be addressed
4 because that is a legitimate problem. It will
5 simply make a bad situation worse.

6 We live in unique situation in

7 the Mongaup Valley. In the Mongaup Valley we have
8 the swinging bridge. We have Mongaup -- we have
9 the Swinging Bridge Dam. We have the Mongaup Dam
10 and we also have the Rio (phonetic spelling) Dam.
11 Unfortunately, Swinging Bridge Dam is the one with
12 all the structural problem, which if that is to let
13 go, my engineer report told me that it will knock
14 both the dams out and there will be tidal wave
15 going down to ninety-seven. Forty percent of the
16 town of Lumberland will be covered with water. The
17 fire department that's supposed to rescue us and
18 evacuate will be wiped away and it will hit that
19 level in fifteen minutes.

20 Well, if it's going to hit that
21 level in fifteen minutes then I think we need to
22 know who is responsible as on the town level of who
23 is going to monitor the safety procedure?
24 I have to tell you when I first got here I was

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2 under the impression that when I would leave here I
3 would know who was in charge. Well, I have to tell
4 you something I'm more confused now than I ever was
5 before I even got here.

6 So far, D.E.C., from what they
7 said, unless I misunderstood is the lead agency but
8 the D.P. -- D. -- D.E.P. does not have to give any
9 information to the D.E.C. to govern so therefore
10 the D.E.P. is on their own. The D.E.C. is on their
11 own. Incidentally, the D.E.C. was very shaky on
12 what their report was and the D.E.P. seemed a
13 little better organized but unfortunately they're
14 not -- they're not in control.

15 Well, we are governed by FERC. I
16 would know a FERC representative if I fell over
17 him. I never saw one before in my life and I
18 didn't see one today. So the question remains, in
19 the town of Lumberland which is below the Swinging
20 Bridge and we will be wiped out forty percent worth
21 and then you're going to get wiped out next, Mark,
22 who is in charge? We cannot wait anymore. We need
23 to know this. We need to know -- we're also told
24 by D.E.C. before that we have an emergency

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2 management plan that was supposed to be given out
3 and a whistle.

4 Well, let me tell you something
5 if you get in the Mongaup Valley you could whistle
6 all you want you're not going to hear a thing in
7 that Mongaup Valley. So that whistle -- they could
8 whistle all they want until all the water comes
9 down and kills everyone because that's going to
10 happen.

11 The other situation too is where
12 is their emergency plan so we know? The first time
13 in January of last year, 2005, I was taking a

14 shower at six o'clock in the morning and I was
15 abruptly taken out of that shower by the State
16 Police to tell me that to please -- I'm sorry, that
17 was March -- to please get down to the firehouse,
18 that the -- that we have a situation with the --
19 with the Swinging Bridge Dam. I said how bad is
20 it? They said it could go at any time. You need
21 to get down here immediately.

22 Well, by the time I dried off
23 without shaving or anything I went down there and I
24 was told that we had to evacuate the firehouse

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2 because that's going to go too and we had to set up
3 headquarters in Forestburgh. Well, where is the
4 plan? Where is the notification? When -- when
5 there is a structural problem who is really in
6 charge? I think maybe that maybe what we need to
7 do is designate the power to more than one agency
8 because it's obvious they can't handle what's going
9 on at this point.

10 The other problem is too is the
11 notification system. If we are not sure of who is
12 going to notify us -- now the town of Lumberland as
13 well as the other towns -- we have our emergency
14 disaster evacuation plan. But no one is going to
15 go -- going to be able to evacuate in a fifteen
16 minute notice. We need to know ahead of time.
17 Swinging Bridge has a structural problem and I -- I
18 want to just tell you about how bad the abuse is.
19 That structural problem -- here is a -- an agency,
20 Mirant, that is in bankruptcy -- that is the second
21 largest bankruptcy in the United States. They have
22 ten billion dollars in assets but yet they're
23 threatening as the letters you have to be held
24 hostage that they will just not renew their license

0351

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2 and walk away if they have about a twenty --
3 fifteen to a twenty foot void underneath because
4 when they were monitoring according to D.E.C. on
5 their own they were responsible for -- for
6 inspecting -- that they allowed that void to expand
7 from -- from five feet to nine feet to fifteen to
8 twenty feet and the way they found out is when the
9 top buckled a little bit. Well, when the top
10 buckles just tell me it's getting ready to go.
11 It's not acceptable.

12 We have a considerable amount of
13 situations here that are life-threatening and in
14 the town of Lumberland -- I maybe sound a little
15 anxious just because I cannot safely tell my people
16 that they will -- their lives are not in danger.
17 We will be forty percent wiped out. We will not
18 have to worry about the millions and millions of
19 dollars of damage because there probably wouldn't
20 be any life to argue the point.

21 We are in a crisis ladies and
22 gentlemen and we need to deal with it and we need
23 to deal with it immediately and I have to tell you
24 something, the last time I went up to Swinging

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2 Bridge where they were reluctant to let me up. I
3 had to go up with one of our police cars -- they --
4 in -- in July of -- of last year they -- they
5 had -- they -- they were supposed to repairing the
6 Swinging Bridge, which was supposed to repaired by
7 March at the latest, I believe?

8 Well, let me tell you something,
9 I went up and I looked. It's the same way in July
10 that it is now. Now the engineer which is Mohawk
11 Engineering, that is the second corps of engineers.
12 The first one walked off and left a few months ago.
13 They had to start over again. They told me not to
14 worry because the water level will not go up
15 because we're going to keep it low.

16 Well, my response to them is I
17 said well, gee, how you going to do that? I said
18 you have -- two hydro plants -- pumps underneath
19 that to pump the water out, one is out already. We
20 have wet season comes which will raise the level
21 already. They are seventy-three -- seventy-three
22 feet below capacity now with the water level --
23 water level. The engineer at Mohawk Engineering
24 told me that that will raise naturally on its own

0353

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2 to seventy-three feet and they're telling us
3 structurally it will not handle. So what are they
4 telling us? That we just have to wait to all die?
5 It's not acceptable. We need to have some help,
6 ladies and gentlemen. We need it immediately.
7 Please do something to help us. Thank you.

8 ASSEMBLYPERSON GUNTHER: These --
9 CHAIRPERSON DiNAPOLI: Ms.

10 Gunther?

11 ASSEMBLYPERSON GUNTHER: -- these
12 gentlemen all -- I represent this district and you
13 can see what we've going -- going on -- what's been
14 going on in Sullivan and Orange County for the last
15 year and I agree with --.

16 THE REPORTER: Could you turn the
17 microphone just a little bit?

18 ASSEMBLYPERSON GUNTHER: Oh,
19 sorry.

20 THE REPORTER: That's all right.

21 ASSEMBLYPERSON GUNTHER: And I
22 agree with Jim, John and Mark that it's very
23 difficult to get answers. We just found out that
24 Mirant might back out, be bankrupt and not -- and

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2 may not pay to fix or fund to fix this Swinging

3 Bridge Dam. I live in the same town as Jim
4 Galligan. It's -- it's a crisis. It's a nightmare
5 and there's really nobody to turn to for help
6 because it's a privately owned dam that there
7 really doesn't seem to be any oversight in any one
8 of these privately owned dams, mind the publicly
9 owned dams and it does threaten the lives of many,
10 many of my constituents.

11 We were so lucky last year not to have had a great
12 loss of life. It was a miracle. And the miracle
13 was because we had great volunteers. We have a
14 community that cares but if we didn't and, you
15 know, if it wasn't at the right moment or the right
16 day they would not be out there.

17 So when we talk about
18 legislation, passing legislation we need oversight.
19 We need someone to be -- be responsible. We need
20 some sort of communication, collaboration. You
21 know, after 9-11, you know, emergency preparedness
22 was on all of our minds and you would have thought
23 that these systems were in place today and --
24 and -- and if tomorrow we had a terroristic attack

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2 we're not ready again. We have no communication
3 system. If it was bioterrorism, it's a bomb, we
4 are not ready for that in -- in New York State and
5 I think that it's a terrible, terrible injustice to
6 the taxpayers of this state and I think we really
7 as a legislative body have to take care of it
8 sooner than later.

9 I mean, we're -- we have FERC
10 coming to our community on March 2nd. Mirant said
11 to me well, you know, we don't whether we'll be
12 ready. I said be ready. But notice they picked
13 the date of March 2nd. March 1st is the last day
14 that anybody could go into their assessor and
15 complain about their assessment on their land.
16 These people are paying tons of money for living on
17 a mudhole, tons of taxes.

18 So in my estimation, you know, we
19 put in three pieces of legislation in the Assembly.
20 I think that probably they need to be tweaked but I
21 think that the D.E.C. and the D.E.P., you know, she
22 was pretty flippant today and I'll say it out loud.
23 I'm not really afraid to say so, but the
24 inspections were -- to me, are a joke. I mean,

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2 that is a joke.

3 Did nobody notice that the same
4 thing was photostated for two years? And it's not
5 the employee. It's the process and the oversight
6 and it's time at our state level that we do it.
7 And I cannot agree with these gentlemen -- I've
8 heard it. I've seen it. I went to the flood
9 sight. I have never seen such devastation to so

10 many homes because of water and you know what we're
11 doing? We're sitting back and waiting for it to
12 happen again and this time it'll be a hell of a lot
13 worse.

14 So gentlemen, I don't have any
15 questions. I'd like you to explain about the
16 privately owned and how we have -- you know, on --
17 on the next day we go up to the top of dam.
18 There's a nine foot sink hole. Think about a nine
19 foot sink hole and it's like tarmac at the top,
20 cracks all over the place. I walked out to the
21 middle of that dam and I thought am I insane
22 standing at the middle of this? And there's a
23 hundred and thirty-five foot deep lake on --
24 from -- one side and I'm standing in the middle. I

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2 thought wow, and -- you know, it was just
3 frightening and it -- it's continues to have a sink
4 hole. We don't know about the -- right now they
5 say to us you say is the dam stable? We cannot
6 guarantee stability. They can guarantee nothing.
7 It's like to me it's like peeling back a -- the
8 layers of onion skin. Every time they pull away a
9 piece of skin they find something new. It's not an
10 exact science. They don't even know what they're
11 finding underneath.

12 They go in and they bore holes
13 and they look and -- it -- to me it's just not
14 exact science. I'm really disappointed about the
15 reservoir systems across New York State and I agree
16 with all the gentlemen and the -- the women that
17 came up here today. The time is now to make some
18 changes of the process and the leadership and the
19 oversight. That's it.

20 CHAIRPERSON DiNAPOLI: Thank you,
21 Aileen.

22 ASSEMBLYPERSON TONKO: Yeah.

23 CHAIRPERSON DiNAPOLI: Mr. Tonko?

24 ASSEMBLYPERSON TONKO: Supervisor

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2 Galligan. You had mentioned something that I was
3 going to quiz our Director Bill Van Hoesen about
4 you both mentioned inspections that are conducted
5 and that you in local government or in -- in agency
6 capacity don't get to review or don't get noticed
7 on. Is it because you don't request these forms or

8 even if you do are they denied you? What's the --?

9 MR. GALLIGAN: They have been
10 requested and not provided. And that's mainly a
11 result of the whole dam situation becoming more and
12 more in the news today and people being aware of
13 it. Prior to that they were never set -- excuse
14 me.

15 ASSEMBLYPERSON TONKO: Uh-huh.

16 MR. GALLIGAN: Okay. We get some
17 privately owned dams but I mean by privately --
18 ASSEMBLYPERSON TONKO: Right.
19 MR. GALLIGAN: -- by home owners
20 associations and stuff like that.
21 ASSEMBLYPERSON TONKO: I didn't
22 even know that --.
23 MR. GALLIGAN: But we -- we have
24 trouble getting those. I mean, it's like a

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2 mystery.
3 ASSEMBLYPERSON TONKO: I -- I --
4 I'm at a -- I'm at a loss here to know if we in
5 statute or regulation require the sharing of
6 inspection information or reports with local
7 officials but if we don't it might be an
8 improvement to just indicate in law that you must
9 share this with local officials. This is --
10 there's a right to know here and there's certainly
11 a fear factor that is real.
12 CHAIRPERSON DESTITO: She
13 stated -- She stated that MR. GALLIGAN: And --
14 ASSEMBLYPERSON TONKO: Well,
15 Mr. --
16 MR. GALLIGAN: -- well, Mr.
17 Tonko --
18 ASSEMBLYPERSON TONKO: -- it
19 shouldn't be -- it's --
20 CHAIRPERSON DESTITO: That long.
21 Right. That long.
22 ASSEMBLYPERSON TONKO: -- but
23 no -- but it not having a problem is fine --
24 CHAIRPERSON DESTITO: Right.

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2 ASSEMBLYPERSON TONKO: -- but
3 individuals come and go, leaders come and go.
4 CHAIRPERSON DESTITO: Right.
5 Right.
6 ASSEMBLYPERSON TONKO: There
7 should be standards established that are protected
8 in statute.
9 MR. GALLIGAN: One of our
10 concerns is we live in a community where there's a
11 lot -- where there's lots of property which are
12 ripe for development, which I'd like some.
13 Developers are beginning to come
14 and we want to know the condition of the dam before
15 we let anybody develop around it.
16 ASSEMBLYPERSON TONKO: Exactly.
17 MR. GALLIGAN: So it's one
18 opportunity we might have where we can say well,
19 you want to do this you got -- you know, at least
20 we might have somebody interested in fixing it.
21 After every thing is once taken care of and the
22 developers are gone.

23 They're not going to interested.
24 It goes back to Homeowners Associations. Trying to
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2 get information is extremely difficult.
3 ASSEMBLYPERSON TONKO: Some --
4 MR. GALLIGAN: It's almost
5 impossible.
6 ASSEMBLYPERSON TONKO: -- I'm
7 sorry. You were going to say something?
8 MR. LIGRECI: I was just going to
9 add to that too. And what -- what -- what you --
10 you hit the nail right on the head basically.
11 Right now we're in a situation where our code
12 enforcement can't -- we cannot even get up to the
13 top. They -- they won't even let us up to the top.
14 It would stand to reason that if the town is going
15 to left -- be left holding the bag we should at
16 least be able to go up and inspect and get an idea
17 and perspective on what's going on so we could
18 fight back in case -- less -- it's less than
19 accurate and right now, we -- we don't have that.
20 ASSEMBLYPERSON TONKO: Right.
21 MR. LIGRECI: We really need some
22 help to do that. That's a good step in the right
23 direction.
24 ASSEMBLYPERSON TONKO: Kay.

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2 The -- I'm sorry. You were going to --?
3 MR. HOUSE: Yeah. I was just
4 going to say in -- in answer to your question to
5 Jim too, is that in point of fact the -- the FERC
6 plan that exists for the Mirant dam and for the two
7 dams below that is on file with Sullivan County.
8 It's on file with Orange County. When this
9 originally occurred that Mr. LiGreci was talking
10 about being pulled out of his shower which is more
11 information than I needed but when it occurred the
12 Orange County Emergency Management Director, Walter
13 Quarry (phonetic spelling) came to my town and he
14 actually had the binder that was provided to him by
15 then Orange and Rockland Utilities and in the
16 binder it said that this binder is not to be
17 disseminated nor copied to any other agency.
18 My question to him was does that
19 make sense? He said no but the regulation is they
20 don't have to supply anybody else with a copy and
21 by putting that in there they're saying that there
22 is confidential information within that report that
23 is not for public knowledge. I -- I was just -- I
24 was appalled because here was the information we

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2 needed which could have told us two hours ago what
3 we could potentially expect and it's not available
4 to us.

5 Thankfully, our -- our county
6 coordinator, you know, knows where the book is and
7 brought it and was able to show us but I don't -- I
8 still don't have a copy and -- and -- and you'll
9 find that that is, in fact, the case. Normally,
10 with the D.E.P., any conversation you have with
11 them will be predicated by the statement well,
12 we're not legally obligated to -- and that is the
13 normal course of conversation and that's what we
14 get.

15 They don't want to share the
16 information. They are still in 9-11 mode. They
17 really believe that everything is a potential
18 terrorist threat and that's how they're working
19 these dams because why? Somebody's going to drop a
20 poison pill in the Rondout Reservoir so we better
21 hold all the water back at the Neversink. Oh, then
22 they're going to drop one there. We better hold it
23 at Cannonsville. That's what they're thinking.
24 And it's just -- it's not a reasonable thought

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2 process but that's what we have to deal and you're
3 dealing with it there.

4 I -- the Schoharie Reservoir is
5 full? You must be kidding.

6 ASSEMBLYPERSON TONKO: All right.
7 The -- and the other point about control status or
8 lead status by agency? So many have pointed to
9 SEMO has being that agency that is supposed to
10 coordinate and you earlier heard my comments about
11 lack of -- lack of good review by many out there.

12 It -- it may be officials or
13 service providers, responders -- I hear this all
14 the time and I think that again, we need to have a
15 good airing about just how that control is
16 exercised because it is critical to response out
17 there and if that lead agency status role isn't
18 utilized well enough. Or if there are murky
19 overlaps or gaps we need to nail that down. It --
20 it -- the responsiveness is not as solid as it
21 needs to be.

22 MR. LIGRECI: I'd just like to
23 add one other thing. The -- the -- you know, we
24 talk about the terrorist act and the -- that they

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2 are reluctant in giving us an emergency evacuation
3 plan to the municipalities. The bottom line is the
4 only one that's being terrorized are the people
5 because we don't know what's going on.

6 ASSEMBLYPERSON TONKO: That's a
7 good assessment.

8 (applause)

9 CHAIRPERSON DiNAPOLI: Gentlemen,
10 thank you very much for your testimony. Thank you.
11 Very helpful testimony. Next we have Dam Concerned

12 Citizens and I announced the way it sounds and
13 they'll testify in the order that I'm calling them
14 up, Gail Schaffer -- Honorable Gail Schaffer,
15 Michael Quinn, P.E., Lester Hendrix and Howard
16 Roger Bartholomew.

17 (Off-the-record discussion)
18 CHAIRPERSON DiNAPOLI: And
19 we're -- we're delighted with all of the witnesses
20 we've seen today but we'll take a special note of
21 personal privilege. We're especially delighted to
22 welcome Gail Schaffer. Our outstanding former
23 Secretary of State and outstanding member of the
24 State Legislature. In fact, many people tell me

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2 you're the best representative for that Assembly
3 district that's ever been.
4 MS. SCHAFFER: Oh, my God.
5 Well, the district has changed.
6 CHAIRPERSON DiNAPOLI: My -- my
7 friends and I welcome you.
8 MS. SCHAFFER: It -- it truly is
9 a privilege to be here and I know --
10 CHAIRPERSON DESTITO: Gail, could
11 I just --.
12 MS. SCHAFFER: Oh, sure.
13 CHAIRPERSON DESTITO: -- I have
14 to -- I have to leave probably somewhere in the
15 middle of this.
16 MS. SCHAFFER: I understand.
17 CHAIRPERSON DESTITO: So I just
18 want to apologize but I have an event and it's very
19 much snowing back in my district.
20 MS. SCHAFFER: Oh, my goodness.
21 CHAIRPERSON DESTITO: Yeah.
22 MS. SCHAFFER: Yeah.
23 CHAIRPERSON DESTITO: So I
24 just -- yeah.

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2 MS. SCHAFFER: We understand
3 that.
4 CHAIRPERSON DESTITO: It's a
5 storm. So I just want to make sure that you don't
6 think that I'm walking out on --
7 MS. SCHAFFER: No.
8 CHAIRPERSON DESTITO: -- on you.
9 MS. SCHAFFER: I understand. I
10 know it's been a long day and -- and we're already
11 weighing on your schedule.
12 CHAIRPERSON DESTITO: Right. So
13 I just --
14 MS. SCHAFFER: Yeah.
15 CHAIRPERSON DESTITO: -- I didn't
16 want anybody to think that I was being rude.
17 MS. SCHAFFER: We appreciate
18 that.

19 CHAIRPERSON DESTITO: But I -- I
20 will stay for a little while longer.
21 MS. SCHAFFER: Thank you.
22 CHAIRPERSON DESTITO: Thank you.
23 MS. SCHAFFER: Well, it's a
24 privilege to be here today among my old colleagues

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2 and I really appreciate -- all of us from Dam
3 Concerned Citizens truly appreciate the opportunity
4 to be here and appreciate that you're focusing
5 this -- policy focus on this issues because it's
6 crying out for leadership.

7 And Chairwoman Destito, Chairman
8 DiNapoli, my good buddy, Paul Tonko, Assemblywoman
9 Gunther and I have to add my -- my great friend,
10 Rick Morris, who's a great environmental advocate
11 that we're -- we're lucky to have here in the
12 Assembly. And I also have to mention it's
13 appropriate we're here because this place is named,
14 I saw, after Owen Bigley who was a state Senator
15 here for many years.

16 ASSEMBLYPERSON TONKO: Uh-huh.

17 MS. SCHAFFER: A wonderful man.
18 My name is Gail Schaffer and I'm a life-long
19 resident of Schoharie Valley. My roots run deep
20 there. My ancestors fought in the Revolution
21 there. I grew up on a farm in Schoharie Valley. I
22 went to a one room school house on the banks of
23 that river and -- to a Gilboa Central School right
24 across from the dam.

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2 Howard Bartholomew and I here as
3 private citizens years ago helped to create the
4 first agricultural district in the entire nation in
5 Schoharie Valley. It was legislation enacted by
6 the state legislature and Governor Rockefeller and
7 we were the first state to pioneer that and in
8 Schoharie Valley we were the first to create an
9 agricultural district.

10 I've written -- I won't bore you
11 with the full length of my written testimony. It's
12 very lengthy. You can take it to bed tonight to
13 get you to sleep but I did title it Schoharie
14 Valley on the precipice of disaster, a crisis
15 resulting from gross negligence, potentially
16 criminal on the part of the city of New York and
17 the state of New York and I truly feel that's what
18 we're faced with here.

19 Schoharie Valley has been blessed
20 with a lot of rich historical heritage and natural
21 beauty and prime agricultural land. We were known
22 as the breadbasket of the Revolution. We provided
23 the wheat that powered the revolutionary
24 continental armies and -- and the soil in that

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2 valley is rated as one of the top ten in the world,
3 not just the nation. That's -- what a resource
4 we're dealing in terms of agriculture.

5 We have discovered that we are
6 living next to a sleeping giant. For all these
7 years we've lived next to the Gilboa Dam, New York
8 City has been our neighbor and the -- the dam
9 itself and all the Reservoirs in the Catskill
10 region were built at great sacrifice to the
11 communities upstate through the indiscriminate use
12 of eminent domain. There's a long history of how
13 many communities were obliterated and uprooted to
14 provide this resource for New York City.

15 The ecology of Schoharie Creek
16 certainly was changed forever. The fisheries, the
17 farmlands, the communities there. And we
18 understand the need for water. We're very proud
19 that New York City has consistently in -- in
20 comparisons of municipal water systems in large
21 cities around the country, New York always rates
22 number one in taste and quality for their water.

23 We understand that that's an
24 important contribution that we make. But we also
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2 feel there is a need for the greatest city in our
3 nation to feel a reciprocal obligation for the
4 sacrifices that have been made for -- by the
5 Catskill region and the most fundamental obligation
6 they have is for the public safety of our citizens.

7 In addition to the New York City
8 Dam that's on Schoharie Creek downstream we have
9 the Power Authority Dam which was built in the
10 1970's and was a further assault on the ecology of
11 Schoharie Creek through eminent domain so this area
12 has sacrificed a great deal for the collective
13 good.

14 On October 27th, 2005, the
15 current crisis emerged due only -- the only reason
16 we really learned about this was we had an
17 exceptionally dry fall, the water level was very,
18 very low and it became apparent just because of
19 that that there were these sink holes in the
20 embankment and subsequently the city got people in
21 there to analyze it further and obviously found
22 some very, very compromising factors.

23 Particularly this adhesion
24 between the concrete structure and the bedrock
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2 which we believe that that structure could have
3 already moved. They're talking about the
4 possibility of a sliding failure. They have not
5 denied that it's possible it could have moved
6 already. They won't categorically say no. So this
7 is a very, very fragile, vulnerable structure that

8 we're living with. And I'm not exaggerating when I
9 tell you that there are people in our community --
10 elderly people who cannot sleep at night, parents
11 who are afraid to send their kids to school if it's
12 a rainy day and the people in the valley feeling as
13 if we're living next to this ticking time bomb
14 with -- with no understanding of when the timer is
15 going to go off. It's like a powder keg.

16 But the worst part of this is
17 that it was all preventable. That's what I want to
18 drive home, particularly. Had the city invested in
19 just routine maintenance of it's infrastructure it
20 should never have come to this juncture. So
21 basically the trust that people have in their
22 government to protect them has been shredded.

23 New York City as our neighbor and as the owner of
24 this system has betrayed the public trust. New

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2 York State too as our oversight agency has betrayed
3 the public trust. Decades of deferred maintenance,
4 a shocking example of gross negligence on the part
5 of the city that I do believe is potentially
6 criminal -- certainly it's moral gross negligence.

7 And the city and the state have
8 both let us down. And lest an appeal to conscience
9 not be sufficient there is a tremendous liability
10 too for the city and the state of New York that all
11 our state leadership and city leadership should be
12 concerned about.

13 Now the dam itself is
14 compromised. As I mentioned the structure is -- is
15 fragile, the adhesion to the bedrock is
16 questionable, the valves on the spillway -- there
17 were valves put into the spillway when it was built
18 in 1926. We've been informed when we asked them if
19 they could use those to let some water downstream
20 that the city had not even bothered to operate
21 these valves for forty to fifty years. They hadn't
22 even operated them to keep them going.

23 The valves even in the Shandaken
24 Tunnel that they have been operating -- when it

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2 came to this crisis and we needed to release more
3 water we were told that only -- only five of the
4 eight valves are operable. There are three that
5 don't function at all. Of the five they weren't
6 fully operable and they've been gradually
7 ratcheting them up and trying to get them open more
8 but they've had so much sediment in there -- from
9 lack of maintenance and so much -- I guess lack of
10 lubrication that the valves have not been operable.

11 So even the part they have been
12 utilizing hasn't really be fully functional. So we
13 really are on the precipice of danger and as
14 several people have mentioned the weather patterns

15 we've been having show far more frequent scenarios
16 of -- of really heavy water.

17 So if the worst case scenarios
18 were to occur and the Gilboa Dam were to burst, we
19 would have -- I am -- as I understand it at least a
20 forty foot tsunami-like wall of water moving down
21 our valley inundating everything very swiftly in
22 its path.

23 With the combined water of the
24 two dams in the path there would be about

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2 twenty-four billion gallons of water, all the
3 concrete and debris from those dams, trees,
4 buildings, vehicles, power lines. Imagine
5 everything cumulatively moving down sweeping
6 communities in its way. The scenic, the historic,
7 the agricultural resources that are beyond
8 quantification, the old Blenheim Bridge which is a
9 national historic landmark, the stockade district
10 here in Schenectady and many other historic
11 resources along that valley, the prime agricultural
12 land, those are national treasures that would be
13 lost forever. They could not replace those. Plus,
14 the loss of revenue to the counties and the
15 municipalities involved.

16 More importantly even lives are
17 at stake and there are thousands of lives that are
18 potentially at stake, homes and businesses and
19 entire communities.

20 So we know with certainty that
21 neglect has seriously compromised this structure
22 but as fearful as our valley residents are we know
23 by their actions and also by the information that
24 the refuse to share that the city of New York

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2 officials are even more afraid than we are. They
3 are up there finally with their equipment and crew
4 on a twenty-hour cycle working into the night with
5 the new repairs they've just begun.

6 They have been withholding
7 information from us. Even state Senators who have
8 requested through the Freedom of Information Laws
9 to see the inspection reports that the city staff
10 have done have been denied that information. The
11 gentlemen on the previous panel mentioned that the
12 city is in 9-11 mode. I don't think they're really
13 in 9-11 mode. I think they're using the -- the
14 Homeland Security issue as a convenient shield to
15 hide behind because they don't want to disclose all
16 the details of their inspection reports, such as
17 whether the dam has moved, what the condition of
18 the concrete is. All those things are very
19 ambiguous and they don't want to share that
20 information so obviously we feel there's more that
21 they have to hide.

22 The Assemblywoman mentioned the
23 incident of falsified reports and if they have been
24 falsifying reports on two of the dams in the system
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2 that do not have a problem, imagine what they might
3 be deliberately, willfully falsifying or -- or
4 camouflaging on a dam of this kind of crisis.
5 So we have had -- in our opinion
6 it's been three months of bureaucratic inertia.
7 Basically this happened at the end of October. It
8 wasn't until the end of January, beginning of
9 February that they finally got some crews in there
10 to start doing something. In that three month
11 period, granted they did shunt water down the
12 Shandaken Tunnel through the Catskills but we have
13 been begging them to drain the water down out the
14 northward end as well -- on spillway end. They
15 finally conceded to put siphons in there which we
16 have been asking for. They're starting to build
17 this notch now this last two weeks and they're
18 going to put in these cables.

19 But otherwise it has been
20 bureaucratic inertia for three whole months and I
21 remember a parish commissioner in Louisiana saying
22 that bureaucracy has committed murder and I truly
23 believe that that's true in Katrina and we don't
24 want to see that here but I think that's how we
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2 would feel if we had a major crisis today, that
3 bureaucracy had killed people.
4 The Shandaken Tunnel is fourteen
5 miles. It's a very unique feature. Fortunately it
6 has been used to get some of that water out. But
7 our slogan of our organization is drain it down
8 before we drown and we believe that they really --
9 their goal really should be in the short term
10 interim period of repairs to drain as much water
11 out of that as possible and that they have an
12 opportunity here because Gilboa is the northernmost
13 reservoir in the entire system and it's also the
14 only one that goes northward in terms of the -- the
15 downstream natural flow and it's the smallest
16 reservoir.

17 So unlike any other reservoir in
18 the system they could really drain Gilboa down
19 without impacting it as much as it would be with
20 another reservoir.

21 Solving the problem and this is
22 where we get to legislative solutions and I really
23 know that the talent we have here in this Assembly
24 panel could really do some terrific things to
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2 improve the public safety, not just for Gilboa but
3 for all these dams that have been compromised.

4 First of all, in the long term
5 revitalization, we're -- we're glad that they have
6 accelerated the time table to 2008. We'd rather
7 see it be 2006 but our feeling is they should build
8 a new dam when they do this long term renovation,
9 that they -- they should put a state of the art dam
10 in there. The U.S. Society of Dams tells us that
11 this particular dam when it was built in 1926 the
12 design is for an average life expectancy of fifty
13 years. We're nearly eighty years. And you know,
14 if you have a car that you maintain well maybe you
15 get well beyond the average life expectancy. We
16 have a structure that was not maintained.

17 So it really has gone well beyond the
18 life expectancy even with poor maintenance. So we
19 think that we should trade in the Gilboa Dam for a
20 good new model and have flood control mechanisms in
21 there. I really hope the Assembly will pass
22 legislation requiring that these dams in a period
23 of time have flood control mechanisms to contribute
24 to alleviation of these situations, not only at

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2 Gilboa but otherwise.

3 We heard some other proposals.
4 We have watched along with everyone with horrified
5 disbelief at what has happened to the victims of
6 Hurricane Katrina. These are fellow Americans
7 abandoned by their government, misused, living in
8 squalor, living in deprivation, like third world
9 citizens at a subsistence level. Why? Because
10 they were left with no resources when they had
11 these overwhelming losses. And we don't want to
12 see that happen here if the worst should happen --
13 to allow that kind of havoc to compound the
14 overwhelming losses people already have had.

15 We believe that one good piece of
16 legislation would be for New York City to be
17 required if the worst occurred to pay within the
18 first week -- to pay every person who's been

19 displaced the assessed value as a minimal first
20 step -- the assessed value of their property and
21 obviously through litigation they would -- they
22 would eventually settle in months or years the full
23 compensation but no one should be stranded with no
24 resources like they were in the limbo of Katrina to

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2 survive with.

3 So that, we think is a minimal
4 first step. We believe that New York City should
5 be required to completely subsidize recording with
6 videos, the property, both real and personal that
7 people have so that it can be stored in an archive,
8 a video archive that can be used to document how --
9 what people lost, stored at high ground in a safe

10 place.

11 We believe that they should be
12 required to subsidize the cost being incurred by
13 municipalities and volunteer agencies for both
14 equipment and evacuation and planning. We believe
15 too that they must be required to provide a state
16 of the art siren system and other alert systems as
17 necessary.

18 My colleague, Sherry Bartholomew,
19 in our organization has submitted written testimony
20 with a further list of legislative measures but I
21 would like to add another one. I already mentioned
22 replacing the dam with a new -- with a new dam but
23 I also think there's a need in legislation to
24 require the city of New York and perhaps this

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2 should apply to other entities that own these dams
3 but to -- to put in law that they must include in
4 their responsibility the issue of flood -- of flood
5 control -- of water releases.

6 They, throughout this process
7 have refused to acknowledge over and over again any
8 modicum of responsibility to provide for -- for
9 flood issues. They -- they cling to this feeling
10 that they're only responsibility should be water
11 supply and common sense dictates that they need to
12 alleviate the pressure to save lives and do -- do
13 proactive releases.

14 Congressman McNulty said it all
15 when he began this morning. He said there is a
16 sense of urgency lacking on the part of the city.
17 And I have to say neither the government of the
18 state of New York nor the Mayor of the city of New
19 York has responded at all. The Governor has never
20 come down to see this area -- has never responded,
21 as I understand, to many letters that have been
22 written. I find that very puzzling. The Mayor has
23 not responded to a Congressman let alone to others
24 up here.

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2 As I said -- as Michael related,
3 our city council member and former colleague,
4 Oliver Koppell, when I saw him the other day in New
5 York said he hadn't even heard about this and he's
6 on the committee that oversees their agency.

7 I was very perplexed by the
8 D.E.C. Commissioner's testimony today. I felt her
9 attitude was one of reluctance for you as
10 legislators to give her more authority under the
11 law. I used to work for D.E.C. I -- I think that
12 D.E.C. should be delighted to see the legislature
13 willing to extend their purview and give them more
14 muscle to protect public safety.

15 So I think -- I agree with

16 Michael McNulty that it's been unacceptable, both
17 the state and the city attitude in response to this
18 crisis.

19 We thank you very much for
20 providing some leadership in having this hearing
21 today and we look to you as our legislators to give
22 us some real advocacy for the public interest. We
23 thank you very much for coming.

24 CHAIRPERSON DiNAPOLI: Thank you.

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2 Thank you. Mr. Quinn?

3 (Off-the-record discussion)

4 MR. QUINN: I'm just going to
5 read my testimony to -- and starting with thank you
6 Committee members for this invitation to testify
7 today. I am an Engineer with Clough Harbour
8 Associates here in Albany and a resident of
9 Schoharie County and I'm routinely involved within
10 inspections, investigations, dam design and dam
11 rehabilitation projects.

12 From my perspective as an
13 engineer another critical facet of public
14 infrastructure, namely, dams has slipped into decay
15 in New York State as well -- as across the nation.
16 In their most recent assessment of the nation's
17 infrastructure the American Society of Civil
18 Engineers gives a grade of D. to dams or poor
19 condition. This is an annual report they give the
20 nation's infrastructure.

21 That we are on the cusp of seeing
22 more dams making news headlines similar to the
23 collapse of nine dams in Burlington County, New
24 Jersey following an extreme July 13th, 2004 storm

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2 event. The evacuation of residents from down
3 stream from the Fulton Dam in Foreston (phonetic
4 spelling) following prolonged heavy rains in --
5 this past fall.

6 The failure of the Tongsok
7 (phonetic spelling) Hydroelectric Dam December
8 14th, 2005 located in Lesterville, Missouri causing
9 evacuation and a critical injury of a family caught
10 in the torrent released from the breach, closer to
11 the home, the failure of the Hadlock Dam in Fort
12 Ann and the damage caused when this structure
13 breached July 2nd, 2005.

14 It is time to take a leadership
15 role. This includes getting -- or setting policy
16 in passing regulations with commensurate funding to
17 rehabilitate New York State's dams. The effort
18 will not be unlike the leadership taken to close
19 the state's open dumps in the mid-eighties and
20 nineties and construct part three sixty state of
21 the art landfills.

22 Or the regulations of the

23 nineties to overhaul countless underground storage
24 tanks or U.S.T.'s or the proactive inspection and
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2 repair of bridges following the 1987 collapse of
3 the New York State Thruway Bridge over Schoharie
4 Creek.
5 By all measures these programs
6 and regulations have been examples of very
7 successful initiatives headed up by two important
8 state agencies. The New York State Department of
9 Environmental Conservation and the New York State
10 Department of Transportation have been instrumental
11 in preserving ground water resources and public
12 transportation systems fundamental to our quality
13 of life.

14 With a -- with a front line view
15 of the disrepair of the often remote dam structures
16 and the technical training to understand the modes
17 of failure I hope today -- today to raise the
18 conscientious of New York State law-makers and
19 policy makers to the need for regulatory initiative
20 and funding to systematically bring the state's
21 five thousand five hundred and sixty-four dams back
22 into compliance with an acceptable factor of
23 safety.

24 I've personally been involved
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2 with emergency response and forensic analysis
3 following dam failures and have the good fortune to
4 say that although the property damage has been
5 severe no one has been hurt.

6 Now, most recently the lack of
7 acceptable stability at the Gilboa Dam has come to
8 light. This facility is a one hundred and
9 eighty-foot high concrete gravity dam with a
10 thirteen hundred and twenty-four foot spillway that
11 impounds approximately twenty billion gallons of
12 water. At the Gilboa the outlet structure -- or
13 outlet controls -- controls which typically provide
14 means of lowering and emptying the reservoir is
15 inoperable. This condition large -- largely leaves
16 the gravity dam structure subject to hydraulic
17 loads at or above full reservoir levels.

18 Stability analysis indicate that
19 the structure has a factor safety against sliding
20 of just one point one four under normal reservoir
21 level and one point zero three under historic flood
22 stage. That was back in 1996. This means that the
23 forces driving the dam to failure aren't nearly
24 equal to the -- to the resisting forces maintaining

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2 a stable dam.

3 The New York State Department of
4 Environmental Conservation Dam design guidelines

5 require that existing dams have resisting forces
6 exceeding driving forces of one and a half to two
7 times, not three percent. The reasons why the
8 factor and safety of dams is dropping perilously
9 close to failure and in some cases below the one
10 point zero failure threshold can be explained by
11 the following.

12 One; the fact that the majority
13 of dams are reaching or have exceeded the end of
14 the design lives.

15 Two; deferred maintenance and
16 neglect is all too common.

17 Three; poor civil planning
18 increases run off upstream and allows development,
19 placing the lives and property in jeopardy
20 downstream.

21 Four; stronger, more frequent
22 storms during recent times must be passed through
23 original and now undersized spillways. In closing
24 I would like to mention the bill, H.R. 5190

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2 introduced by Congresswoman Sue Kelly known as the
3 Dam Repair and Rehabilitation Act. This will be
4 taken up in the one hundred and ninth congress.
5 The bill will provide three hundred and fifty
6 million over four years for repair, rehabilitation,
7 and removal of non-federal, high hazard, publicly
8 owned dams. Passage of this bill would be a great
9 start, keeping in mind that an estimated ten point
10 one billion is needed over the next twelve years to
11 address all critical, non-federal dams nation-wide
12 and an estimated three hundred and three point one
13 million is needed for the rehabilitation of New
14 York State's most critical dams.

15 And I would just like to add that
16 the American Society of Dam Safety Officials
17 estimates that the overall price tag in -- for the
18 United States in a study they did in -- 2003, it's
19 thirty-six billion to repair and rehabilitate dams.
20 Thank you and I appreciate your stamina today.

21 ASSEMBLYPERSON TONKO: We
22 appreciate yours.

23 CHAIRPERSON DiNAPOLI: Thank you
24 for your patients.

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2 Mr. Hendrix?

3 MR. HENDRIX: Thank you very
4 much.

5 CHAIRPERSON DiNAPOLI: Your
6 testimony.

7 MR. HENDRIX: Thank you, members.
8 Ladies and gentlemen, I thank you for the
9 opportunity to speak and I hope my remarks will
10 assist you. My name is Lester Hendrix. I reside
11 at 245 Main Street, Schoharie about twenty miles

12 below the Gilboa Dam. I shall comment on the
13 impact of New York City's recent Gilboa Dam
14 announcement, preparedness for a dam break and how
15 we might assess, address the dam problem.

16 On October 25, New York City told
17 us that Gilboa Dam does not meet safety standards
18 and could fail in extreme circumstances, rumors
19 began and public meetings were held. Piqued by the
20 rumors I inquired as to what was going on and I
21 posted the city's announcement and the meeting
22 dates on my website. I compiled a list of things
23 to take when evacuating and then I made copies of
24 them and passed it out at public meetings.

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2 At those meetings the New York
3 City officials explained the problem and the
4 solution and I passed out a list of acronyms. I
5 learned that A.C.O.E. means Army Corps of
6 Engineers. Schoharie County emergency management
7 answered questions as best they could but they gave
8 no evacuation information. They were caught up
9 short as well.

10 Before too long I heard rumors
11 that the dam had slid four feet and the water would
12 be fifty feet deep when it breaks. People were
13 saying they could not sleep nights and some became
14 nearly hysterical at meetings. We frequently heard
15 how much warning will I receive? How deep will it
16 get? Where shall I go?

17 People were concerned about
18 evacuating the elderly --

19 CHAIRPERSON DiNAPOLI: Bless you.

20 MR. HENDRIX: -- and the schools
21 and what to do with their pets -- bless you --

22 MR. BARTHOLOMEW: Thank you.

23 MR. HENDRIX: -- and how much
24 their property value would fall and their concern

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2 about paying for emergency preparations. One
3 family, I know, lost a buyer for their home when
4 the threat became known. High water came and
5 another family I know fled to a motel out of the
6 immediate area.

7 The city gave out emergency
8 weather radios but it was found that that the
9 weather radio signal was poor in the valley.
10 Programming and usage problems were found, despair
11 deepened. A web surfer devised his own escape
12 route and I asked him to do the same for other
13 areas and he did and I posted them and they became
14 the only evacuation routes available to the public.

15 Schoharie County emergency management appointed
16 task forces. The fire coordinator and county
17 planner started planning evacuation routes. The

18 county could not give me evacuation routes but they
19 did give me the list of existing evacuation
20 shelters. The two largest in the valley were
21 schools which would be underwater in a dam break.
22 Now in a 1996 flood the emergency operating center
23 was in the basement of the county building and it
24 flooded. And they moved it to the second floor of

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2 another building in the flood plain. Now, well,
3 now they're equipping another one far from the
4 valley for use because that second floor is not
5 high enough.

6 People started attending county
7 meetings and it became apparent that several
8 officials don't necessarily cooperate with each
9 other. We learned the only flood warning siren in
10 the county does not work.

11 Increasingly, people turned to
12 the web site saying it was the only place they
13 could learn anything. People without internet
14 heard about it and they called me constantly. One
15 woman called and asked me to mail her a copy of the
16 entire website.

17 By Christmas, two months after
18 the announcement the county had hired a
19 communications consultant who was working on the
20 dam problem but we had no evacuation routes. The
21 city of New York, roundly criticized by the public
22 had, by Christmas, started installing a debris boom
23 on the reservoir to prepare for repair.

24 On January 25th, three months

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2 after the announcement Schoharie county mailed
3 letters to residents. The cover letter said the
4 mailing would help residents prepare their own
5 evacuation plan. One page, printed front and back,
6 had information on preparing for a flood and three
7 surveys were included. One asked how many people
8 would need shelter. Another asked for data on
9 animals and a third asked for people needing
10 special care. And that was the mailing.

11 On January 31st, I learned that
12 the evacuation routes for two of the largest
13 endangered villages were faulty and would be
14 restudied.

15 New York must address the dam
16 problem on a state-wide basis, not merely in the
17 Catskills and we must do this before another dam
18 fails. I urge these actions.

19 Number one; set stringent design,
20 construction, operation, and maintenance standards
21 for dams.

22 Number two; adequately fund the
23 oversight of dam design, construction, operation
24 and maintenance and annually make a public report

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2 of the findings for each dam.
3 Number three; require each dam
4 owner to pay for the physical inspection and a
5 record audit of that dam each year by an engineer
6 hired by and reporting to the county in which the
7 dam is located.
8 Number four; require local
9 emergency management offices to maintain current
10 emergency plans for worst-case dam failures and
11 annually audit the local plans.
12 Number five; established dam
13 owners' liability for damages in a dam failure due
14 to negligence.
15 And number six; require the flood
16 control capability and warning systems to be part
17 of all high hazard dams.
18 Ladies and gentlemen, there is
19 just no sense in allowing high hazard dams to exist
20 without these safety features. There is just no
21 sense in allowing high hazard dams to exist without
22 safety features to protect the downstream public.
23 Thank you for the opportunity to
24 speak.

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2 ASSEMBLYPERSON TONKO: Thank you.
3 CHAIRPERSON DiNAPOLI: Thank you.
4 Okay. We'll pass the mic over to Mr. Bartholomew.
5 MR. BARTHOLOMEW: First of all, I
6 want to thank you all for allowing four of us to be
7 here today and we greatly appreciate the efforts
8 you've made to look into this complex and very
9 dangerous matter.

10 My comments are abridged with
11 regards to the document that I've submitted so that
12 it will be somewhat shorter.

13 My name is Howard Roger
14 Bartholomew. I reside at 148 River Street in
15 Middleburgh, New York. I'm a life long resident of
16 Schoharie County.

17 The Gilboa Dam is the second
18 oldest to the west of Hudson Dams owned and
19 operated by the city of New York. The Gilboa Dam
20 and the Schoharie Reservoir impounds will be
21 seventy-nine years old this year. While it was
22 once a marvel of engineering boasting for a time
23 the world's longest tunnel has been allowed to
24 deteriorate to the point that it poses a threat to

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2 the residents, the main river valleys below it.
3 Residents of Schoharie,
4 Montgomery, Schenectady, and southern Saratoga
5 counties and areas bordered by waters flowing from

6 the Gilboa Dam face certain property loss and
7 possible death should this poor neglected old
8 structure fail.

9 What will follow is a brief
10 discussion of the problems facing the Gilboa Dam.
11 These have arisen since the completion of the
12 reservoir in 1927. A more detailed examination of
13 these factors, as I said, will be found in the
14 paper that I have presented.

15 It was known in the year 2002
16 that there was an unacceptable factor of sliding
17 failure at the Gilboa Dam. This was reported in an
18 abstract entitled stability analysis and the
19 interim safety improvements, Gilboa Dam spillways,
20 Schoharie Reservoir, New York.

21 One of the engineers
22 participating in this -- in this study that was
23 presented to a conference of the United States
24 Society of -- of Dams in 2003 was New York City

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2 Department of Environmental Engineer, Paul Costa
3 (phonetic spelling). The risk of sliding was
4 not -- I repeat was not discovered in October of
5 2005.

6 It was first -- publicly reported
7 then but it was known in 2002. I have a copy of
8 this report with me and I can make it available to
9 members of the panel should you desire it. It's an
10 abstract so that the sliding factor is not a new
11 discovery. It's just a new revelation.

12 Another problem is siltation.
13 The very process that created the Catskill Delta
14 geologically is now filling the reservoirs with
15 sediment. A cubic foot of silt proposing against
16 the dam weighs about one hundred thirty pounds. A
17 cubic foot of water weighs roughly sixty pounds.
18 Silt exerts more than twice the force against the
19 aged dams west of the Hudson than water does in a
20 state of rest.

21 There are great quantities of
22 silt in the Schoharie Reservoir that should be
23 removed as soon as possible to reduce strain on a
24 dam of very questionable stability.

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2 The third factor; limited means
3 of draw down. This applies to the Schoharie
4 Reservoir and the Gilboa Dam. Built at the time
5 when water rights of downstream residents were not
6 at issue the Gilboa Dam has no viable means of
7 releasing water downstream other than spillage. If
8 the inflow of the Schoharie Reservoir exceeds one
9 thousand cubic feet per second the Shandaken Tunnel
10 output is overwhelmed and the Gilboa Dam will spill
11 after the reservoir fills.

12 Spillage of the dam makes work

13 below and in front of it impossible. Hence the
14 need for notches, siphons, et cetera to draw the
15 reservoir down.

16 Changing weather patterns, the
17 fourth factor. This is one factor that we have no
18 control over. It's an undeniable fact that three
19 of the top ten floods on the Schoharie have
20 occurred in the last eighteen months. New and
21 ominous weather patterns seem to be emerging world
22 wide. With the Catskills ability to trap moisture
23 and given the decrepit condition of the Gilboa Dam
24 we have a formula for disaster.

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2 A fifth factor which is also
3 beyond our control, war, terrorism and disease.
4 It's worth noting that the construction of the
5 Rondout and Neversink Reservoirs was interrupted by
6 World War II. We have been at war since the tragic
7 events of September 11th, 2001. With the
8 disruptive effect -- lots of disruptive effects of
9 an act of terrorism or a pandemic of a new disease
10 would be on work at Gilboa are as unimaginable as
11 they are real. The present world climate adds to
12 the immediate urgency of accomplishing interim
13 repairs on the Gilboa Dam and possibly other west
14 of Hudson structures.

15 Red-tape, partisan bickering,
16 bureaucratic turf-wars, et cetera, should not be
17 allowed to interfere in this matter for indeed it
18 is a matter of life and death. Thank you.

19 CHAIRPERSON DiNAPOLI: Thank you.
20 Mr. Tonko?

21 ASSEMBLYPERSON TONKO: Thank you,
22 Mr. Chair. Certainly I want to thank all of you.
23 My immediate predecessor who received great praise
24 and I'll ditto that and all of you as panelists,

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2 thank you for participating. I should thank
3 everyone here including this panel for their
4 patience today. You've been great at enduring in a
5 very long hearing but when you were here earlier on
6 in the -- in the -- the hearing today the -- the
7 questions about new construction and the fact that
8 they're bringing this dam with its improvements in
9 2008 or beyond however it takes to get it done, to
10 new higher standards of new construction for dams.

11 I take it from your call for new
12 construction that you don't buy the -- the outcome
13 of -- of any of the -- of the reconstruction that
14 will leave us with an inappropriate dam structure.

15 MR. QUINN: It's Mike Quinn
16 again. I wouldn't characterize it as -- I
17 wouldn't -- there's ways that you can rehabilitate
18 dams and -- and I -- I can say and I've been part
19 of the workshops with the D.E.P., the D.E.C.,

20 U.R.S., the Corps of Engineers. I've sat it in
21 with -- you had -- there -- there's a quite a heady
22 group assembled to look at this dam and -- and my
23 feeling is that they -- they're going in the right
24 direction. You can rehabilitate dams. There's

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2 precedent of a dam of this structure being
3 rehabilitated.

4 That's not -- so I wouldn't say
5 that you -- you can't -- you know, you can't do
6 that and -- and -- and it's been done and -- and I
7 would expect that we would ultimately will get
8 the -- the right kind of reconstruction here.

9 ASSEMBLYPERSON TONKO: As a panel
10 you bring to the -- our attention the -- the slip
11 factor?

12 MR. QUINN: Yeah.

13 ASSEMBLYPERSON TONKO: And you
14 also heard the exchange earlier today about the
15 life expectancy that's placed on this
16 infrastructure which doesn't seem to have a number
17 yet.

18 MR. QUINN: Uh-huh.

19 ASSEMBLYPERSON TONKO: With that

20 being said which should -- what would you
21 professional opinion be in term of --

22 MR. QUINN: I think --

23 ASSEMBLYPERSON TONKO: -- what it
24 adds to life expectancy?

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2 MR. QUINN: -- I -- you know,
3 the -- the process that has to -- you know, we're
4 talking about gravity structure. It's concrete.
5 There's -- a great deal of concrete has weathered,
6 decayed, needs to be removed. But it's a frosting
7 on top of a larger what we've been told is a
8 competent mass concrete structure and -- and those
9 are the things I'm learning about as I work with
10 the folks from the D.E.P. and the D.E.C. is --
11 well, mainly D.E.P. and Gannup-Flemming (phonetic
12 spelling).

13 They -- they're -- they're trying
14 to demonstrate -- I'm representing the county of
15 Schoharie that, in fact, we have -- they have
16 confidence in this structure once they remove the
17 outer weathered material. So it -- when the leads
18 or -- or it can be demonstrated that we have it --
19 a reasonably good concrete mass below that, the tie
20 down anchors will provide additional reinforcement.
21 Basically, you're adding weight to the structure.
22 You're tying the structure down to deeper bedrock
23 so -- so the tie down anchors are critical to the
24 rehabilitation of it.

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2 So if -- if one has to put a time
3 frame in terms of design life on this new
4 structure --

5 ASSEMBLYPERSON TONKO: Uh-huh.
6 MR. QUINN: -- all you have to do
7 is ask the folks that -- within a post-tension tie
8 down anchors how long do your anchors last and --
9 because without the anchors the -- you -- you go
10 back to the older structure and now there's also
11 plans and I -- I've just at this point only been
12 told but there's -- there's going to be additional
13 concrete put into the toe of the structure so
14 adding more weight, more buttressing and more
15 strength to the -- the gravity nature of this,
16 okay?

17 So from the engineering end of it
18 I do see a lot going in the right direction. Now,
19 I do have -- I'd raise questions as well as the
20 town supervisors at Schoharie that haven't been
21 fully answered and -- and we're going to continue
22 to pursue those answers until we get the answers we
23 want to hear.

24 ASSEMBLYPERSON TONKO: You all
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2 make great recommendations -- I'll just say this,
3 Gail, and then we'll go to your comment -- about
4 improvements in legislative format and -- and so we
5 thank you for that. I thank you for that because
6 it will be helpful. I think there's a -- a lot of
7 concern about the response and evacuation processes
8 that are critical life-saving so we need to have
9 that done as solidly and state of the art as
10 possible. Gail?

11 MS. SCHAFFER: I just wanted to
12 add in response to your question, Mike is the
13 engineer expert. I'm not. However, both
14 Congressman McNulty and I have -- have felt very
15 strongly that the city should be obligated to
16 create a new state of the art dam in the final
17 renovation phase. The city has saved millions of
18 dollars over the years by not investing in -- in
19 routine maintenance on the dam.

20 They're also spending millions of
21 dollars currently in acquiring property in the
22 watershed, which is an understandable goal.
23 They -- but they've been paying some highly
24 inflated prices for some of those properties.

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2 Particularly one in our area that just truly raised
3 people's eyebrows. And so they could take the
4 millions that they're currently putting into that.
5 Make this the top -- the front burner priority and
6 build a new dam and go back to the lesser priority,
7 which is not a life threatening one of -- of land

8 acquisition later.
9 ASSEMBLYPERSON TONKO: Has any
10 experts or -- tossed out any potentials costs of --
11 or projected costs of -- of new construction?
12 MS. SCHAFFER: I'm not aware of
13 that. I -- I just think that considering the long
14 history of neglect and the lives that are at stake
15 that -- and the resources that New York City has
16 they should easily be able to fund it.
17 CHAIRPERSON DiNAPOLI: Thank you
18 for very specific and concrete recommendations --
19 MS. SCHAFFER: Thank you.
20 CHAIRPERSON DiNAPOLI: -- that we
21 will certainly consider as we move forward. Thank
22 you so much.
23 MS. SCHAFFER: Thank you very
24 much.

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2 CHAIRPERSON DiNAPOLI: And
3 good -- good to see you again.
4 MS. SCHAFFER: You too.
5 CHAIRPERSON DiNAPOLI: Yeah.
6 MS. SCHAFFER: It's always good
7 to see you all.
8 (Off-the-record discussion)
9 CHAIRPERSON DiNAPOLI: Next we
10 have Timothy Sweeney, Regulatory Watch Program
11 Director, Environmental Advocates and Bruce
12 Carpenter, Executive Director, New York Rivers
13 United.
14 Yes. Sit.
15 MR. SWEENEY: All set?
16 CHAIRPERSON DiNAPOLI: Yeah.
17 MR. SWEENEY: Chairman DiNapoli,
18 Chairman Tonko, Assemblywoman Gunther. Thank you
19 for inviting me to testify today and thank you for
20 your endurance.

21 My name is Timothy Sweeney. I'm
22 the Regulator Watch Program Director at
23 Environmental Advocates of New York. I'm going to
24 skip over portions of my written testimony just in

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2 the interest of time.
3 On behalf of Environmental
4 Advocates, our Board of Directors and over seven
5 thousand members I want to thank you for holding
6 this hearing and applaud your leadership on
7 bringing the public's attention to an issue that is
8 easily ignored. In the past eighteen months
9 Environmental Advocates has published two reports
10 on the Department of Environmental Conservation and
11 its capacity to -- to fulfill its mission with
12 approximately seven hundred fewer employees when
13 compared to the mid-nineties.
14 In our reports, Endangered Agency

15 I and II, we reveal that among many problems we
16 uncovered at the agency, the dam safety unit had
17 just four employees -- this was last year -- last
18 fall when we did this -- last summer, I'm sorry --
19 with responsibility for more than fifty five
20 hundred dams state wide.

21 It's unfortunate that only now
22 after a dam failure in Washington County at Hadlock
23 Pond and the problems with the New York City
24 watershed dams are more staff positions being

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2 proposed for the D.E.C.'s dam safety unit.

3 Of the fifty five hundred dams in
4 the state, three hundred and eighty-three are
5 listed as class C. or high hazard.
6 The high hazard classification means as we've heard
7 before that the dams are not eminently going to
8 fail but if they did it would result in loss of
9 life and -- and major damage to infrastructure.

10 It -- as -- as has been mentioned
11 also before the D.E.C. has -- as a matter of policy
12 inspects high hazard dams ever two years. This is
13 not a regulation. It -- it's not required
14 anywhere. Perhaps it's required in their new regs
15 that I understand are now in GORE. I don't know
16 how long they'll -- they'll be in there.

17 The downside of -- of -- of the
18 fact that they're -- they're concentrating on the
19 high hazard dams is that many of the intermediate
20 dams and -- and none of the other ones really are
21 getting looked at in a timely fashion if at all.

22 We did a FOIL request and the
23 chart behind you is an indication of how many dams
24 were inspected over the course of the ten year

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2 period, '94 to 2004. You can see the line up on
3 top of -- of the fifty five hundred dams state wide
4 and those tiny little bars at the bottom were the
5 dams that were inspected.

6 The -- the D.E.C., during that
7 time period was able to inspect between one point
8 four percent and eleven point two percent of -- of
9 the state's dam inventory. The problem with --
10 with inspecting the high hazard dams, not that
11 there's a problem with inspecting them, there's a
12 problem with not having enough people to look at
13 the intermediate hazard dams is that no one is on
14 site in -- in -- frequently enough to determine if
15 there's been downstream development of --
16 downstream of these intermediate hazard dams that
17 may require that these dams be raised to a high
18 hazard standard.

19 If there's no one out to inspect
20 a dam, no one to take into consideration what's
21 going on around it then -- then we really -- we

22 really don't have an accurate picture, perhaps, of
23 how many high hazard dams the state should have.

24 Another thing that has been

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2 raised by -- by several people now and I -- I -- I
3 am compelled to reiterate this because it's driving
4 me crazy is the D.E.C.'s stonewalling with regard
5 to giving information out -- we have asked -- and
6 there's a copy of the FOIL denial attached to these
7 comments -- we asked initially for the list of the
8 fifty-four high -- fifty-four deficient dams that
9 were reported to the association of state -- state
10 dam safety officials. The D.E.C. reported this --
11 that there were fifty-four deficient dams.

12 We asked for a list of those
13 dams. We were told that no such list exists.
14 Therefore, under FOIL the agency doesn't have to
15 create a document so the answer was no. So I tried
16 again by asking for the actual inspection records
17 for those fifty-four dams and that's a denial
18 that's attached to your comments there where they
19 said as we told you before we don't have a list so
20 we can't give you the inspection records and even
21 if we did have a list and we could give it to you,
22 we wouldn't because of an exception to the Freedom
23 of Information Law, public officers law, section
24 87.2 (f) which states that an agency may deny a

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2 request. And I quote if disclosure could
3 jeopardize the life or safety of any person.
4 It's -- it's incomprehensible to me that the D.E.C.
5 would rely on this exception to FOIL as a way to
6 deny access to dam inspection records much less a
7 way of denying the public the knowledge that dams
8 have been judged structurally deficient in some
9 way.

10 Is the D.E.C. trying to argue
11 that alerting people to the fact that the are
12 living downstream of a deficient endangers their
13 lives or safety? This argument is mind-boggling to
14 me. And in closing I just once again want to thank
15 you for -- for bringing this to the public's
16 attention and -- and for your endurance.

17 CHAIRPERSON DiNAPOLI: Thank you
18 Timothy.

19 MR. CARPENTER: I certainly want
20 to -- excuse me -- thank the Committee for staying
21 so long and -- and putting up with all of this.
22 For the first time you're going to hear something a
23 little bit different but at the end of my statement
24 I -- I do want to, I think, answer some questions

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2 that I've heard today.
3 My name is Bruce Carpenter. I'm

4 Executive Director of New York Rivers United. Our
5 mission is to conserve, protect, and restore New
6 York's rivers. New York Rivers United was founded
7 because of a dam issue, FERC dams, those dams
8 licensed and under the jurisdiction of the Federal
9 Energy Regulatory Commission.

10 In 1992, NYRU was created to take
11 on the relicensing issues of hydro dams through the
12 FERC process, to represent the public's view to
13 ensure there is a balance between hydro production
14 and the environment. Since 1993, more than fifty
15 hydro facilities have come up for relicensing.

16 We have played a major role in
17 restoring instream flows, creating whitewater
18 opportunities, bank stabilization, increased
19 spawning grounds for migratory fish, base -- base
20 flows and recreational opportunities within
21 communities.

22 Our interest in dams and
23 watersheds in general lead us to begin to look at
24 dams across the state. They're use and condition

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2 and how they currently are effecting our waterways.
3 One major problem was the dam removal was often not
4 even being considered as a solution on some of
5 these waterways. We knew that removal could be a
6 very viable option. All of New York State's
7 seventeen watersheds are fragmented and heavily
8 degraded by dams. We have a different figure here,
9 by the way. The six thousand seven hundred dams
10 was before we actually went in and they changed the
11 legislation and lowered their -- what they actually
12 protected. There were six thousand dams. A
13 thousand went off the books in a day. And these
14 dams exact a heavy toll on rivers and river life.
15 Even small dams can have a big impact on aquatic
16 environment.

17 While our focus was on our
18 environmental issues, we soon realized that many of
19 these dam posed even a greater threat to the
20 communities where they were located. Many
21 communities throughout the state of New York face
22 serious public safety and economic threat as a
23 result of abandoned and deteriorating dams. These
24 once productive dams no longer serve any beneficial

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2 use. The cost of maintenance, the cost to the
3 environment and the liability associated with them
4 make them a burden on their communities where
5 they're located.

6 The vast majority of these
7 structures are municipally owned, not by choice but
8 as a result of abandonment.

9 Our review led us to dam -- to
10 the dam safety program to ask questions of its

11 practices and policies. To determine if, in fact,
12 there was an adequate program to deal with the more
13 than six thousand dams. We found that there were
14 major problems, a lack of staff.

15 Second; that most of the program
16 was consumed by dams that had already failed as
17 opposed to a proactive campaign to eliminate or at
18 least reduce the overall burden and the risk of --
19 the risk in those communities. And lastly, as
20 already mentioned, the transparency, a lack of
21 information and a reluctance to publicly identify
22 the dams that had potential problems, a position
23 that we continue to try to figure out.

24 We have been active on this

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2 problem now, not by attacking the agency but by
3 working within the -- within the agencies to reduce
4 the risk. We are currently active in members of a
5 Barrier Task Force and it's too bad the D.E.C.
6 didn't mention this but it probably doesn't get up
7 to the Commissioner's level. This -- this is an
8 effort whereby all the department heads try to look
9 at all of the problems associated with dams at a
10 programmatic level and integrate them.

11 We've also helped develop some
12 criteria to assess these older structures and are
13 in the process of gathering that data. New York
14 Rivers United currently has an E.P.A. grant to do
15 the evaluation of first barrier dams on Great Lakes
16 tributaries. The goal is to identify projects that
17 impede the restoration of native fish. Some of
18 these will be removed. We've also been active in
19 the Great Lakes Regional Collaboration where we're
20 also trying to identify additional funding sources
21 to help restore and remove dams -- restore dams and
22 remove -- restore fish ways and remove dams.

23 But the bottom line that this
24 policy decision must come from you and other

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2 leaders in Albany. If dam removal is to be part of
3 the solution and we feel it should be then you in
4 the legislature must provide that direction.

5 We have entered the twenty-first
6 century. Dam removal is a tool to repair the
7 damages not fully understood in times before. We
8 now know that not all dams should be left in place.
9 You must provide the laws, you must provide the
10 funding to protect New York's communities, enable
11 the state's agencies to expedite the process for
12 protecting our waterways.

13 I'm going to stop here because
14 there was a couple of questions that came up and --
15 and I have, I think, some answers.

16 Number one; D.E.C. does not
17 regulate dams. D.E.C. permits dams and then dam

18 safety people go out. Unlike FERC dams that go
19 through a licensing process and our integrated into
20 the community, D.E.C. does nothing once the dam is
21 built. That's something you really should
22 understand. And if there's legislation we should
23 think about addressing that. We should be looking
24 at an integrated process very similar to the way

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2 hydro dams are licensed so that all the aspects of
3 a dam on a river can be looked at.
4 You're hearing from communities,
5 you're hearing from the environment. When we go in
6 on the Barrier Task Force, the Division of Water,
7 who regulates water quality was not aware of
8 sedimentation problems that were behind a dam. Dam
9 safety was not aware that there were, in fact,
10 water quality problems. The Bureau of Habitat who
11 has a fisheries issue was not aware that dam safety
12 was doing an inspection.

13 This is all within one
14 department. Say nothing of reaching out to the
15 communities for emergency management or anything
16 like that. D.E.C. does none of that. You talked
17 about the real project. We're looking at that. We
18 have argued with FERC that -- dams, when they
19 surrender their license should not be surrendered
20 in New York State because we can't do it. But our
21 dam safety people say that we can. We have -- we
22 are on file saying that we do not have the
23 capabilities in New York State to do the job FERC
24 does and yet that dam maybe turned over to dam

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2 safety and there is no regulation behind that. In
3 the FERC process we can make them do things.
4 These are some of the issues. We
5 currently have the ability possibly to put some --
6 some type of a rivers task force -- the open space
7 plan to look at these problems long range. That's
8 not legislation, that's just proactive thinking.
9 That's something you could consider.

10 Flow standards within our water
11 quality regs. We don't have the ability. We
12 measure temperature and we measure oxygen.
13 Quantity is something that needs to be addressed.
14 Those are just some things that I think need to be
15 addressed. I encourage you to follow up on all
16 these issues. This has been a great hearing.
17 You've heard a lot of -- a lot of good testimony
18 and I hope that you continue forward with it.

19

20 Thank you.
21 CHAIRPERSON DiNAPOLI: Thank you.
22 Thank you for your testimony. Tim, we -- we -- we
23 appreciate your reports and the impact that it's
24 had on the public policy debate about D.E.C. in the
state and, you know, I think it -- I think it's had

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2 a very positive impact. So I compliment you on
3 that as I've done before.

4 MR. SWEENEY: I appreciate the
5 kind words. Thank you.

6 CHAIRPERSON DiNAPOLI: The -- the
7 FOIL request and the denial that you attached a
8 copy of. Do you think that they're hanging that on
9 a Homeland Security concern. Is that what you
10 think?

11 MR. CARPENTER: I -- I have no
12 doubt that's --

13 CHAIRPERSON DiNAPOLI: That's
14 what that is?

15 MR. CARPENTER: -- that's the
16 intention of it but I think that's a misapplication
17 of it, that provision of the statute and I just --
18 I don't understand. You know, it's not as though
19 these high hazard dams -- and chances are that the
20 deficient dams are the high hazard -- are high
21 hazard because those are the ones that are being
22 looked at predominantly. So it -- it's not as
23 though these dams are camouflaged and by telling
24 people there's a deficient dam somewhere all of a

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2 sudden a terrorist is going to say hey, there's a
3 dam over there.

4 These -- these things are pretty
5 big stretches. They're not hiding. It -- it's
6 well known to anybody who wants to find a dam, you
7 know, they can find it. It -- it's just -- it's
8 just another way to stonewall and keep information
9 from the public. I thought the -- the -- the
10 reason I wanted to get the information was to be
11 able to go to elected officials and say here's a
12 deficient dam in your district. Perhaps your
13 constituents would want to know about it and the
14 D.E.C. needs more staff to take care of these
15 problems. And that -- that's how I -- I came to
16 all this but -- so actually I was going to use the
17 information to try to argue for more staff for the
18 agency but even that didn't seem to sway hope so --
19 it's -- it's really, like I said, it's
20 mind-boggling that they would use that exception
21 to -- the Freedom of Information Law to -- to deny
22 the -- that FOIL.

23 ASSEMBLYPERSON TONKO: Uh-huh.
24 And -- and -- obviously the --

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2 CHAIRPERSON DiNAPOLI: Mr. Tonko?
3 ASSEMBLYPERSON TONKO: -- well,
4 the -- the flip -- just to add to the chair's
5 question -- the -- the flip of not providing the
6 freedom of information here and allowing perhaps

7 deficit, deficiency rated infrastructure to
8 continue provides and equal threat to the community
9 in terms of loss of property and lives so --
10 MR. CARPENTER: Absolutely. I --
11 I'd probably say there's a greater threat --
12 ASSEMBLYPERSON TONKO: --
13 exactly.
14 MR. CARPENTER: -- than a
15 potential terrorist attack perhaps but --.
16 ASSEMBLYPERSON TONKO: Well, it
17 could.
18 MR. CARPENTER: Yeah.
19 ASSEMBLYPERSON TONKO: So I would
20 think it's equal concern if not greater concern but
21 just a quick question, Bruce, on -- on your
22 comments about dam removal.
23 MR. CARPENTER: Uh-huh.
24 ASSEMBLYPERSON TONKO: Can you

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2 give us an idea of what it -- what's required in
3 terms of dollars to --?
4 MR. CARPENTER: That -- that's
5 the first thing that always comes up and the -- the
6 short answer is for small dams it could be fifty
7 thousand dollars. It's -- it's the idea of running
8 a bulldozer through and -- and -- because a lot of
9 these dams are already in disrepair.
10 We are currently removing a dam
11 in the northern part of the state. The total cost
12 of that -- and that's a -- about a forty foot high,
13 sixty foot -- seventy foot long concrete structure,
14 will be around two hundred and fifty thousand
15 dollars with all the permitting and everything
16 else -- all the engineering. And so generally I
17 would say you can get a good size dam out for under
18 a half a million dollars but I should say one --
19 one of the things, we don't have to pay for it all.
20 If we do some sort of
21 licensing -- if we do some sort of regulation why
22 should people be allowed to abandon dams and leave
23 them there?
24 ASSEMBLYPERSON TONKO: Uh-huh.

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2 MR. CARPENTER: I mean, they
3 built them. They made money off of them in some
4 cases.
5 ASSEMBLYPERSON TONKO: But is
6 it --?
7 MR. CARPENTER: Certainly in a
8 power companies case --
9 ASSEMBLYPERSON TONKO: Uh-huh.
10 MR. CARPENTER: -- that's a good
11 example but -- but even those ones that are -- that
12 are -- that communities are stuck with, we can get
13 out if we --

14 ASSEMBLYPERSON TONKO: Uh-huh.
15 MR. CARPENTER: -- go through the
16 process. We can get them out fairly inexpensively.
17 Wisconsin has done it. Pennsylvania's done it.
18 New Hampshire is doing it.

19 Now, we're very slow to get on
20 this and we've got more dams than anybody else.

21 ASSEMBLYPERSON TONKO: Okay.
22 With the -- with the existing infrastructure --
23 that which has to be maintained the -- the most
24 recent panel that appeared before you the -- the

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2 concerns for deferred maintenance were the back
3 burner in some situations. Is there some way to
4 better guarantee a maintenance of effort?

5 MR. CARPENTER: Not -- not
6 without a solid and comprehensive program that
7 reviews on a yearly or biyearly basis. I can tell
8 you that the FOIL requests that have been denied.
9 We have actually gotten eventually that information
10 mainly because we work so closely with D.E.C. and
11 dam safety and in many cases these are communities
12 that don't have the money to repair the dam and
13 D.E.C. doesn't want to force them so -- you heard
14 today about this order that they're complying with?
15 These things drag on for eight to ten years while
16 the communities try to raise the money, try to go
17 through their local Assemblyman. But they don't
18 want you go to their community and say they've got
19 a dam that's failing or it's in disrepair. They
20 think it's going to be a negative effect on their
21 communities. It's a catch twenty-two.

22 ASSEMBLYPERSON GUNTHER: I'm
23 going to a fund raiser Saturday night for the Disco
24 dance --

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2 MR. CARPENTER: Uh-huh.

3 ASSEMBLYPERSON GUNTHER: --
4 during the last storm it went down. So the
5 community is buying the -- is basically buying the

6 dam and going to repair it. But that's what
7 they're doing, a fund raiser Saturday night at
8 seven. Hell, a lot of times that -- some of the
9 problems they don't even hold onto the dam.

10 MR. CARPENTER: That's right.

11 ASSEMBLYPERSON GUNTHER: And then
12 that's even a bigger pickle. You know, it's
13 like -- it's like where's Waldo?

14 MR. CARPENTER: Absolutely.

15 ASSEMBLYPERSON TONKO: Or akin to
16 remediation of some properties and soils that were
17 contaminated by earlier owner and then either
18 abandoned or passed on to someone. The -- the
19 tracing of all this is -- it's got to be difficult.

20 MR. CARPENTER: It's -- it's very
21 hard and the dam we're removing up north and I want
22 to just very quickly say that when you talk about
23 high hazard -- it's a -- it's a low hazard dam even
24 though it's fairly high. I went up there to

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2 inspect it. And when I went there there's a --
3 there's a concrete structure that has a hole in it
4 about as round as this table, where probably some
5 sort of and old water wheel sat and here's ten year
6 old kids sitting around there fishing and the water
7 is rushing in underneath them and piling up and
8 there's wood and debris. Any one of those kids
9 could have fallen in there.

10 How high of a hazard does it have to
11 be before we worry about it?

12 ASSEMBLYPERSON TONKO: Uh-huh.

13 MR. CARPENTER: Is one life
14 enough?

15 ASSEMBLYPERSON TONKO: I would
16 think so. I would hope so.

17 CHAIRPERSON DiNAPOLI: Thank you,
18 gentlemen.

19 MR. SWEENEY: Thank you.

20 ASSEMBLYPERSON TONKO: Thank you.

21 CHAIRPERSON DiNAPOLI: I will
22 call on Neversink flood victims, Timothy O'Leary,
23 Michael O'Leary, Kris O'Leary, Brendan Elliott.

24 (Off-the-record discussion)

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2 CHAIRPERSON DiNAPOLI: Say who
3 you are and --.

4 MR. T. O'LEARY: Well, good
5 afternoon. I want to thank the council members for
6 being kind enough to let us speak. My name is Tim
7 O'Leary. I reside at 20 Riverdale Road, Port
8 Jervis, New York and I just have a brief statement
9 that I'd like to read and some pictures I can show
10 you.

11 CHAIRPERSON DiNAPOLI: Okay.

12 MR. T. O'LEARY: We are just one
13 of over a hundred separate families that were
14 victimized in the flood that occurred in the
15 Neversink in April 2005. My family resides in the
16 town of Deerpark. We presently operate two
17 engineering consulting businesses as well as we
18 manage real estate and through the course of the
19 flood we had a total of ten houses damaged, just
20 demolished. The damage was just incredible.

21 There are certain facts that I --
22 I just don't feel comfortable with the D.E.P. They
23 allowed the dam to overflow. Why? Can -- can
24 anybody answer that question? You know, that home

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2 is not -- is -- excuse me -- does not sit in the
3 flood plain. It's just crazy. I'm going to let my
4 brother read this.

5 MR. M. O'LEARY: Yeah. So
6 basically these are the facts; New York and the
7 D.E.P. have no legal -- no legal prohibition
8 against releasing additional water based upon
9 prudential flood control practices, environmental
10 practices or emergency situations. A Supreme Court
11 decree and the subsequent documents established
12 minimum release of waters, based upon legal
13 prohibition against additional releases by the
14 virtue of the decree, is self-serving. If the
15 D.E.P. were on -- to believe then even emergency
16 releases to avoid catastrophic dam failure which
17 would be prohibited.

18 It's basically on the fact, you
19 know, they're -- no -- it doesn't seem like anybody
20 rules over the D.E.P. It seems like they have
21 their right to do whatever they like. You had
22 mentioned earlier a hundred percent. We have April
23 storms coming from the I can do it again. So I
24 don't know what can be done or what you guys can do

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2 as far as laws but something's got to get done and
3 that's pretty much all I really have to say.

4 CHAIRPERSON DiNAPOLI: Tell --
5 tell us your first name just for the record?

6 MR. M. O'LEARY: Oh, I'm sorry.
7 Michael, I also reside in Deerpark.

8 CHAIRPERSON DiNAPOLI: Okay.

9 MR. M. O'LEARY: So I -- I don't
10 know what can be done.

11 ASSEMBLYPERSON GUNTHER: There
12 was incredible amounts of water in Port Jervis --

13 MR. M. O'LEARY: Yes.

14 ASSEMBLYPERSON GUNTHER: --
15 that's where I -- I --

16 MR. M. O'LEARY: It was.

17 MR. T. O'LEARY: Yeah.

18 ASSEMBLYPERSON GUNTHER: -- I
19 couldn't find the bridge and said where the heck is
20 the bridge? And I was --

21 MR. M. O'LEARY: Yeah.

22 ASSEMBLYPERSON GUNTHER: -- on
23 top of the bridge and it was gone.

24 MR. M. O'LEARY: Yes.

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2 ASSEMBLYPERSON GUNTHER: It was
3 just amazing amounts of water. You just -- it's
4 unbelievable and coffins going down the river.

5 MR. M. O'LEARY: Yes.

6 ASSEMBLYPERSON GUNTHER: I mean,
7 you saw it. We all saw it. It was just -- you
8 know, cars, coffins --

9 MR. M. O'LEARY: It's everything.
10 MR. T. O'LEARY: Yeah.
11 ASSEMBLYPERSON GUNTHER: It was
12 everything.
13 MR. T. O'LEARY: That's -- that
14 particular house is my house that I purchased a
15 couple years ago and it does not reside in a flood
16 plain presently. I understand elevations are
17 supposed to change due some of the surveying facts
18 but that's a picture of that house from the
19 opposite side of where the water should even be.
20 ASSEMBLYPERSON TONKO: Certainly.
21 What was the -- what was -- what are the outcomes
22 then in terms of recovering --
23 MR. T. O'LEARY: That --
24 ASSEMBLYPERSON TONKO: --

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2 damages?
3 MR. T. O'LEARY: -- I did have
4 flood insurance. Of course, flood insurance --
5 ASSEMBLYPERSON TONKO: Right.
6 MR. T. O'LEARY: -- would not
7 cover any exterior damage to my home. I lost a
8 total of seventy-two trees off my six acres of
9 property. Tons and tons of debris. I had over
10 fifty truckloads -- tandem truckloads of gravel
11 brought back in to refill in all around my property
12 as well as my basement floor collapsed out through
13 the bottom of the -- the --.
14 ASSEMBLYPERSON TONKO: The dam
15 here did not --.
16 MR. T. O'LEARY: That's the
17 Neversink -- that's the Neversink Dam.
18 MR. M. O'LEARY: That's the
19 Neversink Dam.
20 ASSEMBLYPERSON GUNTHER: That's
21 the Neversink.
22 ASSEMBLYPERSON TONKO: Oh.
23 ASSEMBLYPERSON GUNTHER: They're
24 below the Neversink.

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2 ASSEMBLYPERSON TONKO: Okay.
3 Okay.
4 MR. T. O'LEARY: Yes. Yeah.
5 ASSEMBLYPERSON TONKO: Wow.
6 MR. T. O'LEARY: So just -- just
7 catastrophic. It's amazing.
8 MR. M. O'LEARY: Yes. My house
9 which resides one point -- one point -- one point
10 four feet above the hundred year flood mark, I had
11 three foot of water in my house. So it doesn't
12 make sense to me why all of a sudden we, you know,
13 exceed a flood level of a hundred year mark by four
14 point four feet? Something doesn't seem right.
15 You know, it wasn't -- it wasn't

16 because they released water from the dam because
17 the water was cascading over the dam so much that
18 they had to, then why can't they drop the levels
19 knowing storms are coming and let the water get
20 caught in that catchment and that's what we're
21 pushing for, is dam -- dam maintenance, dam
22 management.

23 ASSEMBLYPERSON GUNTHER:
24 Oversight.

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2 MR. M. O'LEARY: Yes.
3 MR. T. O'LEARY: Yes.
4 CHAIRPERSON DiNAPOLI: Well,
5 certainly your testimony is a very compelling -- as
6 a visual is a very compelling --
7 MR. T. O'LEARY: Yes.
8 CHAIRPERSON DiNAPOLI: -- and
9 reinforces the need for these respective committees
10 to figure out if there's a way for us to be more
11 helpful to these kinds of situations and you should
12 know that your Assembly representative last year
13 was raising this concern to our committee and you
14 know, she's had some legislative proposals that
15 have been referenced earlier by some of the other
16 folks testifying and, you know, she's been dogged
17 in -- in trying to keep our committee focused on
18 this and trying to figure out whether it's the
19 legislation or regulation, if there's something we
20 could do to relieve these kinds of situations from
21 happening again.

22 So we appreciate your
23 traveling --

24 MR. T. O'LEARY: Yes.

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2 MR. M. O'LEARY: Yes.
3 CHAIRPERSON DiNAPOLI: -- to be
4 with us and -- and, you know, we're trying to
5 navigate our way through this.
6 ASSEMBLYPERSON GUNTHER: Well, I
7 thank you for coming and waiting and being so
8 patient all this time that I'm -- but I'm glad you
9 had a -- a -- a chance to tell your story because I
10 think your visuals are good but it's still after --

11 MR. M. O'LEARY: Yes.

12 ASSEMBLYPERSON GUNTHER: -- the
13 days that you guys spent. I mean, it was just
14 amazing and I'm --

15 MR. M. O'LEARY: Yes.

16 ASSEMBLYPERSON GUNTHER: -- and
17 it -- and it still drives me nuts when I think
18 about it. But Assemblyman DiNapoli was kind enough
19 this year to come to our district, which is really
20 a good thing and he knows -- you know what a
21 beautiful area we live in and the kind of people
22 that live in our area. How much we appreciate and

23 want to stay there but we need some fixes now and
24 we need them sooner than later.

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2 MR. M. O'LEARY: And we need them
3 by --.
4 ASSEMBLYPERSON GUNTHER: We're
5 all very nervous right now because --.
6 MR. M. O'LEARY: Yeah, we're --
7 we're -- we're living under a gun right now.
8 MR. T. O'LEARY: Yeah.
9 MR. M. O'LEARY: Just this past
10 January, I think it was 19th we had yet another
11 flood where the water came within about two foot of
12 his house.
13 MR. T. O'LEARY: One inch away.
14 MR. M. O'LEARY: Yes.
15 MR. T. O'LEARY: One inch --
16 MR. M. O'LEARY: And --
17 MR. T. O'LEARY: -- have it
18 again.
19 MR. M. O'LEARY: -- once again
20 the dam was at a hundred percent. Why can't
21 they --
22 MR. T. O'LEARY: Lower the dam?
23 MR. M. O'LEARY: -- stop it?
24 ASSEMBLYPERSON GUNTHER: Well, I

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2 think there was a lot of important issues discussed
3 today and there was a lot of information to go back
4 and to really --
5 ASSEMBLYPERSON TONKO: Yeah.
6 ASSEMBLYPERSON GUNTHER: --
7 review. I mean, this is just full of information
8 from a lot of knowledgeable people and I think it's
9 important for a hearing like this to occur and I
10 think you really have to go back and examine
11 what -- the information that you have and decide
12 which way -- you know, there's the -- there's a
13 long term goal and there's a short term goal.
14 So I think you have to look at
15 all of -- all of the issues and decide what can be
16 a short-term goal and what could be a long term
17 goal because obviously the dam system in New York
18 State is broken and we have to decide public versus
19 private. There's so many issues there. And then,
20 of course, the ones we don't even know who owns
21 that are -- that's always a fun part.
22 CHAIRPERSON DiNAPOLI: I got you.
23 MR. T. O'LEARY: Yeah.
24 CHAIRPERSON DiNAPOLI: I -- I

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2 thank you.
3 MR. T. O'LEARY: Thank you.
4 ASSEMBLYPERSON TONKO: Before you

5 leave let me just --
6 MR. T. O'LEARY: Yes, sir.
7 ASSEMBLYPERSON TONKO: -- say
8 that I'm sorry to hear that your nephew couldn't
9 join us and hope he is doing better.
10 MR. T. O'LEARY: He is.
11 ASSEMBLYPERSON TONKO: That's
12 great. It was just kind of a -- when the four of
13 you were introduced --
14 MR. T. O'LEARY: Yes.
15 MR. M. O'LEARY: Yes.
16 ASSEMBLYPERSON TONKO: -- so --
17 but I wish him the best.
18 MR. T. O'LEARY: Thank you.
19 MR. M. O'LEARY: Thank you, sir.
20 CHAIRPERSON DiNAPOLI: Thanks
21 very much.
22 MR. T. O'LEARY: Thank you.
23 MR. M. O'LEARY: Thank you.
24 CHAIRPERSON DiNAPOLI: And thank

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2 you all for staying through with us. Have a safe
3 drive in the snow outside so --.
4 ASSEMBLYPERSON TONKO: Before we
5 all leave could I just thank my colleagues for --
6 our two chairs, in particular, for outstanding --
7 and for my colleagues for attending.
8 (applause)
9 I -- it's been very, very helpful
10 and I just want to bring to your attention that the
11 young man seated next to me will celebrate his
12 birthday tomorrow so just give him another
13 applause.
14 (The hearing adjourned at 5:44 p.m.)
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2 STATE OF NEW YORK
3 I, Nathan Roberts, do hereby certify that the
4 foregoing was reported by me, in the cause, at the
5 time and place, and in the presence of counsel, as
6 stated in the caption hereto, at Page 1 hereof;
7 that the foregoing typewritten transcription,
8 consisting of pages number 1 thorough 439,
9 inclusive, was prepared under my supervision and is
10 a true record of all proceedings had at the session

11 at which said prehearing conference was taken
12 IN WITNESS WHEREOF, I have hereunto
13 subscribed my name, this the 3rd day of March,
14 2006.

15

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17 _____
18 Nathan Roberts
19 State of New York

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