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JEFFREY BAKER Attorney for the Coalition of Watershed Towns (1991–present)
Partner with Whiteman Osterman & Hanna

Interviewed by: Nancy Burnett

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Track 1

Origins of the Conflict

NB: Let's see where to begin. I would like to go all the way back to the beginning. See if you can frame the problem for us and talk about how Whiteman Osterman & Hanna got into the whole thing.

JB: All right. Get back to where it starts. I once said, "Oh, it started about three million years ago, when the glaciers moved through the Catskills." [laughs]

The City built its water supply in the Catskills starting in 1905. And they got it by special state legislation, which allowed them to do it, subject to various approvals. The City built its watersheds, and since that time it has had in varying degrees what's known as extraterritorial jurisdiction: the right to regulate outside its boundaries.

The last reservoir was constructed in the mid '60s. I think it was the Pepacton. Certainly starting from the '70s and through most of the '80s, the City's enforcement of watershed regulations was very lax. They didn't have a very strong presence up there. In fact, they were working on watershed regulations that had last been amended in the '50s.

In 1986, the Federal Safe Drinking Water Act was amended to add what became known as the Surface Water Treatment Rule, which established the presumption that surface water supplies (which is what the reservoirs are) would have to be filtered by a certain date. In June 1989, EPA came out with regulations implementing the rule of Congress that said if a water supply wanted a waiver from the filtration requirement—what became known as filtration avoidance—an application had to be made and they had to be approved by the end of December 1991. To meet the application, the City had to demonstrate that it had adequate control over its watershed and would protect it from sources of pollution so that the water quality was good enough to avoid filtration.

In September of 1990, the City issued its first what they called “discussion draft” of the regulations. And they were very strict. They were in draft form, but they proposed buffer distances for septic systems of 500–1,000 feet from a water course. State law is 100 feet. They would have basically prohibited farming. They would have created incredibly costly upgrades for wastewater treatment systems and a whole host of very dramatic changes in regulation far in excess of any other state equivalent for environmental regulations, and New York has pretty stringent environmental regulations generally.

They provided no mechanism to help pay for those regulations—pay for the cost of them, to mitigate their cost—and one of the points that we kept making is that they were all dealing with prospective problems: stopping future development, stopping any changes. There was nothing dealing with retroactive problems, to the fact that you had—as was evident in the Catskills—a lot of old hamlets and villages built, because it’s a mountainous area, right along the rivers. They’re old mill towns and things like that, which didn’t have any modern infrastructure to deal with septic failures. They lacked sewage treatment plants, and they didn’t have the resources on their own to build sewage treatment plants. There were no resources going to deal with existing problems. It was all prospective.

Track 2

Watershed Community Response

JB: When the watershed communities got hit with these regulations, everybody realized immediately the significance of what it meant for them; they were very concerned as to what would happen, and they started making comments on what they were going to do about it.

Our firm had represented Delaware County for some time on solid waste issues, and we got calls from county leaders explaining what was going on and asking what to do. Our advice was that they had to get together with the rest of the watershed communities. You know, we’re talking about tiny towns. Many of these towns have year round residents of a thousand people or less. And individually they do not have the resources to mount the legal and administrative battles to get the regulations changed.

We explained to them that they had to pull together in some kind of coalition, pool their resources, and then work collectively to deal with New York City.

That went on through the winter of ’90-’91, and finally the Coalition was formed in March of 91, where everyone got together and signed an Intermunicipal Agreement that they would pool their resources and work to fight the regulations proposed by New York City.

Here's an interesting story: What happened is, the Coalition was formed, they hired our firm as lawyers, and at that point the City appeared to be on a very fast track for moving forward on their regulations. They had a schedule to come out with an Environmental Impact Statement that summer, and they were looking to have their program in place by the end of the year to get their Filtration Avoidance Decision.

We had explained to the Coalition that you needed to do more than just hire lawyers. We had to go out and hire engineers to review this technical material and point out where things were in error and better ways to do protect water quality.

And there was a big meeting with representatives of a lot of the towns—and members of the public were there, too—where we explained, as the lawyers (in fairly dry terms), how the administrative process works and why you have to participate in that process in order to eventually bring a lawsuit or to make yourself heard.

We went through that long presentation. My partner, Dan Ruzow, who wrote the book on the State Environmental Quality Review Act, gave a very good presentation; and we took questions from the audience. We were in a gym in Margaretville, I think. This little old lady stood up in the bleachers in the back, and I remember her saying, "I don't know why we're spending all this money on you damn lawyers when we should just buy some bombs and blow those reservoirs up." And we said, "Well, that's one view, but that's really not the proper process."

But that showed the depth of the feelings that the watershed communities had. You were dealing with many people who had first-hand experience with the loss of their homes when the reservoirs were built. And there were a lot of stories of how the City had come through, moved people out in the middle of the night—you know, tore up graveyards, destroyed whole communities—and how people waited decades in some cases for compensation. The final compensation claims for the reservoirs were not settled until the early '90s—that's when the State Commission on that wrapped up their business. So there was a lot of mistrust about how the City operates.

NB: This is great. You're hitting all the things I want you to hit, and you're doing it in a concise way. It's fitting together with the other stuff I have. This is great.

Track 3

Legal Strategy

JB: What we kept saying to them was, we had a tough job as lawyers. A lot of times lawyers have to help lead their clients to where the answer's going to be, and the universal first reaction in the watershed is, "Why does New York City have the right to regulate us up here?" "Why do we have the reservoirs?" "Why do we have to pay the cost of avoiding filtration?" And there was a lot of truth in all of that.

We also had to educate them—and the leaders of the Coalition came to understand this, and became very brave about it—to recognize that filtration avoidance was inevitable—from a state policy perspective. The estimates for a filtration plant were anywhere from \$4–8 billion and \$600–800 million in annual operation and maintenance cost. There was no way the state of New York or the City was going to willingly go down that path if there was a less expensive alternative. It was not in the interest of the state economy to do something like that.

Filtration avoidance clearly was possible from an objective water quality based criterion, and what we said is: We can't make the City vanish. There's no silver bullet legally that enables us to say that the reservoirs aren't going to be here anymore. We have to recognize that reality.

What we can do is force the City to recognize that they have to put those investments in the watershed to both mitigate the cost of their regulations and provide improvements to the communities up here, and we have to modify the regulations so that they are no more stringent than is necessary to protect the water quality.

And, very importantly, what we put into the Agreement is a lot of due process controls for the review of the applications—so that when you had an application, it was acted upon in a timely fashion; it wasn't arbitrarily ruled against, and you'd have some controls.

NB: You mean for applications if you're going to be building something—that they don't just sit on it forever.

JB: Right. Because one of the rallying cries was, "No regulation without representation,"—which had a lot of truth. I mean, when you are dealing with a state permit application—you've had to apply to the State Department of Environmental Conservation for a permit—they have time criteria in which they have to act on it. If the State DEC's pattern and practice are not being responsive to the needs of the people in the communities and are being arbitrary and unfair or whatever, you always have redress through your elected representatives at the state government. You go to your State Assemblyman, State Senator, and pressure can be brought upon the Commissioners to fix a bureaucracy that is being insensitive.-

People in the watershed didn't even have that limited avenue of redress to New York City, because in New York City, issues are decided by the New York City voters. It is clear at a time of budgetary constraint that the City is going to cut down staff in the watershed, so you're not going to get timely review of applications. They don't really care what the people in the watershed say. And there was no redress through the ballot box. We couldn't vote an administration out of office in New York City. So it was very important that we really restrict as specifically as possible the authority of the City: not leave it open for abuse, and put in the time frames for action on

applications. What we ended up with is not by any means perfect, but it is a far cry from what the original proposal was.

NB: How significant is this whole Agreement to people elsewhere in the country, or worldwide?

JB: It's significant in that it shows that you can take the various stakeholders—that's the current term that people like to use—and bring them together and work on a common viewpoint. In theory, that's what it shows. I'm personally more skeptical about it. We got this to the table not out of the good graces of an administration in New York City but because through the process the City had made a variety of legal missteps that we had caught them on and we had the potential to essentially throw out their whole program and make them start from Square One.

And then we had the political benefits of the change of administrations in New York, where you had a Governor who was willing to tell the administration of the City, "You have to sit down and work with the communities. They're not being unreasonable in their demands." Because we weren't saying, "You have to filter," or "You have to go away." We said, "Look, we want to save the water supply, too. It's going to cost you more than you would like to spend, because you don't want to spend anything, but it's going to cost you a lot less than a filtration alternative and it's going to provide you a better means of water quality protection."

When you have unequal bargaining positions, you need the legal system to force people to sit down and have a discussion. Unequal bargaining positions—especially with the attitude that the City had, which was very, "This is our water supply, we control it, we don't want anybody else telling us how to do it,"—meant that they were not going to *willingly* give up that level of control, or even share it to the limited degree that they did.

And then, through this whole process and changes of administrations at the City and State level, they gradually came around to recognizing that they could work cooperatively with the watershed communities. Whether, or how, that can be replicated in other areas, I don't know.

NB: That is one of the things that I'm very interested in: that sort of David and Goliath struggle, and the fact that the upstate towns never banded together when the reservoirs were put in because, you know, it was happening piecemeal and people were selling out one at a time until finally it was a ghost town.

JB: Oh, yeah. The City did a very good divide-and-conquer strategy in the past, which we, through a lot of attempts to splinter it, managed to keep the Coalition together—so that we kept it on the common goal and recognized that there was strength in numbers.

Track 4

Marilyn Gelber, Governor's Office Negotiators, and Environmentalists

NB: How significant was Marilyn Gelber?

JB: She was very significant. She brought in a fresh perspective that slowly allowed at least a reassessment of what was there. She came in after the prior commissioner, Albert Appleton, had already laid out the primary groundwork for the watershed program—what he wanted and what he had gotten the first Filtration Avoidance Decision from EPA based on. So they were pretty much locked in largely to that kind of a scenario.

Marilyn was useful because she was a planner by nature, by training, and she was able to look at the broader perspective that we were arguing. Some of the points that we were arguing was that the effect of their regulations as they originally came in would have forced all development in the Catskills up to the hillsides and would take out a lot of the open space. We said, "That's insane—from a water quality and from a broader environmental perspective."

What you want to do is focus the regulations so you provide greater incentives—some relaxed standards, in some respects—into the hamlets and the villages area. So that you promote a "village-ization" and you keep your development concentrated where you can control the runoff and the pollution that's created instead of disperse it all over the place where you can't control it. She recognized that that made a lot more sense and she was useful in bringing her staff around to say that this makes sound planning sense.

And you know she was willing to reconsider some of the positions that had been earlier established by the City. She wasn't by any stretch of the imagination a push-over on things. I mean, it was tenacious and difficult negotiations. But she took more time also to go up and visit in the Catskills, talk to the people; she developed a very good rapport with Perry Shelton, who was the Chairman of the Coalition of Watershed Towns. She wasn't terribly fond of us lawyers, but that goes with the territory. And they—Marilyn Gelber and Perry Shelton—were able to develop a good level of trust, which I think helped a lot in the process.

NB: How about the negotiators from the Governor's Office?

JB: They did a great job. It was all under the auspices of Mike Finnegan, who was counsel to the Governor at the time, and his staff, who were pretty much leading most of it: Erin Crotty, who's Deputy Commissioner of DEC now; Glen Bruening, who's over in Counsel's Office now; Nick Garlick; Ron Tramontano. They did a very good job of trying to keep the parties moving forward.

They wouldn't state a position. It wasn't necessarily, "What is the State's position?" But they were pretty good at facilitating the discussions and where things were going, and they were realistic in telling us, you know, behind the scenes things, such as, "You're asking for too much here"; or, you know, "Try and find some middle ground on things."

And then the Governor's Office brought in, in some of the later stages, some of the environmental groups that were important to help make sure that the Agreement wasn't, you know, challenged collaterally—so that somebody outside the process wouldn't challenge it. That was important. Once we realized we were going to have an Agreement, the most important thing was making it stick—and making it stick through the initial time frame when there could be lawsuits challenging it.

Everybody had problems with the Agreement from one aspect or another. I mean, nobody got everything they wanted, and so there was always the fear that some group would bring a lawsuit and derail the whole thing. We managed to succeed by bringing the environmental groups in and making sure that everybody got something out of the Agreement they couldn't have otherwise had and if some elements were knocked out, that the whole Agreement would fall apart. Call it sort of the doomsday scenario, or mutually assured destruction. It wasn't in anybody's interest to bring the Agreement down, because everything would have stopped. The recognition was that the Agreement was a compromise, and the parties let it go forward with that understanding. And I think that was good.

NB: And those environmentalists were Robert Kennedy, Riverkeeper people?

JB: Riverkeeper, NYPIRG [New York Public Interest Research Group]. There were five environmental groups that are the formal signatories to the MOA [Memorandum of Agreement]: Riverkeeper, NYPIRG, The Catskill Center for Conservation and Development—which is essentially a Catskill-based environmental group looking at sustainable development—the Open Space Institute, and the Trust for Public Land.

Other environmental groups were involved in the negotiations at one time or another. Some declined to participate any further. They didn't think they were getting enough. Others commented and added suggestions, but were not asked to specifically sign the Agreement.

Track 5

Political Change

NB: You had said on the phone that there were a lot of fortuitous developments.

JB: Well, what had happened was, and it was true on all sides, was that there were clear agendas and hidden agendas. Of course that's *my* view, and many people will disagree with me, but that's alright. When the City first tried its watershed regulations, it was working under a Democratic administration in New York City. Dave Dinkens was Mayor. The Commissioner of the New York City Department of Environmental Protection (DEP) at the time was Albert Appleton, who had been a former president of the New York City Audubon Society.

Appleton made no bones about the fact that he was a very strong environmentalist and was interested in protecting the environment, which is fine. Certain environmental groups—Riverkeeper, NRDC, plus some others—had a very close relationship with the Dinkins administration and with Appleton, and they saw this opportunity of the City being forced to reinvigorate their watershed protection program to foster a broader agenda: of not just water quality protection, which is what the jurisdiction of the City is related to, but broader benefits of open space protection and limiting development in the Catskills.

Of course, those are admirable goals; however, without the direct connection to water quality, they represent an unacceptable intrusion into home rule. Regardless, the original regulations were drafted with the clear intent of imposing a land use control plan on the area.

We continued through the administrative process. Dinkins lost the next election and Giuliani came in with his administration. He brought Marilyn Gelber as commissioner, but generally maintained the same program that Appleton had. In that first year of the Giuliani administration, which was '94, there wasn't a lot of movement or meaningful negotiation between the Coalition and the City. We had some negotiating sessions; they actually went on for a fair amount of time. The State was ostensibly chairing it—some different people at the State—but then we were dealing with the Cuomo administration.

Despite repeated efforts by our firm and others to reach out to the Cuomo administration and say, "Look, you know, you've got these parties at loggerheads. It's not in the state's interest. Would you please come in and broker an Agreement?" (because we had heard from many of the staff people at the state level that the positions we were arguing were logical and made sense), Cuomo wouldn't get involved; he would not take the political risk to do that. And so he limited the state participants in these negotiations, and we spent, oh, I don't know, the better part of five or six months, talking at each other with no movement at all, certainly not from the City's perspective. And it was getting very, very frustrating.

In the fall of '94, you're in the middle of the gubernatorial election here in New York. You've got a Republican mayor in New York City, Giuliani, who surprises everyone and endorses Cuomo, the Democrat, for the election in '94,—and Giuliani cites two reasons for not supporting the Republican nominee, Pataki. I forgot what the first

reason was (I'm not sure; I think it had to do with health care financing), but the second reason was the Watershed Agreement. Because Pataki came from Putnam County—the upstate areas—and gave the perception that he would not be interested in protecting the watershed, that he would give in too much to upstate developers, and it would endanger the filtration and the water supply for New York City. I don't know where they got this idea from, but that was the position Giuliani took.

Well, Pataki wins the election. Not only does he win the election, he wins it without carrying New York City, which is the first time that's happened certainly in modern New York State history. So he gets in there. He's not happy with Giuliani. They are not close friends on this. There's a lot of antagonism within the Republican Party and Pataki's not beholden to Giuliani electorally.

So, when Pataki comes into office, he sees he's got this problem of the watershed. And he says, "How do we solve it?" The Coalition had continuing litigation in place. Like I said, it could have thrown the whole program back to Square One. We told Pataki, "If you force the City to the table and you force them to negotiate in good faith, we'll work something out. We think that we can reach a deal. You know, under some broad parameters, we can reach a deal. We're willing to say the City doesn't have to filter, that they've got to make some contributions, and we can do it." And the Governor had the political courage to really put his personal prestige on the line and bring the parties together.

I'm a Democrat, but Pataki's actions showed really strong governance and he did the right thing in taking control of the situation. Because legally, in terms of approving the City's program, the State had the final say. The Governor recognized that. And we said, "Let's do it in the context of these negotiations." By virtue of Pataki's election, we were given an opportunity. And that was our dumb luck, I suppose.

Track 6

Culture of the Catskills

NB: Fascinating. Okay, we've covered all of the major points that I wanted to cover. Let's see if we can get to a cultural perspective. Is this something that you can talk about? I'm sure you know what I'm mean: The culture of upstate people who had been on their land forever and ever—for generations, as opposed to the more transient urban population downstate.

JB: There was a lot of concern about cultural differences—and class differences, to some extent. I mean, you had a more blue collar, poorer community in the Catskills, many of whom had been there for generations, who viewed this as their land when the reservoirs were taken and built. Some of the best farmland was ruined, some of the

most prosperous villages in the Catskills were destroyed. There was a real visceral reaction, obviously, for a lot of people like that and they felt very personally about it.

And there was a real fear of New York City coming in, almost as a colonial power, and dictating what would happen—and that was not just a reflection of people who had lived through the dislocations in the past; some of it was reflected in the continuing attitudes of some of the new DEP staff people and their administration of the regulations—their lack of responsiveness to the concerns of the locals and their willingness to drag things out and increase costs of getting a permit.

I mean, in one case you're dealing with a fairly conservative Republican base up there, anyway, which isn't terribly enamored of land use controls and government regulations. Then you exacerbate it by bringing New York City people up whom they feel don't know or understand what the lifestyle is up there, don't understand farming, and a lot of times weren't that well informed, even on the science or the engineering of a particular question. And so it didn't instill any confidence in the people up there, and it really created a lot of antagonism back and forth.

NB: And what appears to have happened is that, over time, the people from upstate realized the people from downstate were people just like them.

JB: The ones who were mostly involved in the watershed negotiations, especially the leaders of the watershed towns—the supervisors like Perry Shelton, Alan Rosa, Tony Bucca, and a variety of others, Clayton Brooks—yeah, I mean they're very smart people. They realized the political reality of what they were faced with, and the legitimate need to protect the water supply.

There was the point that was made also to the downstaters all the time—to the City—which was that the people in the Catskills don't want to pollute the watershed, they have no desire to pollute the watershed. They live there. That's their home. That's the water that they drink more directly than the City does. They fish in it. The economy is based in large part on the tourist economy tied to trout fishing. You know, they're not going to trash their own back yards. So we really had to get away from the stereotype, you know, that all the people upstate want to do is just pollute. They didn't want to pollute, but a lot of times they didn't have the means to fix the situation. Poverty breeds pollution problems.

You are dealing with very poor counties up there, particularly Delaware County. And those areas simply didn't have the financial resources to make needed improvements. One of the big programs we got out of the Watershed Agreement was \$13.6 million to replace septic systems in the watershed. We had a whole host of antiquated septic systems, some of which were 50 years old. They didn't even come close to meeting modern standards. They clearly caused a problem for water quality.

Well, the City had no proposal originally to do anything about them. We said, “These people can’t afford to fix them. If we set up a grant program to fix these, we’re going to start dealing with a problem instead of just, you know, hammering at each other about this,” and they realized that that was an important contribution and that it was worth the money to upgrade septic systems.

NB: And the good neighbor payments.

JB: That’s not a good example.

NB: [laughs] Buy ’em off.

JB: That was Michael Finnegan’s idea. A very good idea. It was to get the towns to sign. Give some money specifically for each town. Host community benefit payments, I like to call them. Don’t get into that. [laughs]

NB: The economic development. . .

JB: The economic development one is recognizing again that poverty breeds environmental problems. If you can foster sound economic development in the watershed, that will help everybody. So if the money is spent on economic development programs that comply with the regulations and don’t increase pollution to a level that, you know, causes any kind of a problem, that’s in everybody’s good interest, too.

It’s also the recognition that, even with the programs we have, coming in and doing business in the watershed—because you have this extra set of regulations they have to go through—is more expensive than doing business outside the watershed. When you’ve got a large area with a lot of good-size towns in there, you’ve got to maintain some economic vitality. Otherwise, these communities are just going to decay further. So we had to develop the economic development fund to counterbalance the natural reluctance of any business person to say, “Why should I go to a place where I’m going to be more heavily regulated, when I can go somewhere else and not have those same regulations?”

And this was the incentive to bring business people into towns that are at least bordering the watershed, if not in the watershed itself. Economic development funds could be spent in areas outside the watershed if the town is partially within it. So you’re still bringing economic development benefits to the region.

Track 7

Looking Ahead

NB: So you worked on this—and you're still involved—for how many years now?

JB: We're at eight years now. I really started working on this in December of 1990.

NB: And what do you see, at this point?

JB: I see what I expected. We reached an enormous Agreement. It is an ugly document to read. It is a product of having been drafted by—oh, depending on your count—at least a dozen lawyers at any given time, who helped draft any specific provision of it, which guarantees that it is an impossible document to read. It's very complex, dealing with all sorts of things and attempting to anticipate future developments, which is impossible. You can't predict every scenario. But we set a framework for how things would work.

I think so far it's working pretty well; certainly as well as can be expected. The Agreement formed the Catskill Watershed Corporation, which we had to form completely out of whole cloth—no staff, no place of business. A large budget, but nobody to start it, and by the terms of the Agreement—because it was dictated by a variety of forces—it had to be up and running with programs in place within six months. That was an incredible task, and it largely succeeded. The Catskill Watershed Corporation got running, and established funding programs, and started getting things moving in the watershed.

We established what's known as the Watershed Protection and Partnership Council, which is comprised of representatives from the groups that helped negotiate the Watershed Agreement. And the point of that is to have a continuing forum for discussions for watershed management issues, and to try to avoid what we got into in 1990, where you've got the City doing a plan on its own, dumping it on the watershed, and everything blowing up. The Council tries to work on things cooperatively and deal with the substantive issues.

The Council is dealing with its first issues now. It's not working terribly smoothly, but it could still work. The goal there is important. It's still a matter of everybody trying to avoid political posturing, from one side or the other, and saying, "What's the goal here? The goal is water quality. Don't try to push separate agendas, but deal with that." People don't give up their own agendas easily. And it's continuing to be an issue. But it's a model that really should work, and can work. As of now, like I said, it's working. We'll have to see how it continues into the future.

NB: And what we've really got with this David and Goliath population difference and financial difference is that the power of law evened it out?

JB: Yeah, it helped a lot because of the administrative processes that the City has to go through to institute environmental controls. When the watershed communities were able to pool their resources and get some additional assistance from the State to help finance their fight, they were wise enough to choose us as their attorneys. We got some excellent expert assistance from the technical end, which was beyond reproach in terms of its unbiased nature and its expertise.

We were very effective throughout the process, and that's how we kept beating, if you will, the environmentalist position on some aspects, and sometimes the City, because we were able to demonstrate with the technical evidence why our positions were right and why their positions did not have any support.

The environmentalists kept arguing, and in fact they still argue, that over the course from the first regulations to the final version, the regulations were watered down. And they say "watered down" without adequate basis. That's creating a straw man and knocking it down because the first drafted watershed regulations were simply a first draft. They had no more legitimacy than the final draft. They were subject to a demonstration of proof.

The environmental communities never supplied anywhere near the technical information that was submitted by the watershed communities demonstrating the real impacts to water quality and what should be necessary to protect water quality. And by failing to create the evidence for its position, the City—as a matter of law—was really forced to make modifications to the regulations.

We still believe that there are a lot of elements of those regulations that are way beyond state requirements, that you don't see anywhere else. They will do a lot to protect water quality; and it does not really reflect a watering down just because your first blush says, "No development. Nobody can live in the Catskills." And the final version is the one that survived the scrutiny of all the parties.

NB: Right. This did become a situation where people could live in the watershed.

JB: And that's why you always have to be careful comparing the New York City situation to situations elsewhere in the country, especially places like Seattle. That's *my* understanding. You have a living watershed here. You have people that have lived here since before New York City started taking water from it. There have always been people living here in the watershed.

It is not a case where the City took an area that essentially had been uninhabited and then people moved in. If anything, the Catskills over time have been depopulated because of the changing economics and everything else—much like any area of rural America. And that was it: the recognition that these communities had a right to continue. And the Watershed Agreement attempted to strike a balance of upstate and downstate interests.

Track 8

Striking a Balance

NB: Any other stories or personalities or things that you recall?

JB: Sure, but I don't know if I can tell about any of them.

NB: Yeah, right, and still keep in business. . .

JB: There's the story about the woman who said we should not spend money on "damned lawyers." That was a good one. There were a lot of very interesting moments in the process. A lot of blood, sweat, and tears were left on that table by all parties. The emotionalism was very high.

One thing I've said repeatedly, and it's important to say it again, is that the New York City lawyers, who represented the City's interests, did a phenomenal job. They were excellent lawyers. They were strong, effective advocates of their position. They were very careful to protect the City's interests at every step of the way. I mean, in a lot of ways I think they were too good, or too strident. I would have liked for them to have been a little more reasonable on things. But they were very professional about it, and they took very seriously what would happen.

And one of the most unfair criticisms that ever came out of this Agreement came from the New York City comptroller, Alan Hevesi, who has a role in approving elements of the Agreement because there are contracts that stem from it. He made a lot of really unfair criticisms of and attacks on the New York City lawyers. He essentially said that they got hoodwinked by a couple of, you know, country lawyers from upstate.

That's encouraging to me that we could have, you know, hoodwinked them. We didn't hoodwink anyone. We worked within the process, and they had very close negotiations; and it's a disservice, really, to the professionalism that was shown by the City and by the State agencies, too. I mean, their efforts on this were phenomenal for public servants—and everybody gives grief to, you know, government workers all the time. Completely untrue. Their dedication was absolutely phenomenal. And so was the detailed knowledge and the care that they put into it.

NB: Yeah, I've heard that Mike Finnegan and Erin Crotty ran into each other in Ireland when they were there on vacation separately, and they ended up meeting and talking about the watershed?

JB: I think that's true. There were a lot of interesting things that happened. It was very productive. It was nice that it worked out—I mean, the end result. It's scary how close the end result came to our original projection of what was going to happen when we

first started meeting with the Coalition. We said, “If everything goes right, we will end up with something like this.” And we ended up getting there. Not at all by a path that we mapped out. It was a lot of stuff. But what we basically said is, “We’re going to go through the process. We’re going to participate. Odds are the City will screw something up legally and we will have them where we can force negotiations.” And that’s what happened. Some of it, a lot of it, was bad judgment calls by the City. Arrogance of the City that they could get what they wanted and set themselves up into that kind of a position.

But I remember talking to one of the City lawyers relatively early on in the process—we were trying to do negotiations on various elements—and I said, “What we need is a global settlement. We’ve got to deal with all the issues of land acquisition, regulations, and infrastructure improvements all at once, in a global settlement.” He said, “You’re nuts. We might as well do a settlement in Bosnia at the same time.” I said, “We’ll do that afterwards.” And I said, “The only way this is going to happen is on a global settlement of all of the issues.”

NB: I have heard this compared to the Irish Troubles.

JB: Right. Well, same kind of a thing. They tried it in Ireland. That agreement’s having its difficulties and is fighting for its life. The Israelis and Palestinians have tried it, too. And they’re trying it in Bosnia. Hopefully, we haven’t gotten to the point of violence yet, so we’re still way ahead of them but it required a change in mind-set of not the regulators to the regulated, but the concept of a partnership, of working together for the common interest. And that’s really what the CWC is set up to help implement, as well as some of the other elements. I think most of the people who were involved in the process still want to make that happen. And hopefully it will. There’s no reason it shouldn’t.

NB: That is what I think is so marvelous and significant, and that seems to be an outcome of the mediation process—that whole change in mind-set. And, just the hammering away and New York City realizing they had to change their perspective.

JB: They had no choice.

Track 9

Whole Community Planning

NB: Anything else I haven’t asked you?

JB: There’s a lot you haven’t asked me. Did we touch on everything from the phone call?

NB: Yeah, well, we talked about the political histories, inequities, the clear need for some environmental regulations, the competing agendas. We talked about sort of the basic history: the Safe Drinking Water Act, filtration, regulations, the livelihood of people upstate, towns banding together, the negotiation they did, perspectives on the present day. There's so much more you could say, I just know it, and I have another whole side of the tape.

JB: Who've you talked to already?

NB: Initially we talked to Perry Shelton, Ken Markert, Tony Bucca, Alan Rosa, and Clayton Brooks.

JB: I didn't mention Ken, but he was very instrumental—even more so than the lawyers—in bringing all of this together and doing most of the groundwork. Ken Markert helped bring a lot of it together. He was the Delaware County Planner at the time. And he did a major effort of bringing the information together and working with the City and trying to develop—you know, even before we got into the formal negotiations—trying to get this going and let the City understand that there was another way of meeting their goals.

And he got a lot of political flack from the locals. To some extent, he was taken advantage of by New York City, who tried to lead him down the path of Whole Community Planning, which was an issue that was good in concept and sort of held off the negotiations for a long time—a couple of years. But I honestly believe the City was never really serious about it and was doing it as a means to really try to mollify the people in the watershed.

Whole Community Planning was the idea that if you could develop on a community basis a planning tool designed not just for traditional land use planning purposes but as water quality based, then the City would consider letting you out of some of the more arduous regulatory restrictions. And the Coalition spent a lot of time dealing with that process and working for it. And some of the communities spent a lot of time on it. They had Citizens Advisory Committees putting a lot of effort into it and were making some very significant progress.

I had problems with the process because I knew the City wasn't closing the loop. They were not providing anywhere near the assurances that, once the community went through that process, they would get anything in exchange. It was completely open-ended as to what would change from the City's regulatory perspective. And I said, "There are no guarantees you're going to get anything here." The communities went, "Oh, we think we can trust the City. We think this is good." I said, "I'm advising you as a lawyer that you're missing what's happening there."

Track 10**Land Acquisition: Fanning the Flames**

JB: Particularly in the towns of Neversink and Denning, they went way out ahead and made major efforts, and they put together some great products. Well, they got blindsided by the City in August of '93 when the City announced its land acquisition program. Suddenly the City was going to come out and had applied for a permit from the state to buy 80,000 acres of land and use the powers of eminent domain at the same time. Well, eminent domain is sort of the bugaboo for everybody. That was how people lost their homes when the reservoirs were constructed. You know, willing seller is one thing, but I mean if you're going to come in and force me to sell my land, that goes against what most people really can accept—it's a very basic belief.

Well, the City had this whole big application for the land acquisition program to take land by eminent domain, despite the fact that they'd been working closely with several of these communities. They did not even give them a heads-up that this was coming down the pike. The communities found out about this when it hit the papers. And they took enormous political flack locally. The people said, "See, you can't trust the City. You were betrayed. They weren't serious about it." And that's when things really blew up. By applying to take land by eminent domain, the City lost at least a year of good will that they had slowly been building, and they antagonized some of the most moderate people, who had been willing to work with the City.

I mean, there was a public hearing down in Gramhamsville on the application by the City to purchase land, and the City was up there giving its presentation and I was there to comment about it and point out all the legal and environmental problems in what the City said. There were about a thousand people standing in this gymnasium—it was standing room only. I got five standing ovations attacking the City on what they were doing. It was wonderful for my ego, but it was like shooting fish in a barrel. It was terribly easy to point out the flaws in the City application and play to the crowd. And the City lawyers and administrators were very upset. They said to me, "You're just fanning the flames. You're just fanning the flames."

I said, "Well, what do you expect me to do? That's my job. You've antagonized all these people. You come in. You talk about using eminent domain. You're going completely different from the rest of the Agreement." I mean, at the same time that this was going on—this became the basis of our lawsuit—the City was in the middle of their Environmental Impact Statement process on the regulations, was talking about the impacts of the regulations. Huge EIS [Environmental Impact Statement], you know. The City compiled a many-volume EIS on the regulations. There's not a mention anywhere in the regulations (which is supposedly the basis of their whole watershed protection program) of land acquisition, and the environmental impact that it's going to have, and the fact that it's going to displace people. It clearly was an

element that should have been addressed, but it was completely ignored in the Environmental Impact Statement.

And it became the fundamental basis of our subsequent lawsuit about the flaws in their process. They they'd have to go back and do the thing all over again. People can attribute it to either miscommunication within the City—they didn't know what they were doing—or, I think, simply arrogance of moving forward and thinking they'd be able to get what they wanted.

Track 11

Paying the Cost: Part 1

JB: Also, by putting in the application for land acquisition, that kicked the City into another process at the State DEC; it allowed us to force a trial-type hearing on their whole watershed protection program and get them into another statutory balancing test, which requires them to look at other ways of meeting their goals, or provide alternatives to mitigate the impact of their proposed regulations. And that was what really got the ball rolling in the next couple of years and forced negotiations, because we then had the real legal handle for them on everything.

I remember when land acquisition was proposed, we were getting close to the end of the comment period on the watershed EIS; I was working here late at night on the comments with a couple of other people. And Dan Ruzow, my partner, sees this permit application come down. And right away he's ecstatic, because he saw immediately the significance of what they had done. And he said, "Now we have them. Now we're going to force them in this process."

He used to be an assistant commissioner at DEC, and he knew the cases, and said, "They're going to need a water supply permit for all this. They're going to have to prove x, y, and z, and so you get into the balancing test. And this is what's going to get us what we need." And he was largely right. It's what changed the process.

NB: That's what you alluded to earlier. I thought of asking you then what mistake they had made.

JB: That was arguably their single biggest mistake. They just refused, even through that whole process, to develop a mitigation section. It was one of the oddest things they did. Their draft Environmental Impact Statement came out. As part of any Environmental Impact Statement, you have a mitigation section—how you're going to mitigate the impact of your project. They had recognized throughout the EIS that there were going to be adverse effects of their regulations, causing displacement of homeowners, displacement of businesses, added costs that would have an adverse impact.

Their EIS left out a mitigation section. They just didn't put one in. They said, "Well, we'll put one in later." They did! But I mean, again, you don't put it in later. It had to be in at that time. It was completely missing because they had never wanted to get to the point of discussions. We'd talked about the regulations a little bit, saying, "How much money are you going to give us? How are you going to pay for this? What are you going to provide for us?" And they just said, "We don't want to talk about that. We don't want to talk about that now."

And they actually never did finally talk about it 'til well into the negotiations that Michael Finnegan was running. They finally started talking about the dollar figures. And that's how we ended up where we were on the dollar figure. Some of them have a basis, and some of them are just negotiated numbers.

Track 12

Paying the Cost: Part 2

NB: So the fact is, it was really their arrogance that they that didn't talk about how they were going to mitigate the impact of the regulations.

JB: Oh, and a good example of that is—which, I think, worked to their disadvantage—going back to when the City originally got its authority in the watershed. The State Legislature passed a variety of statutes allowing that to happen. And one of the statutes, dating back from the late 1800s, really, was the provision that said, "When the owner of a water supply works (New York City) imposes regulations on another community requiring the treatment of sewage, the City has to pay those costs."

Now, that had been on the books since at least 1905, probably earlier, because it had some precursors that were essentially the same. There was never a reported case of a decision under that statute. The City, through its water supply permits—individual permits that it got to build the reservoirs—was required at various times to build treatment plants for some of the municipalities in the Catskills and run them forever, at no cost to the municipalities.

And at times, when people had bothered to sue them in the past, to say, "Under this section—it's Public Health Law Section 1104—you have an obligation to do that," the City would invariably settle the lawsuit where they would agree to make a payment without admitting that they had a legal obligation to do this. Again, the communities generally did not have the resources to litigate. They would take the deal that they could get. It was fine. It was alright. They weren't concerned about making good law for the broader community.

In the course of the negotiations, we said, "Look, your regulations are going to be requiring all these changes to sewage treatment plants." And what they were

originally talking about was adding ultra filtration as a final treatment level for wastewater treatment plants. Well, the experts we had talked to said, “Ultra filtration—which later became microfiltration, which is a matter of the size of the screen that they use—doesn’t really work for sewage treatment plants. It’s an untried technology. It’s terribly expensive in continuing O & M costs and it really doesn’t do a lot of good.”

Because it doesn’t matter how much you clean up what comes out of a wastewater treatment plant, you still have more furry animals running around in the watershed than you have humans, and they put in more waste—cryptosporidium, giardia—than the people do, so what’s the point of cleaning it up to that degree coming out of the plant. I mean, there’s a basic cost-benefit analysis you have to go through. So we kept going to the City and saying, “Look, your regulations are crazy. Either pay for them or change them if you’re going to do it.” And they refused to admit that they had to pay for them.

We made a petition for a declaratory ruling to the State Health Department because we tried to have discussions. They refused to have discussions. So we finally petitioned the Health Department for a declaratory ruling. “What does Section 1104 mean under a variety of scenarios? Basically, does the City have to pay for the cost of their regulations on their treatment plants?” And the Department of Health said, “Yes.”

The City, instead of letting it just lie there as a declaratory ruling, decided to sue and challenge it. The Supreme Court—the trial level court in New York—agreed with us, said, “Yes.” And the City’s arguments—there were a lot of lawyers’ arguments that weren’t necessary, you know: “Things don’t mean what things say.” But they forced the creation of new law, when if they had negotiated what was going to be done, what was going to be paid for, they probably would have ended up getting something cheaper than what they forced the Supreme Court to do.

And then the funny thing about it at the end is, we’d always said, “Microfiltration’s expensive. It doesn’t work. You know, you really shouldn’t do it.” And then they said, “Well, we’re going to pay for it.” And we said, “Alright. It’s your problem.”

Well, after that, the City realized that microfiltration doesn’t work and is very expensive. And they went through a long process with EPA to get EPA to certify a substitute dual sand filtration instead of microfiltration, which works just as well and is far cheaper, especially for operation and maintenance costs and capital costs. The City got EPA to agree to that, and is now substituting that. And I said, “You know, funny how when it turns out you have to pay for it, you realize it didn’t make a lot of sense.”

Track 13

Paying the Cost: Part 3

NB: There were a lot of environmental breakthroughs (could that be said?) in terms of cutting edge techniques that allow people to live in the watershed, but not pollute the water.

JB: I don't know if I would say techniques or breakthroughs. It was a lot of common sense. Recognizing that you can have activities there, but just control the pollution effects. Put in the infrastructure to help the communities that can't afford it.

The Whole Farm Program: there, you've got a creative response to a major source of pollution. The biggest source of non-point-source pollution—I think nationally, but certainly in the watershed—is farm runoff. The original regulations would have essentially obliterated farming in the watershed by the restrictions they were going to put into effect.

The farm lobby is a very effective lobby and got started way in advance of the Coalition, and made it very clear to the City that if they went forward with their plan on that, not only were they going to take the farms out of production or out of the watershed, but then they're going to be faced with a lot of subdivisions. People are going to develop their lands for vacation homes or whatever. And that certainly wouldn't be in the City's interest. Obviously, open space, less intensive uses, is better.

And so the City, to their credit, recognized early on that they needed to provide funding to help farmers control pollution. They funded the Watershed Ag Council, which is the watershed farm program, for \$36 million, I believe—I'm not sure of the number—which took agriculture out of the watershed regulations. And allowed a program, starting first with model farms and then expanding to the majority of the farms in the watershed, where you help put in non-point-source controls to divert runoff from the lots and pastures and everything away from the water courses. Try to control the pollution that comes from the farm.

When you're dealing with an industry like that that is working on a very marginally profitable basis, people don't have the money to put these infrastructure improvements in, and you're faced with an enormous water quality cost that the City has to bear. It makes sense to make a large contribution in the watershed for a relatively small contribution from the water users to help control this problem.

And that program has been moving along and has been pretty successful, and it clearly has been a model for the rest of the country. Because that's recognizing that you want to maintain—for a whole host of reasons—farming and agricultural uses, but

provide the means to help the people fix their practices. Don't just use a command and control system. Work on a cooperative basis.

NB: I knew something somewhere was a model for the country.

JB: Well, that's the clearest one, and it has been looked at by a lot of places, and is useful. But I think the general principles that we're moving towards on this one follow the same thing. I mean, it really is, "Provide the means for communities that don't have the means." You know, it's nothing more than that.

Track 14

Water Rates

JB: The interests and the policies that were involved were fascinating, and also the public policy choices. New York City had a very real problem with the fact that, from the beginning of time, really, the New York City water supply had been almost free to the people in New York City. They didn't have a metering system; the rates charged for it did not really reflect the true cost of running a water system. And so, historically, water rates had been kept low—very low. I mean, way below the national average.

As this watershed fight is going on, developing at the same time, the City starts an aggressive metering program to install meters on buildings in New York City. They were doing that to increase revenues, to increase conservation measures, and because they needed a better way of determining who was using water—how to pay for it.

So, even forgetting the watershed deal, consumers in New York City were seeing a several hundred percent increase in their water rates. Well, that caused another enormous problem. The City administrations, both Dinkins's and Giuliani's, were paying the price for their predecessors' lack of political courage. And they were in a terrible untenable position. So they always had to be careful of what they were spending because they were watching their water rates go through the roof and everybody in the City's screaming about it, for good reason, because they were used to paying almost nothing.

The fact that they were being asked to pay an amount equivalent to what an average or normal rate would be doesn't help much if you're not used to paying for anything. That was another policy factor that very much came into play on how you're going to pay for all these things, the timing of it, and not to break the budget in New York City.

NB: They must have been really between a rock and a hard place. Talking about the rates going up and then they're still talking about paying for people upstate.

JB: There were major political issues that they had to deal with, and they dealt with them very forthrightly and that was the good thing of the Giuliani administration. Recognizing and going out there and making the statements that these are the investments we have to make to maintain this water supply.

The New York City water supply is still a phenomenal engineering feat. You know, it was created in the late 19th and early 20th century—a phenomenal accomplishment. And that it still works is phenomenal. And that it is still incredibly clean is amazing. But, like any kind of public infrastructure, it requires continued investment. It had been allowed to lapse without that kind of investment for a long time. There's another good story. This was a big factor.

Track 15

Water Treatment Plants

JB: The City operates in the Catskills—let me get this number right—I think there were six wastewater treatment plants under their original Agreement. Grahamsville, Pine Hill, Margaretville, Tannersville, Grand Gorge. Five treatment plants, and a smaller one that was sort of like a community septic system. They had been built pursuant to some of the original watershed permits to provide sewage treatment for the communities that they were built around—at no cost. And they're very large plants. I think they average around 400 to 500 gallons a day. Not really large in terms of major municipal plants, but, for the watershed, very substantial discharges.

Since at least the late 1980s the City had allowed its own plants to fall into massive disrepair and was violating its own discharge permits right and left, and been the subject of a citizens' suit by the Riverkeeper, Bobby Kennedy's group, to fix them up. And they had signed a consent order around 1990 promising to get these things up to speed.

As late as I think it was '95, they still hadn't started to work on the upgrade of their own plants, and were continuing to violate all of their permits. So whenever they were arguing about the impact on the watershed and the impact of development, it was very easy for us to point out that when you added up the cumulative discharges in the watershed, half of the cumulative discharges were New York City's own discharges. And they were the worst ones. They were being the worst stewards of their own water supply. They were violating their permits at enormous levels and yet despite that constant violation, the water supply in the Catskills was still meeting all of the objective standards of the Safe Drinking Water Act. The water was still clean.

And so the point was, if you upgraded those plants, and if you upgraded the new plants to this new higher level of treatment, that alone would be sufficient to protect the water supply. You don't have to be a scientist about it. Look at what had

happened over the past and if you essentially plugged those holes, you're going to be in good shape.

And that was the argument we were able to keep making. And it became a very difficult argument for the City to overcome. That they were their own worst enemy on those kinds of things made it easy to argue. We kept saying this at testimony at Assembly hearings and stuff; because when we were holding the whole thing up with litigation and negotiations, Assemblymen were saying that the watershed communities are standing in the way of clean water and they're endangering the life and health and welfare of nine million New Yorkers and forcing the City to filter.

We'd say, "That's not true! Fix your own plants first. If you want to upgrade the existing treatment plants, you can upgrade them now. You don't need regulations. Go to the treatment plant, enter into a contract, say you're going to pay for the upgrade. You don't have to wait for the whole program to be in place. If you're serious about doing it, go ahead and do it!"

NB: Tony Bucca has talked about going into New York City like a guerrilla.

JB: Well, that was the threat we made; it was, you know, "Look. Negotiate with us or get ready to filter. We don't want to make you filter, but we're prepared to force the issue." The Catskills were not going to pay the price for the City avoiding filtration. We would share the burden, but we weren't going to bear the price. And that was the crux of the issue: If you wanted to avoid pollution, help pay for pollution control. Don't try to force it on anybody.

NB: It just seems to me remarkable that, with all the political clout of the City, the outcome could so easily have been different.

JB: Well, I mean that's sort of the question of what's going to happen for the future. When the City built its reservoirs, you didn't have the current environmental laws, the procedural laws of SEQRA [State Environmental Quality Review Act], and some of the other things that provide protection for the upstate communities. If the City ever has to build another reservoir, it's not going to have as easy a time as it did in the past. And so it was the modern environmental laws that came into place in the '70s that laid the groundwork for allowing the communities to assert their rights like they didn't have the opportunity in the past. That's why they say Robert Moses could never have built everything he did in New York State then if he had to deal with the laws we have now.

NB: How about the connection all the way down the Delaware River, all the way into Chesapeake Bay, all the communities down the line?

JB: It's the Delaware River Basin Commission and all the interstate compacts dealing with the discharges from the dams to maintain a level of flow in the Delaware River

farther downstream. Those factors didn't really come into play in this. They were corollary issues occasionally, but that was really different because that really goes to the quantity of the flow that's released. We weren't dealing with any of that. We were really dealing with quality controls up in the watershed—so, luckily, that was one area that we didn't have to get involved in.

Track 16

Bobby Kennedy, Keith Porter, Erin Crotty

NB: I thought if I talk to Keith Porter from Cornell University, I could get an environmental perspective. And maybe I could talk with Bobby Kennedy, if I can get him.

JB: You can talk to Bobby. You'll get a different perspective, that's for sure. And he has launched a lot of attacks, which are really unfair and inaccurate against DEP's management of the watershed program. And has, in my opinion, libeled a lot of good people who work there with a lot of unfair criticisms about their abilities, their intentions, their integrity, which is really just untrue.

Now, having said that, Riverkeeper had a very important role at the beginning of this—before the Coalition got involved—of really pointing out how the City was not managing its watershed like it should have, and it was a catalyst for getting them to move forward, certainly on their own treatment plants and on other issues. But again, they were also looking for stricter things to be done under the rubric of the City's controls.

Keith Porter at Cornell worked with the Coalition and helped us a lot. He did a lot on Whole Community Planning and provided a lot of other technical information for us. He was definitely a useful source and was very much into looking at trying to develop a cooperative manner of dealing with these issues.

NB: And Erin Crotty?

JB: Well, Erin is the one who, certainly in the last year of the negotiations and a good part of things before, pushed everything forward. I mean, when the negotiations got intense at the state level, she was the key figure.

1995 was devoted to hammering out the agreement-in-principle. That was where we did most of the work on the regulations and the basic parameters of the land acquisition program and the infrastructure programs. But it was a very bare bones Agreement.

The second year was writing the MOA—the Memorandum of Agreement—as we have it now, and all the implementing of contracts and finalizing the text of the regulations,

which was an incredibly intense process. And that's when Erin really came in and really kept the parties moving forward and kept us organized. I call her the Empress of the Esopus. She did a phenomenal job.

Track 17

Dan Ruzow

NB: Tell me about Dan.

JB: Dan Ruzow, who's managing partner of our firm—much more senior than I am—and I worked very closely together through all this. And without any planning based on our natural personalities, we were always the proverbial good cop–bad cop. He was the good cop, the conciliator: “Let's work things out”; “We don't have to get antagonistic here.” I was the mad dog, the terrier. It was basically, “Get along with me, otherwise I'm going to sic Jeff on you.” And I was brought in when the bomb throwing was required—usually to be more adamant about things. And it was generally effective.

And you know, Dan is, by anybody's estimation, a real sweetheart. He's a very nice guy. And he works hard not to antagonize people. One of the few times he lost his temper in the negotiations is near the end, when things were getting really tight before the agreement-in-principle, and he was really upset about the City's position.

He and Marilyn Gelber had an excellent relationship and got along together. But he was really upset about what the City was doing, and when we were on a conference call he used the “f” word on them. Boy, did that have a lot of effect on people! They realized that when they got Dan angry at them, they had probably gone a little too far, and it did have an effect. You know, if I used that word, they didn't care. It wasn't planned, but it worked out that way a lot of times.

NB: It would have been fun to be a bug on the wall to hear the language you were using with each other.

JB: We generally tried to be genteel with each other, but emotions got very heated at times. Things got very nasty on various issues. And one of my—I don't know if it's a strength, or a weaknesses—is when I see somebody making stupid arguments, I tell them, “That is the stupidest argument I've ever heard,” which doesn't always enamor me with people, but . . .

NB: Were you two lawyers doing most of the talking, and the people in the Watershed Coalition just sort of sitting around listening?

JB: Once we got into the in-depth negotiation, the lawyers with Ken Markert were involved in a lot of it, and some other technical people; but we did most of it. Al Rosa

was there for a lot of meetings, Tony was there for some, Perry was there for some. These meetings went on, you know, day in and day out, all day. All these other guys have jobs and lives. They couldn't take time off to be at all the meetings. Nor was it a terribly enjoyable experience to sit around a negotiating room with a dozen or so lawyers nit picking over things.

A lot of times we would just keep them apprised of what was going on and get their guidance on particular issues of what positions to take. There were a lot of conference calls back and forth and, you know, when we had big meetings to deal with some really big issues, they then would come in and deal with stuff. But, just because of the time and distance involved, they had to delegate a lot to us; and because we had been representing them for so many years at that point, we understood what their concerns were, what they wanted. We were very good at anticipating, knowing what they wanted or how things were going to flow, and we'd say, "No, this isn't going to fly in the towns. It's not going to work. We have to change things this way." And, luckily, we stayed consistent with what our clients' views were. There were a few instances where we had gone too far off in a direction, and when we did, they pulled us back.

Track 18

Charlie Cook

NB: How about Charlie Cook and John Hamilton?

JB: Couldn't have happened without Charlie Cook. Charlie Cook was great. Charlie was an incredibly respected Senator, had a lot of power in the Senate. Under the New York State system, the members of the legislature get Member Items, sort of like discretionary funds, to use in their district. Charlie used a considerable amount of his available Member Item money to help finance the Coalition.

The Coalition was an expensive fight. And we got several Member Items from Charlie Cook that allowed the Coalition to keep going—that did not require us to go back to the towns to get significant extra contributions, because that would have been hard to get. They hate paying for lawyers, and they have limited budgets. You know, if they had had to bear the costs on their own, it would have been very hard.

It consistently drove the City nuts that, in a sense, State funds or City tax funds were used to pay for the lawyers that were making their lives miserable. And in the final years—I think it was in '95—we were going to get another Member Item, and the City lobbyists put on a major fight in the Assembly and in the Legislature not to give the Coalition any money.

And there are articles about it. Bobby Kennedy was lobbying against it, and they were saying, you know, that they shouldn't give money to the upstate communities. It was wrong somehow. And I remember talking to one of the Assemblymen, Richard Brodsky, who had been quoted as saying this was wrong, and I called him up and I said, "Richard, why are you against this?" And he said, "Well, I don't think it's right to pay for this."

And I said, "You're in favor of giving legal services for poor people, aren't you?" He said, "Of course." I said, "This is the same thing. It's evening the playing field and providing resources so that people can represent themselves on their interests. We're not doing anything improper. We're just helping them get their viewpoints across, and this is the use of their Member Item money."

They agreed with it. That year we got twice as much money as we were going to get. We got \$200,000 that year instead of \$100,000, which was the original proposal. It didn't work too much to their advantage.

You know, that's where we worked for the Coalition of Watershed Towns. And Charlie brought that all together. He was the voice that kept us our funding. He was also a very effective voice in the final negotiations within the Republican administration and with his contacts in the New York City delegation to help negotiate the final elements of the deal and get some of the money we needed, and he was very much involved.

John Hamilton, as his counsel, provided invaluable expertise on technical issues regarding tax laws and the assessments of properties—because we were dealing with the taxation issues of what the City did—and very strong and useful political advice and legal advice, and he participated a lot in the negotiations at the table, especially in the second year. He was there, and he put in a tremendous effort. Yeah, we couldn't have done things without him.

NB: Well, this has been great.

ERIN M. CROTTY

Governor's Office representative
in the New York City Watershed negotiations
(1995-1997)

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ERIN CROTTY Commissioner of the New York State Department of Environmental Conservation (1997–present)

Governor’s Office representative in the New York City Watershed negotiations (1995–1997)

Also present: Jennifer Post, Assistant Commissioner for Media Relations
Sandra Allen, New York City Watershed Coordinator

Interviewed by: Nancy Burnett

Location: Ms. Crotty’s office, Albany, New York

Date: August 22, 2001

Total time: 50 minutes

Track 1

How Erin Crotty Became Involved in the Watershed Negotiations

NB: Talk about how you first got involved in the watershed negotiations.

EC: How I first got involved. Very early on in Governor Pataki’s first term, starting in 1995, right about March, I was working as a Policy Analyst in the Counsel’s Office under Michael Finnegan, who was then the Counsel to the Governor, and this issue of the New York City watershed and the prospect of the EPA not approving a Filtration Avoidance Determination for the Catskill-Delaware portion of its watershed came up. They really were on the verge of making a decision of whether or not the City of New York was going to be required to build a massive and quite expensive—estimates range from \$6–8 billion—filtration plant, and I was asked by Michael to look into this issue, so look into it I did.

I quickly found out that it was a massive issue. It involved the largest city in the State of New York, sort of the heartbeat of America, if you will—New York City—as well as the upstate communities which are the home to New York City’s drinking water supply. All of what that entails. Everything else that goes into that. The Department of Health was involved, and the Department of Environmental Conservation was involved, and the local governments and the city governments and the federal government. Right around April, the Governor made the decision that he thought that a comprehensive agreement between New York City and the upstate communities and the federal government could be brokered, based on research and discussions that a lot of people did. Not only myself, but there were an awful lot of people working on the issue of the New York City watershed.

That's really how I got involved. From that point forward, I remember Michael and the Governor convening the group of people and the group at that time was really just government representatives. It was the federal, state, city, and local governments getting into a room and identifying what the issues were, and we came up with a list of issues which quickly grew to a pretty lengthy document. But there were categories of issues, and we asked people to prioritize the issues. And so the first meeting was in April of 1995, and at that meeting the Governor directed us to come up with an Agreement by August of 1995; actually, the agreement-in-principle didn't happen until November of 1995, and then the very voluminous multivolume comprehensive Agreement didn't get signed until January of 1997.

So that's how I got involved in the New York City Watershed Agreement.

NB: I hadn't realized that you really did get the agreement-in-principle done awfully quickly.

EC: Yeah, it really was. And that acted as the blueprint for the much more comprehensive Agreement that followed.

Track 2

Issues to Be Addressed in the Watershed Agreement

EC: There were basically three large issues that we were trying to address. One was land acquisition—making sure that the City of New York was able to purchase property in its watershed from willing sellers and making sure that the property was property that was important to water quality protection. That was one of the initiatives.

The second one was making sure that the City of New York had protective regulations for the watershed in the watershed. So things like septic tank siting and storm water and other issues that get addressed in any health regulation were all discussed and hammered out in detail during our negotiations.

The third was really what we came to term “the watershed protection and partnership programs,” which was a host of programs designed and funded by both the State of New York and the City of New York, but mostly the City of New York, to further protect the watershed. We focused on wastewater treatment plant upgrades and storm water retrofits and septic tank replacements. And that package together was the package that was \$1.2 billion back in '97.

Then equally important was also a fund—an economic development fund—funded by the City of New York for environmentally sensitive economic development in the watershed. We set up a not-for-profit, the Catskill Watershed Corporation, which I am

still a director of, representing the Governor. And it has representation of the communities, the State, the City, and the environmental community.

Then we also set up the Watershed Partnership Protection Council, which is a much broader group of people that is charged with really sort of making sure that everything stays on track for the Agreement, which is a pretty exciting group of people. And right now I'm serving as the chair of the Executive Committee.

We were negotiating a very comprehensive, complex public policy issue. We started with the governments in the room together and the folks who were in litigation with each other. But then after we had, we thought, solidified a very bare-bones agreement amongst those parties, we brought in the environmental community. And the environmental community proved to be extremely helpful, and it was a very important partner in the overall Agreement in making sure that there were the right processes in place for public participation and that the environmental community felt confident and secure in the environmental regulations—or the watershed regulations—that were going to be promulgated. And so I think that that was an important step and that we brought them in at the right time.

Simultaneously, we were fast and furious as well with providing briefings to other parties—those being the business community, or the Comptroller down in the City of New York, who held the authority to register all of the contracts that needed to get registered in the City in order for the City to have the funding to fund these projects. And you know, they, too, had a lot of good ideas and a lot of additional recommendations that I think enhanced the Agreement. We also briefed the New York State Legislature and the legislative leaders and their staffs, and they, too, had some recommendations on changes to the Watershed Agreement that proved to be important.

And so although it started out with these—I can't remember how many people we had, but it was probably about 15 people in a room together, or 15 parties in a room together, if you will—we were constantly working together with other people on the outside, and a lot of that fell to the State of New York to make sure that we were working with the environmental community and the business community and the Legislators and the other surrounding areas. That was very important.

But I think that in terms of a negotiated settlement (which is what this really was) or consensus-building program or project, what was key was the leadership of the Governor. The Governor brought the parties together, he brought the federal government to the table, he brought the City to the table, and everybody knew at the beginning of those negotiations that we all had the same goal at the end of the day: to avoid building this massive and very expensive drinking water filtration plant for the Catskill-Delaware system and at the same time to make sure that the watershed communities felt that they could survive economically.

And so you're not only protecting the drinking water of nine million New Yorkers, which is about half the population of the state—or was at that time—but you were also protecting the economic future of the communities that protect the watershed on a day-to-day basis by living there. Former DEP Commissioner Marilyn Gelber used to call it a living watershed, and that was a label, if you will, that has stuck for years and years. It is a living, working watershed. And it really required the commitment at the top of every organization—EPA, the State, the City, the local communities—to commit to that overall goal, which of course sounds wonderful and is laudable, but takes a lot of hard work to get there at the end.

Track 3

Negotiation Process

NB: Alan Rosa said he thought he could never sit down with those people.

EC: Oh, yeah. It was tough. We had a very large trust problem. In the first meetings that we convened, there wasn't a lot of eye contact. Politically speaking, you have to remember that, even for the Governor at that point, it was tough working with the City of New York. During his first term, Mayor Giuliani supported Pataki's opponent, and so there was a distrust, on behalf of the City of New York of the State's willingness and honest brokering of this Agreement: a distrust that perhaps we held the interests of the upstate local communities higher than the interests of the City—which in fact was not the case. And so, there was just a lot of trust building that had to happen. We did it in a lot of different ways. One way is we're all representing organizations—or we were representing institutions—but we're all people, too. And so, when you are involved with and working with people ten, twelve, fourteen hours a day, sometimes seven days a week, you become friends with them just because you're in a room together for that period of time.

We set ground rules as well for the meetings: Things like making sure that the person that was in the room negotiating could carry the organization or institution that they were representing—that was very important—as well as just sort of common courtesy, common respect ground rules: not cutting people off, letting people feel comfortable about articulating their position. Also—and we were criticized for this quite severely in the beginning in the newspapers and by detractors on the outside—they were closed-door meetings. They were settlement discussions, in settlement of litigation. We also asked the parties not to speak to the press, and they didn't. We knew that if this issue was going to be debated in the press, we were never going to reach an agreement, because it was too polarized and there was too much rhetoric.

Another wonderful term that was coined and has been used subsequently—and it was a term used by John Cronin, who was at that time the Hudson Riverkeeper—was said at a meeting in New York City when we were making them work on a Memorial

Day [laughs] or on the eve of Memorial Day weekend—it had to be 7:00 or 8:00 at night. We were very close to an agreement at that point. Often times after six or seven years you might forget exactly what the issue was you were talking about, but remember very clearly what the dynamics in the room were, and I just remember John Cronin standing up and saying, “We need to de-rhetorize this issue. Stop the rhetoric and get together on this issue. It’s too important to the people of the State of New York.” And that has also stuck with me.

So it was a lot of that. I mean, it’s a lot of just team-building and trust-building and making people feel comfortable that you’re listening and that you’re honestly trying to bring people who have very different views about an issue together in a consensus. A consensus is much different from an agreement. A consensus is that there are things in this Agreement that are not liked by every party—it’s not a perfect agreement. A consensus-arrived agreement is one in which not every party loves every thing about what’s in the Agreement, but you can live with it, and you live with it because, at the end of the day, it does exactly what the Governor asked us to do back in April of ’95, which is: protect the drinking water supply of nine million New Yorkers, avoid the construction of this massive and very expensive filtration plant, and at the same time protect the economic future of the upstate watershed communities, who are stewards of the drinking water.

Track 4

Erin Crotty’s Role

NB: Talk about your role specifically.

EC: My role. Okay. Actually, in the beginning (from April of ’95 until November of ’95) both myself and one of the Assistant Counsels in the Counsel’s Office, Nick Garlick, were teamed together to represent the Governor’s Office at the negotiations. We really were identified as the Office, if you will, to bring the parties together—sort of brokering the parties together. We were supported by—very capably, I might add—Glen Bruening, who used to work at the Department of Environmental Conservation, and Ron Tramontano at the Department of Health. We came up with the agendas, we identified the issues, we had off-record conversations, we had off-meeting conversations with the parties. We would hear something in a meeting, we would call a break, and we would pull parties aside and say, “We think you can move on this issue this way” and “How wedded to this particular issue are you?”

We tried to design the agendas in a way where we knew that the issues that were less complicated and easier to fix would be put at the beginning of the day, and then the issues we knew were going to take a long time were sort of in the middle of the day, and then other issues—probably the thorniest issues in the beginning—we would put at the end. The idea was slow, steady progress, and again another term from the

watershed was “slow, incremental progress.” And that’s exactly what we did. Every day there was an achievement. It might have been extremely minor, but you gotta build on those; and it sets a precedent, and you start to feel like—when you’re part of a consensus group like that—“This *is* possible.” What we considered, or *who* we had considered adversaries just yesterday, we really could work together with in a partnership in order to address an issue that—as I’ve said—was tremendously important to the people of the State of New York.

And so that’s sort of how we did it. We designed the agendas, we had off-record conversations, we had off-meeting conversations, we would call time-outs. We would give people breathing space. We would call people on an issue and say, “That’s not what you said last week. You’re changing your position. Why are you changing your position?” That’s sort of what we did on a day to day basis.

That was until November. And then, after the agreement in principle, Nick dropped out of the negotiations and became an assistant counsel to the Governor, which is a very demanding job and involves a lot of different issues. And I became the sole Governor’s Office representative at the negotiations that went from about January of ’96 to January of ’97—for about a year, when we were coming up with the massive, huge Agreement.

Now, there’s another interesting thing—I don’t know if anybody told you this, but there’s another interesting wrinkle in the New York City watershed history, and that was the federal government shut down in 1995. I can’t remember the exact date that they shut down, but they shut down. EPA was not available. I mean, EPA executive staff were still in the office, but the staff people were not coming to work, and we really were in a very funny stage for a two-month period, when the federal government was shut down. We used that opportunity—between November and late December of ’95—to actually start writing the Watershed Agreement. The State took the agreement-in-principle and turned it into a first agreement that was, let’s say 50 pages—I can’t remember exactly how many pages it was. Well, the final Agreement turned out to be three volumes. But you gotta start somewhere on this kind of thing.

So we used that lull, while the federal government was shut down, to put together the first draft of the Watershed Agreement, and then we got the parties back together again in January of ’96. And we really just kept hammering at it, meeting constantly.

It wasn’t easy. There were issues. Once you put pen to paper in a very detailed way, issues keep coming up and we would have meetings—we would call Principals Meetings, which was when the principals would come to the meetings themselves. So in the State’s case, it would be Michael Finnegan who would come; and in the environmental community’s case, it would be John Cronin and Bobby Kennedy, and Chris Meyer at NYPIRG, and the land trust groups (Rose Harvey) and the Catskill Center (at that time it was Deb DeWan); and the locals. It would be whoever was the highest ranking local official in that region, which would be the county execs or the

chair of the County Board of Supervisors for the west-of-Hudson folks, and in the City, it was Peter Powers, who was the Deputy Mayor.

There would be a very limited agenda because we tried to resolve as many issues as possible at the levels we were working at amongst ourselves in the daily group. But every once in a while you gotta get direction from your principals. So we would have Principals Meetings and try to resolve these much larger, thornier issues. That worked out really well.

NB: Amazing.

EC: Yeah, I mean really amazing.

Track 5

Significance of the Agreement

NB: Do you think this is on a level with the Arab-Israeli negotiations—or Ireland, and so forth?

EC: I don't know. I'm not familiar with those negotiations. If you asked the people who were in the room who actually negotiated on a day-to-day basis, I think we all had a feeling we were involved in something extremely important. And we all thought that you could just feel it: that there was an energy in the room and that we were on the sort of brink of an historic agreement. That's exactly what happened. I think having that feeling as a professional—we were all trained lawyers or trained in environmental management or planning—from a professional perspective, it's extremely rewarding.

And from a personal perspective, most of us who are working in government have a tug at our heart about serving the people of the State of New York (in my case) or the people of the United States (in EPA's case). And we knew at the end of the day that this Agreement was good, that it was good for New Yorkers, it was good for the environment, it was good for public health, it was good for the ratepayers of the City of New York, and it was good for the economic development future of the upstate watershed communities. It was a very collaborative, consensus-building experience that you don't often get working anywhere, actually. It was a really unique opportunity, and I think they come by not often.

NB: How old were you then?

EC: Oh, I don't know. [laughs] How old was I? In '95. . . what is it now. . . six years ago, I was in my late 20's, just turning 30.

NB: Incredible.

EC: Yeah, it really was. It was one of those things where I didn't know enough to be afraid. I didn't know enough to know that this was huge. I mean, I knew it was huge, but I didn't know enough to be afraid of it or scared of it or to feel, "This is insurmountable." I think you hear a lot of people who are involved in very large agreements say that. They just went in knowing that this was an important cause, and that we had the right people in the room in order to get an agreement and you had to give it a shot. The people of New York State deserved that, and at the end of the day, if it didn't work out, it didn't work out, you know. We were honestly brokering an agreement of historic magnitude. And if it didn't work out, it didn't work out. We tried. But we would always be wondering "what if" if we didn't try to get people together.

And it also has acted as a template in the Governor's administration for how to deal with very thorny environmental issues. We bring people together in a stakeholder kind of process and try to hammer out at least the parameters of an agreement that all parties we feel can agree to, or live with. The watershed was the first case, and the watershed was the first large environmental achievement of Governor Pataki in his first administration. So I feel tremendously proud to have been part of it, but it really is to his credit because he's the one who took the risk to bring everybody together. And there were risks that it wasn't going to happen.

NB: And you went to Ireland for a wedding, I hear, and you ran into Mike Finnegan, who also happened to be there, and you got together and talked about the watershed?

EC: Yes. [laughs] Yeah, I went to Ireland in August of '95, and Michael was there as well, and so, yeah, it was kind of interesting. I think we were in Dingle, if I'm not mistaken. You're never far from work. [laughs] Not even when you're overseas. . . . It's hard to remember all of this stuff.

NB: You remember very well. And you know, there's an advantage in talking with people a little bit after the fact because you get just the essence. You know, you couldn't remember what the issue was, but you remembered the "let's depoliticize" feeling. That's what's significant.

EC: Yeah, he's a great guy, John.

NB: Maybe I should interview him in my next series of interviews on the Watershed Agreement.

EC: Yeah, you definitely should.

NB: And Bobby Kennedy.

EC: Yeah, you really should.

Track 6**Profiles of Key Participants in the Negotiations**

NB: Let's have you talk about some of the personalities.

EC: Oh. [laughs] On tape? You're going to have to ask real pointed questions about that one, then.

NB: Describe John Cronin.

EC: John is just a gentleman, and extremely smart politically as well as on the substance. Extremely smart. Knows where his bottom line is, and knows what he can give up in order to get to his bottom line. I think that's the true definition of a statesman, in the positive sense of the word. He was tremendously helpful with brokering the Watershed Agreement. I mean, he and Michael and a number of people were working weekends. My beeper was going off constantly. I'm an avid gardener and I'd be gardening just to clear my head and my beeper would go off: "Call this one, call that one."

I actually have a funny story. On Christmas Eve, Michael wanted me to get ahold of Bobby, so I got ahold of Bobby. He was with his family down in Virginia at their family home. I just remember being on the other end of the phone and someone answering the phone and it was Mrs. Kennedy and she said, "May I ask who's calling?" And I said, "This is Erin Crotty, from Governor Pataki's office." And she said, "Oh I know he's going to want to talk to you. This must be about the Watershed Agreement." There were a lot of examples of that. Trying to get ahold of Comptroller Hevesi at different times of the day and night as well as the Mayor's office and just everybody being tremendously available. It was never, "I'm on vacation. You can't talk to me," kind of thing. It was always, "I'm going on vacation, but if you need me, this is where I am. Feel free to call me." And so we did. [laugh] Much to the chagrin, I'm sure, of a lot of folks. . . .

John was just phenomenal. And his knowledge of the Hudson River Valley and the politics, particularly east of the Hudson River in Putnam and Westchester County, was extremely valuable to the negotiations. He's turned out to be a very good friend, as well. So, yeah, he's a great guy.

NB: And Bobby Kennedy.

EC: Oh. Another wonderful person. I mean, he is a tenacious negotiator. He represented the Riverkeeper in the negotiations. John Cronin was the principal, if you will, and Bobby was the attorney—with Dave Gordon, most of the time. David Gordon is still with the Riverkeeper, negotiating on a day-to-day basis the details of the Watershed

Agreement. But Bobby was, well, tenacious. Knew what his bottom line was. Represented his client very well.

NB: I've heard many people say that the people from the watershed thought that he was quite arrogant.

EC: Oh. Well. I don't think so.

NB: I have heard that he said: "Why don't we just buy the watershed and move them out?"

EC: I don't remember that, and that is a quote that I would remember. I don't remember him saying that.

NB: All right. How about Perry Shelton?

EC: A gentleman. Again: just a real gentleman. A leader in his community. Soft-spoken, humble, knew how to represent his community. Did a phenomenal job with that. Really brokered a friendship with former Commissioner Gelber. Marilyn and he had a very good relationship. I think they both saw how important it was for them to broker a friendship as well as a professional relationship. He has my utmost respect. He's one of those people who, when he did speak—and he didn't speak a lot—there was this instant attention to what he was saying because, like Alan Rosa, he would spend a lot of time observing what was being said; and then, when an issue came to the point where he and Alan wanted to be heard, they would speak and it was like the whole room, including any flies that were on the wall, sort of turned their attention to them. I think that's very important. I think he served the people of his community in Delaware County extremely well. Extremely well.

NB: And Alan Rosa?

EC: A friend. He's now doing a superb job as the executive director at the Catskill Watershed Corporation. He did a great job. I've probably spent the most time talking to Alan from the watershed communities' side. He was really sort of the lead negotiator, other than the outside lawyers that they had there: Dan Ruzow, Jeff Baker—can't say enough good things about them. But Alan really was the "go to" guy, from my perspective, to talk to about issues that I thought needed to get discussed off line, and floating trial balloons. Just, "I heard you in the meeting, but what about this?"; "I think I could get the city . . ." Or the kinds of conversations you have in any negotiation: "I can't make any promises, but . . ." He was always willing to listen. Always available and always had tremendously good ideas.

NB: You did have a huge cast of characters from which to pick out who was going to be the person to go to in order to float a trial balloon.

EC: Right. For the west-of-Hudson communities, it really was Alan. And I used the Coalition of Watershed Towns attorneys a tremendous amount. Their lead attorney was Dan Ruzow, who is another very seasoned professional. Just unbelievably patient, level-headed. He's another person who turned out to be a very good personal friend of mine, as well as a professional colleague, whose advice I treasure and whose reading of a situation I could take to the bank. He's just really good at that. He was very patient. Very level-headed. Really knew where his client was; meaning, he knew where the pressure points were, what their bottom line was, and how far they were willing to go. That's tremendously important—and a unique characteristic for an outside attorney to know your client that well. So he was fantastic.

NB: He did know them well, because he had done all that work with Delaware County beforehand. He knew the culture.

EC: Absolutely. And then east-of-Hudson, George Rodenhausen did a phenomenal job representing Putnam County, as did Jim Gordon, who is no longer with Putnam County. They did a really great job. Marc Moran was working for the county executive at that time, and he did a fantastic job. He is now the regional director at DEC. [laughs]

NB: That's right. It's interesting where some of the people have gone.

EC: Yeah, it really is. From the City, you know, we had the Mayor's Office represented in Seth Kaye. Seth represented Mayor Giuliani and Peter Powers, as well as the corporation counsel, who was Elizabeth St. Clair and Susan Amron, who are razor sharp smart and just a delight to work with. And Steve Stein-Cushman, who's moved on as well. They're a brilliant set of lawyers—just really, really smart.

DEP was represented by Commissioner Gelber, and by Mark Hoffer, who is another brilliant attorney. They did a great job. I have to give a lot of credit to Commissioner Gelber. You know, sometimes during the negotiations, lawyers being lawyers, they wanted to lawyer it to death, and I'm not a trained attorney, so sometimes I'd say, "Okay, enough. You can leave some issues for another day." She was a lot like that. Very pragmatic and practical. Without her leadership and certainly without the leadership of Peter Powers, I don't think that we would have ever gotten the Watershed Agreement done. There was a very close relationship between Peter Powers and Mike Finnegan.

Mike was sort of like—I don't know how to describe this. He was the spoke on the wheel. I mean, he was like the center of the spoke on the wheel. The center of the universe. It sort of kept everybody in the right position. Sometimes we used to describe it as three-dimensional chess, and that's exactly what it felt like. We were moving a lot of different parts at a lot of different times, and trying to keep track of it and make sure that we were doing the Agreement justice and bringing everybody closer together as a result of the off-meeting conversations or the conversations in

Ireland or New York City or wherever we were on any given day—Poughkeepsie, you name it, we were there. [laugh]

NB: Talk about Mike a little bit, if you will.

EC: Well, Michael, is just a bundle of energy, one. You have to remember what he was dealing with as the Counsel to the Governor in the first administration in 1995. The Governor inherited a \$5 billion debt. We were trying to pass the death penalty. He was trying to negotiate a budget. There were so many issues that were on Michael's plate. And then the Governor asked him to really broker this Agreement.

And I gotta hand it to Michael and his family, who sacrificed a lot. I think Michael spent a lot of the week up here in Albany and in New York City on the traditional Counsel to the Governor role, and I think he spent every single weekend working on the watershed. The leaders in the environmental movement, not only in New York State but nationally, live in the Hudson River Valley, right near where Michael lives; so not only are they colleagues and professional colleagues, they're also friends. He did an awful lot of work on the weekends—everybody did.

Michael's brilliant. He's brilliant politically. He has an unbelievable ability to grasp substantive issues that he doesn't have formal training in. I think that's true of anybody that's high up in any organization—a government organization or a private organization or a not-for-profit. If you're the Executive Director or the Counsel to the Governor or Secretary to the Governor, you are a kind of person who can grasp substance—complex substance—very quickly, and he certainly did that and did that tremendously well.

And he's also very practical. Very close to the Governor. You knew that when Michael spoke, he was speaking for the Governor, which was extremely important in a negotiation like this. That was true of Peter Powers, as well. Peter Powers was speaking for Mayor Giuliani.

I can't say enough good things about Michael. Not only was he the one who offered me the job in the first place, and so I feel a tremendous amount of gratitude to him for the experience and the opportunity that he gave to me, but also he was just brilliant. I don't know how else to describe his involvement in the Watershed Agreement. I mean, from politics to substance to everything in between. He really made that thing happen.

NB: And he chose you. Talk about that.

EC: I went to the Governor's Counsel's Office as a Policy Analyst on the Environment and so I was a natural choice, as was the Assistant Counsel at that time, Nick Garlick. He was the Assistant Counsel for Ag and Markets as well as agriculture issues, parks

issues, and environmental issues. And so it really was the field that I'm trained in and I was hired for in the Governor's Office.

Now, was I hired to do the Watershed Agreement? No, because I was hired in January and the Watershed Agreement really didn't get rolling until the March/April time frame. It was kind of a natural extension of what I was asked to do.

NB: And what had you been doing before that?

EC: I worked as a Policy Analyst for the Senate—for the Senate Commission on Toxic Substances and Hazard Wastes, which was chaired by John Daly, who was a Senator out in the western part of the state, Lewiston; he actually had Love Canal in his district, and was the author of the original State Superfund statute. I learned a great deal from him. He later became the Commissioner of the Department of Transportation, and then a Commissioner over at the Public Service Commission. I couldn't have been luckier to have my first job in the public sector be for a gentleman and an unbelievable advocate like John Daly. He has since passed away, which is a great loss to the people of New York State. He was just a phenomenal leader. Really amazing.

NB: And that was your first job out of school?

EC: No, out of graduate school.

NB: And one more question: What did you focus on in grad school?

EC: Environmental management, generally. I mean, specifically, it's urban planning, hazardous waste management, environmental economics, cost-benefit analysis—all sorts of different issues. It was a great opportunity over at RPI [Rensselaer Polytechnic Institute]. Something I really treasured. It was ultimately good training for me for what I do now.

NB: And where did you grow up?

EC: In Troy. Still live there.

NB: Now I have enough to be satisfied.

EC: OK, good. Did I miss anything? Did I miss anybody? I don't think so.

Track 7

Process: Setting the Daily Agenda

NB: If I had my wish, I would ask you more about your agenda and that stuff. Do you have time to do more, or do you want to stop?

EC: Which agenda?

NB: The agenda for the meetings. I want to know whether you had them written up, typed up ahead of time?

EC: Oh, yeah.

NB: And did the participants see them ahead of time? I mean, you're doing a daily agenda, right?

EC: Well, after we would negotiate for ten hours a day, Ron and Glen and I would then go back to whoever's office or the hotel that we were staying at or out to dinner and we'd come up with the agenda for the next day. Or sometimes what we did is, we would come up with the agenda at the end of the meeting with the other parties. But that didn't happen until much later in the negotiations. We were very careful about what we put on the agenda. Like I said, we were trying to build an agreement, one brick at a time. One sentence at a time.

We very carefully did that. We frequently asked the parties to prioritize their issues. We asked them to identify what they thought the major issues were, which really lends itself nicely to plotting it out in a matrix. You put a party on a matrix and then an issue and then you see them start to align, which was fascinating. And which is an interesting technique to use in a negotiation. It was not something I had used before. Then, the prioritization of issues to again see the convergence. The consensus. They didn't know it. I mean, we were the only ones who knew they were coming to consensus. Then we would tell them in the meeting the next day. "You're not going to believe this, but . . ." [laughs] "So let's address this issue." We used those sorts of tools to get at what we thought were issues we could resolve quicker than others.

NB: Whose idea was this matrix?

EC: I don't remember whose idea it was. Honestly, I don't know. I think Susan Read. Susan Phillips Read, who was then the Deputy Counsel to the Governor, and was the number one under Michael. I would go to her quite a bit and say, "Now what?" She's a very seasoned attorney. She's now a judge. Very seasoned negotiator. I'd be, like, "We've reached an impasse. What do you think we should do?" if Mike wasn't available.

She often would come up with suggestions like, “Well, did you talk to them about this, or did you talk to them about that?” I remember very distinctly one day sort of being at my wit’s end—which was a normal occurrence—and she said, “Have them prioritize that issue.” You know, “What exactly are they trying to get at?” After they did that, it just acted like a nice blueprint, sort of like a road map. So she helped a lot with the mechanics when Mike wasn’t around.

NB: It’s a fascinating process.

EC: Yeah, it really was. We were sort of feeling our way along. But a lot of people worked very hard to make it happen. It wasn’t one person, by any stretch of the imagination.

Track 8

Implementation of the Agreement

NB: And as it’s been carried out, do you think the parties have remained true to the spirit of the Agreement?

EC: Yes, sometimes I can’t even believe it’s almost five years later. I remember leaving at 7:00 in the morning almost every morning to go to Poughkeepsie or somewhere else to have meetings and it seems like yesterday, but I think the Watershed Agreement has been a tremendous success. Now, is it perfect? No, but we knew that going in. We knew that it was a new way of managing an eco-system. We knew that there were going to be fits and starts and that there were going to be barriers and stumbling blocks along the way, but we also knew, I felt, that if you kept the parties together, you could get there. And I think that they have. I think they’ve done a tremendous job implementing the New York City Watershed Agreement over the past five years. I’m looking forward to the Five Year Review. That’ll be an interesting process.

NB: When’s that come up?

EC: January 2002.

NB: That will be real nice.

EC: Yeah.

NB: And have other states—or other countries—come to you to say, “How did you do this?” and learn from what you did?

EC: Yes. There’s been a tremendous amount of interest in the Watershed Agreement at the Federal level. Since the Agreement was passed, the Governor has treated getting funding from the federal government for various initiatives as a priority in

Washington. We talk to legislative staffers at least quarterly, or I would say that I do—I think that our staff probably talks to them a lot more. That’s just Congress. We also get interest from other countries.

I know the Catskill Watershed Corporation gets inquiries from all over the world, because they’re a very unique corporation and they have a very unique role. I think there are a lot of programs and processes—or there are starting to be—that can be replicated and modeled across the country that are part of the Watershed Agreement. I think it really did serve not only the people of the State of New York, but is turning out to serve a much broader audience as well.

NB: Wow.

EC: Which is a real testament, you know.

NB: Cool.

EC: Very much so.

NB: All right. Well, I could go on and on, but I’m sure you can’t. [laughs]

EC: Unfortunately, I could go on and on, too.

NB: I know.

MARILYN G. GELBER

Commissioner, New York City Department of Environmental Protection
(1994-1996)

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MARILYN GELBER Commissioner, New York City Department of Environmental Protection (1994–1996)

Currently Executive Director, Independence Community Foundation, Brooklyn, New York

Interviewed by: Nancy Burnett

Location: Ms. Gelber's office, Brooklyn, New York

Date: July 6, 2001

Total time: 70 minutes

Track 1

How Marilyn Gelber Became Involved in the Watershed Negotiations

NB: How did you first get involved in the watershed negotiations?

MG: I started as Commissioner of Environmental Protection in New York City in February of 1994. And literally the first day I got a call from Dick Coombe, from the Watershed Agricultural Council—I had barely settled in to my office. It was a big deal to be Commissioner of a Department with 6,000 people, with jurisdiction over water supply, wastewater treatment, air pollution, noise pollution; among the first calls I got was from Dick and he's starting to talk to me about cows, wanting to invite me to his farm. And I said to myself, "What's going on here?" I hung up the phone after having a rather nice chat with him, just trying to say, "I'll call you back after I understand what's going on here a little more." Then I began to get my first briefings from staff about the watershed.

I was excited, intrigued, and scared because what had happened here was, we had just had a change in government in New York City—from David Dinkins being mayor and Rudy Giuliani taking over; and EPA had signed an agreement with the outgoing City administration literally the last day of December, I believe, just before the new mayor was taking office. So here was an agreement signed by a prior administration, laying out I think roughly 157 tasks that the Department of Environmental Protection had to do to protect the watershed or else EPA would order us to filter.

I don't know what to call it—it was an interesting dynamic because EPA, in its one-size-fits-all view, sort of ordered that all major cities that got their water from surface sources had to filter their water or else come up with a plan to protect the watershed in such a way as to avoid filtration. These 157 things that the Department had to do to avoid filtration were sort of a stunning list of requirements. The staff that

described the requirements to me were daunted by it; and here we were, a new administration just coming into office, faced with a lot to do and not very much time to do it.

Track 2

Hostility in the Watershed

MG: At the same time, I quickly became aware of the level of hostility that existed in the watershed for New York City in general and New York City DEP in particular. And I kind of had a hint of it before—although it didn't sort of affect me personally—when I had been on camping trips in the Catskills. One thing about me is, while I'm very much a city person and I've spent all my life in New York City, about 20 years ago my husband and I started to go camping and understand more about the natural environment; and the Catskills became a place we loved to camp in. One year we had been by the Delaware County Fair, I believe it was, and came upon an exhibition, or exhibit, in which people paid, I don't know, a buck or 25 cents to smash in a DEP vehicle with hammers or to try to dunk somebody who had DEP on their chest into a pool of water. So I knew there was some great hostility out there, but at the time it wasn't directed at me on my happy camping trip. I now, in a very real way, had to confront years of very hostile feelings among people in the watershed toward New York City, and most particularly, toward the Department of Environmental Protection.

This antagonism was really crystalized by this filtration avoidance plan, because among the 157 tasks that EPA laid out for the city, one of the principal areas of concern was acquisition of land. Clearly the history of New York City and the watershed was one of using eminent domain, acquiring lands, clearing towns, villages, moving graveyards, moving families out in order to build the New York City water system; and yet EPA was now requiring that New York City come back and acquire more land. Because as onerous as the City's presence may seem to be in the watershed, the truth is, New York City at that point only owned about 2% of the land outside of the water system itself; and EPA, I think rightfully, felt that you could not protect the system against pollution unless you had more control over the property, and so they ordered us to acquire more land if we hoped to avoid filtration.

This in particular was an issue of great concern in the watershed, as was a second major mandate of EPA: that we modernize the watershed regulations. The regulations governing discharges in the watershed hadn't been modernized for more than 50 years; and when I looked at those regulations, they were in a little teeny six-page pamphlet that talked about not locating pig sties within a certain distance of the water. The set of regulations was something that was quaint, to use a nice word, and clearly did need to be modernized.

These two issues of watershed regulations and land acquisition were very charged, to say the least, between watershed communities and New York City. So I really spent my first few weeks as Commissioner reviewing histories, understanding the past, and hopefully putting myself in a position to be able to not only confront the EPA mandate, but also to figure out some way we were going to get along. I must say, all the City lawyers warned me initially that there was no way to avoid litigation—that instead of even fantasizing about an agreement with watershed communities, I should just prepare for litigation, get as many lawyers prepared as possible, and forget about any other strategy.

That bothered me. I should let you ask more questions.

NB: This is just where I was going. Go right ahead.

Track 3

Building Trust: Level 1

MG: I was advised that a legal strategy was the only path to pursue. At the same time, I realized that what was at stake if we failed to meet the EPA mandate was an order to filter, which would have cost what at the time was estimated somewhere between \$6–8 billion to New York City; and, you know, it's not just to New York City. It's to families here. It's to ratepayers. It's to people who pay their water bills. Being a homeowner myself, I understand what that means: You pay real estate taxes, you pay water bills. And for New York City ratepayers—and it's not just the big commercial users, it's to all of the little homeowners in New York City—to have to pay \$6–8 billion to filter the water was, I thought, a pretty big price. At the same time, you have a mayor [Giuliani] that's extremely demanding from a management style and settling the watershed conflict is clearly not a course that I wanted to fail in, and yet I'm being told that litigation is the only possible way to go.

So I decided, after getting a few very nice calls from not only Dick Coombe in the Watershed Council but also from some people who were working around Cornell on water issues, that maybe despite all the advice I was getting, what I should do is just go up and look for myself. A meeting was arranged for me one morning in Liberty, New York, to meet some of the people who were involved in watershed communities, just to get to know them. So I eagerly accepted doing this and I went. I did not take anybody with me. I decided that what made sense for me was to go up without any sort of entourage. Besides—this will sound a little strange—I wasn't sure who in my own department to trust. I didn't know anybody here. I was the first woman Commissioner of DEP—one of the first non-engineers to come into this—so I wasn't sure who my allies were within the department; I wasn't sure who was giving me advice. So I went up on my own—which proved to be a very good thing to do.

I never considered being late, but people told me later that they were impressed by the fact that I wasn't late. Apparently there was a history of arrogance, I guess, or a little bit of disrespect, from people in the City who thought nothing of making appointments and not keeping them, or thought nothing of keeping people waiting. That was not something I thought one should do. And so I had my first meeting with leadership from watershed communities—and, scarily enough for me, they brought lawyers. I did not bring lawyers. It was a good but aggressive meeting—the lawyers particularly got pretty aggressive at the end. As I recall there was also somebody in the room recording, for the local newspaper, what was going on—which again was not something I was particularly prepared for. In hindsight, I think I was a bit naive, but also in hindsight I think that was maybe not a bad thing. It was a good, tough, but candid meeting. It seemed pretty clear at the end that what the people wanted was not a sort of issue-by-issue settlement, but something a little more universal, a little more global. That we were not going to resolve this issue by issue. We had to somehow right this relationship, and set it right on a course not just to solve one issue of land acquisition or one issue of regulation, but to somehow rebalance our relationship.

Now that scared me, because I didn't know how we were going to do that. And that was my very first meeting with people from the watershed. I essentially opened the door to communication. I invited people to call me and have direct access to me, not quite realizing that in the past, having this direct access to a Commissioner was not something that was easily offered to people. But I wanted to do things differently. So I gave out my direct number and said, "Call if there are issues." And by the end, people did begin to talk about some smaller issues. Issues that I knew I could deal with immediately and that maybe would give people confidence that if they asked me something and I said I would do it, I would do it.

So we began a relationship from this one meeting, and thereafter I began to visit people individually, to get to know their concerns. I certainly did follow up with Dick Combe, and the Watershed Agricultural Council as well. That was pretty interesting because what was being asked for was the largest sole source contract New York City had ever done, and certainly that the Department had ever done with the Watershed Agricultural Council. It was to allow a program that frankly I did not negotiate—it had started to be negotiated before I arrived—for the City to pay for capital improvements on farms in the watershed if in fact the farms agreed to participate voluntarily in a watershed protection program. Trying to explain to the Mayor's Office why we had to set aside about \$30 million to make improvements on farms in the Catskills was an interesting test of my new-found ability to talk about watershed agriculture to the Mayor. But we were able to do it, and that initial partnership I think also showed others in the watershed that we were willing to do things differently. That we were willing to take some risks.

NB: So what happened next?

Track 4**The Process Unfolds. Pataki Is Elected Governor.**

MG: Okay. After a series of individual meetings with some of the town leaders and again realizing that the EPA time clock was ticking on trying to come up with a plan for land acquisition and regulation, we decided to make an initial offer to the watershed communities for a settlement. We came up with what we thought was a reasonable dollar figure to work with watershed communities as well as at the same time a plan for land acquisition and for new regulations. Just by way of background, New York City could not unilaterally do these things without approval by a couple of state agencies. New York State DEC had to go along with whatever land acquisition strategy we wanted. The lawyers in the City said they didn't, but it was pretty clear that this was a gray area, and DEC was certainly saying they did need to approve whatever acquisition strategy we did, and that new regulations proposed for the watershed needed the approval of the New York State Health Department, because EPA had delegated to New York State Health oversight of New York City's regulations.

The political landscape in the state was also changing in the same way that it did with a new Mayor in New York City; I guess about a year later there was a new Governor—the first Republican governor in some time, George Pataki. I was aware that when Governor Pataki was in the state legislature he had very much sided with people in the watershed who were seeking to limit New York City's powers to do things in the watershed. And I was quite concerned. And we actually pushed hard to have Mario Cuomo's administration sign off on our land acquisition plan and our watershed regulations, or we thought we should push very hard to do that. But then actually after thinking about it a little more, we decided—well, actually I thought—if I really wanted a relationship with watershed communities, kind of doing this in the waning hours of the Cuomo administration perhaps would get us the immediate permits but would lose us something in terms of our relationship with watershed communities. And even though there was some thinking on the City's part to move ahead and get Cuomo to sign off, ultimately we decided not to do that, and to actually wait for George Pataki to come in.

Meantime, we were working on a proposal to watershed communities for an agreement. When Governor Pataki came in, the watershed communities were reluctant to sign off on a first proposal from us, seeing the Governor as a real ally to them. And in my naiveté, I thought, "Well, if the City government is in negotiations with the state government, the state government is definitely going to side with us." Didn't work that way. Governor Pataki decided that he was not going to so easily approve New York City's proposal for watershed regulation or New York City's proposal for land acquisition program; instead, he gave us a very, very hard time in both areas. And it became clear after not too long that this was not going to work. Our unilateral proposal to watershed communities was not going to fly, and the only thing

that actually did make sense—now that there was both a Republican administration in the State and the City—was that we try to work something out.

And I should say, just by way of politics, I was in government for 28 years and didn't consider myself political, which again is perhaps part of my naiveté. My background, though, was much more in Democratic administrations than in Republican. Nevertheless, I realized working for a Republican administration was really an advantage. I tend to look at things more issue-based, people-based, and yet the politics here were important because the fact that I worked for a Republican administration was very helpful I think in gaining trust in the watershed, which had traditionally been Republican and had a great mistrust of Democratic leadership in New York City—and probably rightfully so.

Anyway, it seemed like an opportune time, with a Republican governor and a Republican mayor, to try to come up with that universal settlement; to clear the air from some of the past disagreements and try, in fact, to negotiate a solution. The Governor agreed to try to host these meetings. And literally that's what the Governor's Office did: They hosted the meetings. Somebody counted up at the end that we had had maybe more than 300 meetings—most of which I actually attended. At first the Governor's Office basically hosted the meetings, creating a place for us to meet and having a representative at the meeting; watershed communities were on one side of the table, and I was on the other side. At this point, I had hired a Counsel in my office whom I trusted—a terrific, smart person named Mark Hoffer. Initially Mark and I essentially handled the negotiations with watershed communities.

Track 5

Building Trust: Level 2

MG: The Governor's Office kind of sat back and let us talk to each other. And those face-to-face negotiations went on for days on end, weeks on end; I cleared my schedule of many things that I had to do in New York City in order to personally be at these negotiations. I felt this was something that was so important that I shouldn't delegate this work to someone else. I felt it important that I be there myself. So we launched these negotiations. I must say that they were substantive and hard; and the only thing that actually made them bearable was getting to know each other on a human level, though that didn't tend to happen across the table in these rooms—it happened more often during our breaks at lunch.

Sometimes we would retreat, and one of my fondest memories is retreating to Schneller's, in Kingston. It was interesting. Everybody positioned themselves at separate tables. There were the City people at one table, and the Watershed people at another table, and the State people at a third table. The State people were sort of halfway between the City people and the Watershed people. So here we were sort of

taking our negotiating postures at lunch at Schneller's, in their beer garden. I said, "Oh, we can't have this," and I called over the waitress and asked her to get a pitcher of beer for the Watershed table. And people were sort of shocked at that, and we got a pitcher of beer for our table, and eventually the tables came together. And it was getting to know each other as people that I think was ultimately very important to settling this.

I remember at the time reading a story—well, not a story, a recollection—that Shimon Peres had published about the Oslo negotiations at the time of the Middle East negotiations, and there were times that I felt that we were in our own version of Middle East negotiations. And, you know, Peres said that what was important was the forming of partnership. That plans don't create partnerships; that once you have that partnership, you can create any plan. And I remember being struck by that and realizing that what was important here was not so much coming up with some, you know, intellectually clever way of settling issues, but instead gaining a level of trust between each other as human beings. And the truth is, people come and go; and, clearly, administrations come and go. But we had to start from some personal relationship; we had to be able to trust each other. And once we trusted each other, I think it was only then that we could begin to negotiate a settlement. And that's what happened here.

Track 6

Bringing in the Environmental Community

MG: And it was interesting that at a certain point where we had established, I thought, a very good trust and were plowing through paragraph by paragraph, issue by issue, the Governor's Office began to get very nervous about the fact that the environmental community had not been to the table and wasn't part of this. And while we were happily coming to agreements, I think the Governor's Office wisely pointed out that all of this could blow up in our faces if we did not extend the table further and invite people in from the environmental community, from the business community; and that this cozy agreement we were coming to also had to withstand public criticism, public scrutiny, in a way, and the Governor's Office was particularly nervous about the environmental community.

Again, Governor Pataki, who I think certainly early on characterized himself as being an environmentally-aware governor who had a clear interest in the environment, was concerned about what the environmental community would think. And I should say that Mike Finnegan played an extraordinary role, and not only in helping convene these meetings. While Mike didn't attend many of the early meetings, clearly his hand was at work here in making sure that things did not get out of control, and also in sort of privately negotiating the politics of this. Both on the state and the federal level, Mike played a critical political role here to make sure that communications

were kept open, and it was Mike's suggestion that we bring in the environmental community.

We were all very nervous about that. New York City was a favorite target of lawsuits from Riverkeeper, from Bobby Kennedy, from the Environmental Defense Fund, from NRDC [Natural Resources Defense Council]. We were frankly not viewed very kindly by the environmental community. In the same way that the watershed communities viewed us with suspicion, certainly so did the environmental community. And I was very concerned, given how well we were getting along with the watershed community, about what it was going to mean to open negotiations further. I would say the watershed communities were particularly upset at the thought of Bobby Kennedy coming to the table. He was not viewed as a friend at all. He was viewed as somebody who was arrogant and disrespectful and who did not at all understand the watershed community view about economic development and building a future for their children. So there was a great deal of concern. And I will say that Mike and the Governor in particular just put their foot down and said, "We have to open this table."

Track 7

Reaching Agreement

MG: It was a very difficult moment. And we did it and it was very hard. Because there were new players, and at the same time, to be quite candid, I was running into serious problems in the City with City Hall, with the Mayor's Office. While what I did probably the first year and a half flew under their radar a lot, they began to see me a little bit differently after a couple of years and they felt I was acting a little too independently, so I was given watchdogs. Suddenly the City's Law Department became a very big presence in the negotiations. It was no longer, you know, the kids negotiating. Now they were getting very concerned, and I was given a much shorter leash. And, again, there were many things going on in the City in terms of me disagreeing with certain things that the Mayor's Office wanted me to do. It was a very difficult time as the negotiations were wearing down, but I was determined to finish these negotiations. I was determined to get a settlement that was fair to watershed communities, but also, of paramount importance to me, that was protective of the New York City water supply system.

I mean, this supply feeds nine million people every day. There is no margin for error. There is no margin for failure. To be a Commissioner of a Department of Environmental Protection and create a plan that would not be protective of this system—which is precious not only to the people as individuals but also to the state as a whole—would be remiss, but you can't have a great city like New York City without a good clean water supply system. And while the people in this City take water for granted, I was privileged as Commissioner to understand how the system works and where the water comes from, and that in order to protect what we have in

New York City, you have to protect watershed communities. Watershed communities have to be your partner in protecting the system, and there's no amount of mechanical systems or science that's going to protect the water unless people in the watershed are your partner in protecting it, and I was determined not to leave before I had that plan in place.

And so while I was under enormous political pressures in New York City, I remained focused on what we had to do in reaching a settlement, and I'm very pleased to say that we did reach a settlement. True, it was the size of a telephone book, and was not very readable at first, but we persevered under all pressures, and I must say that people in the watershed were also experiencing tremendous political pressures as well. You know, to be the people who reach consensus, to compromise, to negotiate, is not often well respected. It's the loud mouths, it's the rabble-rousers who get the attention. The people who try to quietly negotiate are not often respected, and are viewed as compromisers in a negative sense and not in a positive sense. And I recognize that the longer this went on, people from the watershed communities were also being put in difficult positions and were getting pressures from the right and the left, as I was.

Ultimately, though, we did come to an agreement that I felt was fair to both sides. It was expensive, from the City's perspective, and the hardest thing at the end, actually, to get the monies for was economic development: the so-called Catskill Fund for the Future. That name I sort of woke up with one night at two in the morning, when I was trying to figure out the right name for this fund to take into the Mayor's Office at City Hall and get them to agree. I believe it was \$60 million that we set aside, which was a stunning figure for anybody at City Hall to agree to for this fund; that was the final issue to be resolved. But we did get agreement. City Hall allowed that to happen, and we reached a settlement that I think was fair to all parties.

The other point about the settlement was: It wasn't just money, it wasn't just regulations, it wasn't just land acquisition. Another part that I thought was so important was a political structure for the future. We needed to set up systems that got beyond personalities. I knew that the Mayor was going to get rid of me, and I needed to build a structure that allowed people to talk to each other in the future, that did not allow things to deteriorate to the point where they had deteriorated when I walked into the situation in 1994, where people didn't talk to each other, where people didn't have a way to communicate. Creating the Watershed Councils were, I thought, a critically important part of this.

And so once we had that whole Agreement in place, I was whacked by the Mayor shortly thereafter; and hard though that was to leave City service after 28 years, I felt better about this than anything I had done in 28 years, and I sort of felt that all those 28 years had maybe prepared me for this. I also felt that the kinds of friendships and the kinds of relationships formed in the watershed would be with me forever. And

although I was no longer part of City government, I felt every time I drank the water that I knew I had done something good.

NB: This is what I thought you had done. This is what Perry and Alan sort of told me. But it's so nice to hear it from you.

MG: I'm sorry it sort of came out in a rush.

NB: Not at all.

MG: It's been a long time.

NB: Yes. And one thing leads to another. It's just fine. Can you talk about the negotiators from the Governor's Office?

Track 8

Profiles of Key Participants in the Negotiations

MG: Well, Mike Finnegan played that very critical bridge role between the politics of government and the environmental community. Of all the people involved in the negotiations from the State, Mike really played the key role.

The technique initially was to just have the State at the table and not actually participate. Nick Garlick was the first person that the Governor's Office assigned to sit at the table with us, and Nick, in those early meetings, was more umpire, making sure things did not get out of hand, because the discussions were intense. But he did not intrude in any way. He did not particularly venture an opinion. But he created the right environment and the right setting for us to talk.

The Governor's Office played much more of a background role. And while there were private discussions with the City and private discussions with watershed community, mediators from the Governor's Office did not sit at the table and try to arbitrate the dispute. Rather, they allowed the City and the watershed communities to talk out the issues, and their work was much more private, much more behind the scenes, making sure that all the bases were covered.

Again, they were in a unique position, because EPA had delegated to them certain oversight responsibilities for health and land, so again their role was really as facilitator more than direct negotiations. If we hit a snag, they stepped in. Particularly at the end, I was very frustrated with the State, initially hoping government-to-government that they would always support us. They didn't do that. But I thought they played a very critical bridge role—though they did not impose their view, by and large. It was more that they made sure that the political bases were covered, and then,

Mike, in particular, worked hard to keep the channels open with the environmental community. And again, Mike implicitly, explicitly, had the Governor's trust. And so you knew that when you talked to Mike, you absolutely had the word of the Governor there, and that was very critical.

In terms of the Mayor: Peter Powers was the First Deputy Mayor, whom I reported to, and it was Peter (who was a boyhood friend of the Mayor) who played a similar role to Mike Finnegan of making sure the politics in New York City—at least as much as the Mayor wanted to deal with Democratic politics in New York City—the political bases in the City, were covered. But again, the Governor's Office was critical in facilitating the discussions and working behind the scenes to make sure that when it came time for a settlement, it would be a settlement that was broadly accepted, both upstate and downstate.

Track 9

The Environmental Community

NB: Talk about the environmental community and when they joined in the discussions.

MG: That was very raucous. Bobby Kennedy is a very forceful, articulate figure. And he felt very angry not to have been included in the initial discussions, because in fact we set some ground rules about what was open for renegotiation. We had reached agreement with watershed communities and with the State on new regulations and had by and large reached agreement on a land acquisition program, and Bobby and the environmental community were furious that it wasn't all open to renegotiation. We thought that that would be a betrayal of all of the negotiations that had preceded if suddenly we opened everything up again. So things were open for discussion, but not for renegotiation. There were a couple of points in particular where Bobby, representing Riverkeeper, and Eric Goldstein, representing NRDC, were very angry and wanted to, in fact, change what had been agreed to. We had to be very careful about making changes that did not betray the earlier discussions between the watershed community and New York City. I would say John Cronin of Riverkeeper played an extremely important bridge role here, too, because I thought he really was very perceptive in understanding the concerns of watershed communities as well as understanding the concerns of the environmental communities. John was very, very helpful with this.

You know, there's two ways of protecting the environment. Both NRDC and Bobby Kennedy from the Pace Law Center litigate the environment and are much more, it seems to me, comfortable with a regulatory approach and if you misstep in terms of the regulations, well then you sue. I thought this litigious way of protecting the environment or reaching environmental agreements was not healthy. Instead of always litigating settlements, I thought—maybe it's because I'm a Planner by

background—you needed to reach agreements outside of the courtroom; that having judges intrude in making settlements was not quite the right way to do this, and it was a little hard to sit at a table with people who were much more used to litigation than negotiation to win the settlement. NRDC ultimately backed away from agreeing and they didn't leave the negotiation, but they refused to sign off on it. Riverkeeper, to its credit, did. NYPIRG [New York Public Interest Research Group] which also came to the table, for whatever strange reason, did sign on, but it added a whole new wrinkle.

I realized that having an agreement between watershed communities and New York City and New York State and EPA would never stand the test if some people from the environmental community didn't agree, because we would just open ourselves up to litigation. And so ultimately I agreed with the Governor's perspective that, difficult though it was, we had to work through these issues with the environmental community.

Track 10

The Development Community

MG: The other thing that happened was the development community. One of the early decisions—actually it was a threshold decision—that I made was that the proposed new watershed regulations would take place throughout the entire two thousand square mile watershed, meaning both the east and the west side of the Hudson, meaning both the Croton system as well as the Catskill/Delaware system. Now, New York City had been under order to filter the Croton system and had agreed to filter Croton. And the Croton system, if you know it, is largely Westchester and Putnam Counties. Putnam County is probably the most active development county in New York State; it's experienced a great deal of growth and investment in recent years. And there were those people, including from the State, who argued that these new watershed regulations should only be in Catskill/Delaware, and that I should leave east side of the Hudson alone—leave Westchester and Putnam alone because we were going to filter there, anyway, and I was looking for big trouble if I wanted these watershed regulations—which were far more strict than the old regulations—to be put them in place in Putnam County and Westchester County.

Well, after considering that for a while, I decided that I didn't want to do that, that I wanted these new regulations to be in place both east and west side of the Hudson. It didn't matter if we were going to filter Croton. To me, the best way to protect the water is to protect the water from pollution, and if I thought these discharge regulations were meaningful in the Catskills, well then I definitely thought they were meaningful in a place like Putnam County, where there was such development pressure, and in Westchester County, where there was such development pressure. And so I made a threshold decision that the regs were going to govern on both sides—

which led to a whole other set of complications in Westchester and Putnam County now coming to the table and wanting a piece of the pie.

So at a certain point, the Governor's Office—as you know, the Governor's home base was in Putnam County, in Peekskill—wanted to bring the development community to the table. That was very difficult. They came to the table and were not happy. They were furious, and ultimately never really agreed or signed on, and we gave up at a certain point getting them to agree. As a courtesy, we let them know what we were doing, but ultimately they were extremely unhappy with what we were proposing; the negotiations with Putnam County and Westchester County were extraordinarily difficult, and the development community spoke largely through the negotiators from Putnam County. That caused a set of negotiations about under what circumstances you could build any new treatment plants in Putnam County, and there were a series of negotiations that did permit some growth, but only if Putnam County actually came up with a watershed protection plan.

Again, my background as Planner was showing. I linked lots of what happened to requirements that communities plan for themselves, plan for their future, plan for growth, plan for how you're going to protect the water and still have a strong future. And again I realized that that was imposing my particular point of view, but I thought it was an important point of view. And when we started out, the “Z” word, the “zoning” word, the “planning” word, was very difficult. Yet I think that, over time, all communities, Putnam County included, came to understand why it was important to create plans—master plans, growth management plans—both to protect a kind of a lifestyle, in the case of the Catskills, a rural lifestyle that people loved, and in the case of Putnam County, to protect against over-development and growth. But it's a very difficult issue to work out, and that's why I tried to link things like new sewage treatment plants with the requirement that people actually examine their future and develop plans for their future. But in Putnam, with the development community, that was particularly difficult. So at the end of the negotiations it was difficult to have the presence of both the environmental community and the development, but ultimately it was the right thing to do.

Track 11

Building Trust: Level 3

NB: Tell me about going up to Margaretville.

MG: Well, after the negotiations had proceeded and we had established a pretty good relationship, I was at my home in Brooklyn one night and the phone rang and it was Alan Rosa. He had called me to tell me that there was massive rainfall and flooding upstate—worse than he had ever seen—and that the main street in Margaretville had been flooded out and everything was under water, the systems were not working—

they were just overwhelmed with floods. Just before Alan called, I had gotten a call from our DEP Police Director, Mike Collins, who was also making me aware of the terrible flooding upstate. While we were having bad weather in New York City, I had no sense of just how dramatic and how bad the flooding was upstate.

When I got this call of concern from our Police Director, I told him to put everybody on call that we may be needed to help out; this was something that Mike was already preparing his men for. We only have a very small police force upstate, but he was preparing his men for that. Then I got Alan's call.

Alan and I did not know each other well. He is a very private person in a lot of ways, and sometimes I too am not the most effusive person. But we both knew each other and we had a sense of liking each other and respect for each other, whether we articulated that or not. And I was very surprised but pleased to get Alan's call and know that he trusted me enough to call me at home at night.

But I knew then that it was something very serious. He told me about the flooding and said he was finding it difficult to get help, even from the governor's emergency office. Was there anything I could suggest? Was there anybody I could call? And I guess that, without too much hesitation, I said, "Well, I'm going to call City Hall here and why don't I try to get you some help from our crews."

And I then hung up the phone and called the Mayor's Office. I spoke to the Mayor and I spoke to the Deputy Mayor and I said I wanted authorization to send our City people upstate to help out. To their credit, Peter Powers said, "Go ahead. Do it." And we then started a whole chain of connections—through the New York City Police Department, the Emergency Management Office—of getting crews. I called people within my own Department to immediately put together volunteer crews, both from our laborers who normally work on sewer pipes or repairing water mains here in New York City—guys who ran sewage treatment plants; some of our water quality scientists. I put out a call throughout the Department to get volunteer crews to come up.

Alan again detailed some of the problems they were having. In the meantime I asked Mike Collins, our Police Director, to find out what was going on in other towns. Mike did that and began to feed me information—both throughout that night and early the next morning—about conditions. Mike also told me about a very dramatic rescue, where two of our police officers got into a boat to rescue people because there was a fire. I'm not sure which town it was, but one of the towns in the middle of this flooding had a serious fire break out, and people had to be evacuated and buildings were burning at the same time that there was flooding. And our police officers had done a pretty dramatic rescue of some people in the town.

So I was getting reports about conditions, and at the same time, I was thrilled at the number of guys—because it is guys—from our Department who were willing to take

time from their normal jobs and get into trucks, get into vans, bring equipment, and come upstate. I, of course, asked the Mayor's Office for permission to go up myself and do an on-site inspection, and was given permission. So we just began to roll upstate by the truckload.

The conditions were really pretty awful, and I walked the streets—where I could walk—in Fleischmanns and Margaretville, and in Delhi, going into some of the stores, visiting with people who were really pretty devastated, who had lost everything, didn't have insurance. At the same time, our guys were up there working side by side with people to try to clear debris, get systems working. I know in Fleischmanns, particularly, they were trying to get the water system back on. To try, shoulder to shoulder, help people.

I remember visiting some of the store owners and being reminded of the time when I was a young planner in New York City, just after the blackouts—there was a major power failure in probably the late '70s, early—and stores were burned, there were riots, there was looting, there was vandalism. I remember as a young planner being assigned to go out the next day and visit one of the most devastated streets and talk to people, see if there was anything the City could do. And the kind of loss that those shop owners in New York City felt suddenly was mirrored to me by what the shop owners and store keepers in Margaretville and Fleischmanns felt after this flooding. And I was determined that we would do whatever we could do on behalf of people there.

What was very interesting to me was talking to some of the guys after they had been working a few days up there. For the first time, I hadn't realized that people who were working on the water system infrastructure here in New York City had never quite understood upstate. Had never quite understood where the water came from. And this was, for many of them, their first view of the reservoirs. Their first view of watershed communities. And there was a new bond built and a new intelligence built about why what we did in New York City was so dependent on what happened upstate, and why it was so important that we be respectful in New York City of our system, and not take it for granted. One laborer—he was a guy who lived in Washington Heights, a community that often was pictured on TV with opened fire hydrants during the hot summer months—came over to me and said he now understood for the first time why it was so important that the hydrants not be opened, how wasteful and how awful that was, because he now understood where the water came from. And he said he was going to go back and talk to his kids and talk to other people in his community about why it was so important to respect this water supply system and not take it for granted.

From that devastation, I think, a partnership also deepened between downstate and upstate. You know, not just on a Town Supervisor to Commissioner level, but frankly on the workman level, the laborer level. Because people had worked side by side to help each other. And so that was also one of the very critical moments in the

watershed negotiations, when we worked together when that emergency called us together.

Track 12

Building Trust: Breakfast with Perry Shelton

NB: Tell me about your visit to Perry Shelton [the Chairman of the Coalition of Watershed Towns].

MG: As part of the watershed negotiations, I thought it important and respectful to visit people, not just at big meetings, but to actually take the time to visit people where they lived and where they worked. So I set a date to visit Perry Shelton one morning in Trout Creek. And if you know Trout Creek, it is probably at the furthest end of the watershed, way the heck over in Delaware County. I live in Brooklyn, yet I set a meeting to have breakfast with Perry and I said I would come to his home. I think we set a time of 9:30 or 10. I was leaving from Brooklyn, which meant I had to get up well before dawn to make the trip. It was a beautiful day, and, again, I went by myself. I did have a driver from New York City, which made my life easier. Charlie, my young driver, picked me up in the car somewhere before dawn and we barreled up to Trout Creek.

When I got there, there were these wonderful smells coming from the kitchen. Perry's wife, who's now passed, had gotten up early to bake her special blueberry muffins for this occasion of having a New York City Water Commissioner in her kitchen. I was just so moved by the thoughtfulness of doing that for my visit. Perry and his wife came out to greet Charlie and just couldn't have been kinder or more thoughtful in welcoming us.

It was interesting. Perry wanted to be the good host, and since his wife was feeling poorly, he wanted to make coffee for me. He was so nervous at my being in his kitchen that he forgot to put the little thing under the coffeemaker, and he poured the water in and it flooded out all over the kitchen counter. Perry comes across as being a very proper gentleman, very careful, very precise, and here, much to his embarrassment, he couldn't make a cup of coffee. It was great—I mean, we sort of helped each other clean up the kitchen after that because he knew his wife would kill him for messing things up and having this coffee run out of the coffeemaker. We had a very good conversation that morning. I have to feel that as we had the muffins and the newly made coffee—which came out right the second time—we reached a deeper understanding with each other and a deeper respect for each other. It was a morning that I will not soon forget, because I think we helped reach a final agreement, a final set of negotiations. I can't tell you how it happened or why it happened, but somehow over those blueberry muffins I became convinced that we would reach an agreement, and we did.

NB: [laughs] That's great. What can we learn from the negotiation process?

Track 13

The Importance of Human Interaction

MG: Well, I think every negotiation is probably somewhat unique to itself, but I think that it's important to not overintellectualize issues. You had the most important of issues in the watershed negotiations: how to protect a water supply that serves nine million people—half the population of the State of New York—every day; how to protect that system from pollution with there being a whole host of very important and serious regulatory issues and requirements, on the Federal level, on a State level, on a City level; and how to protect that system for the future.

You have choices. You have mechanical means to protect the system, or you can try something that's much tougher: rely on human beings and relationships between communities to protect the system. And I suppose what was particularly interesting here is you have two sets of communities—one upstate and one downstate—connected by underground aqueducts, connected by pipes, connected by extraordinary man-made engineering, where the water is gathered upstate, flows through the aqueducts down to New York City, the most urban of places, eight million people condensed in 321 square miles, and then you have a watershed upstate covering 2,000 square miles, very lightly populated, maybe 250,000 or 275,000 people tops; and here are these communities who are connected but don't realize they're connected, who barely talk to each other. And we had to figure out a way that, in the same way the water flows from upstate to downstate, somehow the people on the both ends who make decisions, who so deeply affect each others' lives and don't realize it, would see they are connected.

I mean, what New York City produces in terms of the wealth, in terms of the resources, for the entire State of New York, can't be minimized. For this City to be a great city, though, it can't survive without the water that comes from upstate communities. And what upstate communities do to protect this resource that enables New York to be a great city is generally not known or respected. So for us, we had to figure out a way to acknowledge this interdependence. I mean, we had been communicating all along and didn't realize it. We had been dependent on each other all along and didn't realize it.

We had to figure out a way to cut through a regulatory morass that structured our relationship through regulation and begin to structure our relationship through a set of human interactions and human values. Don't get me wrong: The regulations are important, enforcement is important, a legal framework for the relationship between watershed communities and New York City was important. But I think what we discovered is that no level of regulation, no level of law, no level of litigation is nearly

as good as forming real human partnerships and having communities talk to each other, and that it's those basic relationships that ultimately dictate the success or failure of any plan. And so, yes, write plans, create plans—that's good. But in doing that planning, don't minimize the importance of the human interaction. Ultimately the most important factor is the success of communities working with each other.

And be aware that there's going to be all sorts of pressures on you: from those who think you're being too strong or too weak or too this or too that. There are enormous pressures out there on you to take an extreme position or positions. I respect an environmental community that might see things in very clear black-and-white terms. At the same time there are those who want development without any restrictions, without zoning, without land use, and without regulation, who believe they have an ultimate right to do whatever they want to do, whenever they want to do it. I mean, you have extremes, and all I can say is, blessed be the people in the middle who are willing to listen to each other. Because out of listening to each other will come respect and, ultimately, agreement. You can't live being at war. It's easy to pick up the gun; it's not so easy to put it down. I respect those who never pick up the gun and who instead choose to negotiate their differences, and I think that, no matter what the situation, you have to be able to learn to do that.

Track 14

Implementing the Agreement

NB: And what do you think, now that we're five years into the Agreement?

MG: Well, over the last five years I certainly haven't followed in intimate detail everything that's gone on. I'm concerned—I think there are reasons to continue to be watchful. I think things are going reasonably well. In talking to people from the watershed communities that I'm still in touch with, I think their sense so far is that the City has by and large been holding up its end of the bargain, and they've been trying hard to hold up theirs. It's a situation that I think needs to be constantly cultivated. I don't think it was a one-time photo op, where you sign the Agreement, shake hands, and then it's over. It's an Agreement that has to be, you know, cared for and cultivated. Again, as people come and go, as administrations change, we need to be watchful. But people worked too hard for too long to do this, the consequences of failure are too great, and my sense is that, with a reasonable amount of continued good will from New York City and New York State—because I do think government becomes the wild card here. . . People who are living in communities will get it in terms of long-term agreements and keeping those agreements; it's the government that one has to be most watchful about, particularly as administrations change. But I'm very hopeful, certainly here in New York City, that a change in administration will not minimize the commitment to make the Agreement work, and I'm hopeful the same will happen on the State level. So I remain very positive and very hopeful, but I also think there are

reasons to be watchful and not overconfident. Agreements break apart, too, but the longer time goes on and the more people work together, I have great hope that the Agreement will not only last but will become stronger over time.

Track 15

Rich Caspe and the EPA

NB: So tell me about Rich Caspe.

MG: Well, even though it was not at the negotiating table, EPA was very much a presence in what we in New York City were doing. Across the table from me, in New York City, was a fellow named Richard Caspe, who at EPA was largely the author of the 157 requirements from New York City for obtaining the filtration avoidance. Rich was the one who helped develop those 157 tasks, and he was a very hard task master across the table. He was fierce in defending what EPA had asked of us and in not letting us off the hook for a minute. And so Rich and I had a very difficult beginning.

However, over time, I think, again, in the way of partnership or whatever spirit descended on us all, Rich became a real partner with us in trying to work out this Agreement. And to this day, I would say, we have been friends, exchange holiday cards—which is not something I ever would have imagined when we started off, since he was very tough on New York City throughout this negotiation about never letting up on our environmental standards. But Rich is a very fine career person at the EPA, and I also think he provided a very helpful backdrop to everything we were talking about at the negotiating table in the watershed.

ROBERT F. KENNEDY, JR.

Senior Prosecuting Attorney for Riverkeeper
(1983–present)

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Interviewed by:

Nancy Burnett

Location:

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Track 1

Robert Kennedy Joins Riverkeeper

NB: How did you get involved in the watershed negotiations?

RK: Riverkeeper is a group that was started on the Hudson River back in the 1960s by a blue-collar coalition of commercial and recreational fishermen, mainly from Crotonville, New York. They were mostly former Marines, and they were led by a guy called Robert Boyle, who was the outdoor editor of *Sports Illustrated* and he has been for 50 years. He was a great fly-fisherman, and fished all over the Catskills and all over the Croton system.

Riverkeeper launched a patrol boat and began suing polluters on the Hudson River back in the '60s before anybody was doing that. I came to work for them in 1983, starting at the Litigation Clinic at Pace Law School, and began litigating against polluters on the Hudson River.

Track 2

The Chelsea Pump Station

RK: In 1988 there was a drought in New York, and the City of New York began proposing to use the Chelsea pump station, which withdraws water from the bottom of the Hudson River at Wappingers Falls, New York, treats it with chemicals, sends it nine miles underground through the Delaware Aqueduct, and then dumps it in the West Branch Reservoir.

They started using the Chelsea pump station—they never built a filtration system at Chelsea. The water in the Hudson River is not high quality drinking water, and so they were treating it with thousands of tons of aluminum sulfide (which is a flocculent—it removes particulates from the water) and chlorine every day. Well, of course those materials are toxic to fish, and within a few days the West Branch Reservoir had the

odor and appearance of a chlorinated swimming pool. All of the fish in it were dead, and there was a growing carpet of alum sulfide—alum hydroxide—on the bottom of the reservoir, which was deadly to aquatic life: the nematodes, the benthic communities.

And we were mainly interested because it turns out that the place where they built the Chelsea pump station when they constructed it back in the 40s was the epicenter for active fish-spawning activities in the Hudson River. It was one of the major nursery grounds and spawning grounds for the river.

We came to the issue through our concern about the estuary and about the commercial fishery and recreational fishery in the estuary. Then we sued the City, and the lawsuit that we brought ultimately was under the Clean Water Act and it was for dumping treatment chemicals into the West Branch Reservoir. We won that suit, and we shut down the Chelsea pump station after it operated for about 14 days, and got a very, very good decision from the federal judge, Judge Charles Brieant.

Track 3

Looking at the Reservoir System

RK: But we started looking at that time and saying, “These reservoirs are mainly part of the Hudson River watershed and they’re the dammed streams that used to flow into the Hudson River for the most part, and this is not a good way to run a reservoir system.” You know, the reservoirs are natural systems, the lakes and the streams, and they have their own ecology. And that ecology actually removes and assimilates pollutants that would otherwise get into the drinking water; and they’re not just holding tanks—they’re living systems. Dousing them with toxic treatment chemicals actually, over the long term, interferes with their ability to treat water.

We then began looking at the way the City managed its entire reservoir system, and what we found was that the reservoirs were run, historically, by engineers. These brilliant engineers had built the system and constructed the largest pipes in the world, bringing water 120 miles down from the Catskills all the way to New York City without pumps. They were known as the best engineers in the world and they were lauded and commended and worshiped for that record. But they weren’t people who understood a lot about ecology, and although the City had the statutory authority to protect the watersheds from pollution, they had never exercised that authority. Instead, the engineers had relied on engineering solutions—on concrete and chemical solutions—to solve whatever pollution problems did occur.

And you know, in reflection, I think the reason for that is, they don’t teach you about ecology in engineering school, and the friends of these engineers were not people who were interested in the environment. They were other engineers, who were

interested in building stuff, and engineers don't want to interfere with other engineers who are building new stuff—whether it's housing developments or whether it's factories like Danbury Pharmacal or corporate headquarters like PepsiCo, all of which were constructed in the watershed that never should have been. But because they were not interested in enforcement or ecology, the reservoir system had become a central magnet for suburban growth from New York City.

When we started looking at the watershed, the population had doubled, for example, in the Croton watershed between 1970 and 1990. And the new development itself had caused a lot of pollution because it was not regulated and it was a careless and unwise kind of development. But also in order to accommodate all of those people, you had to build sewage treatment plants, and the sewage was dumped into the reservoirs—the so-called “treated sewage.” What we found was that there were 112 sewage treatment plants discharging into New York City's reservoir system.

The sewage treatment plants were mainly small package plants that did not function very well, did not treat pollution very effectively. Thirty percent of the plants were in violation of their permits on any particular month. In the Croton system, about two percent of the water in the system had gone through sewage treatment plants and most of those plants were not functioning, so they were discharging raw and partially treated sewage into the reservoir system. There were hospitals and prisons dumping raw sewage into the reservoir system. Prisoners were instructed to haul sludge from the sewage treatment plant at the Bedford Correctional Facility and dump that sewage—the sludge—directly into the Beaverdam Creek, which flows into the Muscoot Reservoir. This was an unfiltered drinking water supply. There's nothing between those sewage pipes and people's taps in New York City except for chlorination.

And the system was in decline. By the time we started looking at this, the system—New York City's water—still had the reputation as being the best water, the best-tasting water, in the world. It was used by tea companies to test their teas. It accounted for the incomparable taste of New York City bagels and New York City pizza, and people still had the illusion that it was a high-quality water supply, but in fact a third of the water by that time was borderline quality. The entire Croton system was overloaded with phosphates and nitrates and other pollutants, and the Cannonsville Reservoir had to be dumped every year in the summer. It turned pea-green in the summertime and it had to be dumped into the Delaware River, causing people in Philadelphia who drink from the Delaware to complain that their water tasted like cucumbers.

The City had, at that time (we're talking about 1989) 527 lawyers in the Corporate Counsel's Office, but it never assigned a single lawyer to do prosecutions of polluters in the New York City water supply. They had a police force that, during World War II and World War I, had been about 1,200 officers whose job was to protect that water supply from pollution; but by the time we started looking at it, it had gone down to 22 officers and they were ordered not to do their jobs. They were threatened—in fact,

one of them, Ron Gatto, who issued tickets in 1989 to the Bedford Correctional Facility and the Putnam County hospital for discharging raw sewage into the water supply, was disciplined for that; but the tickets were torn up by his bosses, George McKenian and Patrick Murphy.

And again, the head of the police then was an engineer—he was not a police officer. So that’s how the engineers kept tight control over environmental enforcement. They didn’t want environmental enforcement. You know, the DEP has really kind of conflicting missions. One, it’s an environmental facilities manager. It operates the 14 largest sewage treatment plants down in New York City. It also operates eight sewage treatment plants in the New York City water supply from communities who are discharging into these reservoirs.

Track 4

Permit Violations

RK: At that time, the Tannersville plant had 2,800 violations over the five previous years when we started looking at them. All of their plants were in violation of their permits. And the City also managed a lot of gate houses, dozens of gate houses, which are industrial facilities that use huge amounts of toxic chemicals. The engineers often broke the law. They dumped mercury and PCBs into the water supply. They didn’t report the spills. They refused to clean them up. And this year, a few months ago, we rounded up this data and gave it to the U.S. Attorney’s Office. They found 75 instances of illegal dumping by the City of enormously toxic chemicals. A 70th of a teaspoon of mercury will contaminate the fish in a 500 acre lake to the point where, if children eat those fish, they will get brain damage. So it was very dangerous chemicals. We reported that to the U.S. Attorney’s Office two years ago, and a few months ago the Commissioner of DEP, Joel Miele, pled guilty to criminal felony violations and paid a \$50,000 fine for those discharges.

But also the City engineers have to review every single construction project in the New York City water supply and if the construction project fails, it’s their responsibility. For example, the Amawalk Reservoir was destroyed three years ago because of a golf course that had engineering approval from New York City, which cleared 220 acres all at once. The first time it rained, the whole golf course washed into the Amawalk Reservoir and created a sand bar there. And that’s typical; that’s what happens all the time because the engineers up here were not concerned about sediment and runoff. They’re concerned about pouring concrete.

And they have to sign off on every construction proposal in the New York City watershed. So they’re operating illegal sewer plants, they’re operating toxic industrial facilities, and they’re signing off on every single construction project. And when something bad happens, like if a construction project fails, and the DEP police issues

a ticket to the developer, the developer will say, “Well, you know, why are you ticketing me? I got approval from the DEP’s own engineers. From your own folks.” And the engineers don’t want an independent police force looking over their shoulder and looking at environmental crimes, because they’re the worst environmental criminals in their own watershed.

So what they did is, they underfunded the police. The maximum pay, at that time—and this is right up through the year 2000—was \$22,900 for a thirty-year veteran of the police force. The police were not given radios, they were not given automobiles. They were told—ordered—not to respond to pollution. I sued the police at one point and got their records for 80 years of arrest records. And what we found is, there was not a single polluter ever ticketed in the New York City watershed. There was not a single polluter ever prosecuted. It was off limits. Anybody who wanted to do anything in the watershed could do it. And, as a result, water quality was declining. The sulfate and nitrate levels in the Croton system violated proposed federal standards. The current color standards were already in regular violation.

Track 5

Suing the City

RK: So you had a system that was declining, and the last time the City had rewritten its regulations, or updated them, was in 1953, the year before I was born. And it had been 48 years previous, or 45 years previous—almost half a century. And the regulations themselves were severely outdated. They told you where you could put an outhouse, or where you could put your manure pile; how far it had to be from the reservoir. But very few people in Westchester County still have outhouses; and the big problems are pesticides from golf courses, runoff from pavement and roadways, driving fluids—the modern threats to a water supply, which were not even understood in 1953, when those regulations were issued. So they needed to rewrite the regulations. The City only owned seven percent of its water supply. Most water supplies—most reservoir systems—are fully owned.

And so we began suing the City, and by the time Mayor Koch left, we had nine lawsuits against New York City. And we began suing the polluters upstate, which included a lot of municipalities upstate. And at that time, Governor Cuomo was Governor, and George Pataki, who was my State Senator, kind of a friend, was running against Cuomo. Pataki had been an environmentalist while he was in the Assembly, but when he went to the Senate, he made a quick turn to the right and he actually, in order to coddle the upstate developers, passed a law through the Senate, which subsequently failed in the Assembly, that relieved New York City of all of its capacity to arrest polluters or to pass regulations that affected the 2,000 square mile upstate watershed. So when he ran on this kind of right-wing record against Cuomo, I campaigned against him all over the state.

The campaign was picked up by the New York City press, who wanted to play the election as an upstate versus downstate election, and the watershed fit into that theory. Cuomo began running very, very heavily in New York City by saying that Pataki was going to sell out the New York City watershed and force the City to construct an \$8 billion filtration plant—but let me step back for that.

Track 6

Filtration

RK: The issue had been given a new urgency in 1987, when Congress amended the Safe Drinking Water Act to add a surface water treatment rule. And that rule said that all water supplies in the country—surface water supplies—had to build filtration plants. If the City had to build a filtration plant, it would cost them, by Malcolm Pirnie's estimates at that time, \$6–\$8 billion to construct, and \$500 million a year to operate—a half billion dollars. At that time, the City's annual budget was about \$29 billion a year, so this was a huge, huge hit. Dinkins, who was New York City's mayor, was fighting for every penny in his budget.

And we were against building a filtration plant because it would double water rates in the City; it would put 250,000 people out of their homes; it would close down 50,000 housing units in rent-controlled areas of New York City, where the landlords could not pass the additional cost of the water on to their tenants, and in those cases—in 50,000 cases—the heightened water rates would have made the housing unit unprofitable, and the landlords would simply walk away from it. And there was a very large homeless problem in the City already at the time, and problems with the housing stock.

Of course, water rates are a regressive tax. They fall disproportionately on the backs of the poor. Poor people use more water: There are more leaky pipes; there are more people home during the daytime. And so those neighborhoods are the neighborhoods that pay. And we felt our job was to keep the water rates down. And also, the last thing you want to spend \$8 billion on is building a filtration plant. We want to invest in public transportation and subways and hospitals and health care and the Police Department—not spend money on a filtration plant that we don't need, particularly because a filtration plant is not going to safeguard the water supply.

Track 7

Protecting the Water Supply

RK: The money you spend on filtration is going to come from the money that you could use to protect the water supply. And the hardest thing is to add pollution to the water

and then try to take it out mechanically down the line. It's much better to invest in protecting the water supply in the first place, and you're going to get cleaner water in the long run, because a filter plant of the kind they were going to build can remove a lot of contaminants from the water, but it's not going to remove salt and benzene, toluene, xylene, pesticides and fertilizers, or cryptosporidium.

In 1993, cryptosporidium went right through the filtration plant in Milwaukee and sickened 400,000 people—half the population of the City—and killed 114 people. If that same kind of outbreak happened in New York—and it could, again, go right through a filtered water supply—you'd have four or five million people sick and tens of thousands of people dead. So the filter plant was not a panacea.

We did a study at that time. A woman came to us who had been in the real estate business—she was a very successful real estate broker for years—and she had taken six months off and wanted to do something socially beneficial. We said to her, “OK. Go up into the Catskills and figure out how much it would cost to buy up all the raw land in the Catskills.” In other words, the entire Catskill watershed. And she came back with a very, very comprehensive study that showed that you could buy the entire Catskill watershed for about \$1.1 billion. And, of course, that would permanently protect it. We weren't suggesting anybody do that, but it showed how stark the social costs were of trying to filter this water—build an \$8 billion plant and then spend half a billion dollars a year forever to try to service that plant—versus a one-time expenditure of about \$1.1 billion to put the watershed off-limits from development.

And the biggest threat to the watershed is pavement. That's the biggest contributor. We now know the biggest contributor of the enteric virus is cryptosporidium, giardia, and the other waterborne viruses—as well as phosphates, nitrates, and toxic chemicals. It's not coming from the farms, it's not coming from the forests, it's not coming from the animals. It's coming from suburban neighborhoods, from pavement. That's the biggest enemy of the water supply.

So we did not want to see a filtration plant built. We sued the Governor, we sued the Department of Health, we sued many of the upstate towns. And the Governor had been angry at me after the election. At one point, Libby Pataki [Governor Pataki's wife], who's a wonderful woman, called up my partner John Cronin, who was the Hudson Riverkeeper—this was four or five days after the election—and said to John, “George wants me to get a message to Bobby, which is that anything he wants for the next four years, he can forget about.”

Track 8

Negotiations

RK: And that's how our relationship started. But in May of 1995, I got a call from Governor Pataki, and he said he wanted to come down and meet with me in Garrison with John Cronin. We spent several hours together, and he said at that time that he wanted to save the New York City water supply and leave that as his legacy to New York, and he asked us how did we think he should do it. And we said to him we thought he should take all of the stakeholders—all of the upstate town supervisors, and the environmental community, and the water consumers from New York, and the DOH, and DEP, and EPA, and DEC—and lock everybody in a room and not let them come out until we had a deal. Because we knew that a deal had to be possible, because there's a \$6 billion margin that New York City would save if it avoided this filtration plant and invested a couple billion dollars in watershed protection. And somewhere in that \$6 billion was the right amount of money to persuade the upstate communities that they could live with clean water, and that they could live and develop and have their own aspirations satisfied, but do it in a way that was consistent with clean water.

So that's what they did; that's what he did. And some of the groups were already meeting upstate. We'd been excluded, but now we were invited in, and at our first meeting, I think there were about 75 people. Perry Shelton was at that meeting; he was a farmer from Delaware County. He's become a friend of mine since then, but at that point he was very, very hostile to me and also to the Governor. He stood up at the first meeting and said that if Governor Pataki allowed the City to buy a single acre of land in the New York City watershed, they were going to meet him with their shotguns on Route 23 and that they'd make the Oklahoma City bombing—which had just occurred about a month before—look like child's play. And so that was the attitude when we started on this. There was a lot of poison in that room, and a lot of tremendous resentments.

We originally thought there were going to be, I don't know, what it was—18 meetings, or something like that. They showed us the schedule and we said, "Why do we need that many meetings?" In the end, I think we had something like 270 meetings over two years, and we produced a 1,500-page document, and there was blood shed over every word in that document. But it's an historic document because it has the opportunity—if public officials do what they're supposed to do—to permanently protect this resource for future generations of New Yorkers, and do it in a way that will assure dignity and prosperity to the upstate communities that are the hosts to the New York City water supply.

As with everything, the devil is in the details, and the effectiveness is going to be in the enforcement and the daily vigilance, and we didn't get—we have not gotten—a

real commitment from any of the mayors of New York so far. At least during the Giuliani administration, it was extremely lax.

Track 9

Politics

RK: What happened with the Giuliani administration was that we had supported Dinkins, because Dinkins had agreed to a watershed protection plan; and one of the reasons that happened was that when Dinkins campaigned against Koch in the Democratic primary, he supported clean water, and he supported investing in the New York City water supply. And when he came in, he appointed Al Appleton, who was the first environmentalist ever to fill the spot of DEP commissioner. They'd always been engineers before that, but Al came out of New York City Audubon [Audubon Society/New York City Chapter].

Appleton met with me on the first day and said, "We're going to protect the water supply." Well, what happened was, he said, "We're going to spend"—at that time I think we were going to spend \$750 million on new land acquisitions—and he was going to rewrite the regulations and he was going to start enforcing them, and all this. But it never happened, and three years later we looked around and realized that we had made deals with the politicians but that they were listening to a lot of other constituencies.

And in New York City, there was no constituency for clean water. When we talked to people at that time in New York City—and I was going around doing speeches every day to civic groups and to schools—and we'd ask people, mature people, "Where does your water come from?" They'd say, "It comes from the tap." People didn't understand that there was a political battle over this resource that was critical to the City. It was the largest single asset—financial asset—in New York State. And people just took it for granted. There's eight and a half million people in New York City and very few of them understood that there was a battle over the most critical resource to the City.

At that time there were 50,000 people in the Catskills, and every one of them knew where their water was going, and most of them had been goaded for years by their own politicians to see New York City as the enemy. The Catskills included some of the poorest counties in New York State. Half the people in Delaware County live below the poverty line. The same is true for Ulster and Greene Counties. And they all were conditioned by the politicians to blame their economic woes on New York City. It was "because New York City took the best farmland" and "New York City treated us badly"—which is true.

But it wasn't all true. I mean, the reservoirs had actually in many ways added value. It was the only land that really had appreciated in the last 80 or 100 years. There were more people in the Catskills during the Revolution than there are today. And the only land that you really saw appreciating was the land with the reservoir views. And the proximity, of course, to New York City brings value to the Catskills. You know, the tourists are coming from New York City to the ski areas, and the largest employer in the Catskills was New York City, and it was the most reliable employer with the highest wages.

The City also paid for all the sewage treatment plants—nobody else in New York State, no other community, gets that. They operated them and they built them. They maintained the roads and bridges, although not very well, a lot of the times, but it was a big investment that other communities don't have. So, it was more complicated than it was presented. But at that time, everybody in the Catskills believed that New York City was the source of all its woes. That's a pretty accurate generalization.

So they had a political constituency, and when the Mayor of New York City went annually to the Senate (the conservative Republican Senate, always led by Catskill stalwarts) to get his budget approved, they would say, "Well, fine—but we're going to hold up this budget unless you agree to not enforce the law or rock the boat in the Catskills." So every mayor, one after the other, had seen it in his interest to simply turn his back on the slow decline of the New York City water supply, counting on the fact that the size of the reservoirs would insulate them from the kind of immediate catastrophe that might call his leadership into question, until he could move on to higher office.

So they ignored the issue, and ignored it and ignored it, and it never became urgent until this filtration order was passed by Congress. When Dinkins came in, he campaigned against Koch, and when Koch left, we had nine lawsuits against him and were in a pitched battle with him. And Dinkins came in and campaigned about the New York City water supply, and he won the election. He did nothing for three years—again, because he was in a budget crisis and they had the unions and the schools and the firemen and the police all battling for stuff and we had no constituency. I had my friendship with David Dinkins and with Al Appleton, but we had no constituency fighting for us, and so our long-term interests of the water supply were put on the back shelf.

Track 10

Building a Constituency for Clean Water

RK: We then decided we had to start educating people in New York City, so we did a number of parades and events that were very high profile: On the Fourth of July, we

put the largest poster ever made of the Statue of Liberty drinking from a pitcher with a tear coming down her eye. I think it was three or four times the height of the real Statue of Liberty. We put it on a barge in New York harbor, where it would be photographed, and we had a lot of rallies. We had marches around the water supply with Dennis Rivera and his group, the SEIU [Service Employees International Union]. We organized the developers in New York City. I went to them—to the Millsteins, the Fisher Brothers, and a number of the other large developers in the City—and said, “You know, your water rates are going to double, and it’s going to hurt you economically, and we need some money.”

We started publishing, doing publications. We went to the Hispanic and black groups and said, “You’re getting the worst water in your communities.” The worst water in the City, from the Croton system, was going to the poorest areas of New York—to Harlem, the South Bronx, the Lower East Side, Hell’s Kitchen. And we went to the gay groups and said, “Your constituents are in danger for cryptosporidium, which kills people who are immuno-suppressed.” And we went to the unions and to the environmental groups, and we got about 60 groups signed on who were reliable about showing up at these parades and these events, and we started mobilizing people.

We went and spoke to schools, editorial boards; I published op-eds in all of the City newspapers; and we began really trying to create a constituency in New York City. At one point, we hooked up with Chris Reeve—who was an activist with a group called Creative Coalition—and Alec Baldwin and Susan Sarandon, and they introduced us to a PR firm called Kirshenbaum and Bond. Kirshenbaum and Bond was an avant-garde public relations firm from SoHo, who had represented two elderly apple growers in upstate New York, and they created a juice they called Snapple, and they advertised it on the Howard Stern Show, and had a great success, and made a, I don’t know—a billion-dollar product. And they’d gotten rich in the process and wanted to give something back, and had gone to Creative Coalition, and Creative Coalition sent us over to them because we said to Creative Coalition, “We want to get the message out to the public.”

We—myself and John Cronin—went and sat down with Richard Kirshenbaum and had a meeting and we gave them the materials and the books we’d written on the watershed, and they said, “Come back in two weeks.” Two weeks later we came back, and they unveiled this campaign for us, which initially shocked us. The campaign involved posters that were very graphic, and what they said to us is that, “In New York City, you have to do something dramatic. You have to do something that shocks people. Because there’s so much background noise in the advertising community that you’re not going to get noticed unless you did that.”

The first poster they unfolded was a naked torso of a man from his neck down to his knees, and instead of a penis there was a faucet and there was graphic yellow liquid coming out of it and a disembodied hand holding up a glass to catch the liquid and it

said, “Did you know that 85% of your water contains human urine?” Which was true. Then another one had a toilet brush with a dab of toothpaste on it and it said, “Brush your teeth with FecalDent.” Then it had another fact: “Did you know that the New York City water supply contains 2% of sewage effluent every day?” And it went on and on and on. They made a cup that they sent to all the state legislators and assemblymen that had a picture of a human behind at the bottom of the cup and it said, “Another fact about the water supply.” Then it said, “Bottoms up.”

At that time, the Bedford Correctional Facility had had 10,000 violations of its sewage permit over the past five years. It was literally discharging raw sewage into the New York City water supply. And they went on Howard Stern, and there was a woman who was the subject of that Howard Stern show, called Amy Fisher, I think. She was the teen Lolita who had shot Joey Buttafuoco. So we had a chemist who determined how many molecules of Amy Fisher’s urine were in the typical glass of New York City drinking water. It was something that sounded like a lot, like 87, if you don’t know how small a molecule is.

But we went on the Howard Stern Show with that and with a campaign that said, “You’re closer to Amy Fisher than you think.” And when the foundation that had offered to give us \$50,000 for this ad campaign saw the campaign, they refused to do it, and they withdrew the money. But we went ahead and were determined to run it, anyway. We met with Barbara Fife, who was the Deputy Mayor at that time, and Norman Steisel, who was the First Deputy Mayor, and Al Appleton, and we met at Dennis Rivera’s house, and unveiled the campaign for them and said we were going to run it.

Track 11

Talking Money with the Mayor

RK: At that time, Giuliani was running against Dinkins for Mayor. Dinkins was in a fight for his life, and they were very angry with us, because although the ad campaign didn’t attack the Mayor directly, it was the kind of thing that would make people feel bad about the quality of life in New York City, and he felt that it would hurt his election chances. I had a long talk with him; the Mayor called me and screamed at me for an hour, but it was a two-hour conversation, and the second part of that hour, he said, “I’ve known you all your life. How can you do this?” I’d seen him many times, at cocktail parties, for a minute here or two minutes there, and at meetings, when he’d come in. But I’d never had his full attention.

He said, “How much does it cost to protect the water supply?” And we said, “About a billion dollars.” And he said, “I can’t do it. I’m balancing pennies on the budget.” And I was able to say to him at that time, “This is off budget, Mr. Mayor.” Meaning that the water supply has its own funding. It doesn’t come from the New York City budget. It

comes from water rates. And there was a surplus. Although the City was in deficit, there was a surplus in water rates at that time because the conservation program that the environmentalists had imposed on the City had reduced the amount of water going into the City sewage treatment plant and the amount of chemicals that they had to use, and there was almost a \$2 billion annual surplus.

We said, “You don’t have to raise water rates a penny in order to protect the New York City water supply.” And he listened to me and said, “I want you to talk to Norman Steisel tomorrow.” I went in and talked to Norman Steisel. We had a full day of negotiation, and we came out with an agreement in which the Mayor said, “We’ll spend 700.” We had asked for a billion, and he agreed to spend \$750 million and to double the size of the police and to buy a lot of land in the watershed—I think at that time it was 50,000 or 100,000 acres.

We then took that agreement—he’d signed it—to EPA (at that time, they were under order to filter) and we said, “Give this mayor a chance to see if he can make this work.” EPA agreed and gave him, I think, a year or two years. Then we went out and got all the other environmental groups in line behind the Mayor and said, “This is an historic document. He’s going to make this work.” And all the environmental community went to bat, fighting for Mayor Dinkins—and Giuliani won the election.

So Giuliani came in owing no chits to the environmental community. And for the next three years—or for the next year and a half—we were at war with the Guiliani administration. They brought back the same old political hacks and the bad actors who run DEP, and we were back in litigation and back fighting with them.

Track 12

Governor Pataki Takes a Risk

RK: And then Governor Pataki—or Senator Pataki—runs against Cuomo a year later. In 1993, or 1994, at one point, Giuliani comes out on the steps of City Hall and makes this extraordinary cross-party endorsement of Cuomo, a Democrat. The reason he did that was for his own reasons. And one can only speculate about why he preferred Cuomo to Republican Pataki as Governor. But he needed a rationale, so the rationale that he gave in his speech was the New York City water supply. He said if Pataki were elected, it would destroy the New York City water supply and force the City to build an \$8 billion filter plant, and so he felt that he had to support Cuomo.

All of a sudden, we got calls from everybody in DEP, saying, “Tell us how to save the New York City water supply.” So for a little while, we were actually working with Giuliani very closely because there was a renewed enthusiasm. But then Pataki won, and Pataki and the New York City water supply got forgotten for a while, until May of 1995, and I asked Pataki about six months after the Watershed Agreement was

finally signed why it was that he made that call to me in May. He said that it was because he had stayed up late and had been watching Chris Reeve on television, and Chris that same month had broken his neck in a riding accident. Many people thought Chris was going to die, but he fought very heroically for his life and spoke very courageously on TV about his accident, and Pataki had been watching him.

Now Chris had been working very closely with us because he was head of the Creative Coalition, and the Creative Coalition had taken on the water supply as one of its primary issues. Chris had gone for us to the lighting of the Christmas tree the previous Christmas and had stood—in Rockefeller Center—next to Governor Pataki and said to him, “You know, the water supply can be saved, but it’s going to need a hero to do it—somebody who’s willing to take a risk.” And then he had made another trip up to Albany to lobby the Governor, and he’d had a private conversation with him in which he’d said the same thing:

“You need to be a hero on this issue.” And Pataki told me that when he saw Chris Reeve on TV basically walking the walk, he decided he would take the risk. So he picked up the phone the next day and called us and made that initial meeting date, which two years later ended up with the signing of the New York City Watershed Agreement.

Anyway, that’s it!

KEITH S. PORTER

Director, New York State Water Resources Institute,
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KEITH PORTER Director, New York State Water Resources Institute,
Cornell University

Interviewed by: Nancy Burnett

Location: Cornell University, Ithaca, New York

Date: July 20, 2001

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Track 1

How Keith Porter Became Involved in the Watershed Negotiations

NB: How did you first get involved in things with the watershed?

KP: In the 1980s, through the New York Water Resources Planning Council, we were invited to explore with what was then called the New York City Mayor's Intergovernmental Task Force, trying to assist them with dealing with a very contentious issue of finding additional water for New York City. And the droughts unveiled a deficiency in the supply of what was then considered to be about 300 mgd.

NB: MGD is what?

KP: Million gallons of water a day. So it was a very large deficit. And the intergovernmental task force was really charged with trying to deal with that deficit. The design supply for the City was about 1.5 billion gallons a day, but the system was only capable of reliably providing about 1.2 billion gallons a day, and so it was a 300 mgd deficit.

The whole exploration was highly contentious because the two primary options of finding additional water were obviously either a new reservoir, or the Hudson River. And there were major objections particularly to tapping the Hudson for that volume of water because of what it might do to the salt water interface—it'd move it upstream substantially, perhaps north of Poughkeepsie. So for several years, we assisted the City, working in collaboration with the New York State DEC [Department of Environmental Conservation], and a result of the interagency effort was a plan that was developed based on conservation rather than on seeking a new supply. We also undertook to provide well-documented peer-reviewed reports that very substantially diminished the public clamor and apprehension about the work. The City embarked on a highly successful water demand management program, including leak control, installation of low-flow toilets and showers and that kind of thing, and consequently the need for the additional 300 mgd was dispensed with.

One consequence of that was that the DEP [New York City Department of Environmental Protection] had confidence in the Watershed Resources Institute [WRI] in those kind of contentious circumstances. When the City published its draft regulations in September of 1990, that also provoked a great deal of public contentiousness, and in October, I was invited to meet Al Appleton [New York City Department of Environmental Protection Commissioner], by Appleton and his staff, and they solicited our assistance. I subsequently arranged a meeting between Dennis Rapp, who was then the Deputy Commissioner of Ag and Markets [New York State Department of Agriculture and Markets], and Joe Conway, who was Deputy Commissioner of the DEP, responsible for the watershed in the DEP. The outcome of that meeting was an agreement that we would create an ad hoc task force for agriculture specifically to see if, through discussion and negotiation, the apprehension farmers in particular had about the regulations would be addressed. So that's how we started.

NB: I had no idea. I had seen your name in the paper when you were doing surveys about the perceptions that people upstate and people downstate had about each other, and how much knowledge people had of the agreement, the situation, or something like that. That was all I knew. Wow. You were involved way earlier—and a part of the formation of the Watershed Ag Council then.

KP: Yes.

NB: Okay. Would you talk just a little bit about that?

Track 2

Formation of the Whole Farm Program and the Watershed Ag Council

KP: What we sought to do in the ad hoc task force was to work with the farmers proactively, as opposed to defensively. That was a very early decision favored very much by both Appleton and Dennis Rapp. You see, initially the farmers were trying to negotiate an alleviation in the regulatory teeth that were proposed in the draft regulations. What we sought to do was, instead of being defensive, take the initiative and propose an active management program that was to be farmer-based that would have as its purpose protecting the water supply from potential contamination originating in farming—but do that conjunctively with a consideration of the farmers' business interests as well. The premise was that, unless the farmers were able to have a management program that respected their interests, the farmers wouldn't sustain the program. So that was the starting premise.

And the question was: What kind of a management program could be developed? To explore how to develop a management program, WRI facilitated a sequence of presentations at the meetings of the ad hoc task force. I had discussions here at

Cornell with the Dean of Agriculture and Life Sciences—Dave Cole—and senior faculty. And we created, if you like, a shadow team, an interdisciplinary team of faculty interested in working with the ad hoc task force. Over an 18-month period at the regular meetings of the task force, the Cornell team gave presentations—sometimes quite formally—on their view of what the challenges and problems were in the New York City watershed facing the farming community and how they might be addressed by the farmers in developing a very soundly based management program, based on very solid scientific credentials.

NB: The members of the team included both farmers upstate and people from New York City.

KP: No, the team I just referred to was the Cornell team. The ad hoc task force was an interagency committee that was comprised of all the stakeholders, including farmers and professional staff from the watershed, particularly the Soil and Water Conservation District offices and Extension offices. They played a very important role in all this, and the Delaware County Planning Department was also a key player.

NB: Ken Markert.

KP: Ken Markert, right.

NB: And New York City.

KP: Right. The DEP and the Department of Agriculture and Markets co-chaired the ad hoc task force, and sometimes the meetings were quite large. I think occasionally as many as 100 people would appear. So they were very lively discussions.

But over the 18 months, what emerged was an agreement that there was a viable prospect of a comprehensive management program, based on what we then called Whole Farm Planning, that the farmers were willing to undertake. New York City—particularly Al Appleton—became persuaded that was a way of securing the integrity of the water supply system. And that then led to the final negotiations, which established the Watershed Ag Council and the funding for it, provided by New York City.

NB: Great. Okay. Give me your take on Al Appleton.

KP: I think he was a visionary in terms of his willingness to undertake this kind of dialogue. And his willingness to accept the kind of solution that was proposed. And it was a very unconventional willingness from a senior representative of the water industry, which as you probably know is quite a conservative body.

NB: Aha. I didn't know. I was a news reporter at that point, and what I gathered was that Appleton was not terribly in touch with what was going on upstate and was not terribly flexible.

KP: No. That wasn't my experience.

NB: Okay. Great.

Track 3

Applying the Whole Farm Model to Communities in the Watershed

NB: Okay. So, the Watershed Ag Council really set the pattern for the set-up that was reached with the towns later on, didn't it?

KP: It followed a very similar pattern. At the time that the Brown Book (which was the document representing the agreement that was established with the Watershed Ag Council) was being drafted on behalf of the ad hoc task force, I particularly was interested in seeing to what extent that model might serve communities in the watershed. The reason that thought occurred to me in particular was we had concurrently with the work with the ad hoc task force a non-point-source pollution prevention grant from EPA. That grant had been made available to us prior to all this effort, and with the grant, we had already established a community effort in the watershed with Neversink and Denning.

NB: Right.

KP: And that preceded all this. And those two communities, which were really, for this purpose, twinned, established a Citizens Advisory Committee, which was very active, very progressive, and explored a lot of options about septic tanks and so forth; so we used that success as a basis for suggesting that communities in the watershed could accept responsibility and take initiative akin to how the farmers had done. I remember it was Martin Luther King Day because when we went to Walton and met in the office, everybody else was enjoying a nice day off—and we went through the Brown Book and reinterpreted it literally in community terms. We took out the word “farming” and substituted the word “communities.” It's amazing how much the document could survive that adulteration. And then we presented that result to the Coalition of Watershed Towns in a meeting in Olive, and that meeting was between the Coalition and the DEP with Al Appleton.

NB: And when was this?

KP: It would be 1992.

Track 4

Whole Community Planning Develops . . . and Collapses

KP: Now, the Coalition was cautious because, as you know, the Coalition was originally set up the same way the farmers had responded. They'd established themselves really just to defend the interest of the watershed, primarily in legal terms. So they created a fund and had retained two excellent lawyers—Dan Ruzow and Jeff Baker—to assist them in protecting the interests of the watershed communities and residents.

The idea that they become pro-active like the farmers had done was not immediately fully accepted. I mean, there was discussion with cautious reserve. And at a subsequent meeting, in Olive, Appleton and Perry Shelton both asked me if I would informally become a facilitator of discussions between the Coalition and the DEP; and so, working with Ken Markert and Rick Weidenbach, that's what I proceeded to do.

Over many meetings, the Coalition moved towards the position that it could successfully negotiate an agreement with the City, which would provide for communities assuming responsibility to meet water quality goals, understanding that there would be compensation for doing that. Whatever they did in service of the City, so to speak, would be paid for by the City.

NB: Which was a pretty big step.

KP: Right. Now, at that time we did develop a charter corresponding to the Brown Book, and that was very, very close to being signed. There were final meetings, in the sense of meetings in which we thought we were finally polishing the document for it to be jointly signed by all the parties. And there was a lot of goodwill and agreement, which was suddenly and unexpectedly sabotaged by the DEP applying for a permit for land acquisition.

NB: Right.

KP: And that dissolved the trust and goodwill that had been developing over many, many months and many, many meetings. It dissolved it almost totally, and it took awhile to recover from that.

NB: That was where I was getting that impression I had about Appleton. So where did this idea of applying for a permit for land acquisition come from? Not from him? Maybe that's going too far afield.

KP: Maybe my recollection is unreliable, but I had the impression from Al that he'd decided to apply for the permit on the recommendation of his lawyers. He did say to

me he didn't think it was necessary, because in any case he thought that, even under the 1953 regs and previously established authorities, the City in fact could undertake those kinds of initiatives, with respect to land acquisition, without applying for a new permit. I think that's a correct recollection.

NB: So the lawyers were being extra cautious, and what happened was it just threw fuel on the fire.

KP: Yes. It was even suggested, actually—and I won't say by whom—that the draft regs proposed in 1990 were not totally necessary, in that the City, through its bureaucratic capacities, could have better used the 1953 rules and regulations and accomplished much of what it wanted under that authority. Whether that would have satisfied EPA in terms of granting the Filtration Avoidance Determination, of course, is an open question. But I know it certainly was discussed in the DEP.

Track 5

Keith Porter's Watershed Connections

NB: Now, let's go back just a little bit to your background. How long have you been in the area? Did you come from this area originally? Obviously Ken Markert and Rick Weidenbach trusted you. That's significant. You were an academic. They might not have really trusted an academic. Can you talk a little bit about that?

KP: WRI, since I have had this position, has worked with communities and the state and the public government. Actually, I started working primarily on Long Island in the mid-1970s on the 208 program.

NB: On the what?

KP: On the Clean Water Act 208—the Section 208 program.

NB: Okay.

KP: And EPA [United States Environmental Protection Agency] very much liked what we did and encouraged us to extend that work upstate, so we became involved with community support upstate through grants, which, in fact, we didn't originally solicit. EPA encouraged us to do that.

NB: Wow.

KP: So we established some credibility in that kind of work, and in the mid-1980s SWCS [Soil and Water Conservation Service] and Cooperative Extension asked us to draft a proposal to USDA [United States Department of Agriculture] to work in the Sidney

Lake watershed, or the Ouleout Creek. So that brought us into direct cooperation with Rick Weidenbach, for example, and Dean Frazier, who was another primary individual in all this.

Track 6

Marilyn Gelber Meets the Watershed Coalition

NB: Okay, things have just blown up because of the DEP's proposed land acquisition. So what next?

KP: That was when I facilitated or arranged the first meetings with Marilyn Gelber [successor to DEP Commissioner Al Appleton] and the Coalition. And those meetings initially went very well. Marilyn created a very positive impression, and there was a shared view, I think, that the agreement that had been sabotaged by the land acquisition application might be restored with Marilyn. Then, I think things went slightly adrift. I don't know what the circumstances were, but she deferred to another individual in the DEP, who was very unfamiliar with the circumstances upstate. And the progress regarding coming to, or restoring, the prior agreement really was arrested.

NB: And what period of time are we in now?

KP: This was in the first few months following Marilyn's appointment.

NB: Which was?

KP: 1993, I think.

NB: '93, Okay. Boy, long time working.

KP: Yes. That may have been '94, actually. This was early in her administration.

NB: Right.

KP: So the progress became increasingly disappointing, and I withdrew from being very actively involved, as did Ken and Rick.

NB: Ah.

KP: And when Governor Pataki and suggested the negotiations that then took place, the role that Ken, Rick, and I played was at that point increasingly peripheral.

NB: Aha. Very interesting. Okay. And then did you come back into the picture at some point?

KP: I'd better interpret what "in the picture" means.

NB: Okay.

KP: We were still active locally, but as far as the negotiations formally were concerned, I didn't attend the meetings or participate in them at all. I think Ken, and to a lesser extent, Rick, initially provided some technical support, but basically, in the end, they were not involved in the consultations, either.

Track 7

Implementing the Watershed Agreement: Phosphorus Study Committee

KB: My primary re-engagement at a more substantial level occurred three years ago, in Delaware County. I received a call from Ray Christensen [Delaware County Board of Supervisors chairman] inviting me to meet him to discuss a dilemma facing the county under the regulations. Because the Cannonsville Reservoir basin is phosphorus restricted, the concentration of phosphorus in the reservoir is at or above the guidance value established by the DEC and accepted by the DEP, which is 20 micrograms per liter. The guidance value was not met in the reservoir, which meant that under the regulations, the basin was phosphorus restricted.

In the regulations, it provides for permits being granted for expansions in a restricted basin, provided the county concerned had a comprehensive management strategy. And the county had undertaken to develop such a strategy, but had not progressed very far. Their assumption was that it would cost something like a half million dollars to do adequately, and they were having difficulty, I think, even raising that money.

And Ray asked me if I would assist the county in at least scoping out what might be done. And so later in the year, WRI was retained by the county to scope out an initial position, kind of a feasibility study of an actual strategy. Ray very emphatically stated that there had to be two bases for the strategy. One was it had to have very sound scientific credentials, which is one reason that he appealed to WRI, because of our link to the scientific community. And he made it very clear he wanted the scientific community engaged.

Secondly, he was very insistent that whatever we did had to have a very solid institutional framework. In other words, it had to be an interagency effort with all the partners to the agreement party to whatever strategy was developed.

To address that, I proposed a hierarchy of working committees, starting with a scientific support group that would mobilize the appropriate scientific work on behalf of whatever was done, and that, in turn, would report to what we subsequently called a Phosphorus Study Committee; this is an interagency committee that also has the task of reviewing the scientific work and provides a forum for all the partners. I'm leaping ahead here, but the county subsequently created an Office of Watershed Affairs, which reports to a county Water Quality Committee that is comprised of members of the Board of Supervisors, who in turn then obviously report to the whole Board.

That was the initial structure, minus that office that had not been created yet. The initial report was well received by all the partners as well as by the county itself. One concern, though, of the working group that WRI fostered to try to make progress toward a final strategy was that, in the kind of time frame we were seeking, which was a short one, it seemed unlikely we were going to be able to raise half a million dollars.

Track 8

Delaware County Action Plan

- KB: So I proposed that the document we were working on be called a Delaware County Action Plan, and that that Action Plan actually serve as the instrument that was the strategy. And what we had worked up, up to that point, was reformulated into a fairly concise document, which we called the Delaware County Action Plan, or DCAP, for short.
- NB: Let me just interrupt you again in terms of the time frame. If it was three years ago, that means it was 1997.
- KP: See, Ray actually called me in the spring—March, actually—of 1998, which was three years ago.
- NB: Let's see, the draft agreement was signed in 1995. So we're now three years into the Agreement and beginning to have a little trouble with how it would play out.
- KP: Yes. Where this requirement lies in the regulations is Section 18-83, and the reason it was an urgent situation for the county was that under the regulations, the City was in a position to deny applications for new or increased surface water discharges in the absence of the strategy.
- NB: Oh, yes. Permits for any kind of surface discharge.

KP: That's right. So the business community, particularly, was very stressed because of this constraint on development.

NB: Right. Oh, I remember that. They were worried that all of the economic development in the county was going to come to a standstill.

KP: Well, the economic development directly impacted—very severely impacted—by this was in the Cannonsville Reservoir basin, which was the phosphorus-restricted part. But obviously a decline in such a large part of the county would have a multiplier effect, so there was some urgency to meet the kind of immediate need, hence this was proposed as the county strategy.

And in September of 1999, the Board formally adopted DCAP as its comprehensive strategy. In October, we had a meeting of senior representatives of all the partners—EPA, DEC, DOH [New York State Department of Health], DOS [New York State Department of State], DEP, obviously. That coincided with the county in follow-up to its adoption of the plan; and with the creation of the Office of Watershed Affairs. Dean Frazier was appointed as Commissioner of that office. And if I remember correctly, this summit meeting, as we termed it, occurred on the very first day of his appointment. So it was quite a launch for Dean, although he was somewhat involved, so it wasn't completely new to him. But it was nevertheless being thrown into the deep end.

The meeting really revealed a need for a second meeting because of the complexity of the issues and just the substance of what was in DCAP and so forth, and the implications in terms of the phosphorous restriction and the county's position under the MOA [Memorandum of Agreement]. And so a second summit meeting was arranged in November of that year, in which we prepared and then presented a more formal account of what DCAP embodied. Again, the senior representatives from all the partners were there.

That meeting went very well. DCAP was embraced and endorsed by all the representatives at that meeting. That was followed up with confirmatory correspondence between the Office of Watershed Affairs and those agencies, particularly DEP and EPA. So DCAP was launched, and concurrently with the finalization of the county's strategy, the county also had requested WRI assist in drafting proposals for funding and available funding arrangements. And we were successful in our applications, so technical work was able to proceed concurrently with the discussions that were taking place as I've just described them.

I'm leaping to the year 2001 now. In a very short time, a substantial amount of work has now been done under DCAP with—I hesitate to say how much, but it was a very substantial amount of money. It was certainly in the low millions in terms of what has been mobilized in terms of scientific work, and assessment, inventorying, appraisal

of problems of septic tanks, highways, manure management, planning considerations, and so forth. Storm water particularly is a major issue.

So the county now has a very well-thought-out, comprehensive understanding of what the needs are, and the county is dealing with them. This progress has been well received.

In January of this year, we held our third summit meeting in which, again, all the senior partners were invited to participate—and senior representatives of those partners came to the meeting—and it was quite a large gathering in Delhi. Under DCAP, a series of presentations were given to summarize the work going forward. There was a very positive response. And later in the meeting, Dean Frazier, who moderated the whole session, invited comments, and they were invariably very enthusiastic—I don't think that's too strong a way to characterize them—to the extent that both the EPA representative and the DEP representative stated they would encourage the county to try to extend the DCAP approach or methods elsewhere in the watershed.

That subsequently led to meetings between DCAP representatives and the Coalition of Watershed Towns. And I should add that the CWC [Catskill Watershed Corporation] had been a partner in DCAP right from its outset under these two arrangements that Ray Christensen was very insistent about. Ray at that time was the chairman of the Board of Supervisors. But his successor, Joe Hanley, and now Jim Eisel, have been very supportive of DCAP. And now so has the Coalition of Watershed Towns. We are currently developing, or refining, an application to the DEP and to EPA for consideration in the ongoing discussions over the renewal of the Filtration Avoidance Determination—for what we're terming, for the time being, an MOA Phase Two application.

Track 9

A Model for Water Supply Management

NB: We're at quite an interesting point right now. Do you think that what has been developed has been a model for other major cities?

KP: Yes, definitely.

NB: Can you talk a little bit more about that? We've had, I think, foreign governments also coming to look at the situation, haven't we?

KP: Yes. In WRI, we've had visitors from Australia and the UK visit the Institute. In the case of the Australian, he actually took a sabbatical here and pursued an interest in what we're doing in the watershed. In the case of the UK, we've similarly had visits,

and we're now pursuing interests quite keenly expressed in England in establishing a twinning arrangement. As you may know, twinning is something that Europe has promoted enthusiastically for many years. It actually preceded the creation of the European Community, but the EU now has enthusiastically embraced twinning, which was set up really to couple towns or cities in different countries in a way that they could share understanding, cultural experiences, technical knowledge, and so forth. I have suggested to some UK colleagues that we try to apply the twinning concept to watersheds or to water supply systems, and in May of this year [2001], I attended meetings in the UK to discuss that idea and I was very gratified at the enthusiasm and interest that was expressed. So we're now very much engaged in trying to work out how that can be somehow established—obviously with the cost being met—because it can't be done without some funding support.

NB: And it would seem to me that water is going to be one of the major issues of the 21st century.

KP: Uh-huh.

NB: So this is very interesting.

KP: The crux of the matter as it's represented by the New York City watershed is that the water industry traditionally has been very conservative, understandably, about protecting water quality of source waters. One tactic to achieve adequate protection was really to own the watershed. The environmental community tends to think in terms of preserving the environment by minimizing human activity. The challenge we have now, though, with burgeoning populations and pressure on land and so on, is to really establish how one can have what we call a living landscape or viable communities in a watershed at the same time that the integrity of the water supply system is adequately protected.

So one of the challenges, I think, for the environmental community is to accept that this is an opportunity that, in fact, we can't evade. And in that respect, one might claim that Europeans are somewhat ahead of us; particularly, for example, in England, where the countryside management is very much a part of the English culture. So if one goes to the Lake District, which serves as a water supply, for example, to Manchester, the communities are definitely thriving very, very well and the tourist burden on the Lake District area is far heavier than it is in the New York City water supply system or watershed. Well, how is that done? How can you maintain a sanitary, well-protected area and yet have human use of it? That's the challenge that we need to address, and the New York City watershed is doing just that.

NB: That is exactly what I wanted to get from you in this interview. Well said.

KP: To further what I just said in terms of the challenge, when one is considering a water supply, one's obviously got to be ultraconservative in respect to protecting public health. Al Appleton used to say that, as Commissioner of the DEP, he couldn't reassure residents in Manhattan that their water supply, as they turned on the faucet, was 95% safe to drink. It's obviously got to be 100% safe.

NB: Right.

KP: And so how does that translate back into protecting waters? The water industry has moved to a position where it doesn't want to rely totally on water treatment, which provides the barriers against contamination or water-borne diseases. Because, obviously, as the Milwaukee experience showed, one can't have necessarily 100 percent confidence in one's water treatment arrangements. So that has led to the interest in protecting the waters at their source.

NB: Not to mention it's considerably cheaper, right?

KP: Right. The better the quality of the rural water, then the easier it is to treat it securely. So that leads to an application of the precautionary principle: that you really try to ensure that the quality of the source water is as well-protected as you can, which, in the New York City case, prompted me in, I think it was 1992, to suggest that we plagiarize the water engineers' concept that water treatment consists of an array of barriers, multiple barriers. We apply that to the landscape, and have multiple barriers on the landscape in terms of applying the precautionary principle.

The Watershed Ag Council adopted that. And another environmental principle that really has an international adoption is the idea that the best way to control pollution is at its source, which relates to source water protection very neatly.

There's a third principle, which comes to the question you just asked about who pays. The corresponding international principle is that the polluter should pay. But in the case of the New York City watershed, that's not the principle that we're adopting. But there is a very sound rationale for that, in that residents in the watershed are being asked to protect water to a very, very high standard, in terms of the precautionary principle, above and beyond what communities such as that are expected to do, and it's relevant to know that these are not affluent communities in the New York City watershed.

That leads to the question of who, under the principles of equity, really should pay for this. And the Agreement was that it should be New York City because this application of the precautionary principle in management on the landscape was for the benefit of New York City. And that benefit included being able to avoid much higher costs to provide filters. So that principle in terms of the beneficiary paying, as opposed to the polluter paying, was adopted.

It's a little more subtle than how I just phrased it, as well, because in this case, it's not so much a matter of the polluter not paying, it's more a matter perhaps of the non-polluter not paying. Because it should be emphasized that the New York City water supply is actually very effective in terms of managing high quality water. The system meets all federal standards, so it is a high quality system. So it's not a matter of remediating pollution, it's a matter of preventing pollution; and to prevent pollution using the precautionary approach to the extent that that is deemed desirable under the filtration avoidance is clearly an imposed cost that is definitely for the benefit of New York City. So it isn't a matter, as I said, of a non-compliance with the polluter-pays principle, because in this case, we're asking people to even further diminish the risk of any pollution when they're not polluting already.

NB: Uh-huh. Right.

KP: One thing I think that can be overlooked is that one can have the institutional arrangements—all these working groups, committees—but, in the end, what happens really depends on individuals, and I've always been impressed by the quality, actually, of the people involved. And their desire to really do something well that is in the public interest. Admittedly, there's a lot of disagreement, and there has been contentiousness and there will be contentiousness again, but the integrity of the individuals and their quality, particularly in the watershed, has been, for me, a very satisfying part of this effort. And it's very easy to overlook the courage of individuals who are not only willing to accept something that's very innovative, but who are also willing to advocate for it in the face of perhaps very strong initial opposition from their colleagues or peers. That's a side of the story which is perhaps difficult to capture because so much of this is not really that tangible or evident. It's certainly not documented. [laughs] But nevertheless, it's the basis, I believe, of what has happened.

NB: And are you talking there about leaders like Ken Markert and Rick Weidenbach, or are you talking about the farmers? Or both?

KP: Actually, I was thinking more of some of the political leaders.

NB: Like?

KP: Ray Christensen. The current members of the Board of Supervisors in Delaware County. Members of the Coalition of Watershed Towns. Perry Shelton, who was a statesman in terms of how he established the CWT and led it in its early days. But there are so many of them, it's unfair, perhaps, to mention individual names. I worked very closely with Clay Brooks and Georgie Lepke, for example. And there are businessmen who are really trying to do good things. Occasionally, I'm even surprised at their persistence in the face of a lot of difficulty, to really remain supportive of the Agreement and to try and make it work.

NB: It does all come down to individuals, doesn't it.

KP: Environmentalists have stated that three billion dollars would be sufficient to buy everybody out. It's a very simplistic view, and it misses the opportunity we have. The environmental community really should think more creatively about how people can live well in their environment instead of just trying to stop the human activity. Improve it so that it really is compatible with environmental objectives.

In this country, one tends to favor views of the landscape as being a wilderness painting, a representation of the wilderness. In Europe, a painting will show a church and a village or a farm in the countryside, and that compatibility of humans on the landscape is an aspect of environmental management that I think tends to be too often neglected.

Not that I'm suggesting that all protected wilderness areas should be invaded by humans, by any means. But wherever there are humans, the challenge to the environmental community should be to help work out how those humans can remain there in a way that does securely protect the environment.

NB: And it's obviously sort of a new take to believe that it is indeed possible.

DANIEL A. RUZOW

Attorney for the Coalition of Watershed Towns
(1991-1999)

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DANIEL RUZOW Attorney for the Coalition of Watershed Towns (1991–1997)
Partner with Whiteman Osterman & Hanna

Interviewed by: Nancy Burnett

Location: Whiteman Osterman & Hanna, Albany, New York

Date: August 2, 2001

Total time: 70 minutes

Track 1

How Dan Ruzow Became Involved in the Watershed Negotiations

NB: Dan, you have been called the point man for this whole thing by John Hamilton, who was Charlie Cook's Counsel.

DR: May he rest in peace.

NB: Yes, indeed. Maybe we can start out with you talking about when you got involved in the watershed negotiations.

DR: Sure. Our firm was representing Delaware County back in the late '80s and early '90s in connection with its solid waste planning activities, and one of my former partners, Kevin Young, had heard about the release of a discussion draft—the September 1990 draft of the regulations. And we talked about it here at the firm as having rather profound potential effect on the watershed, not just in Delaware County but on the rest of the west-of-Hudson watershed, and indeed, at the time, the east-of-Hudson watershed. So we talked it through here and we thought we really needed a way of reaching out to the communities in that area to find a way of understanding what these regs would mean to them. Life as they knew it would change. We came up with an idea with a consulting firm, an engineering firm, to put on a panel presentation at the Association of Towns meeting in February of 1991 to see if we could alert people to it, to see if a consortium of the towns perhaps could get together so that they would be capable of being represented as a unified voice.

NB: This was a major difference from the past.

DR: Right. In the past, most of the communities never spoke to each other, either across their county borders or indeed even some of their town borders, and the panel presentation was an effort, at least in the beginning, directed at both east-of-Hudson and west-of-Hudson municipalities. That didn't quite work. We realized after that meeting that some of the east-of-Hudson communities, while they shared some of

the same concerns of the west-of-Hudson communities, were different places, their issues were slightly different, and there was a larger constituency of anti-development, anti-growth movement in the east-of-Hudson communities that was not present west-of-Hudson. So a decision was made to basically alert the east-of-Hudson communities to what might come about if the regs were adopted, but to focus our efforts on the west-of-Hudson communities.

NB: And was Ken Markert involved in that?

DR: Yes, Ken was actually actively involved. Ken was one of our key contacts at that point in time—I guess it was the winter of '90 or '91. We had worked with him, as well as with the solid waste staff, on solid waste issues in Delaware County, and Ken saw the advantages of all of the communities getting together in terms of determining how their voice would be heard. And from a political point of view, it was clearly in the interests of everybody if there was a very loud voice as opposed to lots of little voices that didn't always speak the same way.

NB: And what did you think the chances were of achieving some sort of an agreement at that point?

Track 2

Watershed Towns Band Together

DR: Well, we didn't see it in terms of an agreement. The first agreement was among the west-of-Hudson communities to actually band together. We didn't know all of the history—ignorance is bliss sometimes—or the lack of interchange between those communities. We just saw it as illogical that they wouldn't be able to get together, because they tended to share some of the same issues: concerns about state government, concerns about the City. But they didn't talk, they didn't know that they shared the same concerns. We were blind to the barriers; therefore it actually helped us because we were sort of able to persuade them what their mutual interests would be.

NB: So that was a tough, long process just to get them working together.

DR: Getting them to actually work together took longer than getting them to at least group together. I think it was March 26th or 25th of 1991 when they got together in, I believe, the Middletown High School; these were people who had essentially never been in a room together, and I think we got something like 30 or 32 of the towns together. We had drafted up the outlines of what is an interagency compact under the New York General Municipal Law. It's a provision of the New York State law that isn't used very much; we had found it and thought it could serve their purpose, so we submitted that and had draft resolutions prepared for the towns to take back home

and think about. Ken Markert, to his credit, had a brilliant strategy about how they would share the costs of hiring the lawyers and hiring the technical consultants, based on a sort of weighted population/area formula that he had worked on, and they thought that was sort of a reasonable approach to things.

NB: I don't want to get too far afield, but it does occur to me: How about the money, how did they pay for your services?

DR: Money was a big issue. We had agreed to a discounted rate for the communities. I think we persuaded them that if they all hired their own separate lawyers and consultants there would be duplication and it would be wasteful. As I said, we had put in a fee proposal, and we were confident. Delaware County came to the aid of the individual towns and agreed—I forget in those days what the number was—to put up the first \$5,000; I think it was eventually \$30,000 in the first year. The other towns would similarly contribute; in terms of how much they would contribute, it depended on the size of the town and the number of people in it. In the early days there was no real envisioning of state aid or assistance, which came later and which Charlie Cook brilliantly provided.

But we raised money. We went to the fire halls. Barbecues and other things. We would sort of get on the stump and come down on Saturday and provide the background on why this was important, and it was a real grassroots fundraising. You know, most of the elected officials who are on the Coalition Executive Committee and part of the Board—there was an 11-person executive committee appointed—had a great deal of experience in grassroots fundraising, so they knew where to go, and in the summer they provided the county fairs and other opportunities to have fundraising. We also reached out to interest groups that we thought would support a challenge to the City's regulations. We were able to facilitate, I believe it was a \$25,000 grant from the Homebuilders group. I think the realtors provided some funding. But it was a mixed basis of funding to help keep the effort going. A little bit later, Charlie Cook and I don't know who was working with Charlie in Delaware County came up with the idea of a Legislative Member Item to help fund things, but I think that came two or three years into the effort.

NB: Okay. So, you're beginning to gather the towns together. What next?

Track 3

Discussions with New York City

DR: Well, the City—at this point in time, Al Appleton was the Commissioner of the New York City Department of Environmental Protection—was really sort of all over the place in terms of ideas. There was some reaching out to the communities at that stage, with the pilot planning programs being started in the towns. Two or three

towns agreed to be pilot programs for planning things. The City made a big outreach to the agricultural community, which was independent of the municipalities—the Watershed Ag Council eventually came out of that—and so the effort was all over the place. Our focus as lawyers was really in a support role. Ken Markert was taking more of a lead at that stage. There was a lot of distrust of the lawyers by the City, so they sort of planted the idea, you know: “You don’t need lawyers. What do you need lawyers for? We’re not going to hurt you,” that type of thing, and so our role was relegated to more support—an assessment of what’s going on. To counterbalance the City’s assertions, we helped hire some technical consultants out of Maryland who did an analysis on pure science of what the City was proposing to do by way of regulations.

That went on for almost two years, and began to break up at that point in time. There were disagreements, there was lack of communication. There were efforts at mediation, actually. The Coalition brought in some facilitators to try to do things. But the City would never really negotiate. It was always, you know, “We’ll do this for you. Is this okay?” and “Does that make the problem go away?” There was no real willingness to talk about why they needed particular provisions of the regulations to protect New York City’s water supply. They had dreamed them up in sort of in a vacuum in a room with some environmental groups and their own technical staff, but there was never any real external assessment or zero-based budgeting: “If you don’t have this, what happens?” or “Why do you need this?” We—Jeff Baker and I, in particular, at that point in time— were pushing very hard for answers to those questions. And they were not questions that anybody wanted to answer. So we were not viewed particularly well by the City’s lawyers and the City power regime at DEP [Department of Environmental Protection], because we were asking questions they didn’t choose to answer at that point in time.

Track 4

Implications of the Watershed Regulations

NB: Maybe we should back up and talk about what you foresaw as the implications of the watershed regs.

DR: Well, the prohibitions that were included in the September 1990 regs were vast. The City wanted to abrogate to itself the ability to prohibit essentially all pesticide use in the watershed—the agricultural use. Some of the City folks might disagree, but we believed if the City’s regs were implemented, agriculture would be strained. The setbacks for septic systems would essentially mean—because of the topographic conditions in the watershed—you couldn’t build any more second homes, in most places. You wouldn’t have any development in most places, even in the historical places of commerce within the watershed, the ribbons of commerce or highways, we called them, that traveled—whether it’s Route 28 or Route 10 or Route 30—wherever

the roads were, which tended to follow the rivers and the streams. The hamlets and the farm areas and the villages grew up in those areas—you couldn't do anything further with those areas. They could never grow. There were restrictions on the rebuilding of areas. So it was pretty dark and gloomy in terms of what would be required.

The other thing is that we were familiar with how the City as a bureaucracy managed affairs and how it considered permits in the normal regulatory process. The level of discretion they were according themselves was so vast; and the normal checks and balances that exist in most regulatory systems, where the regulated have a role in electing the leaders that then appoint people to administer these laws, was lacking. You had the notion of extraterritoriality here, we argued. New York City was seeking to regulate, external to its boundaries, with no rights of the regulated in the election of the City officials who would be regulating them. That was sort of a fundamental problem that existed. We thought it raised some interesting constitutional issues, which we were not shy about suggesting to folks. And we did a fair amount of homework on the regulatory structure that we thought would be legitimate and when it sort of trespassed over the boundaries.

NB: I remember that whole constitutional issue. I was the news director at that point at WZOZ radio in Oneonta, and that's when this really began to catch my attention.

DR: It's one of those issues that captures the attention and the excitement of lawyers, because you don't get to litigate those questions very often. They don't come across in most projects or representations. And when they do and they're issues of first impression and they go back to the interpretations of statutes and provisions that were trying to harmonize public need at the turn of the century vs. today, and you can consider how things have evolved and how those things play out today, it's fascinating. You know, it's great work.

NB: Okay, so you proposed a different scenario.

Track 5

Breakdown of Negotiations

DR: I think there was genuine, sincere effort on the part of the mediators that the City brought in—but some of them just didn't understand the context in which they were seeking to operate. I think they were handcuffed in terms of the responsiveness; you had unequal partners to the mediation efforts and the facilitation. There wasn't a lot of money on the side of the Coalition—the upstate communities. There wasn't a high degree of sophistication on these regulatory issues, and they were reaching out to this very narrow band of elected officials putting lots of pressure on them to agree to

things. And that fell apart. I think it was in the summer of 1993 that that began to fall apart.

Immediately on the heels of that effort, the City made an announcement about its land acquisition program. There were a series of meetings that were going on sort of simultaneously with the mediation efforts—I think they were sponsored by DEC (Department of Environmental Conservation) and the State Health Department—where the lawyer types and the regulatory types were trying to get together to understand what the regs were and where the City was coming from on the regs, the justification for various provisions of the regs. We were meeting at the Health Department, or in DEC's offices. No formal mediation, it was just sort of a convening of the parties by these state agencies, and it wasn't going anywhere. Very frustrating sets of meetings. We weren't getting answers. We would report back to the Executive Committee of the Coalition. We spent days sort of talking about things, but we didn't get answers from the City on why. We'd always come up with these lists, but never have answers to the questions.

And so that was coalescing at the same time the mediation efforts on these pilot programs and other things were going on, and like a ton of bricks, without providing any advance notice to the local leaders or anyone else, the City files an application with DEC to acquire lands in the watershed. A major, major political flaw. Never told any of their presumed partners in these discussions that they were going to file an application to seek a permit to acquire up to ten thousand acres of land in the watershed. Very significantly, while condemnation was not specifically mentioned, it was not excluded in this application (though after it hit the proverbial fan they claimed they were not going to seek the power of condemnation or seek to exercise it).

And at the same time they were filing that application, (we later learned) they had filed a Filtration Avoidance application with EPA that talked about acquiring up to 80,000 acres. This is a classic SEQRA segmentation; they had filed a plan to do more; they didn't tell you about it, but worse was the political mistake of not telling your partners—your new partners—that this was what you were intending to do. And that caused a riot. Essentially all of the informal discussions ended at that point in time, and we began what was sort of Stage One of some of the more acerbic litigation or adversarial discussions pending at that point before DEC.

There was also at about the same time a declaratory ruling request that we made of DEC as the agency that administers the water supply permit under Article 15, Title 15 of the Environmental Conservation Law. It's a peculiar jurisdiction that DEC has that's left over from the Water Resources Commission and the Water Power Commission from the turn of the 20th century. I'm sorry. I misspoke. I'm confusing two things. The DEC permit proceeding, which they filed an application for, relates to this Article 15, Title 15 jurisdiction.

But about the same time, just prior to that, we had filed a request with the State Health Department for a declaratory ruling under the State Health Law regarding the sort of scope of power and authority, and responsibility, the City had to pay for the additional burdens, the costs of compliance when it's exercising its authority extraterritorially. The Public Health Law contains a provision that dates back to the turn of the century that had an interesting provision in it requiring the City to pay the extra costs. There were some interesting legal issues about how far that ought to pertain, under what circumstances the City would be required to pay for not just construction but for operation and maintenance, and the Health Department issued a ruling that was favorable to us—not completely, but enough that it would potentially cost the City many, many dollars for many years on that. But the City appealed that decision to the Courts rather than accepting it. So we started down the path of litigation.

NB: I remember, I remember, I remember! This is great.

DR: I didn't bring it with me today, but I had a sort of a chronology of all of these sort of dates that's helpful. I should have brought it with me.

NB: Oh, great. Maybe I'll ask you to send it to me.

Track 6

Marilyn Gelber Appointed DEP Commissioner

DR: War essentially started at that point in time. It was the fall, I believe, of 1993. And we proceeded to a DEC administrative hearing—I think they held the first issues conference in Kingston, at the County Office Building. There were parties all over the place—Bobby Kennedy came in at that point, in time to intervene on behalf of the Riverkeeper. And the City was represented at the proceeding by Peter Lehner, from Corporate Counsel's office; he's now the Director of the Environmental Protection Bureau, under Spitzer, here in Albany.

We raised constitutional issues, we raised SEQRA segmentation violation issues, we raised a lot of issues. While we didn't see it quite that way, it started an avenue for discussion. In the spring of '94, Marilyn Gelber was appointed Commissioner of DEP: Al Appleton had been replaced. Mayor Giuliani had just been elected in November and took office in January of '94, and Marilyn started a different approach to the watershed leaders. She essentially didn't want to get involved with "the lawyers". I remember first meeting with her when she was somewhat disparaging of "the lawyers" and their effort. She laughs about it now. She was directing all of her attention to the elected officials. She had spent a lot of time in the Catskills; she thought that the approach that the City had previously taken was not the right one, and that they needed to talk to the communities and begin a new dialogue. She

started, as I'm sure she's shared with you, her sort of kitchen coffee klatches with various leaders, trying to understand what the City had done, what the concerns were and the complaints. And it was very effective.

She also brought a different vision to the issues. She spoke of not subjugating the region to regulation but rather of trying to find some path through the mountainsides to enable the communities to continue to grow—to plan for how they might grow and how they might protect the water supply at the same time. And she had a good vision, she developed a good vision—one that she could begin to communicate and—in some quarters in the watershed—have it be received favorably.

NB: When I talked with Keith Porter I was interested in hearing his view of Al Appleton. Can you give me your take on him?

DR: Al didn't reach out to the lawyers. Al didn't really want to communicate. I think he had a particularly hard time with Jeffrey—Jeff Baker—who was not very patient with Al's sort of impatience with the lawyers. Jeff was impatient with not getting answers to questions that we thought were legitimate. Al was particularly good at evading answering questions, but you know we didn't really let him get away with that for very long. I had very little interaction with Appleton. He enabled me to posit his positions in a way in which we could cause some level of embarrassment to the City and to take advantage of his missteps. He was a good foil, and I don't think he intended to be. I'm not sure how well advised he was at that time, whether he took advice or not. I have no way of measuring or gauging that.

Track 7

Pataki Elected

NB: Okay, so Marilyn Gelber is in now and Giuliani is in. Pataki is not in yet.

DR: No, we're still awhile away from the gubernatorial elections. Cuomo was still in office. We had made efforts to the Cuomo administration, to outreach to their office to get them, well, first of all, to help support the Coalition. We did that through the Assembly as well—Assemblyman Hinchey—which was disappointing because Hinchey basically did not want to support the Coalition in the beginning. And he saw that land needed to be acquired and protected and the regulation was good and it was a disappointing position. The Cuomo administration similarly didn't want to touch the mediation; I don't know whether it was because Bobby Kennedy was, you know, rattling and taking positions. We eventually persuaded Lang Marsh, who was—first the Acting Commissioner and then later Commissioner of the New York State Department of Environmental Conservation—to try and work on the mediation side of things. I guess I was a pretty constant voice for believing that there was some way to get the two

sides together if some pressure could be put on the City to back off some of the silly levels of regulation that they had, that were just unnecessary.

So Lang did convene a series of meetings with all of the parties. And we started on a series of dialogue meetings. Marilyn was supportive of that—this was in '94—and we started making some progress. With the City, there wasn't as much progress as we wanted. Eventually, in the fall, Marilyn produced what was the City's offer of settlement. There were a number of programs that actually found their way into the MOA [Memorandum of Agreement] that had their kernel at that point in time, their germination point. The money—it was minor amounts of money—wasn't there. No money for economic assistance in any way.

And then we had the surprise of the election. Cuomo was not re-elected—Governor Pataki was elected. There was some level of excitement—at least for the upstate communities—because he was a Republican, he grew up in the watershed east-of-Hudson, he understood the issues of the City's regulation east-of-Hudson and was someone who would listen to our side of the issues.

And so that brought a great deal of scurrying around in the postelection November–December period for reaching out to folks in the administration. We certainly did that. Again, we voiced—at least from the perspective of our firm—that this was something that could be negotiated. The environmental groups themselves were not actively involved in any of the negotiations, in any of the discussions between the upstate communities—and it was primarily west-of-Hudson at that time: one or two representatives from east-of-Hudson, and New York City, and the state agencies. Riverkeeper was not part of that discussion at all at the City level. Now there may have been discussions between New York City and some of the environmental groups, but that was not something that we were party to.

Track 8

Michael Finnegan Spearheads Mediation

DR: And Mike Finnegan grabbed hold of the issue and heard us, you know, quizzed us on whether we really thought there was a possibility of doing something. There was always the question of whether the upstate communities were really together on things. And they were. By then, they were pretty unified.

The Executive Committee had congealed—the eleven representatives—into a very, very tight working group. They may have argued about things and how to do things, but they learned how to communicate with each other, they understood each other's biases. We could have meetings in which some steam was let off but nevertheless could work together. They listened to us most of the time. They gave us grief some of the time. But we had a mutual respect for what each of us knew.

As lawyers, we had to respect what they knew about their watershed constituencies and what would fly and what wouldn't fly, and what you could push on and what you could give, what you couldn't give, how it would play out. They respected our judgment about what was possible and what wasn't from a legal point of view, from a regulatory point of view, from a political perspective in Albany, and eventually when we got into the final throes of negotiations with the City and state a year later what would fly politically there.

So we—I—felt comfortable in conveying to the Governor's Office that the west-of-Hudson communities could be counted on to be reasonable and rational at the end of the day. We knew we couldn't make the City go away. The question was asked, mind you. And we were asked to research whether that was possible. But our conclusion was that we couldn't make the City go away. So Governor Pataki took on the watershed as his first major environmental initiative.

NB: Great. Okay.

DR: In the spring, a process began. The environmental community was not yet at the table. Michael kept them out of the picture for the time being. It wasn't ripe yet to bring the environmental community in. We started with a new set of people coming from the Governor's Office and the state agencies—some of the state agency folks were all the same between the administrations—and that was actually a very good thing because they were aware of what the issues were; you didn't have to re-educate people about what they were. They had a good understanding of them. These were by and large professional career people.

But the Governor made it clear to us, personally and through Michael, of how important he saw resolving this issue was. You know, nine million people rely on the water supply for their daily drinking water; and the watershed communities have a history. He respected the history of the livelihoods that had been created, born, and that preceded those today in the watershed, and so there was respect. I think that aided the opportunities for the west-of-Hudson community to participate meaningfully in the process, because you had a key player respecting the rights of the upstate communities. There wasn't an argument over that issue. You didn't have to fight about gaining that.

Marilyn brought that, too, because she conveyed the same perspective of respect for the local issues. So you had a good setting, finally. There was some unequalness of position in terms of financial resources, but thankfully, between Charlie Cook's Member Items and, quite frankly, our firm's willingness to continue to work with the hope that someday we would get paid for our time and that something good would come out of it, the economic disparity between upstate and downstate didn't present a problem. We all talked about this at various times, both in the watershed meetings west-of-Hudson but certainly among the negotiators—that reaching agreement was larger than any of the individual parties' interests. It was something larger than

yourselves, both professionally and personally, from all parties' perspectives; and that was a constant reminder, when things got bad and you really disagreed on position, that it was almost sort of an ethical obligation to try to find some middle ground on each one of the issues. Or to push very hard on issues that just were critically important, but to make sure the other side knew they were critically important. So it became an element, sort of an interesting aspect, of the nature of how you reach agreement on things and how you communicate with each other.

Track 9

Ground Rules for Negotiations

DR: That process started pretty much in April of '95, and continued on through November, which is when the agreement in principle was announced. The environmental community was actually brought into the negotiations in a formal sense in July. A number of environmental groups came in, were willing to come in. A number didn't want to participate—NRDC [Natural Resources Defense Council] was probably the most significant among them not to participate. But the caveat was that to the extent that the upstate communities east- and west-of-Hudson and the City had agreed on issues and had put them on the agreement side—all subject to eventually the final Agreement with all of the issues—those issues would not be reopened for discussion. Another technique that was very pragmatic in terms of how you negotiate things was that you don't finally agree to everything until the end of the day. But you need some way of moving the issues, so you move them to the side of the table if you couldn't come to agreement, or you moved them off the table, if you were generally in agreement. Then you come back to everything at the end of the day to see if it all hangs together.

But they were told, "We're not reopening those agreements that are on the side. Whether you like them or not, you're coming to the table with the expectation that those agreements that have been reached up to this point are not going to be touched." And that, you know, was sort of a tough move on the part of Finnegan, but it was effective at bringing people in.

NB: So Finnegan was really the one who laid down that ground rule.

DR: That was a Finnegan ground rule. There were a number of things he did that were quite clever and effective for the purposes of moving things along. Not everybody agreed with all of those side issues. You had different levels of strength of feeling about whether they made sense after you got back to them, but because you knew you really couldn't get at them again, you were willing to abide by them for the time being. And again—as we used to say to the press every day—it provided some "broad, sweeping, incremental progress." That was the press quote every day. And it was accurate. But, you know, there were no details.

NB: I see. No details came out. Otherwise, you would have gotten public reaction and totally sidetracked the negotiations.

DR: It would have been very difficult because it was such a complex negotiation. We had pages and pages of lists of issues—some more important than others, admittedly. And vast categories of issues. You had the land acquisition issues, you had the pure regulatory issues, you had the prohibition of water in terms of the reg issues, you had the historical construct of issues and reparations; so it was too complex to try to explain every day why you reached agreement on this one little narrow piece. And I'm not sure you would have had an agreement if you had gone that way. But that was the presumption. It was particularly difficult, I thought, for the upstate leaders to abide by that. They had the hardest time because they're the closest to the public—and that's the beauty of our democratic system—so when they abided by that and they lived with that, sometimes it was, "Don't tell me. I don't want to be in a position of having to know the answer that I can't give to somebody. You guys just take care of it. And I agree with you, but don't tell me the details."

NB: Interesting.

DR: And some couldn't abide by that, but I think honestly they had the hardest time with it. And Mike Finnegan knew they would have the hardest time with it. And he and the Governor reached out to the group—the larger group—a couple of times directly and basically said, "Listen, this is how we think you need to do it in order to reach an agreement. We're not going to abandon you here, but this is what we need you to be able to do."

NB: Interesting. I've heard people talk about Finnegan, and how he and the negotiating team just sort of said, "You've got to do it yourselves." Do you know what his background was in terms of negotiations?

DR: What Michael had done in negotiations? I believe Michael had been in the City of Peekskill government. He had worked with municipalities in the past. He had a good political sense. I think he had worked on the Governor's earlier campaigns in the Assembly. He had a real good sense of that, and he just understood it well. I was very pleased and privileged to be able to pick up the phone and talk to him when something was important. He certainly gave me that access during the course of the negotiations. And sometimes it was real important because at times we had some issues that I needed to back-channel to him on that were really troubling people, and he would provide that avenue for contact, even though he wasn't involved in the day-to-day—you know, the hundreds of meetings that we had.

But on those bigger issues, because he understood the needs of the local officials from a political point of view—I don't mean partisan politics, I just mean the needs of how you communicate with your residents and citizens, how you decide what's important—he provided an opportunity for them, for the negotiation to reflect input

that would be important at the end of the day in settling things, in agreeing to things, and being able to go back to the community and say, “We couldn’t get everything for you, but we were able to get this for you and this is valuable because . . .” There were lots of dimensions to the Agreement that Michael understood; and whether or not he had direct responsibility for them, I can’t say, but he certainly had a key role to play. He was a very impressive person, coming to state government with as little experience as he had in the state government context; he had some innate understanding of governments and how they have to reach agreement.

Track 10

Agreement in Principle

NB: OK, so you finally got an Agreement.

DR: Well, we had an agreement-in-principle. We were all a little bit surprised by it, because we didn’t think we were all there yet, and we had gotten a call from the Governor’s Office that the Governor was going to be announcing this agreement. And so we all scurried around. There was some concern because there were bi-party discussions, but not multi-party discussions, on a bunch of issues. The environmentalists were concerned about certain issues, and we hadn’t talked to them about it. And again, Michael was able to sort of get the parties to agree to this agreement in principle, recognizing that there were still issues that we needed to hammer out details over. I think what emerged, though—for the first time—was that the State was willing to put some dollars on the table, and that was a fundamental thing.

The biggest issues that we had—we had a couple of difficult moments in September through October of ’95—had to do with money, and how much money the City was willing to pay on a bunch of programs. No surprise. I mean, I knew money would be an issue, and particularly the money for economic development in the watershed. So when we finally got to that, we were worlds apart. And Michael made it clear that we had to work that Agreement out with the City. The State would be there to provide you with some insight, provide you with some balance, if you will, a backboard to bounce things off of, but the Agreement with the City was something we had to negotiate with New York City ourselves.

And the City’s negotiators were not the lawyers who were at the table. The City’s negotiator was Peter Powers. And Peter was a good negotiator. But Peter understood the political needs, again, of the upstate communities. You’re talking about asking them to take on an enormous responsibility for additional regulatory controls, for helping the City maintain the quality of the water supply and, you know, it doesn’t come for nothing. You know, what’s the tradeoff? What do the upstate communities get? And they were looking for economic aid.

And the City had a real tough time with providing economic aid or economic development aid, because the environmental communities within the City in particular and the City Club, and a whole variety of City folks, couldn't understand the logic of, "I thought you were going to protect that water supply. Why would you allow the area to continue to be developed?" And they were drawing a parallel between the "bad experience," as it is characterized east-of-Hudson—over-development, development right to the edge of the reservoirs—and what life was like west-of-Hudson, which was totally different, and which was not subject to the same risks.

So when you have to explain things a lot to people, it's not easy politically. Because you need people to take the time to educate themselves about details. It's a lot easier to sort of shoot from the hip and have an opinion. But when you have to educate yourself about why you have that opinion, it takes a little more doing. So they made some efforts with the environmental groups within the City.

I think that's where Finnegan played another key role. The City administration, the Giuliani administration, did not have a good relationship with most of the environmental groups that were parties to these proceedings. The administration was constantly being shot at by those same groups. So there wasn't a regular line of communication, if you will. Michael provided that, as a back channel to the environmental groups—that was another sort of key element of the negotiation. You gotta have direct channels and you have to have an opportunity for back channels.

Track 11

Back Channels

NB: Let's talk about this back channel business, because you mentioned that you had access to Finnegan also, and I'm interested in these negotiations in the wider sense of, you know, how do we bring peace to Bosnia and Israel.

DR: Well, it's the same sort of model that you would have in an international dispute. You have the direct line channels, you have the high profile channels—you know, the President doesn't go in to meet the opposition to sign the deal until it's there, except for those times when a President wants to intervene personally. Clinton certainly did that, and you had it in prior administrations where they take a risk. You know, Jimmy Carter tried to do that—to step in personally to meet with the other parties before all of the groundwork has been laid. But then there're other avenues—whether it's the French, or somebody else outside of the direct picture that provide the opportunity for making sure that communication occurs, that things are heard clearly.

For the longest time in the negotiations, the folks west-of-Hudson were so upset with the history of City behavior, they could not hear somebody from the City speak and hear what they were currently saying. Perry Shelton spent a lot of time with me giving

me history lessons about what had happened when the Pepacton Reservoir was being built and property was condemned. And it opened up my mind. I was a history major in college, so I like hearing history. But that aside, what Perry told me gave a context and a construct for speaking and listening to people that was different from what I had known previously. It enabled me to understand how to get people past some of the history, past some of their prejudices. The same is true for the environmental groups. They were so upset with what had happened east-of-Hudson and the damage that they saw there that they could not see that west-of-Hudson was different geographically, topographically. All they could see was replicating what had happened east-of-Hudson. Every dialogue, every discussion was colored by that view. You needed different ways to get people's attention—I mean, to get their attention differently. So those sort of back channels occurred.

There were lots of back channels. There was Finnegan with the environmental groups—and again, he played that sort of back channel role more than the role of direct negotiator. He left the day-to-day direct negotiation roles to Erin Crotty largely and to Nick Garlick, and to Glen Bruening and Ron Tramontano from the State Health Department. And they were good reporters of what was going on. That's another sort of keyfactor: You need people who are accurate reporters of events and of what is said and of how it is said. If your reporter is jaundiced in the way in which he or she characterize things because they're so caught up into it personally, you're not helping yourself. Because you may miss or lose an opportunity to hear things. So a lot of that was going on, and different people played different roles at various times—you know, Jeff Baker might play the bad cop to my good cop. There were times when I had to blow. There were times when, whether it was strategically decided or not, you have the sort of calm person blowing up in a negotiation discussion, and when those who are on the other side have to begin to question what they have done here.

And different people play different roles. Tony Bucca and Alan Rosa played different roles in the negotiating sessions depending upon the issue, on how strongly they felt about it, and so on. And I believe it was true for the City as well. Each one of the City representatives, and they had lots of them—they had twice as many or three times as many as we had at any given moment—played a different role. And after you've met with a group of people 50 or 100 times, you begin to know them after a while, and you know what to expect of them. The same is true of the environmental groups. The principal person who was representing the Riverkeeper was Dave Gordon. And Chris Meyer was representing NYPIRG. Deborah DeWan was representing, I guess at that point in time, the Catskill Center.

Track 12

Building Trust

DR: You know, different people played these roles and you began to understand them, but you also developed a personal relationship independent of your position with each one of these people. Their horns began to disappear after, you know, several months of negotiations. The prickliness that they might respond with to an issue or an individual might change. A sense of humor began to emerge. Because the discussions went on day after day—they would go on three or four days a week, all day long. Some of the sessions would last 10 or 12 hours.

And again, I found it remarkable that people from a bureaucracy were putting in more than an eight-hour or seven-and-a-half-hour day and were not complaining about it. Remember, you have all these governmental entities playing: I mean, we were hired guns, you know, sort of independent folks who were paid, but you had these government people who were on fixed salaries. This was important—this was critically important. We started to know what our various children were doing or planning to do, going to school or studying for school, etc. It all became part of a dialogue with folks. You didn't have to be mad at everybody every day to accomplish something. So there was another dynamic that developed.

I remember the story was in the *New York Times* about the pitcher of beer the first time we were in Schnabers (or whatever the name is) in Kingston. We were negotiating out of the County Office Building—you may know the name.

NB: I know—Marilyn said it, and it's perfect that you didn't know. It's so funny, it's the same story.

DR: Same story. And Elizabeth St. Clair, who was one of the lead negotiators—and a really classy person—for the City, was at these negotiating sessions, and we had separate tables outside at this beer and schnitzel and hot dog sort of restaurant in Kingston. Sometimes we would go to different restaurants in those days this was reasonably early on, it was in the early summer of '95 and I think it was Elizabeth's idea to send a pitcher of beer over to our table. And we thanked them for it. You know, we're questioning it: "Are we accepting something from the City?" "Can you accept the beer?" Actually, we reciprocated.

But we started sitting together at lunch, unless we had to prepare for the next argument. We began talking to each other as humans, as fellow human beings dealing with difficult issues, and that helped. It really helped the negotiations. Because you listened better to someone who you weren't so mad at that you couldn't hear or see straight. So at the end of the day, it's helpful to the Agreement. People have voiced the criticism that people gave away the store. Nothing was given away without having thought through whether it was appropriate to change your position

and seek something different or accept something a little bit short of what you wanted to have.

I think in retrospect that, in the end, there are things we gave away or agreed to—because, on reflection, we had not fully understood the complexity of some of those issues. I’m not sure we [ordinarily] would have agreed so quickly—although no one would say it was very quick on any of the agreements, and you weren’t giving anything away because you got something back for everything.

There were positions taken on regulatory issues where Jeff and I, in particular, and Kevin Young—who work in the environmental regulatory world every day—understood how difficult some of those issues would be. The communities who were not subject to much development wouldn’t necessarily have understood the issues as well. But they were looking at bigger picture issues than we were looking at, and the decision was made to agree to certain things—like some of the complexity of the storm water regs that are there. We probably would have (and did) urged them to fight longer and harder on. There was a decision made that, you know, they thought they could live with it and make it work. Those are judgments.

It got very contorted because the difficulty was more with EPA [United States Environmental Protection Agency].

Track 13

Kidnapping the EPA

DR: Rich Caspe was the principal person at EPA, who was involved in the discussions—you know, who really didn’t understand the west-of-Hudson watershed. I don’t know if anybody told you the story about having kidnapped him at lunchtime. There was one day when we were very frustrated with EPA because they didn’t seem to understand definitions of watercourses and how that would play out under the proposed regulations. They couldn’t understand why we were so concerned about setbacks from certain watercourses.

I think we were in Poughkeepsie that day, and we had gone to lunch. And I basically told the City folks, “We’re going to be a little bit longer coming back,” and we put Rich Caspe in a car—I think Alan Rosa was with us—we had a couple of cars—and we essentially headed west on Route 28 and came back three hours later. We took him to Margaretville. And we stopped along the way a bunch of times and showed him the streams, the principal streams; why we were concerned about how close some of the stream corridors were to the developable land and the roadways. And we pointed out small watercourses to him, which we don’t think he understood were watercourses. He didn’t know they were watercourses, but under the definition in the proposed regulations, they were. And we think that helped in terms of moving him on a variety

of issues. Again, it was, you know, finding ways in which to educate people about things you knew about but that you couldn't get them to understand.

NB: That they didn't even know they didn't know. Right.

DR: Right. And it wasn't they were rejecting it because they just thought you were wrong. They just didn't know. There was no community of understanding.

NB: Just didn't have a clue. Right. Right.

DR: But there are lots of those little vignettes of moments that were important moments in the scheme of things.

Track 14

A Bit of History

NB: Talk a little bit about the history of what the watershed communities had gone through, and why that colored people's perceptions so much.

DR: One of the interesting things that I learned is the history of the City's acquisition of reservoirs west-of-Hudson. I knew a little bit about the City's acquisition east-of-Hudson, because I grew up in Westchester County and, while I'm not that old, as a historian if you will or at least someone who studies history, I knew about the Kensico, I knew the history; we had pulled out *New York Times* articles from the turn of the century when the City's watershed was being expanded into Westchester County. So I had a sense of how things were done.

As I said, Perry was a good teacher in terms of an understanding of the construction of the Pepacton Reservoir and Cannonsville Reservoir, which were not that long ago, in the '40s, '50s. The City exercised condemnation to acquire property. The City was all-powerful then—you know, the deals cut in the Legislature about what lands can be acquired and the powers that go with it. And today's modern notion of respecting the rights of a condemnee—the current owner of land—when the government wants to do something with it, didn't exist 40 or 50 years ago. It just wasn't something that was recognized as important. The government wanted to do something, they exercised the power, you got whatever they said you were entitled to, there wasn't a bar, if you will—either an environmental or real estate bar of lawyers—that practiced condemnation law to protect the rights of people. They tended to be farmers or people without a lot of assets in terms of fighting City Hall (pardon the pun).

And so you had extreme circumstances—human circumstances—where livelihoods, generations of livelihoods, of land for which the trees were felled by generations three or four back, were simply taken away. They moved cemeteries—I mean, just the

notion of respecting the dead. There was no sensitivity that was brought to bear. There was no public hearing notice. What we do today about bringing the public in, about the rights of the public to know—these are notions that came about in the '60s and '70s as a principle. They didn't exist in the '50s, in the '40s and the '30s, and earlier; so if your land was taken or your uncle's land was taken or your grandfather's was taken by these means, you didn't forget this, this was passed on to you. And there were thousands of acres taken, mind you, for the reservoirs, so they affected a lot of people; it isn't that there were tens of thousands of people to be affected, but this is a small, close-knit community. What I learned subsequently was that they actually taught these things in the sort of history lectures in the schools in the watershed. Whether it was a required curriculum, I can't tell you. The State didn't require it, but it was done. And the history was explained.

So whether your family was directly involved or not, it was passed on and you learned about it at a time when you were influenced as a young person. So there was a profoundness to the history of how the City treated people in the watershed, which was pervasive throughout the watershed. And today's modern sense of these things was not present. It's hard, because if you look at who participates in the City's regulatory environment, the negotiators are all young people, 40 or less. They're all pushing 50 today. But when this was all going on ten years ago, when it started, this was a young group of people who had no clue about this stuff. If you grew up in the City, you didn't learn about these things. It was not something that was understood. And you couldn't imagine government doing something like that. If you're a part of government, for example, you couldn't imagine government doing something wrong or hurtful or thoughtless. You're doing what's in the public good, in the public interest.

So if you don't have a clue as to the context of what had occurred before your time, there's no way you can communicate with folks who view it so differently. You may be saying all the right words as far as you can, but you don't have a vocabulary that will get across to these other folks and communicate things that will give them comfort. Because you haven't even recognized what they've been through, or what their ancestors went through. So, you know, it is in one sense almost religious; if you look at the Arab-Israeli and the Serbo-Croatian conflicts, you look at a sort of religious-based, spiritual-based anger and fear and mistrust that was also prevalent here. So that had to be overcome in some way. Again, that is probably one of the more remarkable things about this Agreement: that despite that history, people were able to come together and begin to listen.

But I think the credit lies more with the west-of-Hudson communities' willingness to re-examine how to move forward rather than the City or State folks involved, or indeed us. Because they had to overcome the greatest level of history that would affect the future. They had to revisit issues. I imagine it would be particularly difficult for any one of the leaders—Alan Rosa—to talk to a parent or a grandparent about what they were doing today in these negotiations and be able to explain why they

thought that you could trust the City or trust the negotiators. And basically the position we took was, “You’re not going to trust the City. You’re not going to trust these individuals. The Agreement itself has to be capable of being crafted so that while we all must learn to live with each other and we hope for that to come over time you don’t have to rely on goodwill or trust to protect your interests.”

Track 15

Implementing the Agreement

DR: That was our goal, and that’s why it took from November–December of ’95 to January of ’97, because everybody was concerned that the players at the table will all be getting gray, and we need the Agreement, the principles that we’ve agreed upon, the elements that we’ve agreed upon to be implemented and be required to be implemented regardless of who is in the various seats as this goes on.

But part of the brilliance of Michael Finnegan was he envisioned this Watershed Partnership Council, and the construct that we had worked for, the Catskill Watershed Corporation, of having a place, a body where some of the same players—not individually, but in terms of interests—could be represented and you could prevent some of a repeat of the bad history of behavior. Because you would have someone else watching.

It’s interesting if you counterpose the notion of keeping the public out of the negotiations with the advantages of having public scrutiny on the behavior of governments—largely governments, different levels, but governments—in behaving and regulating in the future and how they’re going to implement this. You know, they hid from the public so that an Agreement could be crafted, always subject to public approval at the end of the day, but just to get to that point of agreement.

And then you construct two largely public organizations—a not-for-profit Catskill Watershed Corporation, where all the communities are represented, but there’s also a Governor’s Office appointee, an environmentalist, a State official, and City officials all at the table responsible for implementing all of these programs, all open to public scrutiny.

We could have constructed this as private, not-for-profit, with no public involvement, with no public scrutiny. But we decided, no, we wanted to open it up, and that was coming from the government officials. And then there is this Watershed Partnership Council, which is essentially there as a safeguard to make sure that important issues are talked about before they bubble up and become major litigation battles or political fights.

NB: I don't really know about that group. I know about the Catskill Watershed Corporation, but not the Partnership.

DR: The Watershed Partnership title is the Watershed Partnership and Protection Council—the WPPC. It's comprised of representatives from east-of-Hudson communities, west-of-Hudson communities, New York City, New York State, the Health Departments of both the City and the State, representatives from the City, and community groups. Right now, Commissioner Crotty is the chair of it. Secretary of State Treadwell was its first chairman. And it meets several times a year, or more if you need it to, to talk about watershed issues: how the FAD—the Filtration Avoidance Determination—of the EPA is being implemented and how the various programs under it are being operated.

But it's a place where people can talk and it's again another device we created in the Agreement. It doesn't have separate statutory authority, but it's a place where all these players can meet and talk about watershed-related issues. It's a place where you can threaten to bring an issue to the Watershed Council. And just the mere threat of it gets people talking. It's a great device, and if you step back and you don't trust government for the moment—and there's a lot of people who rightfully don't trust government—it's a way of keeping the government behaving, because they have to account to somebody.

In the past, the City didn't have to talk to anybody. There was no place where you could force the City to come publicly and talk, to say why they were doing something. But if you have a partnership meeting and the City's out doing something, you can bring to the table, "City. Why are you doing this?" So it empowers those groups that have less power. Again, it's a very useful thing.

NB: One last question: Tell me what you think of Robert Kennedy.

DR: My impressions of Bobby have evolved over I guess the eight years that I have watched him in this forum. He was not welcome west-of-Hudson in the beginning at all. He was viewed as dogmatic, that he didn't understand the west-of-Hudson communities, that his issues were east-of-Hudson and he was attempting to simply transport them west-of-Hudson when it suited his purpose. There were also concerns—and this is not personal, but in terms of where the west-of-Hudson communities were coming from—of, "Who elected him? Where did he get his basis? He's the Riverkeeper. He's the Hudson River person. What does he have to do with the west-of-Hudson watershed? He doesn't know our issues," etc. So there was a great resistance to him.

To his credit, he's a very charming person, and he will study issues so that he can learn; he teaches himself and educates himself about things. There might be a dispute over whether it's selective education or not, but more often than not, he is capable of being thoughtful about an issue if you get to him, if you prevail and push

to make sure that he talks to you about an issue and listens to you. I think many of the leaders west-of-Hudson—Alan Rosa, in particular—have had that opportunity. Alan has taken that opportunity, or made that opportunity, to talk to Bobby about issues.

And, you know, the reality is that he's influential. He was influential as a Democrat in this Republican-led initiative. He chose to be that way. He could have backed out like NRDC did and could have had nothing to do with the Agreement. So he took some political risks himself. He can be a real pain on issues when he doesn't want to listen to you or when he is convinced that he's right—he's no different from the rest of us in that regard. But he's someone to be reckoned with because he is able to be listened to, regardless of which side of the aisle you come from—at least in Albany, and perhaps in Washington as well.

Part of my business is to make sure that people understand who the players are and what power they have. It's not enough to say you don't like somebody, and in counseling the watershed community, part of my role is—and again, I'm not always welcome in this role—to just say it as I see it, call it as I see it, and give them my best guidance on how you deal with a particular issue.

Sometimes you have to convince people to do the opposite of what they are inclined to do, and Bobby is one of those sorts of folks. If they had their choice, people would say, "He's irrelevant to what we do." But, realistically, he's not. He's going to remain a player in environmental circles for a long time to come, and he's made watershed issues important and important to him, and there may be opportunities for the watershed communities to take advantage of that, particularly if there are things that they want to do that he's in full agreement with. So at the end of the day there is respect for all of the players in this. Because there has to be. But in answer to your question, those are my thoughts.

NB: That's great. I could go on and on.

DR: I gotta get to a phone call.