



October 16, 2014

Ms. Catarina de Albuquerque
United Nations
Office of the High Commissioner for Human Rights
Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation

Ms. Leilani Farha
United Nations
Office of the High Commissioner for Human Rights
Special Rapporteur on Adequate Housing

Dear Special Rapporteurs de Albuquerque and Farha:

The ACLU of Michigan and the NAACP Legal Defense and Educational Fund, Inc. (LDF) are civil rights law organizations dedicated to eliminating racial discrimination and securing civil liberties for all Americans. We are currently serving as legal consultants in legal proceedings to compel Detroit to restore water service to its residents. We write to provide the United Nations' Office of the High Commissioner for Human Rights with additional background on Detroit Water and Sewerage Department's (DWSD) massive water shut-off campaign and its impact on African Americans and low-income Detroiters. These facts support our conclusion that the water shut-off campaign violates both civil and human rights laws and norms. These claims were presented to the bankruptcy court managing Detroit's insolvency. We also provide in this letter a summary of the ongoing litigation against Detroit and DWSD. We hope that this information will aid you in your fact-finding investigation in Detroit.

At issue are four core violations of human and civil rights:

- More than 27,000 Detroit residents have had their water service disconnected this year, imperiling their health, family relationships, and dignity.
- Residents have been denied a legal remedy because the only court with authority to hear claims against DWSD during the pendency of Detroit's bankruptcy has refused to accept jurisdiction over the residents' claims.
- Many residents have been denied due process, including notice of impending shut-off and the opportunity to contest their bills or avoid shut-off in the case of medical necessity.
- The shut-offs disproportionately affect Detroit's African-American residents.

We hope to place these issues in the broader context of a regional and national epidemic related to water affordability.

The City of Detroit, and all cities in the United States, must ensure that all citizens have access to clean water on an affordable basis.¹ DWSD must cease its policy of mass water shut-offs and restore service to occupied homes without water immediately. The City and DWSD must also work together to implement a water affordability plan that guarantees that no household is required to pay more than 2.5% of its income towards its water bill, as recommended by the U.S. Environmental Protection Agency and advocated by the People's Water Board Coalition and other Michigan advocates for over a decade. The State of Michigan and the Federal government should provide assistance in the furtherance of these goals.

Representatives from the ACLU of Michigan and LDF will be available at the October 18, 2014, meeting at the offices of Michigan Welfare Rights Organization, and would welcome the opportunity to meet with you at that time. In the meantime, we hope this letter will supplement the information provided to you by the People's Water Board Coalition and aid in your investigation and report.

Background

On July 18, 2013, the City of Detroit filed the largest municipal bankruptcy in American history, with immense ramifications that have disproportionately burdened the City's elderly and impoverished residents. Over the past few months, DWSD has dealt the City's most vulnerable residents another heavy blow. Since approximately March of this year, residential customers have been the target of an aggressive campaign by DWSD to terminate the water service of thousands of individuals, often without the requisite notice established by DWSD's own policies and without regard to the residents' ability to pay or their serious health needs.

The situation in Detroit is further complicated by a variety of factors, not the least of which has been a curtailment of democracy. In March 2013, the State of Michigan appointed Kevyn Orr as Emergency Manager of Detroit and granted him unprecedented control over all City operations and finances. With the appointment of an Emergency Manager, the residents of Detroit no longer had a voice in city governance, as their democratically elected city council and mayor became virtually powerless. It was Orr's decision, with the approval of the governor, to take Detroit into bankruptcy. Furthermore, Orr was a staunch supporter of DWSD's aggressive shut-off campaign against residential customers.²

The human rights implications of this campaign have garnered significant national and international attention, including the attention of the United Nations' Office of the High Commissioner for Human Rights.³ Fearing that DWSD's actions would further embarrass the

¹ See United Nations International Covenant on Economic, Social and Cultural Rights (CESCR), art. 11(1), Dec. 16, 1966, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>; United Nations Office of the High Commissioner for Human Rights, *What Are the Human Rights to Water & Sanitation?*, SPECIAL RAPPORTEUR ON THE HUMAN RIGHT TO SAFE DRINKING WATER AND SANITATION, http://sr-watersanitation.ohchr.org/en/rightstowater_1.html (last visited Oct. 15, 2014) (The right to safe and affordable drinking water "is derived from the right to an adequate standard of living as consecrated in article 11 of the International Covenant on Economic, Social and Cultural Rights, as well as in other human rights treaties.").

² *Forget left and right on water shut-offs. Let's figure out how to fix the non-payment problem*, MICHIGANRADIO.ORG, July 21, 2014, <http://michiganradio.org/post/forget-left-and-right-water-shut-offs-lets-figure-out-how-fix-non-payment-problem>.

³ Detroit: Disconnecting water from people who cannot pay - an affront to human rights, June 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>.

City and harm the bankruptcy proceedings, Bankruptcy Judge Steven W. Rhodes, who is presiding over the bankruptcy, called DWSD officials into court on July 21, 2014, to address concerns raised by the water shut-offs. At that time, DWSD Deputy Director Daryl Latimer announced that DWSD would institute a 10-day “pause” on shut-offs to allow those who were at risk of losing water service to make payment arrangements. This moratorium on shut-offs was later extended until August 24, 2014, and the City developed a “10-point plan” with the goal of improving customer service and simplifying payment assistance for customers.

Since the moratorium on water shut-offs ended in late August, however, a private contractor has resumed cutting off water to Detroit’s residential customers at a rate of about 1,100 homes per week, according to the latest statistics provided by DWSD to the ACLU of Michigan. In September alone, water was shut off to 5,114 homes. About 2,200 of those homes have had their water service restored, leaving more than 2,800 homes that lost service during September still without water.

In total, since January of this year, DWSD reports that it has shut off water to over 27,000 customers. According to DWSD Deputy Director Daryl Latimer, 16,000 customers have entered into payment plans but Mr. Latimer was unsure how many homes currently remain without water.⁴ Recent reports put that number around 12,000. Neither DWSD nor the city have done an assessment of whether customers in occupied homes without water service have the ability to pay.

Some of these are certainly vacant and abandoned properties, but DWSD acknowledges that it does not know how many homes without water are vacant and how many are occupied.⁵ And even now, despite the City’s 10-point plan, thousands of residents are continuing to lose access to water, a vital resource they cannot live without.

Among these residents is Avellah J., a 41-year-old woman whose family had their water shut off on October 9, 2014. This family of five people occupies both residences in a duplex that receives just one water bill, and they currently owe \$800 for water services. Avellah says that, after her sister’s disability payments were recently cancelled, she is currently the only person in the two combined households with any income, which is less than \$700 a month. With other utility bills costing her as much as \$300 a month (due to a payment plan to catch up on past electric bills), her monthly car payment, and other household expenses, there just is not enough money to pay all of her outstanding bills.

“Our ends aren’t meeting,” Avellah said, when describing the situation.

Her plan is to seek assistance from other family members in the hopes of raising enough funds to make a down payment on the past-due amount on her water bill and get the water turned back on.

How long she can keep the water on is another question.

“We’re already behind,” she said. “There’s not more money coming in, so how are we going to catch up?”

⁴ See Evid. Hr’g re: Mot. for Temporary Restraining Order, Tr. 102, 126, Sept. 23, 2014.

⁵ See Evid. Hr’g re: Mot. for Temporary Restraining Order, Tr. 75-77, Sept. 22, 2014.

Avellah J.'s story, sadly, is not unique. In a City where nearly 40% of residents live below the federal poverty line⁶ – which is \$23,850 for a family of 4⁷ – thousands of residents are at risk of losing water service because they simply cannot afford to pay the bills.

The Lawsuit Against DWSD

In an effort to address the needs of Detroit residents who have been affected by the recent mass shut-offs, and who have long-term affordability issues, on July 21, 2014, a team of Michigan attorneys filed a lawsuit, styled *Lyda v. City of Detroit*, on behalf of community groups and Detroit residents who have had their water shut off or are at risk of having it shut off.⁸ The lawsuit claims that DWSD's mass residential shut-off campaign constituted a breach of executory contract under bankruptcy law; violated the Due Process Clause and Equal Protection Clause of the U.S. Constitution; and created a public health crisis, among other allegations.⁹

The ACLU of Michigan and LDF are serving as expert consultants to this critical human rights lawsuit that seeks an injunction ordering DWSD to restore water service, halt future shut-offs, and implement a water affordability plan.¹⁰

One effect of the pending bankruptcy is that any lawsuit filed against the City and its departments in federal district court, which has unquestionable authority over Plaintiffs' claims, is placed on hold until the bankruptcy concludes. However, the federal bankruptcy court is authorized to hear lawsuits against the City that concern the bankruptcy. Furthermore, because the City is always prohibited from committing acts that violate the United States Constitution, the bankruptcy court also has jurisdiction to resolve claims of unconstitutional conduct by the City. Due to the potentially severe human rights and public health consequences of DWSD's acts, the litigation team could not afford to wait until the bankruptcy ended to take action. Because the lawsuit filed against DWSD includes claims that involve the bankruptcy as well as constitutional claims, we strongly believe that the bankruptcy court has the jurisdiction to order the requested relief.

Over the course of a two-day hearing on the issues presented by this case, Plaintiffs offered testimony from low-income Detroit residents whose water service had been terminated without notice, including some who did not have enough money to enter into a payment plan to get it restored.¹¹ Plaintiffs also presented experts on the issue of water affordability, and health care

⁶ U.S. Census Bureau, 2012 American Community Survey, Selected Economic Characteristics for Detroit, Michigan, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml.

⁷ U.S. Dept. of Health and Human Services, 2014 Poverty Guidelines, <http://aspe.hhs.gov/poverty/14poverty.cfm>.

⁸ Around the same time the lawsuit was filed, the ACLU of Michigan and LDF wrote to the Mayor of Detroit, the Emergency Manager of Detroit, and the head of the Detroit Water and Sewerage Department (DWSD) to express our concern over the aggressive policy of mass water shut-offs instituted by DWSD earlier this year. *See* Exhibit 1. In particular, our organizations were and are concerned about the due process and equal protection violations that DWSD has committed, and continues to commit, against its customers. We also remain concerned that the water shut-offs disproportionately affect Detroit's majority African-American population.

⁹ Amend. Compl., *Lyda v. City of Detroit*, Dkt. No. 5, Case No. 14-4732 (Bankr. E.D. Mich. Jul. 30, 2014).

¹⁰ In response to our July letter, DWSD expressed interest in meeting with the ACLU of Michigan and LDF, which we did, jointly with the litigation team, in our capacity as consultants. However, those meetings were not fruitful, as the parties were not able to agree on a resolution to the litigation, and could not develop either an immediate or long-term strategy to assist Detroit's most vulnerable citizens at risk of losing their water service in the future.

¹¹ *See, e.g.*, H'rg re: Mot. For Temporary Restraining Order, Tr. 23, 30, Sept. 22, 2014 (Testimony of T. Peasant).

and public health professionals to discuss the dangers associated with the lack of access to clean and potable water. The Defendants offered testimony from several DWSD officials, who acknowledged that they did not know how many of the residences without water service were occupied or whether those residences were home to children, the elderly, or people with chronic health issues or disabilities.¹² These officials also acknowledged that DWSD no longer adheres to certain aspects of its own rules and procedures governing water shut-offs, although those rules and procedures are still posted on DWSD's website,¹³ giving customers the impression that they are still in effect.

Unfortunately, despite this evidence, Judge Rhodes found that the relief sought by Plaintiffs was beyond the scope of his limited authority and that Plaintiffs' constitutional claims were deficient as a matter of law. This decision has left Detroiters with no legal forum to seek relief during the pendency of the bankruptcy. Plaintiffs' litigation team has requested reconsideration of this decision.

Ongoing Human Rights Violations

Although Judge Rhodes found that he did not have authority to order the relief sought by Plaintiffs, he made several very significant findings that highlight the continuing human rights and public health crisis created by DWSD's insistence on pursuing its aggressive water shut-off program.

First, Judge Rhodes found that it was unclear "that the City's ten-point plan will be of any long-term assistance to customers . . . with insufficient income to pay their bills." As Special Rapporteur de Albuquerque previously noted: "Disconnections [of water service] due to non-payment are only permissible if it can be shown that the resident is able to pay but is not paying. In other words, when there is genuine inability to pay, human rights simply forbids disconnections."¹⁴ Indeed, the International Covenant on Economic, Social and Cultural Rights, to which the United States is a party, declares "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."¹⁵ An adequate standard of living, including adequate housing, must include consistent access to clean, potable water.

Second, Judge Rhodes found that a resident who is without water, "especially if the service is lost for more than a few days," suffers "the risk of serious and even life-threatening medical conditions as well as adverse consequences in employment, in family and personal relations, and for children in their education."¹⁶ Placing customers at risk of these harms is inconsistent with the norms set out in the Universal Declaration of Human Rights, which states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food,

¹² See *id.* at 77-78, Sept. 22, 2014 (Testimony of S. McCormick); *Id.* at 102-103, Sept. 23, 2014 (Testimony of D. Latimer).

¹³ *Id.* at 99-100, Sept. 23, 2014 (Testimony of D. Latimer).

¹⁴ Detroit: Disconnecting water from people who cannot pay - an affront to human rights, June 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>.

¹⁵ CESCR, art. 11(1).

¹⁶ Hr'g re: Mot. for Temporary Restraining Order, Tr. 20, Sept. 29, 2014.

clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.¹⁷

Third, Judge Rhodes found that although DWSD's policies provide that a water shut-off may be delayed for customers with special needs or medical conditions, DWSD has not made customers aware of this relief or how to pursue it. Thus, people with chronic health issues have had their water service terminated when it should have been, at a minimum, delayed.¹⁸ The termination of water service to those with special needs and medical conditions who cannot afford to pay similarly contravenes the intent of the international human rights treaties to which the United States is a party.

Finally, Judge Rhodes rejected the notion that, because public health officials have not recorded any health consequences resulting from water shut-offs to date, such consequences do not exist. He noted that the records kept by those officials have not been created for the express purpose of measuring the effects of mass water shut-offs, and he was unwilling to believe that "these records establish that there have not been and will not be any significant health consequences resulting from the water terminations."¹⁹ DWSD's policies, which have left thousands of homes without access to water and risk creating a public health crisis, violate human rights standards that require "[t]he improvement of all aspects of environmental and industrial hygiene" and "[t]he prevention, treatment and control of epidemic, endemic, occupational and other disease."²⁰

Racially Discriminatory Effect of Shut-Offs

In addition to the violations of international health, housing, and economic security standards, as civil and human rights organizations, we remain gravely concerned about the racial impact of the DWSD water shut-offs. Without question, the disparate impact on African Americans of DWSD's massive shut-off campaign is in conflict with the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), to which the United States is a party. Specifically, CERD article one (1), prohibits practices that have a racially discriminatory effect, regardless of intent.²¹

The Committee on the Elimination of Racial Discrimination recently expressed concern over the "high degree of racial segregation and concentrated poverty in neighborhoods characterized by substandard conditions and services, including poor housing conditions" in the U.S.²² The

¹⁷ Universal Declaration of Human Rights, art. 25, Dec. 10, 1948, <http://www.un.org/en/documents/udhr/>; *see also* United Nations International Convention on the Elimination of All Forms of Racial Discrimination (CERD), art. 5(e)(iv), Dec. 21, 1965, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx> ("States Parties undertake to . . . guarantee the right of everyone . . . [t]he right to public health, medical care, social security, and social services."); CESC, art. 12(1) ("The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.") .

¹⁸ *See* Hr'g re: Mot. for Temporary Restraining Order, Tr. 17-18, Sept. 29, 2014.

¹⁹ *Id.* at 22.

²⁰ CERD, art. 12(1)(b) & (c).

²¹ *See* CERD, art. 1(1).

²² United Nations, Office of the UN High Commissioner for Human Rights, Committee on the Elimination of Racial Discrimination, Concluding observations of on the combined seventh to ninth periodic reports of United States of

demographic and socioeconomic realities of Detroit, a city whose population is over 82% African American with a high degree of poverty,²³ make the racial implications of DWSD's shut-off campaign especially stark. Peter Hammer, a law professor at Wayne State University and Director of the Damon J. Keith Center for Civil Rights, recently noted that the City has failed to address segregation and discriminatory housing practices in Detroit, and instead has focused only on "blight removal" and demolition of vacant properties.²⁴ "Blight removal" programs have long been used to displace African Americans from their homes,²⁵ and many believe the City's aggressive water shut-off policy, which renders homes uninhabitable, will have the effect – if not the stated intent – of driving African-American residents from the City.

Additionally, the systematic denial of due process to DWSD's residential customers, the majority of whom are African American, prior to service termination is inconsistent with CERD's guarantee of equality before the law, including the right to fair proceedings and the right to public health.²⁶ As previously noted, homes without access to water are not considered adequate. Service terminations are grounds for the removal of children by child welfare agencies, leading to another consequence that could disproportionately affect African-American children and families. This concern was previously raised by Special Rapporteur Farha.²⁷

The Creation of the Regional Water Authority

Our concern that DWSD is unable to meet the needs of the most vulnerable Detroiters has been heightened by the recent agreement by the Governor of Michigan, the Mayor of Detroit, and the Chief Executives of nearby Wayne, Oakland, and Macomb counties to create a new entity called the Great Lakes Water Authority (GLWA). The GLWA will lease DWSD's system-wide infrastructure for the next 40 years and provide water on a wholesale basis to about 4 million customers in southeast Michigan, including all current DWSD customers. This new authority as described is ill-equipped to address the needs across the region for financial assistance.

The Memorandum of Understanding requires the GLWA to set aside \$4.5 million the first year, and subsequently one-half percent (0.5%) of its budget annually, to help poor people across three major metropolitan counties, including Detroit, pay their water bills. We believe this program is woefully underfunded. No one can say for certain what the actual need is because, reportedly, no study has been conducted to determine what the actual need for assistance really is.²⁸

American, CERD/C/USA/CO/7-9, Paragraph 13, August 29, 2014, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/CERD_C_USA_CO_7-9_18102_E.pdf.

²³ U.S. Census Bureau, Profile of General Population and Housing Characteristics: 2010, http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml#none.

²⁴ Rose Hackman, *Detroit Demolishes its Ruins; 'The Capitalists Will Take Care of the Rest,'* THEGUARDIAN.COM, Sept. 28, 2014, <http://www.theguardian.com/money/2014/sep/28/detroit-demolish-ruins-capitalists-abandoned-buildings-plan>.

²⁵ Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 Yale L. & Pol'y Rev. 1, 6 (2003) ("While [the term] purportedly assessed the state of urban infrastructure, blight was often used to describe the negative impact of certain residents on city neighborhoods" and "justify" their removal.).

²⁶ CERD, art. 5(a) & (e)(iv).

²⁷ Detroit: Disconnecting water from people who cannot pay - an affront to human rights, June 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>.

²⁸ See Curt Guyette, *UN to Hear Residents' Testimony*, MICHIGANCITIZEN.COM, Oct. 15, 2014, <http://michigancitizen.com/detroit-water-leaks-boost-costs/>.

Basic math, however, suggests that the \$4.5 million will be inadequate to make water affordable to all southeast-Michigan residents living below or near the poverty line. In Detroit alone, there are about 170,000 residential customers in a city where about 40 percent of the residents live below the federal poverty line. That means nearly 70,000 homes, roughly speaking, are likely to require assistance in paying water and sewerage bills that have increased by nearly 120 percent in the last decade. The average monthly water bill in Detroit is \$75 for a family of four – nearly twice the United States average.²⁹ The \$4.5 million proposed in the Memorandum of Understanding works out to about \$65 in assistance per year for each of those 70,000 impoverished Detroit households, and leaves nothing for families in need throughout all of southeast Michigan who may also require assistance.

Water Affordability as a National Issue

Indeed, the problem of water affordability is not limited to Detroit. It is also a serious concern in a variety of ways across southeast Michigan and the nation.

In Detroit, residents have endured rate increases of nearly 120 percent over the past decade. This is due, in part, to the decline in the City’s population from nearly 2 million in the 1950s to fewer than 690,000 today, which has increased the burden on the remaining citizens to maintain an aging water and sewage infrastructure. Those who remain are often the poorest and least mobile citizens. As rates increased, so did the number of people who could not afford water and sewer services. As a result, the DWSD shut off water service to more than 27,000 customers in the first nine months of 2014. Of that number, it is estimated that approximately 8,000 customers have failed to have service restored.

Similarly, in Flint, Michigan, another urban area that has seen substantial population loss and high rates of poverty among the remaining residents, water bills now average \$140 per month.³⁰ There is anecdotal evidence that the high cost of water service is pushing some people to leave Flint. As the customer base declines, the cost of water rises even more dramatically for those who remain. Flint recently left the Detroit water system and began drawing its drinking water from the Flint River. However, contamination led to the issuance of at least three “boil water” advisories in August and September this year.³¹

In Highland Park, an enclave of about 10,400 people surrounded by Detroit, the City-owned water treatment plant has been shuttered. Water for Highland Park, which is located in Wayne County, is now purchased from DWSD, but will soon be provided by the GLWA. In November 2013, Detroit filed a lawsuit claiming that Highland Park owed nearly \$18 million in delinquent payments. If Detroit prevails, it would likely place an additional burden on the residents of

²⁹ Anna Clark, Op-Ed, *Going Without Water in Detroit*, [WWW.NYTIMES.COM](http://www.nytimes.com/2014/07/04/opinion/going-without-water-in-detroit.html?_r=0), Jul. 3, 2014, http://www.nytimes.com/2014/07/04/opinion/going-without-water-in-detroit.html?_r=0.

³⁰ Dominic Adams, *Flint Monthly Water and Sewer Bills Highest in Genesee County by \$35*, [WWW.MLIVE.COM](http://www.mlive.com/news/flint/index.ssf/2014/06/post_386.html), June 1, 2014, http://www.mlive.com/news/flint/index.ssf/2014/06/post_386.html.

³¹ *Boil Water Advisory Lifted in Flint*, [WWW.ABC12.COM](http://www.abc12.com/story/26294997/boil-water-advisory-lifted-in-flint), Aug. 15, 2014, <http://www.abc12.com/story/26294997/boil-water-advisory-lifted-in-flint>; Ron Fonger, *Flint Lifts Boil Water Advisories for West Side of City, Says Investigation of Contamination Will Continue*, [WWW.MLIVE.COM](http://www.mlive.com/news/flint/index.ssf/2014/09/flint_lifts_boil_water_advisor.html), Sept. 9, 2014, http://www.mlive.com/news/flint/index.ssf/2014/09/flint_lifts_boil_water_advisor.html (discussing two advisories in September).

Highland Park – where 46 percent of the population lives below the poverty line – as the city scrambles to find the money to pay the judgment. Furthermore, as described above, the \$4.5 million assistance fund that will be established as part of the GLWA is unlikely to have sufficient funds to assist low-income residents in both Detroit and the surrounding counties.

Beyond Detroit and southeast Michigan, water affordability is an issue across the United States. In June, Special Rapporteur de Albuquerque stated: “When I conducted an official country mission to the US in 2011, I encouraged the US Government to adopt a federal minimum standard on affordability for water and sanitation and a standard to provide protection against disconnections for vulnerable groups and people living in poverty. I also urged the Government to ensure due process guarantees in relation to water disconnection.”³² Yet, as highlighted in an April 2013 report produced by the Georgetown Law Human Rights Institute, standards have not been implemented on a national level – nor on a local level in many cities, like Detroit.

According to the report:

Rising water costs—and the increasing proportion of those costs borne by ratepayers—starkly highlight the lack of a national program to ensure low-income individuals’ access to water. Although the federal government has stepped in to help struggling households with other utility bills through programs such as the Low-Income Home Energy Assistance Program (LIHEAP), this has not been expanded to help keep water flowing to those same economically constrained households. Meanwhile, the National Drinking Water Advisory Council—a federal advisory committee created by the Safe Drinking Water Act—has proposed a nationwide Low-Income Water Assistance Program (LIWAP) to the Environmental Protection Agency. Over the past decade, non-governmental consumer advocacy organizations such as the National Consumer Law Center and the Utility Reform Network have increasingly drawn attention to impending infrastructure and regulatory costs in proceedings before various state public utility commissions.

....

As infrastructure costs rise, changes in water and wastewater infrastructure financing have contributed to the problem of unaffordable rate increases. Historically, federal and state governments would cover some long-term costs in the form of infrastructure grants. Since the 1980s, however, these grants have given way to infrastructure loans, pushing water systems to charge their customers full-cost, or near full-cost, rates. As James Fausone, Chairman of the Board of Water Commissioners at the

³² Detroit: Disconnecting water from people who cannot pay - an affront to human rights, June 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>.

Detroit Water and Sewerage Department, explained, “There’s an absolute lack of national and state planning on water infrastructure except on the backs of individual users.”³³

The petitioners and other groups will present additional information about water affordability issues in Michigan and elsewhere, including proposed solutions, during your visit.

Thank you for responding to the petition and accepting the invitation of the Detroit People’s Water Board, the Blue Planet Project, Food & Water Watch, and the Michigan Welfare Rights Organization to conduct this fact-finding investigation in Detroit. We hope this background information is helpful as you conduct your investigation. We believe the influence of the United Nations can be an important factor in the continuing efforts to encourage the federal, state, and local governments to implement the necessary reforms to ensure that all citizens have access to clean, affordable drinking water.

We ask that you make the following recommendations to the United States and local government:

- US Department of Justice, Civil Rights Division, and the state equivalent(s), should:
 - open an investigation into the disparate impact of DWSD practices including constitutional due process and equal protection violations; and
 - monitor the implementation of the GLWA specifically with respect to its impact on racial segregation and concentrations of poverty.
- U.S. Department of Housing and Urban Development and the state equivalent(s) should:
 - investigate whether DWSD’s shut-off program has operated to make housing unavailable to low-income and African-American residents, in violation of the Fair Housing Act of 1964 and CERD; and
 - advise Detroit and other similarly situated cities how they can use available funds to assist residents with water bills, make infrastructure improvements to water system, and provide conservation assistance to low-income resident to improve their plumbing and limit water loss. This is particularly important for residents using housing subsidies to rent apartments with poor plumbing, which can lead to unaffordable water bills.
- U.S. Department of Health and Human Services and its state equivalent(s) should:
 - investigate the public health implications of mass water shut-offs; and
 - establish “best practice” guidelines for evaluating and managing the risks to families associated with mass water shut-offs.
- U.S. Environmental Protection Agency and the state equivalent should:

³³ JASON AMIRHADJI ET AL., GEORGETOWN LAW HUMAN RIGHTS INSTITUTE FACT-FINDING PRACTICUM, TAPPED OUT: THREATS TO THE HUMAN RIGHT TO WATER IN THE URBAN UNITED STATES 19-20 (2013), <http://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/upload/HumanRightsFinal2013.pdf>.

- investigate, research, and establish "best practice" guidelines for overall management of safe drinking water act and clean water act, and affordability guidelines.

Additionally, we ask that you make the following specific recommendations, supported by the petitioners, to the City of Detroit and the State of Michigan:

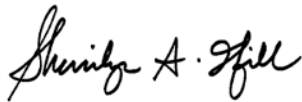
- Immediately end DWSD's campaign of residential water shut-offs;
- Restore water service to the thousands of Detroiters whose water service has been terminated; and
- Execute a water affordability plan that ensures that no household is required to pay more than 2.5% of its income towards its water bill.

We hope to have the opportunity to meet with you on October 18 to discuss these issues further. Thank you for your consideration.

Very truly yours,



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EXHIBIT 1



July 18, 2014

Mayor Mike Duggan, City of Detroit
Kevyn Orr, Emergency Manager
City of Detroit
Two Woodward Ave., Ste. 1126
Detroit, MI 48226

James Fausone, Esq., Chair
Sue F. McCormick, Chief Executive Officer
Detroit Water and Sewerage Department
735 Randolph Street
Detroit, Michigan 48226

Dear Mayor Duggan, Emergency Manager Orr, Mr. Fausone and Ms. McCormick:

The ACLU of Michigan and the NAACP Legal Defense and Educational Fund, Inc. (LDF) write to express strong concern over the Detroit Water and Sewerage Department's (DWSD) decision to turn off water to Detroit residents in arrears. As you know, this issue has received international attention as the disconnection process accelerated this last month to around 3,000 customers per week with little, if any, notice. Reportedly, some 30,000 households are expected to be disconnected from water services over the next few months. Most importantly, the denial of water services creates untenable challenges and dangers to the health and well-being of many of Detroit's poorest residents. **In light of these issues, we seek an opportunity to meet with you as soon as practicable with the aim of restoring water service to all Detroit residents while claims, arrears, and other billing concerns are resolved.**

The ACLU and LDF have grave concerns about the process, lack of process, or ineffective process by which DWSD has terminated water services to thousands of indigent customers, as well as the manner in which delinquent accounts have been handled and the impact of these actions on the most vulnerable residents of Detroit. We are also troubled that the shut offs have been conducted in a way that disproportionately affects African Americans, a concern echoed by the United Nations (UN).¹ Locally, Mayor Duggan opined that, while customers must pay their bills, the shut-offs "could have been handled in a far more sensitive way."² U.S. Bankruptcy Judge Steven Rhodes, who is overseeing Detroit's bankruptcy process, similarly noted this week that the "shutoff program has created a lot of

¹ Detroit: Disconnecting water from people who cannot pay - an affront to human rights, June 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>.

² Steve Pardo, Detroit Water Department to Crack Down on Businesses with Overdue Bills, thedetroitnews.com, July 9, 2014, <http://www.detroitnews.com/article/20140709/METRO01/307090030#ixzz37k5H7Sby>.

anger and hardship,” and is “hurting the city and this bankruptcy.”³ Judge Rhodes has ordered DWSD Deputy Director Daryl Latimer to appear in court on Monday, July 21, 2014, to present plans to resolve this problem. Moreover, the UN Office of the High Commissioner for Human Rights last week stated that, “Disconnections due to non-payment are only permissible if it can be shown that the resident is able to pay but is not paying. In other words, when there is genuine inability to pay, human rights simply forbids disconnections.”⁴

We ask that DWSD immediately cease terminating services and restore water to the thousands of customers who are currently without this basic necessity. We urge DWSD to restore water service immediately to avoid further harm to the City’s most vulnerable citizens, the vast majority of whom are African-American, and to place a moratorium on plans to discontinue water service pending the development of a review-and-implementation plan that is based on accurate information, that is staffed sufficiently for effective implementation, and, ultimately, that is humane. As stated above, we further respectfully request a meeting with you to discuss the civil and humanitarian crisis created by the decision of the DWSD to terminate water services to thousands of Detroit residents. Access to water is a human right and a public health necessity. The denial of this right contravenes sound public policy, health and safety laws, and international law.

Background on the Detroit Water Situation

It is our understanding that, in March, the DWSD began dispatching private contractors to shut off water to people more than 60 days behind in their payments and to those who owed more than \$150. This was done without a plan in place to help the citizens of a city where the official unemployment rate tops 14 percent and more than 38 percent of the population lives below the poverty line, more than twice the state average.

This is not simply a problem of individual households in arrears, as some City officials appear to be suggesting in their public statements in response to the widespread outcry. To assert or imply that the problems facing the water department are solely the fault of delinquent low-income Detroit residents misrepresents a complex situation, over-simplifies the problem, and perpetuates harmful stereotypes that are a disservice to the City and its residents, especially given the far more egregious circumstances that led to the City’s current financial devastation.

Among the factors contributing to the water crisis are the DWSD’s poor investments. DWSD officials made a series of disastrous interest rate swaps (related to bond deals) anticipating that interest rates would go up when, instead, they plummeted to almost nothing when the economy crashed. According to a 2012 Bloomberg News interview with Professor Michael Greenberger, an expert on derivatives from the University of Maryland Law School: “They’re paying huge amounts of money for interest-rate transactions that have gone horribly wrong.” According to the article, DWSD borrowed more than \$530 million that was used to buy its way out of those bad deals. The cost to costumers has increased because the water department now spends a larger portion of its annual budget making debt payments

³ T. Kelly, *Bankruptcy Judge Wants Solutions to Detroit Water Crisis*, The Michigan Citizen, July 15, 2014, <http://michigancitizen.com/bankruptcy-judge-wants-solutions-to-detroit-water-crisis/>.

⁴ Detroit: Disconnecting water from people who cannot pay - an affront to human rights, June 25, 2014, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>.

(nearly \$420 million) than it does operating and maintaining its vast system (\$380.6 million). As a result, the DWSD rates are unaffordable for most Detroiters.

Present Harms to Residents Resulting from DWSD's Water Shut-Off and Related Policies

The harmful consequences of the water shut-off are compounded by a multitude of ill-advised decisions on the part of DWSD:

- DWSD's prior practice of terminating services to individual residences with delinquent accounts while failing to do the same to commercial customers has disproportionately harmed Detroit's African-American population.
- Major media outlets have reported that DWSD's crackdown on delinquent residential accounts has caused confusion and fear among families who have lost or may lose water service – fear of illness from lack of water or re-use of dirty water during the hot summer months; fear that their parental rights may be threatened because the physical home is now unsuitable for a child; or fear of losing the home itself when delinquent bills are added to property taxes that are potentially in arrears.⁵
- DWSD's use of blue paint to mark the property of "delinquent" homes stigmatizes families and neighborhoods, which is particularly troubling in a city whose poor, predominantly black residents have all too often been treated as a lost cause by suburbanites, the media, and others around the nation who wish to distance themselves from their plight.

The media portrayal of the shut-offs has not only exacerbated Detroit's marred image, it has perpetuated unfair stereotypes of African Americans and poor people – that they, as one reporter put it, "simply don't want to pay the water bill" and "would rather spend money on cable" – instead of taking into account the reality of the poverty and unemployment that exist in the City. The issue here is not about a failure in fiscal – or personal – responsibility; rather, it is about how we treat our most vulnerable populations and the protection of their human and constitutional rights in times of crisis.

Presently in Detroit, the high cost of water for many low-income households constitutes a crisis. In contrast to the Environmental Protection Agency's (EPA) established affordability standard for water and sewer services, which recommends that rates should not exceed 2.5% of the median household income in an area,⁶ the LA Times estimates that many Detroit households are being asked to spend more than 20% of their annual income on DWSD services.⁷ Therefore, many Detroiters are forced to go without other essential services in order to pay their water bill, and others are simply unable to pay.

⁵ See, e.g., Alana Semuels, *Thousands Go Without Water as Detroit Cuts Service For Non-Payment*, latimes.com, June 28, 2014, <http://www.latimes.com/nation/la-na-detroit-water-20140629-story.html#page=1>.

⁶ Office of Water EPA Report to Congress: Small Systems Arsenic Implementation Issues, EPA 815-R-02-003 at 4 (2002), available at http://water.epa.gov/drink/info/arsenic/upload/2005_11_10_arsenic_congr_ars_mar_02.pdf.

⁷ Alana Semuels, *Thousands go Without Water as Detroit Cuts Services for Nonpayment*, L.A. Times, June 28, 2014, available at <http://touch.latimes.com/#section/-1/article/p2p-80666749/>.

The city's declining population – from nearly 2 million in the 1950s to fewer than 690,000 today – has increased the burden on the remaining citizens to maintain an aging infrastructure built to deliver water throughout the city and carry away sewage, a problem made worse by the federal government's reduction, over the past several decades, of its share of funding infrastructure improvements. This is reflected in the Detroit City Council's recent decision to increase rates by 8.7 percent this year alone and the fact that, over the past decade, water rates in Detroit have skyrocketed by nearly 120 percent. Despite the fact that water is necessary to human survival and good health, the City's dwindling population is being forced to bear these increasing costs.

According to data provided by DWSD, water was shut off to 15,266 customers from March through June 2014, with service being restored to just 7,365 (48 percent). Yet, despite these startling numbers, it wasn't until July that the city found a way to revive a program – funded by a voluntary 50-cent per month contribution from ratepayers -- to help some of those who cannot afford to make their payments. *Some* is the operative word here, because the program will not cover those who are unable to verify how they earn their money or who have no income. Likewise, people who owe more than \$2,500 aren't eligible. They all will be left without water. It's also not clear what will happen when the fund, which reportedly holds \$1 million, becomes depleted now that it is being used.

Further, we are skeptical that this program can be successful given how quickly it has been resurrected despite its poor history of performance. We attach a 2010 letter from the Auditor General who reported to the Detroit City Council at that time that the Detroit Residential Water Assistance Program (DRWAP), an assistance program for residents with delinquent water bills, had numerous deficiencies in its implementation and operation. Among the concerns that the Auditor General identified: the Detroit Water and Sewerage Department did not post payments timely to the clients' account once the customer was approved for the program; continued to bill accounts even after the customer was enrolled as a recipient of the program; and, for seven of the ten accounts tested, continued to bill the customer for the \$.50 per month donation for twelve months without making a payment toward the donation portion of the bill. *See Attachment A, Letter from Loren E. Monroe, CPA, Auditor General, to Detroit City Council, November 18, 2010.* She also indicated that the Department "did not properly manage the Water Affordability Project Escrow Account" and "did not properly credit payments to customer accounts."

We note that DRWAP did not become operative until July, months after the widespread shut-offs began in March of 2014. **An essential feature of an effective assistance program, that ameliorates public health and human right concerns, is that it assists customers before a shut-off happens.**

Access to Water Is a Human Right and a Public Health Necessity.

The United Nations recognizes "the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights."⁸ Indeed, consumption of a certain amount of water is an absolute requirement of human survival.⁹ Besides being vital to human functioning, water is also essential to cooking and basic hygienic practices, such as cleaning and bathing. Depriving Detroit residents of access to water and the ability to practice routine hygienic practices, such

⁸ <http://www.righttowater.info/wp-content/uploads/Human-Rights-Council-Resolution.pdf>.

⁹ http://www.who.int/water_sanitation_health/publications/2011/tn9_how_much_water_en.pdf.

as hand-washing following use of the restroom, greatly increases the risk of illness or death from disease.¹⁰ DWSD's decision to shut off water to numerous households — and, in this case, what appear to be mostly African-American households — does more than just affect the conditions of the persons who reside in those homes. It creates a potential public health crisis. Diseases that result from lack of water are easily spread to others in the city with whom those without water have contact, such as neighbors, co-workers, and classmates.¹¹ Shutting off water to thousands of Detroit residents without first inquiring whether these residents had the ability to pay and, if not, whether alternative methods besides complete deprivation of water are available is dangerous and a violation of both U.S. and international human rights law.

DWSD's Policy Violates Customers' Right to Due Process of Law.

In addition to the public health concerns created by the decision to shut off water services to thousands of homes, DWSD's shut-off policy violates indigent families' due process rights because it often fails to provide them with adequate notice and a hearing that takes into account whether they actually have the ability to pay their overdue bills before their water is shut off. Moreover, to the extent DWSD's policy does require certain notifications prior to termination of services, there are reports of many instances in which DWSD has not adhered to that policy. The policy, and DWSD's implementation strategy, must be reformed immediately to protect the constitutional and human rights of low- and no-income Detroiters.

Customers Must Be Given a Meaningful Opportunity to Be Heard Before They Are Denied Access to Water.

Both the United States Constitution and the Michigan Constitution prohibit government actors from depriving citizens of "life, liberty, or property, without due process of law."¹² Michigan courts have observed that water is a necessity and its provision is a public service.¹³ When a public utility provides that service, it must do so indiscriminately to all customers, and there are some limits on its right to terminate service.¹⁴ Additionally, the Michigan State Constitution declares that "[t]he public health and general welfare of the people of the state are hereby declared to be matters of primary public concern."¹⁵ As described above, access to water is unequivocally a public health concern. Courts have held that state laws similar to those cited here create a property interest in water such that, before water can be shut off, citizens have a right to notification of the proposed action against them and a

¹⁰ <http://www.cdc.gov/handwashing/why-handwashing.html>.

¹¹ *See id.*

¹² U.S. Const., amend. 14, § 1; Mich. Const., Art I, § 17.

¹³ *Ten Broek v. Miller*, 240 Mich. 667 (Mich. 1927); *Mitchell v. Negaunee*, 113 Mich. 359, 366 (Mich. 1897) ("Every inhabitant [of a city] needs water . . . and therefore the furnishing of water has been considered a public service.") (internal citations omitted).

¹⁴ *See Ten Broek*, 240 Mich. at 670; *Bonner v. Brighton*, 91 Mich. App. 547, 551-52 (Mich. App. 1979).

¹⁵ Mich. Const. Art. IV § 51.

meaningful opportunity to be heard.¹⁶ Yet, many DWSD customers are not being afforded notice, much less a meaningful hearing, before their water is shut off.

According to DWSD's Interim Collection Rules and Procedures, when a customer's bill becomes delinquent, the Department will issue two notices – first a past due notice, followed by a final shut-off notice.¹⁷ The policy also states that a customer who alleges a serious illness may postpone water shut-off for twenty-one days, or have service restored, upon provision of a doctor's statement that a resident of the home suffered a medical emergency. However, we believe this policy is inadequate for several reasons: (1) twenty-one days may not provide sufficient time for a family to recover physically and financially from a medical emergency, particularly for African-Americans, who are less likely than whites to have savings or other financial resources and more likely to take on new debt when emergencies arise; (2) the requirement of a doctor's statement may place a significant financial burden on families who lack adequate health insurance; and (3) such a policy does not cover the problems faced by households with infants and young children, the very elderly, or people with disabilities, whose needs are often beyond those of the average adult without rising to the level of a specific medical emergency.

Aside from medical emergencies, DWSD's shut-off policy only offers customers the opportunity to enter into a payment plan or to file a complaint to dispute the amount of their bill. To the extent Michigan law creates a property interest in water service, constitutionally adequate due process requires a *meaningful* opportunity to be heard prior to any deprivation of property rights. To avoid any due process concerns, customers must have the opportunity not only to dispute a particular bill, but also to seek assistance and avoid termination of services if they are unable to pay.¹⁸ As the examples below suggest, many low- or no-income Detroit residents cannot afford the payment plans DWSD offers, resulting in termination of their water service despite their best efforts. Thus, the payment plan option does not constitute meaningful process for these customers.

DWSD Has Not Adhered to Its Own Notice Requirements.

Beyond the inadequate hearing process DWSD offers, there are many reports that DWSD has failed to comply with even the limited notice requirements of its own policy. Under the policy, customers must receive a final notice of termination that states that they have ten days to pay the bill or file a complaint disputing the bill before their service is shut off. Yet, according to news reports, Detroit resident Dewilda Hershey's water was shut off despite the fact that she received no bills from DWSD for over a year and received no shut-off notice.¹⁹ Similarly, Joe Link II, a customer who is enrolled in a payment plan to become current on his bills, reportedly had his water shut off in May five days after his monthly payment was due. Pursuant to DWSD policy allowing customers ten days to pay their bill after receiving a shut-off notice, Mr. Link believed he had an additional five days in which to pay his bill before facing

¹⁶ See, e.g., *Memphis Light, Gas & Water Div. v. Craft*, 463 U.S. 1, 11, 13 (1978) (finding that Tennessee law "does not permit a public utility to terminate service 'at will'" and, therefore, due process is required).

¹⁷ City of Detroit Water & Sewerage Department, Interim Collection Rules and Procedures 3-4 (Jan. 22, 2003), http://www.dwsd.org/downloads_n/customer_service/customer_information/collection_rules.pdf.

¹⁸ See, e.g., *Craft v. Memphis Light, Gas & Water Div.*, 534 F.2d 684, 687-88 (6th Cir. 1976), *aff'd* 463 U.S. 1 (1978).

¹⁹ *Detroit Woman Gets No Bill, Water Cut Off Anyway*, ClickonDetroit.com, July 10, 2014, <http://www.clickondetroit.com/news/detroit-woman-gets-no-bill-water-cut-off-anyway/26875622>.

termination of services.²⁰ Such reported incidents are indicative of the rampant due process violations to which DWSD customers have been subjected.

The City's Existing Payment Plans and New Financial Assistance Plan Are Inadequate to Address the Needs of Many Poor Families.

In defense of its current practices, DWSD asserts that it currently has more than 17,000 customers enrolled in payment plans based on their abilities to pay and has raised nearly \$1 million to provide financial assistance to families at or below 200% of the federal poverty line who owe less than \$2,500. While these programs may benefit many people, they do not address the needs of the thousands of customers who cannot afford to make monthly payments or otherwise do not meet the programs' guidelines. DWSD's announcement that some percentage of customers are able to pay their bills or enter payment plans after receiving shut-off notices is also an admission that thousands of other customers are unable to do so, and remain without water.

Nicole Hill is one such example. Ms. Hill reported that upon moving into her apartment, she began receiving extremely high water bills – as much as \$200 per month. She fell behind and, in May of this year, her water was shut off. She has since been told she owes \$5,754, which renders her ineligible for DWSD's payment plans or financial assistance. As of June 28, 2014, Ms. Hill had been without water for six weeks, and her children were staying with friends because she feared that child protective services would take them from her if she kept them in a home with no water.²¹

The ACLU and LDF are also concerned that many eligible low- or no-income families may feel compelled to accept a payment plan that they will be unable to afford in the long term just to keep their water on in the short term. When Ms. Hershey, described above, finally reached DWSD to inquire about her water being shut off despite her never having received a bill, she alleges that she was initially told that she owed \$700 and that the Department would accept no less \$379 to restore her service, even though she was only financially able to offer \$150 at that time. The requirement to pay \$379 may have forced Ms. Hershey to choose between going without water and going without other basic needs, such as housing or groceries. Fortunately, after Ms. Hershey's story received media attention, DWSD agreed to work with her to remedy the situation. We urge DWSD to revise its policies to ensure that all its customers have a meaningful opportunity to be heard and are offered remedies reflective of their financial circumstances.

The Right to Have Access to Clean and Safe Water Should Not Be Denied Because of a Resident's Inability to Pay.

Our justice system recognizes that there are certain rights in our democracy that are so fundamental that they cannot be denied because a person is unable to pay a fee or has outstanding debts, such as the right to counsel and the right to vote.²² In deciding that a state could not condition the right to vote on

²⁰ Joe Guillen, *Detroit Plan to Shut Off Water Shows Results, But Frustrates Residents*, Detroit Free Press, June 26, 2014, <http://www.freep.com/article/20140626/NEWS01/306260038/detroit-water-shutoff>.

²¹ Alana Semuels, *Thousands Go Without Water as Detroit Cuts Service For Non-Payment*, latimes.com, June 28, 2014, <http://www.latimes.com/nation/la-na-detroit-water-20140629-story.html#page=1>.

²² See *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966).

payment of a fee, the Supreme Court emphasized that “the right to vote is too precious, too fundamental to be so burdened or conditioned.”²³ That statement has substantially greater weight where the right to water is concerned. At its core, the right to have access to water is the right to have life – and is thus the foundational right upon which all other rights in our country depend. And similar to the manner in which we regard those other rights, DWSD should not deprive anyone of water simply because either they, or in the case of children, their parents, lack the ability to pay.

DWSD Should Target Commercial Rather Than Residential Customers for Shut-Offs.

The DWSD has stated that its aggressive shut-off policy is necessary to collect on the roughly 90,000 delinquent water accounts in Detroit, calling the current level of delinquencies “unsustainable.”²⁴ However, this justification was belied by the fact that the Department was, until recently, targeting residential customers for shut-offs while allowing corporate clients who owed tens or hundreds of thousands of dollars to retain their water service. While DWSD has announced that this differential treatment occurred because the contractors hired to physically shut off the water were not properly equipped to do so for larger entities like stadiums,²⁵ this practice violates civil, constitutional, and human rights norms, and gives the appearance that DWSD is unfairly singling out the City’s poorest residents, most of whom are African American, while turning a blind eye to corporate clients who have a greater ability to pay. In a city with such extreme poverty and high unemployment rates, DWSD should focus its energy on larger, commercial customers before targeting residential accounts with relatively small delinquencies.

We are encouraged by DWSD’s recent announcement of its plan to increase its efforts to collect from delinquent corporate accounts and to shut off services to commercial clients,²⁶ as well as the new “Detroit Delivers” mobile application that will allow customers to report running water in vacant and abandoned properties.²⁷ In addition to these efforts, DWSD should restore and refrain from shutting off service to low-income residential accounts until it develops an adequate process that takes into account customers’ specific circumstances that affect their ability to pay. Focusing on collecting larger commercial accounts and cutting off unnecessary water supplies is a more efficient and more humane use of DWSD’s limited resources, and decreases the opportunity for and appearance of discrimination.

²³ *Harper*, 383 U.S. at 670.

²⁴ Imaeyen Ibanga and Ron Mott, *Tapped Out Detroit Residents in Water Fight With City*, nbcnews.com, July 6, 2014, <http://www.nbcnews.com/nightly-news/tapped-out-detroit-residents-water-fight-city-n149196>.

²⁵ John Guillen, *Detroit Water Department Now Sending Shut-off Crews to Commercial Customers*, Detroit Free Press, July 14, 2014, <http://www.freep.com/article/20140709/NEWS01/307090141/Detroit-water-shut-offs-companies-customers>.

²⁶ John Guillen, *Detroit Water Department Now Sending Shut-off Crews to Commercial Customers*, Detroit Free Press, July 14, 2014, <http://www.freep.com/article/20140709/NEWS01/307090141/Detroit-water-shut-offs-companies-customers>.

²⁷ Report Running Water Problems to DWSD with Detroit Delivers, Detroit Water and Sewerage Department, July 14, 2014, <http://www.dwsd.org/detroitdelivers.html>.

Alternatives to Shutting Off the Water of Those Unable to Pay

It is imperative that DWSD implement a viable affordability program that would proactively reach out to delinquent customers, work with those who are indigent to ensure they are paying what they can afford, and prevent water shut-offs for vulnerable and indigent customers.

DWSD has experimented with affordability programs, but given the current number of shut-offs it is clear that the existing affordability programs – Water Access Volunteer Effort (WAVE), Detroit Residential Water Assistance Program (DRWAP) and Payment Plan Agreements (PPA) – are inadequate. We understand that WAVE operates as an independent non-profit organization,²⁸ but both DRWAP and PPA are DWSD run but nonetheless leave many indigent DWSD customers without assistance in paying their unaffordable water bills.

In 2006, the Michigan Welfare Rights Organization (MWRO) successfully advocated for a Water Affordability Plan, which was approved by the Detroit City Counsel. This plan reflected the EPA's recommendation that households not be expected to pay more than 2.5% of their annual income on sewer and water services. However, DWSD never implemented the Water Affordability Plan.

The proposed Plan and other programs across the country provide a roadmap for how DWSD could implement a viable and effective affordability program. Additionally, the Water Research Foundation published an instructive report regarding best practices for water affordability programs.²⁹ Finally, we would like to point DWSD to the District of Columbia Water and Sewer Authority's (DCWSA) Customer Assistance Program. In addition to the Serving People by Lending a Supporting Hand program, which is similar to WAVE or DRWAP, DCWSA provides 400 cubic feet of free water to eligible customers through the Customer Assistance Program.³⁰ DCWSA's Customer Assistance Program ensures that indigent residents are not faced with the humanitarian crisis presently visited upon many Detroiters.

We recommend that DWSD develop an affordability plan that meets the following criteria:

- DWSD customers should not be charged more than 2.5% of their annual household income for water and sewer services.
- No customers' water should be turned off before DWSD has determined whether the household qualifies for an affordability program and attempts to enroll qualified households.
- Indigent and vulnerable DWSD customers should be guaranteed access to enough water to ensure their drinking, personal sanitation, food preparation, and household hygiene needs can be met. The UN and World Health Organization (WHO) have determined that a person needs

²⁸ http://www.dwsd.org/downloads_n/customer_service/customer_information/WAVE_handout_Dec_06.pdf.

²⁹ John E. Cromwell Et Al., Best Practices in Customer Payment Assistance Programs, Water Research Foundation (2010), available at <http://www.waterrf.org/PublicReportLibrary/4004.pdf>.


³⁰ http://www.dcwater.com/customer-care/special_programs.cfm.

between 50-100 liters of water per day.³¹ The DCWSA Customer Assistance Program highlighted above provides 400 cubic feet (approximately 11327 litres) of free water a month to qualified customers—this allocation meets the UN and WHO human rights standards.

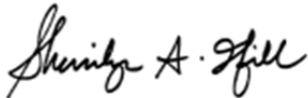
- DWSD should institute a permanent moratorium against shutting off water service to households who were previously enrolled in the DRWAP program.
- DWSD should not punish innocent renters whose landlords are delinquent in their payments.

We look forward to discussing these recommendations to resolve these concerns with you as soon as possible.

Very truly yours,



Kary L. Moss, Executive Director
ACLU Fund of Michigan
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313-578-6813



Sherrilyn Ifill, Director-Counsel
NAACP Legal Defense and Educational Fund, Inc.
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212-965-2200

Cc: Judge Steven Rhodes, U.S. Bankruptcy Court
Governor Rick Snyder

³¹ http://www.un.org/waterforlifedecade/human_right_to_water.shtml.

Attachment A

City of Detroit

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LOREN E. MONROE, CPA
AUDITOR GENERAL

MEMORANDUM

DATE: November 18, 2010

TO: Honorable City Council

FROM: Loren E. Monroe, CPA *Loren E. Monroe*
Auditor General

RE: Detroit Residential Water Assistance Program (DRWAP)

CC: Mayor Dave Bing
Norman L. White, Chief Financial Officer
Shenetta Coleman, Department of Human Services (DHS) Director
Darryl A. Latimer, Detroit Water & Sewerage Department (DWSD)
Deputy Director

This memorandum serves to provide your Honorable Body with a report on the DRWAP. Your Honorable Body requested a report on the following aspects of the DRWAP program, the Water Access Volunteer Effort (WAVE) Program, the DWSD Donor Program, and the DWSD interest bearing late fee account. Below is a brief description of each of these areas along with a conclusion.

- The DRWAP program housed at DHS
 - The DRWAP program is a program to provide assistance for Detroit residents whose water bills have become delinquent. The program has been administered by DHS since September 2008. The Office of the Auditor General's (OAG) review of the program found inconsistencies in the administration of the program which are detailed later in this memorandum under Issues and Concerns.

- The WAVE Program
 - The WAVE Program was created in January 2003 as a Michigan non-profit 501 (c) 3 corporation. Its purpose was to provide assistance to low-income Detroit families by ensuring uninterrupted and safe access to drinking water. The WAVE Program received the funds from the DWSD Donor Program until the DRWAP program began receiving the funds in September 2008. DWSD has continued to provide \$100,000 in annual funding to WAVE. In total

WAVE has received \$1.5 million from DWSD. According to State of Michigan records this non-profit was dissolved by the state in October 2009. Representatives from the organization state that it is still functioning. The OAG was unable to confirm if WAVE received any funds from DWSD in 2010.

- The DWSD Donor Program
 - The DWSD Donor Program allows Detroit residents to voluntarily donate fifty cents every month when the bill is paid. Initially the Donor Program funds went to the WAVE program. In September 2008 all Donor program funds began going to fund the DRWAP program. At this point these funds are the only funding source for the DRWAP program.

- The DWSD interest bearing late fee account
 - DWSD informed the OAG that the initial funding for DRWAP came from non-rate revenue. This non-rate revenue does include interest earnings on investments and miscellaneous non-rate revenue. Representatives from DWSD stated that DRWAP was never to be funded solely from an interest bearing late fee account. The funding was lowered to \$2.5 million from the original amount of \$5.0 million by City Council as part of an agreement to lower the rate increase for Detroit customers from 9.4% to 7.4%. The initial \$2.5 million is the only funding that has been provided by the City of Detroit. As of December 25, 2009 there were 2,047 customers enrolled in DRWAP. The total funds required to meet the program commitments for these customers was \$3,430,383.37 and total funds available to meet the commitments were \$3,614,759 leaving \$184,375.63.

Additional background information on DRWAP, greater detail on the information provided above and additional issues and concerns are included in the remainder of this memorandum.

Background

DRWAP was established in August 2007. Discussions regarding the establishment of the program had begun as early as 2005. A Memorandum of Understanding (MOU) between DWSD and DHS provided that the program was to assist low-income residents of the City of Detroit related to the supply of drinking water. The program began in September 2007 and was to continue until June 2008 with initial funding of \$2.5 million.

DHS assumed responsibility for intake and qualification of applicants at the Department's four intake centers which are located throughout the City of Detroit, case management, energy education, tracking and maintaining files for program participants and reporting and evaluation. DWSD assumed responsibility for

reporting the program funding level, providing customer payment and history information, sharing outreach responsibilities, notifying DHS of participants' termination of service, scheduling monthly bill payments and reconnection services of customers upon enrollment in the program.

The original proposal for funding DRWAP for fiscal year 2007-2008 was \$5.0 million, which was comprised of interest on investment earnings and miscellaneous non-operating revenue. During hearings on proposed DWSD rate increases, DWSD proposed lowering the funding to \$2.5 million in order to lower the rate increase for Detroit customers from 9.4% to 7.4%. The lower rates were approved by City Council. DRWAP was never to be funded by an interest bearing late fee account.

An additional \$2.5 million in funding for DRWAP was included in DWSD's budget request for fiscal year 2008-2009. This amount was not included in the approved budget. In September 2008, DWSD began directing all funds received from the voluntary contribution program of Detroit customers to DRWAP. The proposed budget for fiscal year 2009-2010 did not contain any funding for DRWAP.

	Fiscal Year Ended June 30		
	<u>2008</u>	<u>2009</u>	<u>2010</u>
DRWAP Funding – Sewerage	\$1,250,000	\$1,250,000	\$0
DRWAP Funding – Water	<u>1,250,000</u>	<u>1,250,000</u>	<u>\$0</u>
Total DRWAP Funding	<u>\$2,500,000</u>	<u>\$2,500,000</u>	<u>\$0</u>

According to information prepared by DWSD, there were 2,047 customers enrolled DRWAP at December 25, 2009. The total funds required to meet the program commitments for these customers was \$3,430,383.37 and total funds available to meet the commitments were \$3,614,759 leaving \$184,375.63 available for funding future applicants.

Issues and Concerns

During the course of the audit the OAG found deficiencies in the implementation and operation of the DRWAP program.

The Memorandum of Understanding governing the program expired on June 30, 2008. The MOU was not extended, nor was a new MOU executed. This has left the program without a governing document and the DWSD and DHS have continued to operate the program using the expired document.

DWSD did not properly execute its portion of the DRWAP program. The following includes areas of implementation in which DWSD failed to meet its obligations:

- DWSD did not provide the required data to DHS by the dates specified by the MOU and the associated Exhibit-A.
- DWSD did not post payments timely to the clients' account once the customer was approved for DRWAP.
- DWSD continued to bill accounts for the DRWAP donation even after the customer was enrolled as a recipient of the program.
- For seven of the ten accounts tested the customer continued to be billed for the \$0.50 per month donation for twelve months without making a payment toward the donation portion of the bill.

An escrow account was established by DWSD for the funds set aside for DRWAP, including the initial funding and the customer donations. DWSD did not properly manage the Water Affordability Project Escrow Account.

- Donations collected for the DRWAP program were not transferred to the escrow account for seven months of the two years examined.
- Donations collected for the DRWAP program were posted to a liability account established specifically for the donations. As of December 31, 2009, no entries had been made to account for the transfer of a portion of the funds from the liability account to the Escrow Account.
- DWSD did not reconcile the donations collected and posted to the liability account. The total amounts of credits applied to the accounts of customers participating in DRWAP are not reconciled to the escrow account or to the DWSD operations account. Donations received, credits applied and transfers to and from the escrow account are not reconciled to DRMS.

DWSD did not properly credit payments to DRWAP customer accounts.

- Ten accounts of customers enrolled in DRWAP were reviewed. All ten accounts had inconsistencies and were not properly handled. Six of the DRWAP customers owed money back to DWSD because the DWSD billing system erroneously provided credits to the customers even after the customers had defaulted from the program. Four of the ten DRWAP customers were owed money for the DRWAP program even though the enrollment had ended.
- An additional five accounts were reviewed and showed that the initial payment applied by DWSD did not match the calculation made by the DHS staff for all five accounts.

DHS did not properly meet its DRWAP responsibilities. Exhibit-A of the MOU, delineates the following for DHS responsibilities: intake and assessments including eligibility determination, affordability determination, case management and customer recertification, energy education, tracking, reporting and evaluation.

The OAG tested 23 DRWAP applications from the various intake locations and found the following:

- Eleven, or 48% of them were not completed in their entirety.
- Six or 26% had insufficient information to determine or verify the total household income.
- Nineteen or 83% consisted of clients being billed for donations over a twelve-month period, which was figured into their monthly payment amount for DRWAP.
- Ten or 43% did not have a residential utility shut off or shut off pending notice.
- Two or 9% did not have copies of recent utility bills in their file.
- Twelve or 52% reflected the incorrect monthly payment.
- Two or 9% did not have a copy of the rental agreement or mortgage document.
- Six or 26% had monthly payments that were not feasible based on insufficient monthly incomes.
- Two or 9% did not have a copy of the twelve-month water consumption history report.
- One or 4% did not include a copy of resident's social security card.
- Seven or 30% did not include a copy of the authorization to release form in the file.
- One or 4% was not a single-family residence.
- One or 4% had an address that did not match the utility bill.

The OAG also found that:

- DHS included the billed but unpaid voluntary water donations in the calculation of the applicants' average monthly bill, which was used to determine the applicants' required monthly payment amount under DRWAP.
- DHS did not provide the customers with written notice of the date the first payment was due under DRWAP.
- DHS did not advise applicants that if they defaulted on their DRWAP payment obligations they would be responsible for the entire account balance and the original DRWAP credit amounts could be reversed from the account.
- DHS did not require all applicants to attend the Energy Education Workshop as specified in the DRWAP guidelines.
- DHS did not notify customers enrolled in DRWAP of the recertification requirements prior to the expiration of the initial twelve-month participation in the program.

- The DHS employee who oversees the intake process did not submit account information to DWSD for processing on a daily basis.
- The DHS Community Service Commission never completed an annual evaluation of the program for 2008, 2009 and 2010.
- DHS has not billed DWSD for administrative costs associated with administering the DRWAP program. Because DHS is not billing DWSD, DHS is using other funding to pay for work associated with DRWAP. DHS is 99 percent grant funded and therefore DHS is using grant funds for other projects to administer DRWAP.

Sufficient policies and procedures were lacking from the associated Exhibit-A and the MOU to adequately control the program. There is no guidance for how to handle defaults and recertification. The lack of appropriate policies has allowed for customers enrolled to default and then re-enroll and ensure themselves of receiving multiple initial payments.

Recommendations

The OAG recommends that:

- DWSD and DHS convene the appropriate people from both departments to evaluate the program and determine which aspects of the program work and which do not.
- A new MOU be written and executed that clearly delineates the responsibilities of each department.
- DWSD and DHS develop appropriate policies and procedures to adequately govern all aspects of the program from application to default to recertification.
- DWSD and DHS each appoint one person from the department to oversee the department's responsibilities and to act as a liaison with the other department.
- DHS requires all intake centers and intake workers to use standardized documentation and guidelines when processing applications.
- DHS bills DWSD for administrative work and ensure that any expenses for employee time are either not charged to grant funds or are an allowable expense under the specific grant charged.
- DWSD should assign the appropriate level of staff to the program to allow for the DRWAP accounts to be handled in a timely manner.
- DWSD works to automate the processing of DRWAP payments to expedite and streamline the process.
- DWSD reconciles the donations due to DWSD operations to reimburse for the DRWAP credits and the associated bank accounts be reconciled to a control account on a monthly basis.

- DWSD transfers the collected donated funds to the escrow account monthly.
- DWSD transfer the appropriate funds from the escrow account to the operating account to cover the cost of the program on a monthly basis.