



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.

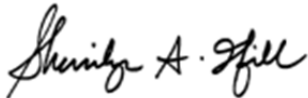
- DWSD should institute a permanent moratorium against shutting off water service to households who were previously enrolled in the DRWAP program.
- DWSD should not punish innocent renters whose landlords are delinquent in their payments.

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
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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.