

Statement on Water Affordability vs. Water Assistance for DWSD Low Income Customers:

Assistance is not Affordability -- Metro Detroit needs affordable and accessible water and sewage rates and payment plans for vulnerable populations based on income.

May 13, 2015

Over several weeks of participation on the Great Lakes Water Authority (GLWA) Water Residential Assistance Program (WRAP) committee meetings, we remain concerned about this process and its outcomes on water access and affordability for low-income customers. While the program may benefit some in the region, it will not benefit the majority of persons in need. The water conservation measures are a good start but more needs to be done. Given this unique opportunity in time, we think the GLWA WRAP can and must do better to benefit customers who are in financial need. Our main concerns include:

- (1) The GLWA WRAP does not address the affordability of water for residents who are low-income, and senior citizens and people with disabilities who are on fixed incomes. WRAP is based on temporary solutions to long-term problems and, therefore, will not deliver on customer self-sufficiency measures and regular payment requirements.
- (2) The Detroit Water and Sewerage Department (DWSD) has operated for decades without a basic understanding of how its municipal customers operate and assist their retail customers (including affordability concerns), thereby contributing to current GLWA WRAP design challenges and flaws.
- (3) The designers of the GLWA Water Residential Assistance Program, although well intentioned, have missed a critical opportunity to document their expert and direct customer service experience and critiques of current water assistance programs that could have illuminated concerns with developing another inadequate concept.
- (4) Most importantly, the GLWA Board has failed to incorporate the well-researched 2005 Water Affordability Program presented to DWSD and Detroit City Council as a long-term solution to address customer affordability problems and DWSD revenue concerns. The recently drafted Appendix 1: GLWA Social Responsibility and Water Affordability is a positive first step but falls short of the depth of analysis on assistance vs. affordability, including a lack of local studies and data; and fails to call for a move from assistance to affordability models.

In this statement and report, we offer insights, alternatives and conclusions that address the need for a water affordability program instead of the current Water Residential Assistance Program. We ask that they be taken into consideration as part of the GLWA Board's review of the WRAP and related proceedings for implementation of GLWA processes this summer.

Background on solutions based on affordability and legal challenges.

In 2005, in response to tens of thousands of annual water service shutoffs in Detroit, Michigan Welfare Rights Organization (MWRO) and utilities expert Roger Colton drafted a Water Affordability Program¹ (WAP), to address the issue of providing water for low income customers unable to afford DWSD water and sewage rates. The WAP calls for an affordable rate structure, based on individual household's income and ability to pay.

The Detroit City Council passed a resolution in 2006 in support of DWSD adopting the WAP. Unfortunately, DWSD never adopted the proactive affordability model of the WAP as specified. Instead, it implemented a modified and unsupported plan termed the Detroit Residential Water Assistance Plan (DRWAP).

DRWAP was based on a different, reactive model of assistance for the low-income customers. Limited to the City of Detroit, it earmarked funds to subsidize repayment of overdue bills after customers fell behind and into shut off status. DRWAP operated ineffectively and with inadequate funding for a few years before the program collapsed.

In the 10 years since WAP report was introduced there hasn't been a single publicly released DWSD study, analysis or report that provides basic data needed to support or refute this fundamental policy choice. Instead, speculation and suspicion of unfounded legal restrictions have been supplanted for data and facts.

Multiple studies and reports on affordability programs clearly outline the strengths and benefits of this approach over assistance programs. The National Consumer Law Council's (NCLR) extensive March 2014 report entitled, *Review and Recommendations for Implementing Water and Wastewater Affordability Programs in the United States*,² states that "An affordability analysis should also focus on customer ability to pay...." Similarly, a 2010 Water Research Foundation jointly funded a report with the U.S. Environmental Protection Agency (EPA) called, *Best Practices in Customer Payment Assistance Programs*,³ noted: "Another significant dimension of the problem of nonpayment relates squarely to public health -- the very heart of a water utility's mission." Note: The EPA recommends a threshold of no more than 2.5% of median household income be spent on water and wastewater.⁴

On the interpretation of laws to allow for water affordability plans, NCLR offers insightful conclusions:

"Throughout the United States, regulatory bodies and water agencies have repeatedly viewed any program that might subsidize one ratepayer class at the expense of another as potentially violating the anti-discriminatory rate provisions

¹ <http://michiganwro.blogspot.com/p/water-affordability-program.html>

² <http://www.nclc.org/images/pdf/pr-reports/report-water-affordability.pdf>

³ <http://www.waterrf.org/PublicReportLibrary/4004.pdf>

⁴ <http://pacinst.org/wp-content/uploads/2013/01/water-rates-affordability.pdf>

found in their respective state statutes. And while some jurisdictions have more broadly interpreted anti-discriminatory statutes, which facilitate the development of ratepayer assistance programs, the fact remains that absent specific legislative authorization, some affordability programs might be precariously positioned to pass judicial scrutiny. ... Some states have relaxed their interpretations of existing statutes to allow for rate relief in disadvantaged communities under certain circumstances. Flexibility to deviate from the strict application of district specific pricing or single-tariff pricing should be an option when reasonably necessary, based on all relevant factors. Tracking expenses on a district specific level even in the context of single-tariff pricing or rate consolidation may help to ensure that companies are held accountable and incur only those costs that are reasonable. Flexibility is also necessary to create effective payment plans that take into account the different circumstances of payment- troubled customers."

During GLWA WRAP meetings, it has been asserted that water affordability programs based on income are illegal. In reviewing Michigan statutes, particularly, the Headlee Amendment (Art. IX, Sec. 31 of the Michigan Constitution,) and the Michigan Supreme Court's decision in *Bolt v Lansing*, our legal team finds that the MWRO Water Affordability Program is not illegal. Headlee requires a vote of the People before raising a tax. Bolt held that when government charges a fee for a service, it has to be only enough to pay for the cost of providing the service (similar to the requirement of the above statute for DWSD), rather than a general revenue raising measure. The Water Affordability Plan would not violate Headlee because it does not impose a "tax." Bolt should not apply, in light of the above statute specifically targeting the DWSD system. Even if it did apply, the Water Affordability Plan implemented by GLWA would not violate Bolt for the same reason it doesn't violate the statute.

Finally, the State adopted in 2014 a comprehensive new funding program for the City of Detroit in the legislation implementing the Grand Bargain. If the results of that reform indicate that people in Detroit are being denied the means of life, whether because of interpretations of the regional water system statute, Headlee or Bolt, then that plan has to be amended. Laws and the legal issues they raise have to be taken account of but should not block actions necessary for public health and justice.

Water shut offs, racial bias and international criticism.

DWSD has a pattern of mass shutoffs to low income customers that yield the same consequences and ineffective solutions. As in 2005, the 2014-2015 water shut offs disproportionately affect the most vulnerable people living in poverty, e.g., persons with disabilities, single parents with children, elders living on fixed incomes and low income residents of color.

Combined with severe economic challenges facing Detroit beginning in the 2008 Great Recession, and throughout the 2013-2014 Chapter 9 bankruptcy proceeding, the pre-existing inability of many Detroit residents to pay water and sewer bills inevitably led to more mass water

shutoffs. In spring and summer 2014, up to 3000 customers per week were threatened with shut off. Over 31,000 households were eventually shut off or nearly 100,000 residents equating to 1/6 of the population.

Last year's mass water shutoffs were denounced by Detroit residents; international and national social justice and civil rights organizations; and United Nations Special Rapporteurs who visited Detroit in October 2014 at the urging of our organizations. In meetings with residents and local officials, the human rights experts maintained that U.N. Resolution 64/292 of July 2010 declares, "Disconnection of water services because of failure to pay due to lack of means constitutes a violation of the human right to water and other international human rights."⁵

Local and regional officials have falsely argued that low income DWSD customers insist on "free water," do not want to pay their water and sewage bills, and need behavior modification training on bill payment responsibility. These egregious accusations would be better directed at DWSD officials and Board members who have allowed millions of dollars in waste⁶, fraud⁷ and debt⁸ to go without demonstrable accountability by responsible parties.

Disconnection of water and wastewater service is tantamount to household eviction because the property is deemed uninhabitable, both legally and practically. In communities where the penalty for nonpayment is service disconnection, low-income families are forced to determine priorities on other health-related expenses such as medical care, food, childcare, or energy service in order to pay the water and wastewater bill. Households with limited resources make trade-offs among basic needs (e.g., food vs. medication) or unsafely ration goods and services to make ends meet often resulting in deprivation resulting in negative health impacts for individuals and communities. As reported by George D. Gaines, MPH, MSW, a former Deputy Director of the Detroit Health Department and a participant in GLWA WRAP meetings:

"The massive program to shut off running water from residential homes has a public health and safety aspect that has not been discussed other than the Detroit Bankruptcy hearing. Contaminated water may carry infection from human waste. Some of the diseases that result from unsanitary conditions in a house are from the lack of running water. The most common waterborne diseases are: typhoid fever, paratyphoid fever; dysentery – both amoebic and bacterial; severe gastroenteritis infections; hepatitis; and Asiatic cholera.

There are three disease-transmitting causes: (1) contaminated hands of the carrier, including feces and soils; (2) filthy water; and (3) transmission from the fecal and oral route.

⁵ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E>

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<http://archive.freep.com/article/20120809/COL33/308090096/Stephen-Henderson-Intolerable-waste-in-Detroit-s-Water-Department>

⁷ https://www.oakgov.com/water/Documents/Press_releases/2011/20110126_press_release.pdf

⁸ <http://www.circleofblue.org/waternews/2014/world/detroit-water-shutoffs-resume-bankruptcy-lawyers-banks-cash/>

Prevention for all of these is a using hygienic measures applicable to fecal-oral route. *How is this to be carried out without running water in the house?"*

These consequences have also been demonstrated to disproportionately affect and target low-income communities of color, especially African American residents. The complaint filed with the federal Detroit Bankruptcy judge is now under appeal pending trial in the case of *Lyda et al. v City of Detroit*.⁹ MWRO and the Detroit People's Water Board are plaintiffs in the case.

Southeast Michigan poverty and the ineffectiveness of assistance programs.

In September 2014, in the course of Detroit's Chapter 9 bankruptcy (mediated by Judge Cox), the Great Lakes Water Authority (GLWA), was created via a Memorandum of Understanding (MOU). At the same time, Mayor Duggan announced a new 10-point plan that he said was intended to deal with the large number of DWSD customers who were behind in their water bills.

Since then the plan's effectiveness has been debunked. Only 300 of the 24,743 customers on the Mayor's plan were able to keep up with their payment and assistance plans.¹⁰ DWSD recently announced plans to commence another round of mass residential water shutoffs in spring 2015, reportedly affecting approximately 800 households per day affecting 34,000 customers.

Retail water and sewer service rates in Detroit have increased annually since 2000, i.e., from 0.4% to 13.8% for water and between 4.2% to 16.4% for sewage. DWSD recommendations for 2015 include a record high of 16.7% for sewage.

Throughout this same period of disproportionate and steep rate increases, population data for income, unemployment levels, cost of living expenses and other economic measures have worsened among Detroit's poorest residents. These struggles are spreading and impacting residents across the GLWA region.

A recent report¹¹ by the Annie E. Casey Foundation found child poverty in Detroit rose from 44.3% in 2006 to 59.4% in 2012 – the highest percentage among the top 50 U.S. cities. Outside of Detroit, Southeast Michigan cities had an increase in child poverty rates from 18.9% in 2006 to 27% in 2012. Similar data (including maps) was reported by Forgotten Harvest¹² and concluded, "The poverty population of the suburbs increased by 96.4 percent, and their share of the area's

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http://www.naacpldf.org/files/case_issue/LYDA,%20et%20al.%20v.%20Detroit-Brief%20in%20Support%20of%20Plaintiffs%27%20Motion%20for%20Temporary%20Restraining%20Order.pdf

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<http://www.aclumich.org/democracywatch/index.php/entry/with-detroit-s-water-payment-plan-a-massive-failure-mayor-duggan-plans-changes>

¹¹ http://www.mlive.com/news/detroit/index.ssf/2015/02/child_poverty_rises_to_27_perc.html

¹² <http://datadrivendetroit.org/wp-content/uploads/2012/09/Forgotten-Harvest-Poverty-Final.pdf>

total rose from 45% to 59.7%. Poverty increased throughout the region. Macomb County led all others with an increase of 140%, followed by Oakland County at 86.5% and out-Wayne at 82.3%.”

As the GLWA is scheduled to commence operations on July 1, 2015, the \$4.5 million budget allocation – representing .5% of DWSD annual revenue – is insufficient to meet the need for such wide-scale assistance throughout its nine county regional service area or in Detroit alone, for that matter.

WRAP is not only underfunded, it is inherently unsustainable and futile. Experience has shown us that most low-income DWSD customers have consistent affordability problems. A household that has fallen behind on its water and wastewater bills is highly likely to do so again and again. Assistance-based models ignore systemic problems of poverty and limited incomes that lead to repeated shut off crises. Moreover, recursive and punitive payment agreements, like those developed by DWSD officials, are destined to be breached and will not meet the goals of the customers or water system.

Moreover, mass residential water shut offs involve substantial costs and complications. The two-year contract with demolition contractor Homrich, Inc. to implement hundreds of shut offs per day costs DWSD \$5.2 million and has had disastrous execution results.

Conclusion and recommendations.

Under these circumstances, we believe it would be better policy to refrain from implementing further residential water assistance programs, and to halt residential water shut offs while the cost and effects of the WAP plan are adequately studied, analyzed and quantified. We find the choice between affordability- and assistance-based programs for providing water to low-income customers is driven by ideology, not data – in turn, causing human suffering upon children, seniors citizens, the informed and people with disabilities, along with developing public health crises.

We strongly recommend that the GLWA Board and its government partners study key empirical questions of how much an affordable rate structure would actually cost those who can least afford current rates, bills and payment plans. Without this basic economic analysis, WRAP may emerge as a failed policy choice that is unable to support the affordability needs of regional customers leading to more mass shutoffs and a further weakened water system.

Additionally, GLWA should begin steps to review and adopt the aforementioned Water Affordability Plan, based on an equitable, sustainable and income-based rate structure. Any legal questions should be immediately reviewed and clarified with water expert attorneys.

As organizations that work directly with communities and customers in crisis, we know that when water is not deemed a human right, thousands of poverty-stricken families in Southeast Michigan face the humanitarian catastrophe of threatened shut offs each month. In the end we all continue

to pay an economic and social cost to pay for these services and infrastructure repairs because municipal water systems are necessary public goods. The argument that some customers bear the burden of higher costs when others are unable to pay as much puts forth a short-sighted and narrow ideology for sound, long-term management of our water system.

It's striking that current water shut offs and the denial of affordable payments continue to be policy decisions led by politically-driven narratives that ostracize and insult DWSD customers, who are poor. Local officials have acknowledged that about 1/3 of DWSD water is unmetered from leaks and running water in abandoned buildings. This cost is borne by all Detroit customers too.

DWSD and GLWA can and must avoid repeating last year's massive assault on the human rights and dignity of the most vulnerable members of our communities. After the pain and restructuring of the bankruptcy, our region was supposed to do better. The world is watching to see if the Great Lakes Water Authority, DWSD, Mayor Duggan and regional and state partners in the GLWA will do the right thing.

Finally, we acknowledge and appreciate yesterday's decision by the Detroit City Council to adopt a "Resolution Supporting Collection and Analysis of Adequate Data To Evaluate Creation of a Water Affordability Plan Before Resuming Residential Water Shutoffs" that concludes:

NOW THEREFORE BE IT

RESOLVED, That further residential water shut offs by DWSD and/or GLWA or any contractors retained by either entity, be suspended pending an adequately supported independent evaluation of the actual, or reliably estimated, costs of a true, proactive water affordability rate structure based on ability to pay, together with options for absorbing the resulting impact on the systems' revenue needs reflected in alternative rate structures for others who are more able to pay, can be demonstrated in order to enable an informed data-driven and transparent policy choice regarding how to deliver and pay for these vital services to customers who are vulnerable due to poverty, disability, age or other factors; and **BE IT FURTHER**

RESOLVED, That the water affordability working group agreed to by Chief Operating Officer Gary Brown in discussions with the Detroit City Council Public Health and Safety Committee be established and begin work without delay to create policy and plans for an equitable, practical and humane method of providing essential water services to the entire community of water users, *i.e.*, the entire community, including the entire GLWA service area; and **BE IT FINALLY**

RESOLVED, That copies of this Resolution shall be delivered forthwith to Detroit Mayor Mike Duggan, Chief Operating Officer Gary Brown, Judge Sean Cox, Governor Rick Snyder, Macomb County Executive Mark Hackel, Oakland County Executive Brooks Patterson, Chairman of GLWA Board Robert Daddow, Oakland County Water Resources

Commissioner Jim Nash, Macomb County Public Works Commissioner Anthony Marrocco, the Detroit Board of Water Commissioners, the Great Lakes Water Authority Board, media outlets and other interested parties.

It is a most needed step in the direction to stop the deadly harm and consequences of denying affordable water and sewage water as a fundamental human right to all residents of Southeast Michigan.

Respectfully submitted,

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