

Congressional Briefing: Trouble on Tap: Challenges to Affordable Water in the U.S.

The View From Detroit

For The Congressional Briefing on Water Affordability:

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Unitarian Universalist Service Committee

Prepared Statement of

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Thank you Dean John Conyers, Jr., our Detroit Congressperson and each of the other Representatives bringing us here today to discuss one of the most fundamental issues of our time, affordable water in the United States.

We appreciate the Unitarian Universalist Service Committee for sponsoring this hearing and its past and ongoing work on water affordability.

Detroit, Michigan, is experiencing a humanitarian and public health crisis. Since January 1, 2013 over fifty-three (53,000) thousand Detroiters, residential customers of Detroit Water and Sewerage Department (DWSD), had their water and sewerage abruptly terminated. We know from FOIA requests and reports from the Director of the DWSD, Susan McCormick, that of the thirty-three (33,000) thousand shutoffs occurring in 2014, only approximately eighteen (18,000) thousand homes were restored to service by the end of the year.

I cannot advise you of the exact numbers of Detroit children, disabled, elderly or others at risk Detroiters living in houses without water, though we know almost 15,000 homes were not restored to service. No analytical tool, study or review was created by state or local government prior to the shutoffs, or at any time to capture the data on the social demographic of the inhabitants in the shutoff homes. We know that after 2007 no comprehensive collection effort was made by DWSD through a shutoffs policy; instead DWSD relied on placing the water bill on the Wayne County tax roll of the property. Wayne County would pay the DWSD bill until a sale through foreclosure allowed Wayne County to receive its payment back.

What we know, from the groundwork of community organizing performed by non-profit social justice organizations in Detroit: Michigan Welfare Rights Organization, Peoples Water Board, We the People, National Action Network, Moratorium Now, and thousands of dedicated volunteers, is that human pain and suffering has occurred and continues to occur in Detroit, because of the water and sewerage shutoffs and the non-sustainability of the DWSD service increases and “payment plans”, which are not based on affordability. Not having water service immediately makes a home uninhabitable under Detroit ordinances. Children under State law can be immediately taken from their parents or family and placed under protective services. Fear, humiliation and embarrassment are not uncommon where water has been shut off for non-payment. Public and private sanitation risks are magnified where no water sanitation is available in the home.

Reliance on the water bill going to Wayne County’s Tax Collection Department, gave many Detroiters a way to buy food, medicine, pay rent or other expenses, while paying only part of their DWSD bill. In the case of landlords, money was collected in rent; but the water bill was not paid. DWSD’s bills grew to thousands of dollars, particularly for low income Detroiters living below the federal poverty level.

The water shutoffs of 2014 were very harsh indeed. In mid-2013 a contractor, Homrich Wrecking, was hired to perform the shutoffs at a cost of five million six hundred thousand (\$5,600,000.00) dollars. In April 2014, the DWSD shutoff policy required shutoff if the bill was 2 months late or over \$150.00. A majority of Detroiters were at risk for water shutoff.

The early 2014 Detroit water shutoffs occurred where a constellation of other economic and social hardships affected Detroiters:

Poverty – 39.3% of households lived below the federal poverty level. Considering employed Detroiters, the United Way’s September 2014 study shows a review of working Detroiters, using 2012 data of “Asset Limited, Income Constrained, Employed” (ALICE), to be 29% of Detroit households that struggle to afford basic household necessities. Over 60% of Detroiters were already in severe financial hardship when the water shutoffs escalated in April 2014:

Unemployment – rates of 12.2% twice as high as other Michigan cities.

Foreclosures – Detroiters were hit hard by predatory lending practices of banks. The banks’ targeted homeowners, who had paid off or were close to paying off their homes. Many of these homes were owned by senior citizens, many retired. This year 62,000 homes in Detroit were foreclosed in Detroit alone, up from 52,000 in 2014, and 42,000 in 2013 and 2012.

Bankruptcy – filed in July 2013, by Governor Snyder’s Emergency Manager, immediately changed medical co-pay coverage for thousands of Detroit employees and retirees; in some instances several hundred dollars per month.

Bond Payout - Detroit Water and Sewerage Department paid over 500 million dollars for bond swaps to Wall Street when Detroit’s bankruptcy triggered early interest payments.

Medical Conditions – Detroit has highest rate of childhood asthma in Michigan; three (3) times the state average.

Racial Disparity –Detroiters, 85% African Americans, are predominantly long term core city dwellers. The lack of city services affected African American population in a disproportionate way, compared to downtown and midtown Detroiters.

Cost of a Basic Necessity - Water – Going up, up, up each year. A DWSD chart shows the water/sewerage combined rate increase each year since 2001¹. In June 2014, the water and sewerage rates were increased 8.7%. DWSD’s proposed combined rate increase (12.8% waste water, 3.4% more in water and 16.7% increase in sewer rates) is scheduled for implementation in July 1, 2015.

Crumbling Water/Sewerage Infrastructure – Placed the costs of repairs and replacement almost 83% squarely on the bills of Detroit residents. Waste water ran unabated in thousands of empty, blighted properties.

Dishonest Landlords – Renters paid rent, while property owners did not pay water bills.

¹ After the 2004 increase the Colton Detroit Water Affordability Plan was created with the Poverty Law Center, Michigan Welfare Rights Organization and Michigan Legal Services.

In mid-2013 the city's contractor began to aggressively shut off water service to homes. By April 2014 the DWSD contractor continued sweeping through Detroit streets in a military fashion. Without following the due process requirements included in its Interim Collection Rules and Procedures of 2003, specifically rules on notice and medical waivers, the contract trucks started at one end of the blocks and shut off water to half or three-fourths of Detroiters on the same blocks. The contractor left a blue stigmatizing mark, spray painted on the water cap and many sidewalks. Thousands of Detroiters' water services were terminated each month after mid-2013.

As the crisis phone calls began to pour into various non-profit organizations, Michigan Welfare Rights Organization, the Peoples Water Board, We The People, Moratorium Now, and other, Detroiters began to take action. First they reached out to help. An international expert, Maude Barlow, from Council of the Canadians; and Charity Hicks (deceased), a "water warrior" from the Detroit People's Water Board; Food and Water, Watch and members of Circle of Blue, moved by the humanitarian crisis, filed a complaint with the United Nations.²

Testimony From Detroit

A civil and human rights lawsuit was filed on July 21, 2014. The *Lyda et al v City of Detroit* lawsuit was brought by ten Detroit families experiencing water shutoffs; with Constitutional Due Process and Equal Protection Counts³, Health and Safety Counts and a Count on Public Trust and Human Right To Water.

Organizations with thousands of Detroit citizens affected by the shutoffs, Michigan Welfare Rights Organization, Peoples Water Board, Moratorium Now and Michigan Chapter of the National Action Network, became organizational Plaintiffs.

The pro bono committee of human rights lawyers from across the country heard of very tragic facts⁴:

- A mother of three, Nicole Hill, one of the Plaintiffs in the *Lyda* case, with an Eight Thousand (\$8,000) Dollar water bill, sent her children to stay with relatives after the water was shutoff to her residential home. Mom stayed in the house. The little girl, age 7, got up in the middle of the night and decided she wanted her mother. Determined, she left her Aunt's home and walked out into Detroit streets at 2:00 a.m. An angel, a Good Samaritan saw the little girl and called the police. After talking to the child at 3:00 a.m., the police delivered the child to her mother. Crying, the child stated, "Mommy don't make me leave you again!" Ms. Hill was hospitalized with a severe viral infection for over a week after her water was cut

² Later in October 2014, two United Nations Special Rapporteurs, Lelani Farha and Catarina de Albuquerque made a three day fact finding visit. The United Nations report by the Special Rapporteurs state the Detroit water shutoffs violate the human rights of Detroiters.

³ Commercial customers, some with several hundred thousand dollars in overdue bills, were not subject to the same abrupt DWSD shutoff policies.

⁴ A committee of civil rights and human rights attorneys from around the country, the NAACP-Legal Defense Fund, National Lawyers Guild, American Civil Liberties Union, Sugar Law Center, civil and human rights law firms and organizations.

off for a second time, again without notice. Ms. Hill's water bill is inconsistent with bills ranging from \$27.00 to \$689.00 in the last eight month period. Ms. Hill has received water bills during the timeframe when her water service was terminated.

The inhumane facts exposed in the *Lyda et al v City of Detroit* complaint and Plaintiffs' Motion for Injunctive Relief held in September 2014 are tragic:

- Denise Donaldson submitted a Declaration in support of an injunction of water shutoffs. Ms. Donaldson's mother was bedridden and required tube feeding. No provision for medical waiver was stated to Ms. Donaldson when she contacted DWSD about her water shutoff.
- Tracy Peasant, a putative Plaintiff in the *Lyda* case, and a DWSD customer, testified on September 22, 2014. Ms. Peasant's DWSD bill resulting from two (2) homes she rented, one with serious plumbing problems which the landlord would not repair, is over Eight Thousand (\$8,000.00) Dollars at the time of shut-off in 2013. Ms. Peasant testified that she and her daughter and grandchildren lived in a home with eight (8) children, ages ranging from 15 to 1. Two of the children have asthma. Ms. Peasant is disabled due to injuries to her back and leg.

From September 2013 to June of 2014, Ms. Peasant and her family, with an income of less than \$700.00 per month, lived in a home without water, attempting to make do with big bottles of purchased water. Only in June 2014, after a "guardian angel" from the DWSD checked to make sure the water remained off, was Ms. Peasant's water restored. The DWSD employee stated after seeing so many children outside, "This is wrong!"

Though Ms. Peasant reached out to non-profit sources for help based on information she received from DWSD, no organization would assist her because her DWSD bill was over \$2,500.

Ms. Peasant lives in fear that her water will be shut off again. DWSD requires that she pay \$800.00 on her bill, money she does not have. No one from DWSD surveyed her prior to shutting off the water to determine her ability to pay or whether or not children or disabled adults lived in the residence.

Ms. Peasant testified she was not looking for free water, but an affordability plan similar to her utilities payment plan for electricity and gas, which she pays every month.

- Maurikia Lyda, the lead Plaintiff in the water shutoff lawsuit, testified that she is a customer of DWSD. Ms. Lyda describes her income as low income. Ms. Lyda lives with her four children ages 14, 13, 10 and 5. The children attend public school. Ms. Lyda is a renter.

In June of 2014 Ms. Lyda's water service was cut off. The bill was \$1,000.00. Ms. Lyda testified the day her water was shut off no one knocked on her door and advised her that the service was being disconnected. She noted that several other homes in her low income" neighborhood were also shut off.

Ms. Lyda describes how she called DWSD several times, staying on the line two (2) or three (3) hours without assistance, after she received notice that her water was being shut off. After Ms. Lyda went to a DWSD location she was told she had to pay \$500.00 on the \$1,000 bill and to have the bill removed from her landlord's account and put in her name. Plaintiff's water was shut off approximately one month prior to the morning that Plaintiff filed this lawsuit.

After the water was shutoff Ms. Lyda's children were sent to live with other relatives. Ms. Lyda was fearful that State of Michigan "protective services" would remove her children from the home if it was discovered there was no water in the home. Ms. Lyda describes a blue paint used to mark her home on the day the water services was terminated, which did not come off "that quick".

Though Ms. Lyda's water service was restored on June 21, 2014, without a payment, due to her litigation, she continued to seek help. After several months she received assistance from "Metro". Her bill for September 2014 was \$424.00. At the September hearing Ms. Lyda's water was again subject to shut off after September 9, 2014. Ms. Lyda only learned of the shut off after calling DWSD, as she had not received a bill mailed to her home.

- Carol Ann Bogden testified on September 22, 2014 that she is a senior citizen, age 67, living alone on Social Security Disability. At the time of the hearing on September 22, 2014, her water service remained disconnected, from its shutoff date of July 11, 2014.

Ms. Bogden got behind in her own bills attempting to help a disabled adult son with major medical conditions. Ms. Bogden testified she would heat water from bottles on the stove to attempt to bathe herself and to live without running water.

The day of the shutoff Ms. Bogden reports a blue line was painted in front of her home. "I was really embarrassed. I started to cry. I thought that was done and over with back in the Second World War".

Ms. Bogden, though she had 10% to pay on her \$1,006.00 bill, was not allowed to enter a payment plan because she did not have a current identification. Her purse had recently been stolen. DWSD refused to accept other forms of identification and at the time of the hearing in October 2014 would not allow her to enter a payment plan in person or by phone.

To get help on her \$1,000.00 plus bill Ms. Bogden contacted THAW, United Way, Salvation Army, and Department of Human Services, none of the organizations had funds to assist her. Ms. Bogden indicated even if she was allowed to pay \$90.00 a month on her overdue bill "it's going to be very hard", because it has nothing to do with her current bills.

- John Smith, a named Plaintiff in the Lyda litigation, testified in the September 22, 2014 hearing. Mr. Smith lives with his mother, a senior who suffers from lupus and heart problems. Mr. Smith is purchasing his home on a land contract. On or about late January 2014, DWSD shut off Mr. Smith's water services for a \$1,099.99 bill. At the time of the water termination no one from DWSD advised Mr. Smith that his water would be cutoff that day, or asked if there was a disabled person in his home. Prior to the shutoff Mr. Smith was having

trouble paying his water bill due to a layoff from his employment. Mr. Smith contacted organizations for help, but was denied assistance. During the five (5) months, Mr. Smith and his mother were without water service and he would buy bottled water or take a pail and borrow water from his neighbors.

Like Ms. Lyda, Mr. Smith's water was restored after he filed the litigation. Mr. Smith testified he is now back to work, but is still unable to pay the \$1,000.00 bill. His new job pays income of only about \$900 per month. Because Mr. Smith is so behind in his bills, he cannot pay the full amount of his water bill.

Mr. Smith testified he is not looking to get free water, but believes his payment plan should be a reasonable percentage of his income. Mr. Smith testified on September 22, that DWSD was going to have his water shut off again on September 23, 2014, according to a bill he saw in Court. He had not seen the bill before. Mr. Smith stated he would not be able to pay his bill and was at risk of having his and his mother's water terminated again.

- Nicole Cannon (deceased), a putative Plaintiff, testified on September 22, 2014 in the TRO hearing. Ms. Cannon testified that she was renting her home through Section 8 low income housing, but because she was paying part of her own rent, she did not receive any assistance with her utilities. Ms. Cannon testified that she receives Social Security Disability in the amount of \$648.00 per month.

In 2014, Ms. Cannon's water bill was over \$3,000.00, which she states resulted from a leak in the home. Though Ms. Cannon attempted on several occasions to have her landlord fix the leak, it was not done. Under Section 8 HUD rules, Ms. Cannon testified that even though she was renting, she was required to have the water bill in her own name.

Facing shut off of her water bill in early 2014, Ms. Cannon paid \$382.00 on the \$3,000.00 bill in order to keep her water service from shut off. She paid this amount out of her \$648.00 Social Security check. At the hearing, Ms. Cannon testified that she must now pay approximately \$241.00 per month on her present and past water bill for a period of 24 months, to keep her water service from shut off. Ms. Cannon testified she would not be able to pay the \$241.00 per month on her present and past water bill for a period of 24 months, to keep her water service from shut off. The current arrangement is not sustainable and she would likely face shut off of her water again, even though she was aggressively looking for help.

Ms. Cannon described her medical disability as sarcoidosis. She explained that she would not move out of her present home, with the \$3,000.00 bill, because the present "bill is too high for me to move and relocate and I would have to take the bill with me".

Tragically, in January of this year Ms. Cannon, at age 44, died, leaving three children.

- Chara Reynolds a putative Plaintiff, in this matter is a DWSD customer. Ms. Reynolds earns approximately \$600.00 per month. Ms. Reynolds at the injunction hearing learned for the first time that DWSD had placed her in a payment plan presumably in anticipation of her testimony at trial.

Under the “payment plan” Ms. Reynolds would be required to pay both current bills and a part of the arrearages, approximately \$170.00 per month. Ms. Reynolds testified that she would have a problem keeping up with a DWSD payment plan which was such a large percentage of her pay. Specifically, where here rent is \$210.00 per month and her other utilities \$300.00 per month.

Ms. Reynolds testified because of her mortgage terms, overdue water bills, if not paid, jeopardized her ability to keep her home, placing her in a position of default which can lead to tax foreclosure if she is unable to make the payments.

Plaintiff’s Expert Testimony on the Water Shutoff Public Health Crisis

On September 22, 2014, Roger Colton, the author of the Detroit Water Affordability Plan, testified in the *Lyda* hearing for injunctive relief, that adoption of his DWAP plan would actually increase the amount of DWSD revenues. Roger Colton will testify at this hearing.

Plaintiffs, on September 22, 2014, presented testimony from George Gaines, MSW, MPH, the former Deputy Director of the City of Detroit Health Department. Mr. Gaines opined that the massive shutoffs, 24,000 in 2013 and 23,000 by September 2014, created a public health emergency:

That means that you also don’t have any water to wash your hands, and so you begin to think immediately about what diseases that would result from insanitary ways of defecating and I have a list of hepatitis, which is focally orally related. Salmonella which is focally orally related from people who defecate and do not sanitize their hands and comes in contact with water or food. Carditis. . . all of these diseases are communicable.

- John Armelago, R.N., at University of Michigan Health Center, testified on September 22, 2014, for Plaintiffs in the Motion for Injunctive Relief. In describing the medical impact of lack of water on human health, R.N. Armelago testified, “water service has a number of functions. One is hydration, one is hygiene, and one is sanitation.” R.N. Armelago further testified that dehydration, body temperature regulation, joint mobility and central nervous system are all affected by lack of water. Most vulnerable are “the very young and the elderly, especially if the elderly are infirmed.”

Regarding hygiene, R.N. Armelago testified that “hand washing is one of the first lines of defense in regards to diminishing the possibility of communicable disease.

- Maureen Taylor, MSW, President of Michigan Welfare Rights Organization (MWRO), testified on September 22, 2014, regarding the work of MWRO and its water shutoff water hotline, which received forty or more calls of water shut off per hour after the aggressive campaign began in April 2014. Ms. Taylor, a school social worker, testified about children attending school without water in their homes.

Ms. Taylor described one case of a DWSD customer who lost her job, had her water shut off; and then her children were taken and placed in foster care by social services. Ms. Taylor, describing her job as a school social worker, testified that she has moved families into homeless shelters or church basements to obtain temporary shelter until water is restored. Parents with children, whose water services were terminated, fear Child Protective Services. If Child Protective Services is notified, it can result in a child or children being removed from their home.

Ms. Taylor described the August 2014, Mayor's 10 Point Plan, created after this lawsuit was filed, as "woefully inadequate", based on the population being a fixed low income. "Folks that didn't have enough money in the beginning can't pay regular bills plus an addition".

In Detroit, in addition to large street protests attended by Detroiters, Michiganders and International Supporters against water shutoffs, Detroiters led by ministers, affected citizens, and human rights activists have been arrested for civil disobedience by blocking the contract trucks from leaving their central yard. The trial for these brave activist is expected in the Spring of 2015.

The *Lyda* case is now on appeal. We have been supported by an Amicus Curie Brief filed by international attorneys from ESCR-NET – International Network for Economic Social & Cultural Rights.

Solutions

- A federal mandate establishing a uniform policy on water and sewerage affordability, based on each residential customer's ability to pay.
- A federal dedicated source of funding to the Drinking Water State Revolving Fund and renew the Build America Bonds Program to address aging water and sewerage infrastructure, which is but one of the reasons for rising costs, passed on to residential customers.
- In Detroit, Michigan, implement the original Detroit Water Affordability Plan (2005) created by expert Roger Colton.
- In Detroit, Michigan, an immediate assessment of the number of Detroiters living in homes without water, including a survey of the number of children, disabled, elderly and other at-risk citizens, with a review of public health and safety issues. Restore all water service and then determine eligibility for assistance programs, in one stop, including federal and state assistance. Only if it is determined that the person has the ability to pay, but has not, will the water and sewerage services be terminated.
- Create a comprehensive DWSD Policy and Procedure for shutoff of residential and commercial accounts.

- Stop all water and sewerage shutoffs until DWSD has implemented policies and procedures addressing shutoffs by implementing the Colton, Detroit Water Affordability Plan.
- Declare an amnesty on Detroit criminal prosecutions for “alleged water thief”; instead evaluate these Detroiters for financial assistance based on what Detroiters can afford to pay. Turn an alleged criminal into a contributor.