

State Headquarters
2966 Woodward Avenue
Detroit, MI 48201
Phone 313.578.6800
Fax 313.578.6811
Email aclu@aclumich.org
www.aclumich.org

Legislative Office
115 West Allegan Street
Lansing, MI 48933
Phone 517.372.8503
Fax 517.372.5121
Email aclu@aclumich.org
www.aclumich.org

West Michigan Regional Office
1514 Wealthy SE, Suite 242
Grand Rapids, MI 49506
Phone 616.301.0930
Fax 616.301.0640
Email aclu@aclumich.org
www.aclumich.org

May 31, 2017

Detroit Water & Sewerage Dept.
Board of Water Commissioners
735 Randolph Street
Detroit, MI 48226

Re: access to water

Dear Commissioners:

In recent months, the ACLU of Michigan and its volunteer lawyers have provided assistance to DWSD customers to learn more about access to water service. DWSD has terminated water service for thousands of low-income water customers in recent years. From our experience we are persuaded that instead of more shut-offs, there should be an emphasis on: flexibility and empathy; counseling for those who have lost their water service; and waiver of rules that are an obstacle to restoration of water service. In addition DWSD should adopt an effective affordability plan. The cases of just a few customers make these points.

Flexibility and empathy

- In one case, our volunteer lawyers advised customer service representatives that DWSD failed to clear the amount due at the time a customer moved in to her residence. The customer also pointed out there were problems with the meter for some time after she moved in, and eventually DWSD had to install a new meter. Consequently, any bills estimated during the period when the meter was not functioning were not reliable. At the time of the new meter installation, the record showed a \$950 balance. Although DWSD rules limit the time to dispute a balance to 42 days, customer service staff agreed to deduct the \$950 from the total arrearage. Although the customer had missed payments on a previous payment plan and the rules required a 50 percent down-payment on the arrearage, an affordable 30 percent down-payment was negotiated. The DWSD staff's flexibility and consideration of the customer's actual circumstances made it possible not only for water service to be restored, but also for DWSD to receive payments from this customer.

Access to information can yield access to water

- In another case, the customer had been without water for months. All the while she was unaware that she was eligible for restoration of her water service for two reasons. First, a family member's medical condition qualified the household for restoration of water service for a 21 day period because of a health emergency. Also, the water could remain on after the 21 day period because the customer was on the waiting list for the Water Residential Assistance Program (WRAP). The customer learned these things only after working with her legal counsel and DWSD customer service personnel.

Those who create the rules can waive the rules

- Finally, a customer had been without water for more than a year through no fault of his own. He rented a house from a landlord who had apparently failed to pay water bills. Consequently, water service was terminated soon after the customer moved in. The landlord then passed away. The customer had no knowledge or information about the disposition of the property owner's estate. His only interest was in establishing a tenant's account so that he could pay water bills directly. Unfortunately, at several levels, DWSD staff seemed at a loss as to how to establish an account for the customer – largely because of DWSD rules that were apparently designed to prevent squatters from receiving water service. A tenant's account was established only after the customer and I attended a Board of Water Commissioners meeting to request waiver of any rules preventing restoration of water services. Certain board members expressed concern and asked a customer service manager to speak with us. Within the next hour a tenant's account had been established for the customer.

Because of our experiences with water customers, we strongly suspect there are many whose services have been terminated and who could have their services restored if they had more information about their options. We have no first-hand knowledge of how the DWSD customer service staff interacts with customers who are not accompanied by counsel. However, during our meetings with the customer service staff, they presented themselves as conscientious, concerned and willing to provide customers with significant information and options.

We nevertheless perceive a problem. Unless there are special outreach programs unknown to us, customer contact with the customer service staff occurs only if a customer initiates it. That means there are probably thousands of customers with potential remedies for their water service problems who will never have contact with a customer service representative. This prompts the first of three recommendations:

1. Institute ongoing, persistent outreach to customers who have lost their water service.

Budget and personnel limitations should not prevent more aggressive efforts to re-connect water service for eligible customers. When personal visits to homes are not feasible, such things as newsletters that discuss the various options (e.g., health emergency reconnections; payment plans; WRAP, etc.) should be routinely and repeatedly mailed to homes that are no longer receiving water service. This type of outreach is not just a service. It is an investment that can bolster the roster of paying DWSD customers.

2. Provide greater license and encouragement to DWSD staff to seek and obtain authorization to implement policies and rules in ways that provide greater and not less access to water services.

The lack of water for any household is an emergency that warrants an extraordinary response. We further believe that DWSD staff culture should make it unacceptable for a customer who has financial means or who is otherwise eligible for water to be denied reconnection of their water service because of policies or rules. There should be a commitment to restoring water service even to the point of requesting (and receiving) waivers and exceptions to rules as often as needed unless doing so poses a health or safety risk, or will result in violation of the law.

3. Implement an effective water affordability plan.

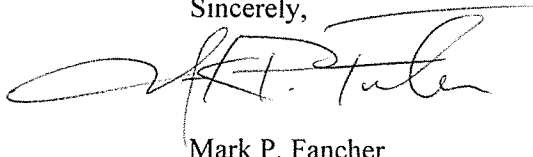
Community advocates and organizations have, for many years urged the adoption of a water affordability plan with a rate structure that indexes water and sewerage rates to poverty, and that holds poor customers harmless for amounts that exceed 3% of their total household income. Proposals for such plans have been presented to DWSD on a number of occasions. When the cost of water service corresponds with what customers are able to pay, everyone wins. Low income families and neighborhoods are stabilized because they receive a necessity. DWSD benefits because it receives actual payments for water services as opposed to the alternative – nothing. We have long been perplexed by arguments that the user fees for water affordability plans are a “tax” that violates the Headlee Amendment. Our reading of the law suggests just the opposite.¹ Unlike a tax, obligations to pay water service fees are assumed voluntarily. They are not mandatory for property owners who choose not to have water service. In addition, any user fee for water would be a valid regulatory fee for water services and would not be fees collected like a tax for the general city fund. A water affordability plan for Detroit is long overdue, and we urge adoption at the earliest possible date.

Is the “New Detroit” for everyone?

The loss of water service has caused the exodus of many families who have lived in Detroit for generations. The emergence of the so-called “new Detroit” means abandoned residential properties will find their way into the hands of developers hungry for opportunities to establish upscale housing. How DWSD chooses to handle its customers can have profound implications for Detroit’s future demographics. A decision to terminate a family’s water service long term is essentially a decision to drive the family from their home, and possibly from the City of Detroit. Over time, the fact that Detroit becomes richer and whiter will not mean that it has become better. The long-term Detroit families have made the City what it is, and if the City is to retain its unique character and culture these families must be given every opportunity to remain.

For all of the reasons discussed above, the ACLU of Michigan calls for a commitment by DWSD to ensuring water service for every Detroit household regardless of income. I welcome the opportunity to discuss these issues with you in further detail. Thank you for the attention you have given these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark P. Fancher", written over a horizontal line.

Mark P. Fancher
Staff Attorney – Racial Justice Project

¹ Full ACLU analyses of *Bolt v. City of Lansing*, 459 Mich 152 (1998) and *Jones v. Board of Water Commissioners of Detroit*, 34 Mich 273 (1876) can be provided upon request.