

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755
LANSING, MICHIGAN 48909

November 21, 2018

VIA EMAIL AND U.S. MAIL

William Kim
City of Flint Department of Law
1101 South Saginaw Street, 3rd Floor
Flint, MI 48502

Re: City of Flint's Violations of the Settlement Agreement in
Concerned Pastors v Khouri, Case No. 2:16-cv-10277-DML-SDD

Dear Bill:

During the "meet and confer" held on Friday, November 16, 2018, we discussed the various violations of the settlement agreement identified by the parties. Prior to that call, counsel for the Natural Resource Defense Council (NRDC) submitted a detailed proposal to resolve the issues arising out of the City's failure to prioritize lead and galvanized steel services lines for excavation and removal. The State Parties endorsed NRDC's proposal with some added conditions as set forth in my November 16, 2018 email.

As we stated during that call, the State Parties believe that prioritization is important to protecting public health in Flint. Although Flint frequently voices concerns about the threat posed by lead and galvanized steel service lines in the City, its failure to prioritize excavations and use hydro excavation to efficiently identify the composition of service lines has actually prolonged the process by allowing thousands of those service lines to remain in use. Any actions that can be taken to more efficiently identify and remove such lines will effectuate the City's stated goal of protecting public health.

We believe that NRDC's proposal will promote that goal and urge the City to ratify it (with the State Parties' amendments). Because of the need to consult with others and presumed absences during Thanksgiving week, you stated that Flint would not be able to respond to NRDC's proposal until after November 26, 2018.

During the call, you referenced roughly \$2,600,000 in open-trench excavation costs incurred that DEQ had refused to reimburse Flint. DEQ had allegedly refused to pay those costs based upon the State Parties' position that the 10-foot excavations unilaterally mandated by Flint are not covered under the settlement agreement. Although we expressed a willingness to resolve such reimbursement

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issues if Flint would agree to NRDC's proposal, you expressed that the City was concerned that any payment delay would threaten its liquidity. As a result, you requested that the State Parties immediately pay those outstanding amounts.

I have spoken with DEQ and determined that, in fact, it has not withheld payment of any funds to Flint because Flint has not yet submitted a final, signed disbursement request to DEQ for *any* of the Phase V costs. Any assertion that the State is currently withholding funds from Flint is not in accordance with the facts.

I acknowledge that DEQ's review of one of Flint's draft Phase V reimbursement requests has identified roughly \$2,600,000 in open-trench excavation costs that would not be payable should Flint ever seek a disbursement. But Flint has never sought a disbursement. So the State Parties have no obligation to pay any costs at this point, which renders the City's demand that DEQ pay those funds while it considers NRDC's proposal moot.

We look forward to receiving Flint's comments on the NRDC proposal, which will hopefully assist in resolving all of the outstanding issues.

Sincerely,



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RSK:rah

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