

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. BOX 30755
LANSING, MICHIGAN 48909

June 23, 2017

VIA EMAIL AND US MAIL

City of Flint
ATTN: City Administrator Sylvester Jones
1st Floor, City Hall
1101 South Saginaw Street
Flint, Michigan 48502

City of Flint Department of Law
ATTN: William Y. Kim
1101 S. Saginaw Street
Flint, Michigan 48502
wkim@cityofflint.com

Re: Notice of City of Flint's Violation of Settlement Agreement in
Concerned Pastors v Khouri

Dear Mr. Jones and Mr. Kim:

The information available to us indicates that the City Council has refused to approve the agreement negotiated by Mayor Weaver whereby Flint will enter into a contract with the Great Lakes Water Authority (GLWA) to purchase finished water. Any further delay by the City Council in approving that agreement or attempt to force a change in the water source will create an imminent and substantial endangerment to the public in violation of the United States Environmental Protection Agency's January 21, 2016 Emergency Administrative Order, the Settlement Agreement in *Concerned Pastors v Khouri*, and the state and federal versions of the Safe Drinking Water Act. Each of these violations provide an independent basis upon which the Michigan Department of Environmental Quality and the State of Michigan can act. The bases for our contention are more fully set forth in Director Grether's June 15, 2017 letter to City Council President Nelson and Mayor Weaver.

This letter constitutes written notice of the dispute and intent to file a motion to enforce the Settlement Agreement as required under Section XIII of the

Messrs. Jones and Kim

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Agreement. Please let us know your availability to meet and confer within the next fourteen (14) days regarding this dispute.

Sincerely,



Richard S. Kuhl
Assistant Attorney General
ENRA Division
(517) 373-7540

RSK/kaw

Enclosure: June 15, 2017 letter from Director Grether to City Council President Nelson and Mayor Weaver

cc: C. Heidi Grether, Director, MDEQ
Keith Creagh, Director, MDNR
Richard Baird, Governor's Office
Karen Williams Weaver, Mayor, City of Flint
Kerry L. Nelson, President, Flint City Council
S. Peter Manning, Division Chief, MDAG-ENRA
Eugene Driker, BSDD
Todd Mendel, BSDD
Dimple Chaudhary, NRDC
Sarah Tallman, NRDC
Michael Steinberg, ACLU



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



C. HEIDI GREETHER
DIRECTOR

June 15, 2017

VIA E-MAIL

Mr. Kerry L. Nelson, President
Flint City Council
City Hall
1101 South Saginaw Street
Flint, Michigan 48502

The Honorable Karen Williams Weaver
Mayor of Flint
City Hall
1101 South Saginaw Street
Flint, Michigan 48502

Dear President Nelson and Mayor Weaver:

SUBJECT: Request that the Flint City Council Take Action to Approve the Agreement to Purchase Finished Water from the Great Lakes Water Authority

The information available to the Michigan Department of Environmental Quality (MDEQ) indicates that the Flint City Council has postponed a decision on whether or not to approve the agreement negotiated by Mayor Karen Williams Weaver whereby Flint will enter into a contract with the Great Lakes Water Authority (GLWA) to purchase finished water. The GLWA water currently being used by Flint constitutes a safe and reliable source of drinking water that has proven to be protective of public health. Continued use of that reliable source is important to ensure protection of public health.

Any further delay by the City Council in approving the Mayor's recommendation or a reasonable alternative will create an imminent and substantial endangerment to the public. As a result, if the City Council does not approve the Mayor's recommendation by June 26, 2017, or offer a reasonable alternative proposal to obtain drinking water from some other source that will comply with the United States Environmental Protection Agency's (USEPA) January 21, 2016, Emergency Administrative Order (Order) and the state and federal Safe Drinking Water Acts (SDWA), the MDEQ has requested under MCL §325.1022 of the Michigan SDWA that the Michigan Department of Attorney General (MDAG) take legal action against the City to ensure that Flint maintain a safe and reliable drinking water source.

The City is currently paying \$14,100,000 per year to obtain water from the GLWA through a 72" line that was previously transferred to Genesee County. Due to its decision to transfer the line, Flint will lose use of the 72" line on October 1, 2017, absent approval of the Mayor's recommendation. No other alternate pipeline currently exists to supply GLWA water to Flint.

Building a separate pipeline would cost an estimated \$16,100,000 and would need to be completed by October 1, 2017. Failure to complete such an alternative line could result in a conflict with the delivery of treated water by the Genesee County Drain Commission to its customers and would likely result in litigation and the potential for damage claims against the City.

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If Flint were able to build a separate pipeline to obtain GLWA water by October 1, 2017, not only will it have to continue to pay \$14,100,000 per year for that water, but it will be obligated to pay \$7,000,000 per year in bond debt associated with the cost of building the Karegnondi Water Authority (KWA) pipeline and at least \$1,100,000 per year for KWA administrative costs and backup water from Genesee County.

Under the USEPA's Order, Flint cannot change water sources without extensive testing and planning that must be approved by the USEPA. Moreover, roughly \$58,800,000 to \$67,900,000 in improvements to the water treatment plant will be required to operate it on a long-term basis. In addition to these costs, such improvements will take approximately 3.5 years to complete.

It should also be noted that the water distribution system in Flint has not been properly maintained or improved for a significant number of years. As a result of that neglect, extensive repairs are currently required. If the approximately \$60,000,000 spent on the water treatment plant is not available for those repairs, Flint will need to find those resources elsewhere or be forced to leave the system in significant disrepair with attendant health and safety risks.

As a result, if the City Council fails to approve the Mayor's recommendation until Flint can obtain USEPA approval to change to any other water source proposed by the City Council and improvements are completed at the water treatment plant, Flint will have to increase water rates significantly or otherwise supplement the water fund to cover the combined GLWA and KWA costs. Even at that higher rate, if collection rates do not improve, it is projected that by June 2018 the City's water fund will not be sustainable. Depletion of the water fund will limit, if not prevent, any further monies from being spent on necessary improvements to the water treatment plant and distribution system.

Because the City does not have qualified staff to operate the water treatment plant or sufficient funding available to make necessary improvements to maintain and operate the water treatment plant and distribution system, any attempt by Flint to switch to a water source that would require operation of the water treatment plant will create a threat to public health. Under MCL §325.1015(1) of the Michigan SDWA, when necessary for the protection of public health, the MDEQ is required to notify the City of a need to make changes in its operations. The MDEQ has determined that the City Council's failure to approve the agreement with the GLWA and continued consideration of other options that may require operation of the water treatment plant places public health at risk.

In addition, under Paragraph 60 of the USEPA's Order, Flint cannot change water sources until it has submitted required plans to the MDEQ demonstrating that the City has the "technical, managerial and financial capacity to operate its PWS in compliance with SDWA and the NPDWRs and that necessary infrastructure upgrades, analysis, and testing have been completed to ensure a safe transition." Flint has not submitted the necessary plans to the MDEQ, and the MDEQ has concluded that the City does not have the necessary technical, managerial, and financial capacity to operate the water

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treatment plant in compliance with the SDWA or to ensure a safe transition to a new water source. As a result, the MDEQ is notifying the City that it cannot change sources at this time and may not until the technical, managerial, and financial issues outlined in this letter are resolved.

Finally, under Paragraph 61 of the USEPA's Order, the City must demonstrate to the MDEQ and the State that it has the "necessary, capable and qualified personnel" required to ensure that its water treatment plant will comply with the SDWA. The City does not have such personnel at this time. Indeed, the City has recently informed us that their employee with the proper certification license (D-1) to serve as its Limited Treatment System operator-in-charge will resign effective June 23, 2017. If the City returns the water treatment plant to routine service relying upon surface water as its source, the classification of the treatment system would then be a Complete Treatment System, and the operator-in-charge would be required to hold an F-1 certification license. The City does not have an employee with an F-1 license. As a result, Flint cannot make any change to its water source that would require the operation of the water treatment plant until the certification issue is resolved.

As set forth above, any actions by the City Council that delay approval of the agreement with the GLWA, or any failure to establish a reasonable alternative proposal that complies with the USEPA's Order, will endanger public health and violate the SDWA and the USEPA's Order. As a result, we request that the City Council approve that agreement or make its new proposal at its earliest opportunity so the State and the City can continue to cooperatively work together for the benefit of Flint residents.

Please contact us immediately to advise if the City Council intends to approve the Mayor's recommendation or to make a new proposal that will be both reasonable and ensure timely compliance with the USEPA's Order. We look forward to receiving your prompt response to this letter.

Sincerely,



C. Heidi Grether
Director
517-284-6700

cc: Mr. Keith Creagh, Director, Michigan Department of Natural Resources
Mr. Robert Kaplan, Acting Regional Administrator, USEPA, Region 5
Mr. Richard Baird, Governor's Office
Mr. S. Peter Manning, MDAG
Mr. Richard S. Kuhl, MDAG
Ms. Amy Epkey, Environment Deputy Director, MDEQ