

The Flint Water Crisis, DWSD, and GLWA

Monopoly, Price Gouging, Corruption, and the Poisoning of a City

by

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INTRODUCTION

Much has been said about the Flint Water Crisis, the causes, the effects, who is responsible, and what should be done about it now. Many have been blamed... Governor Rick Snyder; Former State Treasurer Andy Dillon; Emergency Managers Ed Kurtz, Mike Brown, Darnell Earley, and Jerry Ambrose; Former Flint Mayor Dayne Walling; various State department heads and staff in the Governor's office, the Department of Environmental Quality ("DEQ"); the Michigan Department of Health and Human Services ("MDHHS"); the Environmental Protection Agency ("EPA") officials; and City of Flint's officials and staff. Along the way, some even blamed Genesee County Drain Commissioner's office ("GCDC"), and the Karegnondi Water Authority (KWA). A number of misstatements, half truths, and outright lies have been told about me, my office, and KWA. Among the lies, that I am racist, and KWA is a racist organization.

This report provides the truth about KWA, details its history, why its pipeline was built, and how the City of Flint participated in that process. This report allows you to draw your own conclusions about whether the KWA pipeline was necessary and whether KWA had anything to do with Flint's decision to move to the Flint River for its interim water supply. In addition, the report refutes a number of the claims Professor Peter Hammer made in his testimony before the Michigan Civil Rights Commission.

BACKGROUND INFORMATION

The City of Flint owns and operates its own water distribution system. It also owns and, from time-to-time, has operated a water treatment plant (Flint WTP). Flint treated water from the Flint River ("River") to provide drinking water to its residents and businesses from 1903

until the 1960s. In the early 60s, it became clear that the River could not supply sufficient drinking water to serve Flint's growing population and industries. Then, Flint began to consider building a pipeline from Lake Huron to the City to provide water to be treated at the Flint WTP.

Flint's efforts to build its own pipeline were stymied by corrupt officials. The City initially planned a cross-country route for the pipeline and began to buy land along the route to install the pipeline. The City bought properties from Lake Huron to Flint, along the most direct linear construction route. A handful of Flint officials had inside information about the route and bought land along it, seeking to resell the land to the City at a dramatic markup. A few people hoped to become rich at the expense of Flint taxpayers. The corrupt scheme was uncovered, and trust in those running the project evaporated. Criminal charges were brought, and that pipeline was never built. Detroit then stepped in, built its own pipeline and sold water to Flint. Instead of owning its own system, Flint was forced to buy water from Detroit. From then to today, Detroit charged whatever Detroit felt like charging for drinking water, and our community was forced to pay whatever it cost.

THE EARLY DETROIT WATER CONTRACTS

On June 9, 1964, Detroit and Flint signed an initial water service agreement ("1964 Agreement"). The 1964 Agreement stated that Detroit would provide water from its Lake Huron Intake when it completed its pipeline to Flint. Flint would buy its drinking water from Detroit. The 1964 Agreement also gave Flint exclusive rights to distribute Detroit water throughout the rest of Genesee County. The 1964 Agreement was challenged in court. The lawsuit didn't end until December 1965. The Court approved a contract for Flint to buy

water from Detroit for an indefinite time, but no less than 35 years (“DWSD Agreement”). Flint did not receive water under the DWSD Agreement until the pipeline was completed in 1967.

In the 1960s, a number of townships bordering Flint signed various contracts with Flint to receive Detroit water. On June 28, 1973, Genesee County, acting through the County Agent – GCDC, agreed to buy Detroit water wholesale from Flint, which it would, in turn, distribute to other communities in the County. GCDC picked up the physical and administrative burden of dealing with the other municipalities in the County, saving Flint a large amount of money each year.

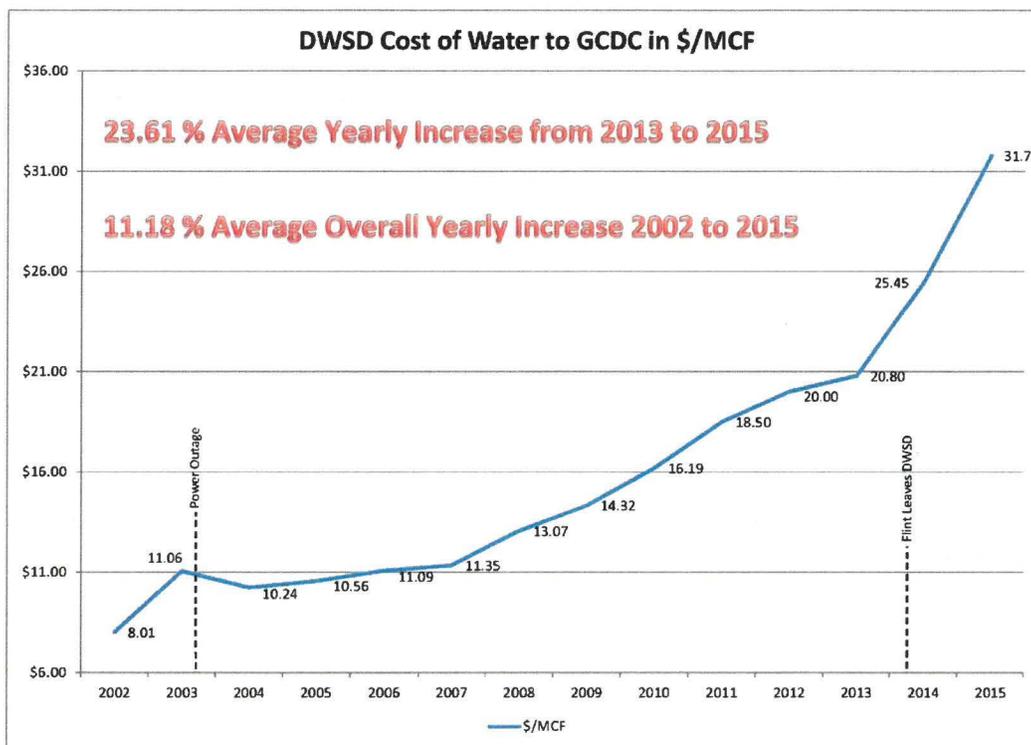
DWSD’S OUTRAGEOUS PRICES

In the early years, the Flint – DWSD relationship worked fairly well. Flint and GCDC grew more and more concerned with the authoritarian manner of DWSD, but the price of water was not too high, so the parties tolerated one another. This began to change in the 1990s. A dispute among the City of Flint, DWSD, and the Michigan Department of Public Health (“MDPH”) smoldered in the background once the City ceased operating its treatment plant and began the process of de-commissioning it. At the heart of the problem was the concern of the MDPH (predecessor of the MDEQ) regarding reliability of the Flint System. Without a functional treatment plant and with a single pipeline from DWSD to Flint and Genesee County, the potential for a long-term outage of water existed.

Rates Begin to Soar.

In the 1990s, Detroit began its systematic annual escalation of the price charged to Flint and Genesee County for water. The price increases were relatively mild in the 1990s; however, in the 2000s they became extreme.

The escalation in DWSD prices since 2002 is shown in the graph below:



Note: 2002 through 2013 figures are based on July 1 - June 30 rates, however beginning 2014, figures are based on calendar year data

The graph above shows that DWSD was pricing Flint and Genesee County out of its system. The price of water more than doubled for Flint and Genesee County from 2002 to 2013. After 2013, Genesee County's rates increased by an additional 50%. From 2012 to date, the rates quadrupled. These rate increases are simply unsustainable.

DWSD'S CORRUPTION

While DWSD was gouging Flint and Genesee County for our drinking water, its management was taking bribes in return for contracts where DWSD was being overcharged. This forced DWSD to increase Flint and GCDC's rates to support the corrupt enterprise. Charles Beckham, the DWSD Director was convicted of rigging a DWSD sludge contract. Following in Beckham's footsteps, the DWSD Director, Victor Mercado (2002-2008), was tried and convicted for corruption. Mercado pled guilty to charges of conspiring with then Detroit Mayor Kwame Kilpatrick "to illegally rig nearly \$72 million in contracts" (MLive, May 20, 2014). Kilpatrick was later tried for the same conspiracy and sentenced for public corruption at DWSD. DWSD kept increasing its rates to pay for phony and inflated contracts and to service \$5.2 billion in debt. These DWSD corruption trials came on the heels of nearly 36 years of Federal oversight of DWSD, due to repeated violations of the Clean Water Act.

DWSD'S UNRELIABILITY

Water Shutoff to 200,000 Residents.

As DWSD continued raising its prices and Detroit officials continued going to prison for corruption, service to Flint and Genesee continued to deteriorate. DWSD's system was very unreliable. During the blackouts of 2003, Flint and Genesee County were cut off from water delivery from the DWSD system for four days. DWSD had told its customers it had purchased generators for \$10 million, but the generators could not be found or had mysteriously disappeared. Hospitals, city residents, and businesses were without water: the public health and safety were placed in peril. The problem, a second pipeline was necessary to provide

reliability. DWSD knew this and promised a second pipeline¹, but after the plans were made, they refused to build it. DWSD tried to have Genesee County pay for the second line, but without being able to recoup the cost of building it. This made no sense. Flint and Genesee County residents should not shoulder the cost of a pipeline so that Detroit and Wayne, Oakland, and Macomb residents could see their rates drop. GCDC and Flint were being asked to pay the costs of solving DWSD's reliability problem, pouring more of our money into Detroit's corrupt enterprise. DWSD continued to charge its escalating rates to Flint and GCDC but refused to allow them a voice in setting those rates.

THE ONLY REASONABLE SOLUTION – KWA

From the 1990s into the 2000s, Flint and Genesee County were faced with these problems. DWSD was a corrupt, unreliable water supplier, which would mercilessly gouge Flint and the County. DWSD was quite content to let Flint and GCDC pay excessive rates to support the rest of its customers. Everyone knew a second pipeline was needed to serve Flint and Genesee County. The only reasonable solution to the problem – Genesee County and Flint should build the pipeline themselves.

Five Communities – an Equal Voice.

In 2010, Genesee, Sanilac, and Lapeer Counties, together with the cities of Flint and Lapeer, formed the Karegnondi Water Authority to provide water to the I-69 corridor. They hoped to stabilize their water bills, secure a reliable water supply, and have a voice in how much they paid for that water. For too long, DWSD had refused to allow Flint and the greater Genesee area to have a voice on its Board of Water Commissioners (“DWSD Board”). While

¹ Detroit News Article **(September 19, 2007)**

Detroit and Wayne, Oakland, and Macomb Counties were represented on DWSD's Board, Flint/Genesee, DWSD's largest outside customer, had no vote. Other communities got to decide what Flint and Genesee County would pay, thereby lowering their own rates at our expense. The result was that Flint, with a median income of \$24,679, paid more than three times what Oakland County, with a median income of \$66,436, paid for water.

This has changed. Under KWA, all members have a fair representative voice. Each member has a voice representing its stake in the entity which provides its drinking water. Most importantly, each community pays the same rate for its water.

KWA Approved under Governor Granholm – Great Lakes Water Compact.

The KWA pipeline project is one of the most highly scrutinized construction projects in the history of Michigan. KWA was initially studied by the Granholm administration and the DEQ (on behalf of the Great Lakes Water Compact). KWA was vetted by federal, state, and local agencies, as well as the Province of Ontario.² The pipeline was discussed at public hearings and approved by local elected officials in every part of its service area. Finally, it was approved by the Granholm administration through the Great Lakes Water Compact. Literally everything relating to KWA was closely examined and scrutinized.

² Large Quantity Water Withdrawal Permit # 2009-001.

GOING FROM DWSD TO HIGH QUALITY WATER FROM KWA.

Scope of the Project.

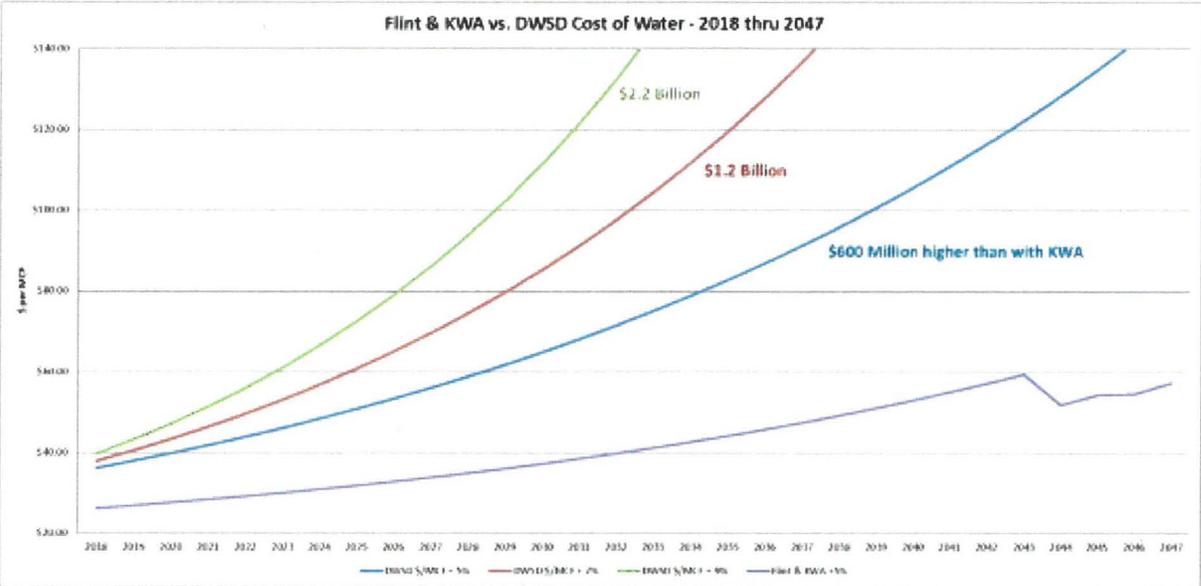
The KWA pipeline was an enormous undertaking. The system includes 63.98 miles of large diameter pipe and an intake facility capable of delivering up to 85 million gallons per day. The intake points are located approximately 1.5 to 2 miles off Lake Huron's shoreline with underwater pipe of 84". The system is designed to withdraw raw water from Lake Huron and pump it to a balancing tank in Lynn Township in St. Clair County. From there, the water is pumped through an intermediate pump station to a site in Oregon Township, Lapeer County, where GCDC is building a new water treatment plant, a 150 million gallon impoundment, and a pump station. Some of the raw water will then be treated at the new Genesee County Treatment Plant, then pumped to GCDC customers. Some will be pumped to the Flint WTP for treatment. To construct the pipeline, KWA was required to obtain permits to from federal, state, and local agencies,³ KWA then had to install intakes on the lake bottom; build improvements on the land; design, and construct pump stations and the pipe itself. The permitting process was a byzantine labyrinth which took more than five years of negotiations with federal, state, and local agencies to solve.

While obtaining approval to withdraw water from Lake Huron was very time consuming – it was only part of the process. In 2007 through 2009, prior to when KWA was formed in 2010, initial engineering studies, regulatory analyses, and cost estimates had been done. These studies showed, as did every objective study conducted since then, that KWA will save both

³ List of DEQ Permits

Flint and Genesee County resident’s money when compared to their costs to stay with DWSD. The studies showed it was not a close question – KWA was much cheaper than DWSD.

Flint City Customer Cost



Flint Water Rate Analysis as of 02-24-16.xlsx

Prepared 2/24/2016 Using an Average of 111 MGD

The only study critical of KWA was a February 2013 study prepared by Tucker, Young, Jackson and Tull (“Tucker Young study”). Tucker Young had an obvious bias -- the substantial amount of work it does for DWSD. But, Professor Hammer, in his testimony before this Committee, ignored that bias. Instead, he praised the study highly. Professor Hammer claimed the Tucker Young Study was rejected by Flint because it was “apparently not the answer that the Emergency Manager and other KWA backers in Flint wanted to hear”

(Hammer at 18). There is just one problem with this sarcastic conclusion, Tucker Young's analysis of the cost of KWA turned out to be completely wrong. The KWA pipeline was actually completed in October 2016 at the costs originally projected by KWA, and it was on time and under budget. The actual cost was within the range that all studies, except Tucker Young, had predicted and well below Tucker Young's inflated estimate. Tucker Young's independent study was not independent, and it was flat out wrong. Professor Hammer criticizes those in Flint who credited the mass of evidence showing that KWA was Flint's best choice and insists they should have accepted Tucker Young's flawed work.

Flint's \$85 Million Bond Debt

KWA's cost projections were correct. Tucker Young's were not. Professor Hammer continues to claim that Flint never properly analyzed how it would pay its bond debt or how it would pay the cost of necessary improvements to the Flint WTP (Hammer – Sec II B at 22-35). Flint was obligated to pay approximately \$85 million for its share of the KWA bond debt. The City was under the State's emergency financial management. Professor Hammer asks, rhetorically, how could Flint possibly find the money to pay this enormous debt? The short answer is simple: by using the same money it didn't have to pay to DWSD for over-priced water.

There is also a longer answer. Professor Hammer ignores or does not understand that Flint's water fund is an enterprise fund which can be used only to pay for the cost of water, water system operating expenses, and water system capital expenses. Money paid to the City by water users must go into the water fund and used only for these purposes. It is illegal for the City to use this money to pay its other general obligations. Since Flint's user fees were

sufficient to pay DWSD's \$13 million cost, it would be more than sufficient to pay KWA's lesser rates and Flint's portion of the bond debt as it became due. Today, DWSD's annual price to Flint is \$16 million. A portion of the City's existing user fees would be available to pay its \$7 million share of the bond debt.

The Administrative Consent Order.

Professor Hammer speciously claims that KWA and the DEQ manipulated rules governing bond financing through an administrative consent order ("ACO") with Flint in connection with KWA's \$300 million bond issue (Hammer, at 28-30). Professor Hammer describes the events leading up to the ACO as being truly nefarious. He posits that the ACO was needed because Flint's bonding capacity had declined so much that the KWA bonds could not be sold unless the ACO was entered pursuant to a regulatory loophole. This is not true. The ACO was necessary because the Flint WTP could not legally be operated without it. The water treatment process produces sludge. Flint wanted to store the sludge at its Bray Road site, near the WTP. In a very shortsighted decision, the city had improperly used a portion of the Bray Road site, which then became the subject of a DEQ enforcement action. The bond sale could not proceed because the Flint WTP could not legally operate and produce revenue without resolving the enforcement action, not because the City lacked adequate bonding capacity. The ACO did help Flint's future bonding activities by reducing the amount included in calculating the city's bonded indebtedness, but was not necessary to sell KWA bonds.

Necessary WTP Improvements.

Even though Flint joined KWA in 2010, until 2013 the City remained unsure of how it wanted to obtain its permanent water supply. The City had four basic options: stay with DWSD; buy

from KWA using the Flint WTP; treat Flint River water using the Flint WTP; or some combination of these. To remain with DWSD required Flint to enter into a new 30-year contract. The existing DWSD contract had expired, and the parties were operating on a year-to-year extension.

To stay with DWSD, Flint didn't have to improve its water treatment plant, unless DWSD allowed Flint to blend treated River water with DWSD water. The existing contract with DWSD explicitly prohibited blending, and DWSD refused to consider it, during discussions of a new contract with DWSD from the old Contract's expiration in 2000 until late 2012. It was only when DWSD began to believe KWA might soon become a reality that DWSD agreed to consider blending.

The improvements required to use the Flint River and Flint WTP as a permanent water source were different from and more expensive than those necessary to treat Lake Huron water. While many in Flint wanted to use the River permanently and pay for the maximum improvements, this would involve a more difficult treatment regimen and result in lower quality water at a higher cost.

In July 2011, Rowe Engineering ("Rowe") and Lockwood, Andrews, and Newnam ("LAN") provided Flint with a study that showed almost \$50 million as the cost to improve the plant to meet all required treatment standards and use the River as its permanent water source. In 2009, Rowe had calculated the cost to improve the WTP to treat Lake Huron Water as \$5.5 million. The Flint WTP could treat both sources to required standards, but it was easier and less expensive to treat lake water. And, the second pipeline from Lake Huron would satisfy the DEQ's reliability concerns.

Professor Hammer wonders where Flint would ever find the money to do the required improvements to treat lake water. Again, the answer is simple: from the City's water enterprise fund. Legally, the fund could only be used to pay water-related costs. The water fund produced sufficient revenue to make payments for the improvements as the City's court filings show. In a 2015 filing in Case No. 14-103476-CZ Shears v. Bingaman, Genesee County Circuit Court (2015), the water fund balance exceeded \$50 million. Professor Hammer never asks where Flint would find the money to pay for each of its more expensive alternatives to KWA.

PROFESSOR HAMMER'S NARRATIVE

But these basic facts do not interest Professor Hammer. He has an ideologically driven agenda. He tells a rambling and inaccurate tale to support his thesis that Genesee County, the hundreds of others connected with KWA and I racists. He says we may not be intentionally racist, but we are clearly strategically racist. Now if you don't know what a strategic racist is, please read Professor Hammer's explanation of various types of racism at pages 1-5 of his testimony. There he applies Michel Foucault's analysis of knowledge & power, to his newly minted concept - strategic racism.

Professor Hammer does not show how strategic racism fits into his pyramid of oppressive forces: intentional racism, structural racism, and unconscious bias (Hammer, at 2). Instead he highlights it separately for special treatment. He defines strategic racism as the manipulation of intentional racism, structural racism and unconscious biases for political and economic purposes regardless of whether the actor has express racist intent. This does not make sense: both manipulation and strategic action are thoughtful acts. To say someone

manipulates intentional racism and structural racism may be rational, but to say they manipulate these things unconsciously, is not. And, it makes no sense to say someone is a strategic racist, but claim he or she doesn't know it.

In any event, Professor Hammer insists that strategic racism can be unconscious and that it powered decisions regarding Flint's initial participation in KWA (Hammer, at 3). That is, Flint's participation in KWA was the result of strategic racism, not the result of racially neutral decisions taken to provide Flint and Genesee County residents with high quality Lake Huron water at guaranteed reasonable prices from an honest and reliable source, KWA. The price of water would be the same price for each community, and each would have a seat at the table when that price is set. Most respectfully, Professor Hammer never explains how this resulted from strategic racism. He doesn't even come close.

Happy New Year – Thank you for your Help.

Professor Hammer starts his analysis of Flint's journey to KWA with these words:

“There is another name in the email trails central to the KWA story – John C. O'Malia. John O'Malia is a professional engineer coordinating much of the engineering and political work for KWA. From the beginning, one senses an inappropriately close relationship between those associated with KWA, officials in the City of Flint and employees of DEQ. On November 18, 2011, John O'Malia sent an e-mail to Liane Shekter-Smith (DEQ) concerning “Revised Memo” regarding KWA... Thanks for your help”. (emphasis supplied)

Emphasis on the November 18, 2011 email shows just how little Professor Hammer understands what it takes to get approvals for, and build, a \$285 million pipeline. In today's jargon, Professor Hammer is clueless, totally clueless, about how to do these things. And, he has a bizarre way of reading emails.

At the outset, it is difficult to understand how he or anyone else can "sense" that a relationship is inappropriately close from a single phrase in a single email or even from a series of emails. Yet, Professor Hammer claims to have done just that. In any event, the November 18, 2011 email was nowhere near the beginning of the KWA story. Mr. O'Malia, together with other engineers, consultants, and financial advisors had been hired four years before in 2007 by GCDC to do engineering and administrative (not political) work for what ultimately became the KWA project. Mr. O'Malia was hired because he is an expert in navigating the labyrinth of federal, state, and international statutes, regulations, and administrative agencies which confront a community needing to withdraw water from Lake Huron.

Instead of being the shadowy character Professor Hammer describes, Mr. O'Malia is a competent, meticulous, and thoroughly professional engineer. He understands what permits are necessary, the requirements for those permits, the order in which to seek them, and the timetable to be followed to obtain each of them. He also understands that the regulatory agencies are made of people most of who try to do their jobs correctly and apply the rules, fairly and completely. They want to be treated with respect, and Mr. O'Malia does that.

Neither they nor Mr. O'Malia are the sinister forces of racism Professor Hammer makes them out to be , trying to take advantage of minorities and poor people in the City of Flint. When

you have worked with someone for almost five years to obtain permits for a project of this magnitude, to get a detailed review of two inlet points which are to be placed in the lake, to lay approximately 63 miles of pipeline, and build 3 pump stations to pump the water from the Lake to Flint and Genesee County, it is not surprising to say, "Thank you for your help", to those who have worked with you.

No matter, from this sinister, "Thank you", Professor Hammer skips to Mr. O'Malia's January 5, 2012 e-mail: "... see attached... Happy New Year to you and your staff". The Professor thinks the attached memorandum is so significant, he quotes it verbatim. To the untutored eye, the memorandum is simply a status report of events which took place in calendar year 2011. But to Professor Hammer, O'Malia's descriptions of people who are favorable to KWA coupled with the Emergency Manager's decision to delegate to the Mayor and City Council the decision on whether to buy water from KWA to avoid redoing the decision if a pending lawsuit is successful is very sinister. And, Professor Hammer finds Mr. O'Malia's inaccurate prediction that the Flint City Council will approve KWA in January or February 2012 quite suspicious. But, then comes his "smoking gun", the evidence that Professor Hammer claims conclusively establishes that KWA and DEQ have an inappropriate relationship -- Mr. O'Malia wishes Ms. Shekter-Smith and her staff a Happy New Year.

From this email, Professor Hammer infers a series of remarkable, but totally wrong, conclusions. First, he says O'Malia is not an outsider trying to lobby or influence decisions of government. Instead, he is an insider giving DEQ, his coconspirator, a summary of the conspiracy's 2011 outcomes and plans for 2012 (Hammer at 15). Next, Professor Hammer concludes the email proves that Flint is essential to the viability of the KWA project. Finally, he says the January 3, 2012 O'Malia memo "reported that the KWA project was essentially a

done deal in Flint". Perhaps this is true in Professor Hammer's mind, but nowhere else. Each of these inferences is wrong, and none is even suggested in the January 3rd memo.

How Professor Hammer was able to discern all of this on the basis of O'Malia's, "Thanks for your help", and "Happy New Year", is impossible to understand. Had he looked at the record, Professor Hammer would have known that Mr. O'Malia had been working with the DEQ on the KWA project since 2007. The DEQ files would have clued him in to how grossly he minimizes the engineering work, negotiations, and costs of building a pipeline of this magnitude. If he understood the process, he would not have dared to suggest that Mr. O'Malia's five years of work to get these approvals was somehow tainted by an inappropriate relationship.

First, Professor Hammer does not understand how hard it is for a homeowner to get permits to build a lake front dock, much less a \$285 million pipeline. He thinks DEQ procedures are like getting a driver's license: take test; pay fee; get permit. Wrong. DEQ permits are always difficult, and quite often, you don't get them. The KWA process was very complicated. The applicable regulatory standards and permitting requirements were extremely complex. By January 2012, the original withdrawal permit had been issued, but the scope of the KWA pipeline had not been decided, the plans and specifications for the pipeline had not been prepared, and Flint hadn't yet decided who was going to supply it with water.

Second, Flint's participation in KWA was not necessary for the pipeline to be built. On February 24, 2012, GCDC explicitly told Flint that Genesee County would go ahead with the pipeline with or without the City. Mr. O'Malia's March 14, 2012 email to Ms. Shekter-Smith, which Professor Hammer cites, states that Flint wanted to meet with the DEQ to discuss

whether it could blend with DWSD or with KWA, whether it would join KWA at all or whether it could use the Flint WTP permanently to treat Flint River water as Flint's permanent water source. GCDC was not going to wait indefinitely for Flint to decide what it was going to do. Genesee County had bought the land, obtained the withdrawal permit, and designed the intake and pump stations before Flint agreed to the Water Supply Agreement. KWA continued to process applications for approval at the DEQ without knowing whether Flint would participate in the pipeline or not. Flint's participation was in no way essential to the viability of KWA's vision.

Third, it is silly to suggest that in the January 3, 2012 memo, O'Malia reported that the KWA project was essentially a done deal in Flint. It wasn't close to done. At that time, Flint did not know what it wanted to do. Flint did not agree to buy water from KWA until April 2013. Between January 3, 2012 and April, 2013, Flint negotiated with both DWSD and KWA. It also continued to consider going to the Flint River permanently. A done deal is not done until all parties to it agree that it is done.

DWSD's Role

Even before Flint agreed to buy KWA water, DWSD began a publicity and lobbying campaign to squash the deal. Until early 2013, DWSD didn't really believe KWA would actually get built. When DWSD Director Sue McCormick met privately with Tucker Young president George Karmo and other Tucker Young representatives on November 19, 2012, DWSD was comfortable that Tucker Young would decide DWSD was less expensive for Flint than KWA. DWSD was also confident Treasurer Dillon would select DWSD to supply water to Flint. When he didn't and when he did select KWA, all hell broke loose at DWSD. On March 26, 2013, B.K. Johnson, a DWSD spokesperson, published a scathing press release calling the

KWA pipeline Jeff Wright's "Pipe Dream". Relying heavily on Tucker Young's inaccurate report, Johnson claimed that Wright had "low-balled" the project costs by a whopping 24 percent. Since the pipeline was completed on time and under budget, Mr. Johnson has been proven dead wrong. KWA's estimates were correct, Tucker Young's were not. The only whoppers were Mr. Johnson's claims in his press release.

Despite these claims by Mr. Johnson, one has only to review his own words 2 years earlier, before he was hired by DWSD, to understand the truth. In a blog post written on December 27, 2010, Johnson refers to DWSD as "...a dumping ground for patronage jobs, contract padding and sleaze..." Johnson says DWSD is rife with "mismanagement, incompetence, cronyism and corruption."

Johnson goes on to state "that DWSD has awarded millions in no-bid contracts, failed to collect from deadbeat customers and was guilty of gross mismanagement." Johnson also points to unjustified rate increases and price gouging of suburban customers. "DWSD is the poster child for Detroit corruption," says Johnson. His words proved prophetic, and are one of the major reasons Genesee County and Flint created KWA.

In the meantime, DWSD also stepped up its lobbying efforts. On April 1, 2013, Flint Journal Reporter Ron Fonger noted on MLive, "The City of Detroit is asking the State to stop Flint from joining in the construction of a new water pipeline from Lake Huron." Mr. Johnson chimed in again, arguing that Treasury should select DWSD based on the "credible state-sponsored", albeit completely inaccurate, study produced by the "prestigious engineering consulting firm" Tucker Young. On April 15, 2013, DWSD sent KWA and Flint EM Kurtz a final financial offer (the first of three final offers) copying Treasurer Andy Dillon as it had

promised to do when lobbying him. On April 16, 2013, Mr. Kurtz analyzed DWSD's first final offer, noting that it was not actually a firm offer but rather a framework for future negotiations. Equally important, the offer demanded Flint enter into a 30-year contract, but guaranteed the price for only the first year. Flint's cost in the remaining 29 years would be determined by DWSD, just as it had done in the past. Mr. Kurtz also noted the offer didn't contemplate Flint using the WTP in which the City had invested over \$40 million in the last 10 years. Flint declined the offer based on its lack of merit.

At 10:15 a.m., the very next day, April 16, 2013, DWSD terminated its existing contract with Flint effective April 17, 2014. But two hours before sending that termination letter, DWSD Board President Jim Fausone had revealed in an email why DWSD had sent the notice:

“Folks – I am disappointed to report that Flint/Genesee rejected the offer last night by press release to the Flint Journal. The next step will be to send Flint a termination letter. Flint plans on buying water from DWSD for the next 3 years. Under the old contract, a termination letter is sent and then 12 months later DWSD can set new rates for the water delivered in year 2 and 3. The new rates will cover all sunk costs...” (*emphasis supplied*)

Detroit's lobbying did not end. On April 19, 2013, Governor Snyder stepped in. He summoned Mr. Dillon, together with Treasury and DEQ employees, to a meeting in his Detroit office with Flint Mayor Dayne Walling, Flint EM Kurtz, Jim Fausone, and DWSD Director Sue McCormick. John O'Brien and I, from KWA also attended. Kevyn Orr, Detroit's Emergency Manager, attended by telephone. After allowing everyone to say their piece, the

Governor determined that DWSD would be allowed to make a second “final” offer, which DWSD did and which Flint later rejected.

But, Professor Hammer tells us the DWSD termination notice had nothing to do with later events.

“In reconstructing events, the first thing to make clear is that the DWSD April 17, 2013, one year termination notice, plays no legitimate role in the story. The letter had no implications for Flint’s ability to access Detroit water on April 18, 2013, and everybody knew it. Claims to the contrary are completely pretextual.”

“Pretextual” is law professor talk for: This doesn’t fit into my narrative, so I’m not going to give it any weight or talk about it at all. Professor Hammer’s analysis is both severely limited and simply wrong. The Professor deals in a world dominated by abstract sinister forces, like strategic racism, not in a world where real people make real decisions based on concrete facts.

Leaving aside whether the termination notice caused officials in Flint to believe DWSD would really try to cut off drinking water (some did believe DWSD might), it certainly caused them a great deal of anxiety. They seriously thought that DWSD might actually force them to turn to the Courts to enjoin a shutoff. Also, the termination notice caused them to think about their alternatives, what they could do in response to the notice. Many Flint officials were truly offended by the letter. They saw it as a gratuitous nasty act by an arrogant bureaucrat with whom they had been trying to work out a new contract since the old one expired in

2000. They also feared the notice might be a ruse to allow DWSD to raise their rates for years after April 17, 2014, which it was.

Mr. Fausone's email stated DWSD's plan explicitly: send the notice today, wait a year, then raise the rates for years two and three. But, Mr. Fausone's email is interesting for another reason: He assumed Flint intended to buy water from DWSD for the next three years. How arrogant. In Mr. Fausone's world, Flint had no other choice but to do what DWSD wanted it to. DWSD has always had an inflated view of its own importance; after all, it is the largest supplier of water in Michigan. It didn't occur to Mr. Fausone that Flint or anyone else would refuse to buy overpriced water from DWSD if they had the chance to buy it.

Flint EM Ed Kurtz saw things differently. After being appointed to his job in August 2012, Mr. Kurtz had attacked Flint's water problem head on. He studied the engineering and financial implications of all of Flint's options: staying with DWSD, using the Flint River permanently, going with KWA, or entering into some sort of blending arrangement either with KWA or DWSD on a temporary or permanent basis. He really did his homework, so that he was entirely comfortable when he recommended KWA to Treasurer Dillon as the best permanent source of potable water for the City of Flint. He'd run all the numbers.

So, when DWSD sent its termination notice, Mr. Kurtz did not panic. He understood the City had options. Unlike Mr. Fausone, he didn't assume anything. He knew DWSD was Flint's most expensive option, nothing more, nothing less. On May 10, 2013, he instructed the Flint WTP supervisor, to ask LAN to prepare a proposal to perform engineering work on the Flint WTP to get it ready for full-time operation temporarily using the Flint River, and later using water from KWA after it came on line. On May 22, 2013, Flint told LAN it wanted to complete

the design and construction of the Flint WTP by July 2014. The City also told LAN it expected to save \$10,000,000 over what it would have to pay DWSD for water during the interim period before KWA.

On June 17, 2013, Flint's staff recommended to Mr. Kurtz that he authorize the City to enter into a sole source contract with LAN to place the Flint Water Plant into operation using the Flint River as the City's primary drinking water source. On June 26, 2013, Mr. Kurtz adopted a resolution to do that. It was in this resolution on June 26, 2013, that the City of Flint decided to go to the River. GCDC, KWA, and I had nothing to do with that decision.

Flint's elected leaders chose KWA as Its Long-Term Water Source.

Professor Hammer claims that because Flint was in economic distress, it made a mistake when it chose to buy water from KWA. Professor Hammer clearly believes that DWSD was superior to KWA as the choice to permanently provide Flint water. On the facts, the Professor's belief is unsustainable.

By April 17, 2013, Flint's Mayor, City Council, and Emergency Manager had each decided to buy water from KWA. They all thought KWA provided the most benefit to the City. They knew DWSD was a corrupt organization which had been used by Kwame Kilpatrick, Charles Beckham, Victor Mercado and others to line their pockets for years. They also knew that DWSD's service was not reliable. They had lived through the waterless days in 2003. Flint also knew DWSD had never built the second pipeline it had promised to build, nor was that second Flint pipeline in DWSD's 10-year Capital Improvements Budget. Everyone knew that DWSD would continue to overcharge its customers without compunction. Through its rate

formula, DWSD had for years been allocating the costs of its water system disproportionately to Flint in order to lower rates in Detroit, as well as in Wayne, Oakland and Macomb Counties. Under all of these circumstances, the City Council, Mayor, and EM would have to be more than a little daft to sign a new 30-year contract with DWSD.

Yet, Professor Hammer seems genuinely to believe this is precisely what Flint should have done. Why? First, hindsight is always 20/20: after the Flint Water Crisis happened, it was easy to say Flint coulda, woulda, shoulda done something else. Some people, in any office, had the foresight to tell Flint before it went to the River not to do so. Unfortunately, our advice was not heeded. If it had been, the residents of Flint would not have suffered the immense pain in the years since. The unmeasurable health burden, financial toll, and psychological damage done to Flint and its residents by the water crisis is heartbreaking. At the time however, river water advocates wouldn't listen. Now, some of those advocates choose to exercise 20/20 hindsight. They view events much differently than they did in 2013 and 2014.

For example, Professor Hammer asserts categorically: "The decision to use the Flint River for drinking water bares (sic) no direct relationship to the conduct of DWSD" (Hammer at 23). This is just wrong -- the DWSD termination letter had everything to do with going to the Flint River. EM Kurtz and others were not certain what DWSD would actually do. They didn't know whether DWSD would shut the water off, would force a lawsuit, would sell water to Flint, or, if so, at what price?

With hindsight, all of these questions were answered: DWSD did not shut off the water; no lawsuit was necessary; DWSD would have sold water to Flint but only at the outrageous

prices contemplated by Mr. Fausone. Look at what DWSD did to GCDC. It marked up its price by 50 percent, gouging with both hands. Professor Hammer's analysis turned out to be 100 percent wrong.

To begin, no one should have to pay excessive rates to subsidize an unreliable, inefficient, corrupt water supplier – which DWSD is. Second, Professor Hammer's testimony is ideologically driven. Racism, intentional racism, structural racism, unconscious bias; and most significantly, strategic racism, do not explain everything about the Flint Water Crisis. In fact, they explain little. KWA was formed to provide the people in the I-69 Corridor, including Flint and Genesee County, with a reliable source of drinking water less expensive than DWSD water. KWA was not formed so that those associated with it could manipulate the forces of intentional racism, structural racism, and unconscious bias to achieve sinister political and economic purposes. Our decisions had nothing to do with race. KWA was formed after more than forty years of waiting for DWSD to act, to provide the second necessary pipeline from Lake Huron. No one questioned that the pipeline had to be built. The only question was who was going to build it, and who was going to pay for it.

Third, Professor Hammer accepts the DWSD mythology. No one knows where the myth started, but Professor Hammer, his academic colleagues and even Governor Snyder's Task Force somehow believe that DWSD is a benign, well run public utility, which is upright and fair in dealing with its customers. Professor Hammer proudly quotes his colleague Nick Schroeck's 2009 attack against KWA:

“The economic assumptions behind and the environmental impacts of the proposed Genesee withdrawal render the proposal flawed, at best, and a

cynical ploy, at worse. We don't need to drive another wedge between Detroit and the rest of the region. We should seek to improve upon the efficiency and conservation measures of the water delivery system that we already have, rather than spending vast sums of public dollars on projects that are completely unnecessary." (Hammer at 17, citations omitted)

To begin, the economic assumptions behind KWA turned out to be precisely correct, accurate almost to the dollar. Second, there were no adverse environmental impacts. KWA serves only communities in its drainage basin, or region, which flows into Lake Huron near KWA's withdrawal point. KWA is not a cynical ploy, a wedge between Detroit and the rest of the region, which we don't need. Professor Schroeck never explains who "we" are or what region he's talking about. And, he never tells us why wanting an affordable, reliable water supply is a cynical ploy. And, most importantly, he never explains why DWSD is to be the favored (or in the professor's jargon) privileged water supplier.

"We" is the literary imperial we; actually it's just Professor Schroeck. The amorphous region is the frequently discussed but poorly defined area "Southeast Michigan". When Detroit, Wayne, Oakland, and Macomb Counties want something, like water revenue, Flint and Genesee County become a part of Southeast Michigan. But, when those governments are not looking for something, Flint and Genesee County are not. When there is federal money to be distributed, Flint and Genesee County are nowhere near Southeast Michigan much less a part of it. From physical and economic points of view, Genesee County and the other members of KWA are part of the I-69 Corridor, a region which drains into Lake Huron near the intake point for KWA. From a planning perspective, Genesee County and the other KWA members

are not only not in Southeast Michigan, they are not even members of the Southeast Michigan Council of Government (“SEMCOG”).

For Professor Schroeck, KWA’s desire to provide inexpensive drinking water to its members is a cynical ploy because he thinks Genesee County is supposed to buy its water from DWSD at any cost. Why, because Detroit wants to sell them water. There is no reason, much less a good reason, for the County to buy its water from DWSD, but Professor Schroeck can’t see that. As he sees the world, KWA is just another someone who is taking what rightfully belongs to Detroit. Put another way, Genesee County should buy water from DWSD so Genesee County can continue to pay its disproportionate share of DWSD’s expenses; this allows Detroit and Oakland, Macomb, and Wayne Counties to pay less for their water, as they have historically done.

DWSD is the privileged water supplier to Genesee County because DWSD exists and because it currently supplies water to the County. It matters not that DWSD has been proven itself to be a corrupt, inept, unreliable price gouging bureaucracy. Professor Schroeck sees no other appropriate choice. DWSD is, ironically, a very conservative risk averse choice. The liberal professor finds KWA must be rejected because it is a locally controlled, higher risk venture seeking to provide less costly water in a transparent way to its members. But Professors Schroeck and Hammer reject KWA because it is not the water establishment’s choice. This is not very independent thinking from two such credentialed law professors. The DWSD myth is simply an urban legend with no basis in fact. DWSD is privileged because it exists, and has existed for years – nothing more. It is the establishment’s privileged water supplier. How could it not be honest, competent, and safe? It could because it is not honest, competent,

or safe. And the DWSD myth conceals an important truth – DWSD is a monopolist, trying to sustain its monopoly.

Both Professors Hammer and Schroeck claim KWA is a result of poor regional water planning. Like the DWSD myth, there is no truth in it. KWA's service area is the same as its drainage basin. KWA serves a geographic and economically integrated area, the I-69 corridor. KWA will allow the corridor to develop in competition with Southeast Michigan. It is excellent water planning. And, the poor planning mantra masks the fact that DWSD is only trying to protect its water monopoly. DWSD admitted this when it shrieked that KWA had started a "water war". One questions why the professors criticize local governments for working together to create a more transparent, democratic, and efficient way to provide themselves with affordable drinking water. KWA started as a natural human response to DWSD's price gouging and lack of reliability. KWA represents what local government can do when it is at its best. The attacks of DWSD and its supporters are nothing more than attempts to protect a corrupt, inefficient bureaucratic monopoly and epitomize government at its worst.

STRATEGIC RACISM – A DISHONEST CRITIQUE OF KWA

Professor Hammer says KWA and its people are strategic racists. To accuse someone of being a racist in the United States in 2016 is a very serious thing. The accusation should not be made lightly or without clear evidence of particular statements and actions by the people being charged. Professor Hammer's provides no such proof. The Professor cites no statement I made or any other person associated with KWA made, which even hints at racial animus. He cites nothing, no statement, no action, no fact, that even suggests I or anyone else

at KWA are racists. Instead of providing facts, Professor Hammer's testimony piles innuendos, upon speculation, upon suspicion, Professor Hammer defames people he doesn't know and has not even met. Instead of presenting facts, Professor Hammer provides a narrative to a world that exists only in his mind.

The facts surrounding KWA are clear: Buying KWA water was Flint's best option in 2013, and it is the City's best option today. It will remain Flint's best option for decades into the future. The reasons are simple: reliability, access to high quality water, full participation, through representation on KWA Board, and financial savings for a struggling region. The facts have not changed: either about KWA or about DWSD.

There is one more vital fact: KWA had no part in Flint's decision to go to the Flint River for its drinking water. Signing the KWA contract for raw water supply did not require Flint to use the River for its water supply. KWA certainly did not cause Flint to omit corrosion control in treating the river water. When Flint voted to buy water from KWA, almost everyone, as DWSD Board President Fausone stated in his email to the Treasurer, thought Flint would remain with DWSD until the KWA pipeline was constructed. This is what KWA, in fact, thought and recommended at the time.

These basic facts did not prevent people from sensationalizing the tragedy, twisting the truth, and using Flint's crisis to advance personal, political, and career aspirations. Professor Hammer may or may not be one of them, but his testimony and his statements to the Detroit press are littered with totally untrue statements.

False Statement #1: Flint did not have enough money to upgrade the City of Flint treatment plant.

The Truth: Flint had more than enough money to pay for the improvements to its water treatment plant. As previously noted, the City swore in Genesee County Circuit Court Case No. 14-103476-CZ, Shears v. Bingaman, 2015, that it had \$50 million in its enterprise fund in 2015. The money in the fund could only be used for such water-related expenses. And, Flint would have quickly recouped these capital expenditures from the difference between the cost of KWA water and the cost of DWSD water.

False Statement #2: Flint could not pay for their 30% share of the KWA bonds.

The Truth: Flint will pay its share of KWA bonds using the same money they paid Detroit (DWSD) for water delivery – with one difference. The amount of money Flint residents will pay to KWA is significantly less than what they paid Detroit. So much so that switching to KWA will save Flint \$600 million over 30 years, with savings beginning on day one. No new revenue will ever be needed for Flint’s KWA bond payments.

False Statement #3: Flint City Council’s vote in 2013 was a sham, not an exercise in democracy.

The Truth: The City Council’s vote on March 25, 2013, to buy water from KWA was not a sham. The vote was taken to assure Flint’s residents had a voice in what their water supply would be. That vote that day was one of the few moments of true democracy Flint had during the EM reign. The lawsuit about the validity of the Emergency Manager law, mentioned in

Mr. O'Malia's January 3, 2012 memo, had been dismissed long before the vote was taken. As Drain Commissioner I insisted that the City Council vote because I believed that the City's permanent water source should be decided by Flint's elected representatives. I stand by that decision today. The vote was also not an idle exercise. I assured the Flint City Council that if it voted "no", KWA would not sell water to Flint, but the pipeline would be built anyway.

False Statement #4: KWA and the people associated with KWA are strategic racists.

The Truth: DWSD operating as a monopoly had raised Flint and Genesee County's water rates to an unsustainable level. DWSD's water bills had more than tripled since 2002. It was less expensive to build a new pipeline than continuing to pay those exorbitant rates. Even DWSD admitted a second pipeline had to be built, due to the lack of reliability of its aging system. Yet, DWSD refused to build the pipe itself. It wanted Flint and Genesee County to build and pay for the pipeline, while continuing to pay DWSD's excessive rates so that Detroit and Oakland, Macomb, and Wayne Counties could continue to profit from those payments.

Professor Hammer ignores the true effect of DWSD's termination notice because it does not fit his narrative that KWA and I are racist and caused the Flint water crisis. This is false, and the accusation of racism is groundless. It is also one of the most severe and insulting accusations one person can make against another in this society. Yet, Professor Hammer does so cavalierly and without a shred of proof. Professor Hammer documents no bias from anyone, except his own clear bias in favor of DWSD.

While I have no jurisdiction over the Flint water system, I have represented the residents of Flint as their County Drain Commissioner for more than 16 years. I've seen first-hand the

economic hardships Flint residents face, and refused to sit idly by while DWSD used its monopoly to gouge Flint and its residents. Professor Hammer thinks I should have just watched as Flint and other Genesee County residents overpaid for water, and do nothing about it. The Fausone email tells the real DWSD story – it assumes Flint would stay with DWSD until KWA came on line. In the meantime, DWSD could raise its prices in the last two years with impunity. To show that he is a man of his word, when DWSD got the chance to charge GCDC in those years, it increased the price of water by 50 percent.

THE SHELL GAME GOES ON: DWSD BECOMES GREAT LAKES WATER AUTHORITY (GLWA).

On May 25th, 2016, the Detroit News reported GLWA officially approved rate hikes for Fiscal Year 2016-17 to its water customers across Michigan.

While many parts of the system saw a 4.3% rate increase, GLWA wielded its hammer on several select communities, including Genesee County. New Haven saw a 14.1% increase, Romeo 12%, while Genesee County customers had a 17.5% increase. GLWA used fuzzy math to conceal the amount of GCDC's rate increase. Make no mistake, Genesee County has been levied a stiff price increase and every penny will be heading south on I-75 to Oakland, Macomb, and Wayne Counties, and of course Detroit.

It is painfully apparent that GLWA and DWSD are different in name only. The executives in charge, the rate makers, the accountants, the attorneys, GLWA's entire staff is substantially identical to the old DWSD. Why should anyone expect different results? For some perspective, one needs only to look at recent comments from Oakland County officials about GLWA.

Here are two excerpts from a June 1, 2016 Detroit News article, describing current controversy over contracts being handed out by the Great Lakes Authority:

“I’m disgusted” “It’s the same old bull that got Detroit in trouble.

L. Brooks Patterson – Oakland County Executive

“There’s Big C and Little C corruption – the “I’ll scratch your back, you scratch mine’ type. Once you start down that path, you only have to look at Kwame Kilpatrick to see where it leads.”

Robert Daddow, Oakland County’s Representative on GLWA and Deputy Executive

These statements should shake to the core any confidence one would have in the Great Lakes Water Authority.

In the end, several questions must now be asked:

1. If DWSD recouped the revenue lost from losing Flint/Genesee as a customer in their 2014 rate increases, why didn’t it place Flint back on the system at no cost since it had already received the revenues it lost by charging its other customers.
2. Should DWSD be held liable for sending the 2013 Flint termination letter, the event that led Flint to explore going to the Flint River in the first place?

3. Should DWSD repay other member communities the 2014 price increase for each year of its double dip payments from the State, or should the State demand DWSD repay it and the Mott Foundation for those double dip payments?

Residents of Flint, Genesee County, and the State of Michigan are owed answers to these questions.

This testimony is submitted to counter Professor Hammer's written testimony which libels me, and everyone else connected to KWA. Professor Hammer makes unsupportable accusations about our character, lies about our record, and sensationalizes the Flint tragedy for his benefit. Not once, however, did he contact me, Mr. O'Malia, or anyone else connected with KWA, to ask them what happened, why specific actions were taken or how much things cost. Clearly it is easier to craft your own narrative if you do not bother to check the facts or ask about the intentions of the people you later call strategic racists.



Jeff Wright, Drain Commissioner
Genesee County Drain Commission

The Detroit News

Wednesday, September 19, 2007

detnews.com

State Edition

Detroit Water to expand pipeline

■ Extension from Orion Township to Flint may cost current customers hundreds of millions of dollars.

By ROBERT SNELL
The Detroit News

DETROIT — The Detroit Water and Sewerage Department on Tuesday proposed a major water-line extension that will stretch from northern Oakland County to Flint, potentially opening up large rural areas to development.

The project — the largest system expansion since the 1970s — will cost several hundred million dollars and be paid for by water and sewer customers across southeast Michigan instead of merely by communities along the proposed route.

The roughly 35-mile water line originally was proposed to be built in 2040 but was moved up to increase reliability, officials said.

Critics, however, say it's because a rival study is under way that would establish a new water system and potentially siphon away customers who are dissatisfied with spending and rate hikes in Detroit's system.

"That is a bombshell," said Independence Township Trustee Dan Kelly, whose community is along the pipeline's path. "Sounds like they're trying to beat them to the punch."

Detroit leaders say a new water line to Flint — along with an \$85 million, 25-mile water line between Orion Township and Romeo also announced Tuesday — would ensure consistent water

Please see Water, Page 7A

Water

Continued from Page 1A

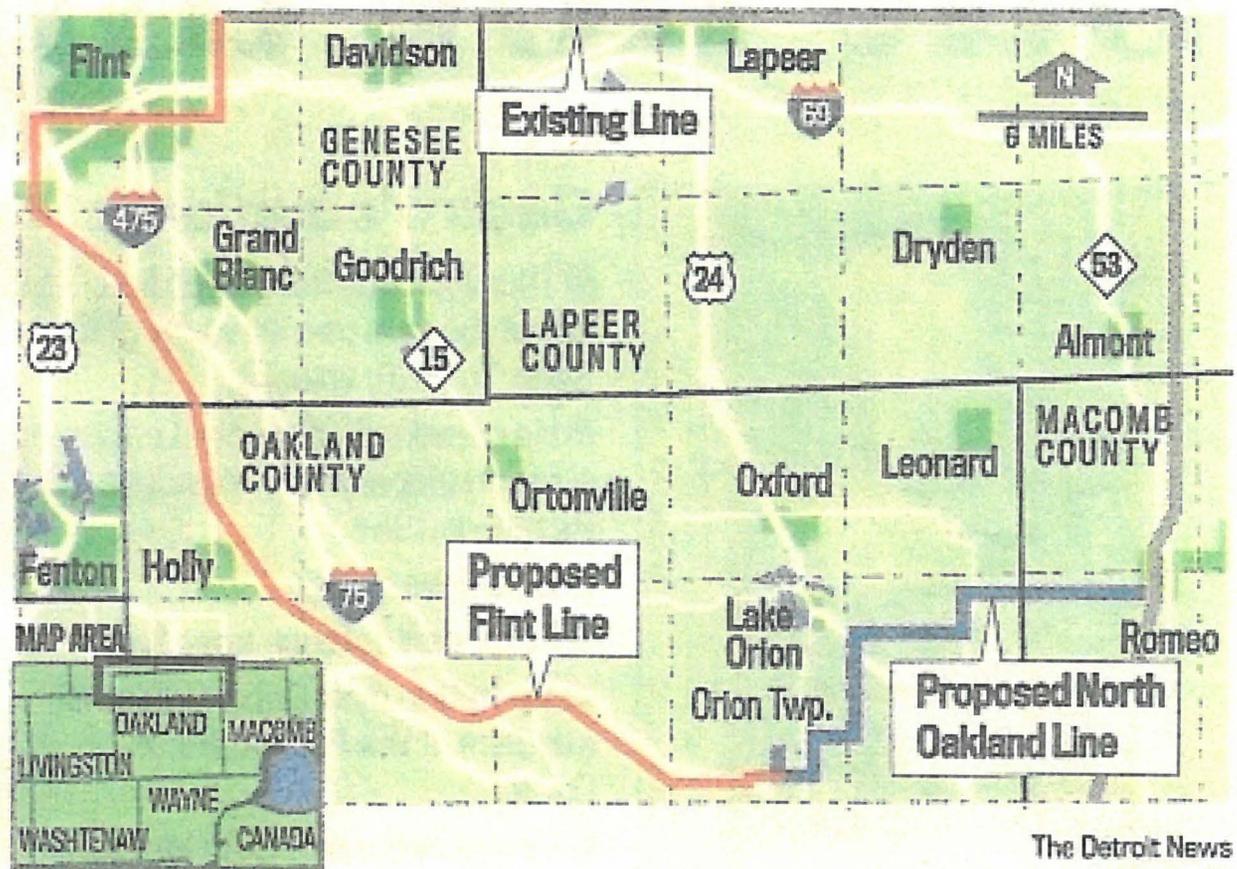
pressure. It also would provide a backup system in case of breaks or a catastrophe such as the 2003 blackout, which left portions of the service area without water.

The department will solicit design plans by December. Construction contracts would need approval by the Detroit City Council and the department's Board of Water Commissioners. Construction could start in two years, Director Victor Mercado said.

The cost would be shared by all customers because the new water lines are part of a system-wide im-

Pipe progress

Two proposed water-line extensions would run from Orion Township to Flint and from Orion Township to Romeo. Construction could start as early as 2009.



The Detroit News



Department of Environmental Quality, Water Bureau
LARGE QUANTITY WATER WITHDRAWAL PERMIT

Issued under Part 327
 Great Lakes Preservation, Natural Resources and Environmental Protection Act
 1994 PA 451, as amended

In accordance with Part 327, Great Lakes Preservation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), authority is hereby given to withdraw water from the waters of the State of Michigan as described herein. This permit is issued in reliance on information supplied in the corresponding application and other information as may have been supplied by the permit applicant in support of that application.

PERMIT NUMBER: **2009-001**

DATE ISSUED: August 28, 2009

Permittee Name and Address: Genesee County Drain Commission
 Division of Water and Waste Section
 G-4610 Beecher Road
 Flint, Michigan 48532

Location Information

County where Water Withdrawal is Located: Sanilac County

Township Name, Town, Range and Section: Worth Township, T 9 N, R 17 E Sec 31 and 32

The activity authorized by this permit is subject to the following limitations and conditions:

Section A. Authorizations and Coverage Provisions

1. **Water Withdrawal is restricted to the following sources, locations and rates above the baseline capacity established with the DEQ:**

Water Withdrawal Source	Latitude and Longitude (decimal degrees)	Withdrawal Rate
Lake Huron	43.174, -82.436	85 million gallons per day / 59,028 gallons per minute

2. **Approval Conditions**

- a) The Genesee County Drain Commission must require as a condition of this authorization that all participating members of the Karegnondi Water Authority certify compliance with the environmentally sound and economically feasible water conservation measures applicable to the water user's sector under section 32708a of Part 327 and posted on the MDEQ website prior to commencing with the construction of any facilities necessary to implementation of the withdrawal. Certification shall be provided to the Chief of the Drinking Water and Environmental Health Section, Water Bureau, MDEQ.
- b) A permit under the Safe Drinking Water Act, Act 399, P.A. 1976, as amended and rules must be obtained prior to commencing with the construction of any facilities necessary to implementation of the withdrawal.

Section B. Reporting and Record Keeping**1. Environmental Impacts**

The permittee is required to immediately contact the DEQ, Water Bureau, at 517-241-1415 if an Adverse Resource Impact (ARI) occurs in association with the water withdrawal authorized by this permit. An ARI is defined in section 32701(1)(a)(vii) of the NREPA as "Decreasing the level of a lake or pond with a surface area of 5 acres or more through a direct withdrawal from the lake or pond in a manner that would impair or destroy the lake or pond or the uses made of the lake or pond, including the ability of the lake or pond to support characteristic fish populations, or such that the ability of the lake or pond to support characteristic fish populations is functionally impaired."

2. Water Use Report

Water Use Reporting is for a Public Water Supply is implemented through the annual reporting required under Safe Drinking Water Act, Act 399 PA 1976 as amended.

Section C. Liability**1. Noncompliance**

Commencing the water withdrawal authorized herein confirms the permittee's acceptance and agreement to comply with all terms and conditions of this permit. Noncompliance with these terms and conditions, and/or the initiation of other regulated activities not specifically authorized by this permit, shall be cause for the modification, suspension, or revocation of this permit, in whole or in part. Further, the DEQ may initiate criminal and/or civil proceedings to correct deficiencies, protect natural resource values, and secure compliance with law.

2. Limitations

This permit does not convey property rights in water, or other real or personal property, authorize any injury to private property or invasion of public or private rights, or waive the necessity of obtaining any other applicable federal, state or local permit or approval.

3. Indemnification

The permittee shall indemnify and hold harmless the State of Michigan and its departments, agencies, officials, employees, agents and representatives for any and all claims or causes of action arising from acts or omissions of the permittee, or employees, agents, or representatives of the permittee, undertaken in connection with this permit. This permit shall not be construed as an indemnity by the State of Michigan for the benefit of the permittee or any other person.

Steven E. Chester, Director
Department of Environmental Quality


By: Wm. Elgar Brown, P.E., Chief
Drinking Water and Environmental Health Section
Water Bureau

KWA Environmental Permits

MDEQ Construction Permit (ACT 399 permit)
National Pollution Discharge Elimination System (NPDES)
Joint Permit Application MDEQ (State)
Joint Permit Application EPA (Federal)
Floodplains (NREPA Part 31)
Inland Lakes and Streams (NREPA Part 301)
Wetlands (NREPA Part 303)
Threatened and Endangered Species (NREPA Part 365)