

BANKRUPTCY JUDGE: “NO ENFORCEABLE RIGHT TO FREE AND AFFORDABLE WATER”



By Curt Guyette

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When it came time to make a decision on reinstating a moratorium on water shutoffs, the fact that an untold number of people in Detroit simply can't afford water wasn't what mattered most to U.S. Bankruptcy Court Judge Steven Rhodes.

Neither did the fact that Mayor Mike Duggan's much-touted 10-point plan was put together without the benefit of an analysis to determine if there would actually be enough money available to help everyone in need.

The fact the Detroit Water and Sewerage Department wasn't following its own posted rules regarding procedures that are supposed to be followed prior to shutting off access to something people need to survive — that didn't take precedence either.

Concerns about the potential of a public health crisis erupting because of the poor sanitation conditions that result when people don't have access to water were also passed over.

None of that mattered most when it came time for Judge Rhodes to make a decision Sept. 29, after hearing all the arguments and considering the testimony and evidence presented over two days last week.

In a lengthy ruling read from the bench, Rhodes said, broadly speaking, he didn't have the authority to order the moratorium on shutoffs being sought by a group of city residents and their advocates.

Then he expanded upon that, saying even if he did have the power (as might be the case when it comes to the constitutional issues being raised by the plaintiffs in this case), he still wouldn't order a halt to the shutoffs.

That's because of what he sees as the overriding importance of three things: the collection of revenue, the payment of creditors and the proposed Great Lakes Water Authority.

“Detroit cannot afford any revenue slippage,” the judge said.

In addition, the City “has to satisfy creditors,” he said. And, finally, creation of the Great Lakes Water Authority — which would provide the city \$50 million a year in lease payments from Oakland, Macomb and Wayne counties over the next 40 years — was too important to be possibly put in jeopardy if collection efforts were allowed to flag.

As for the desperately poor people who simply can't afford paying water bills that have gone up by 120 percent in the last decade, or getting hit with six years' worth of sewerage charges all at once because of a massive water department billing snafu, well, the messages seems to have been this: In order to serve the greater good, it might be necessary for some to face sacrifice.

And in this case, it is families living in poverty, and the elderly and disabled trying to survive on fixed incomes who are the ones who will suffer the fate of having their water continuing to be shut off at a rate of about 400 homes a day.

The need to help those people retain access to something necessary for survival is “undermined by the harm to the city and the public” a moratorium would cause, the judge said.

Furthermore, the judge ruled, even though it “cannot be doubted water is a necessary ingredient to sustaining life,” there is no “enforceable right to free and affordable water.”

Just to be clear, none of the plaintiffs in this case — a group that includes the Michigan Welfare Rights Organization, Moratorium NOW!, the Peoples Water Board and the National Action Network — are asking for free water. What they are calling for is a true affordability plan based upon the ability of people to pay.

“Our position is that water has to be affordable,” said Alice Jennings, lead attorney for the plaintiffs, after the ruling was handed down.

Jennings called the ruling disappointing, but not surprising, and vowed to continue the fight, saying an appeal would certainly be filed. But she also talked about the need to extend the fight for affordable water beyond the courts, calling upon the governor and state legislature to become involved.

It is not just a legal issue. It's also a political issue. And, with the creation of the Great Lakes Water Authority in the offing, it is an issue that has region-wide implications. The tentative agreement that would create the new water authority calls for \$4.5 million to go into a fund to help poor people throughout southeast Michigan pay for water. But, as with Duggan's 10-point plan, no study has been done to ensure that will be adequate.

As Jennings notes, “Poverty is not something Detroit has a lock on.”

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