Responding to the Detroit Water Crisis: The Great Lakes Water Authority and the City of Detroit

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I. INTRODUCTION

In the summer of 2014, nineteen thousand Detroit residents were left without access to water.[1] Widely known as "water shutoffs", the city of Detroit purposefully cut off individual's access to the city's water supply if their accounts were delinquent or overdue.[2] In a June 25 press release, the UN Office of the High Commissioner published a press release calling the water shutoffs, "an affront to human rights."[3]

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1. Before a month-long moratorium that lasted from July until the end of August 2014, nineteen thousand residents had their water shut off. Matt Helms & Joe Guillen, *Judge Says No to Detroit Water Shutoff Moratorium*, DETROIT FREE PRESS (Sept. 29, 2014, 6:43 PM), http://www.freep.com/story/news/local/detroit-bankruptcy/2014/09/29/water-shutoff-moratorium/16451483/; U.N. Human Rights Office of the High Comm'r, *Detroit: Disconnecting Water from People Who Cannot Pay—An Affront to Human Rights, Says UN Experts*, OHCHR (June 25, 2014), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14777&LangID=E.

2. *Id.*

3. U.N. Human Rights Office of the High Comm'r, *supra* note 1. The title of the press release labeled the shutoff as "an affront to human rights." *Id.* The press release went on to explain:

> Three UN experts on the human rights to water and sanitation, adequate housing, and extreme poverty and human rights expressed concern Wednesday about reports of widespread water disconnections in the US city of Detroit of households unable to pay water bills. "Disconnection of water services because of failure to pay due to lack of means constitutes a violation of the human right to water and other international human rights," the experts said. "Disconnections due to non-payment are only permissible if it can be shown that the resident is able to pay but is not paying. In other words, when there is genuine inability to pay, human rights simply forbids

Beginning earlier that year, in March 2014, the Detroit Water and Sewerage Department (DWSD) started shutting off the water of customers with delinquent or overdue accounts.[4] The shutoffs continued into the summer, and on June 18, 2014, a coalition of Detroit organizations[5] submitted a report to the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation.[6] In this report, the coalition detailed how the water shutoffs disparately affected people of color and those of lower socioeconomic status.[7] In a 2014 Census Bureau report, Detroit was shown to be the most impoverished big city in the United States, with 39.3 percent of people living below the poverty line.[8] The city of Detroit responded suggesting that allowing customers with delinquent bills to continue to be served would create a culture of further delinquency.[9]

> disconnections," said Catarina de Albuquerque, the expert on the human right to water and sanitation.

Id.

4. Anna Clark, *Going Without Water in Detroit*, N.Y. TIMES (July 3, 2014), http://www.nytimes.com/2014/07/04/opinion/going-without-water-in-detroit.html?_r=0.

5. The coalition includes the founder of Blue Planet Project and Chair of Food & Water Watch (Maude Barlow), the Michigan Welfare Rights Organization, and the Detroit People's Water Board. PEOPLE'S WATER BOARD ET AL., SUBMISSION TO THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHT TO SAFE DRINKING WATER AND SANITATION REGARDING WATER CUT-OFFS IN THE CITY OF DETROIT, MICHIGAN 4 (June 18, 2014), *available at* http://www.blueplanetproject.net/wordpress/wp-content/uploads/Detroit-HRTW-submission-June-18-2014.pdf.

6. *Id*.

7. *Id.* at 3.

> The case of water cut-offs in the City of Detroit speaks to the deep racial divides and intractable economic and social inequality in access to services within the United States. The burden of paying for city services has fallen onto the residents who have stayed within the economically depressed city, most of whom are African-American.

Id.

8. Karen Bouffard, *Census Bureau: Detroit IS Poorest Big City in U.S.*, DETROIT NEWS (Sept. 17, 2015), http://www.detroitnews.com/story/news/local/michigan/2015/09/16/census-us-uninsured-drops-income-stagnates/32499231/ (The poverty line for a family of four is $24,008. A "big city" for this purpose has a population of more than three hundred thousand people).

9. Sarah Cwiek, *Detroit Is Shutting Off Water to Delinquent Customers. But Is Everyone Getting the Same Treatment?*, MICH. RADIO (July 10, 2014), http://michiganradio.org/post/detroit-shutting-water-delinquent-customers-everyone-getting-same-treatment#stream/0 ("But [Detroit Emergency Manager Kevyn] Orr and water department officials insist they're not targeting the poor. They say the water department hasn't followed through on shutoff notices for too long—and too many people got used to just ignoring their water bill.").

Nearly one year before the shutoffs began, the city of Detroit filed bankruptcy, the largest municipal bankruptcy in U.S. history.[10] In October 2014, Detroit and the surrounding suburbs reached a long debated Great Lakes Water Authority (GLWA) agreement to manage water supply and sewage disposal, and the aging water and sewerage infrastructure.[11] The bankruptcy court created this water authority as part of what was dubbed the "grand bargain"[12] to save Detroit.[13] The GLWA is a "special purpose government,"[14] and despite this technically being a governmental body, the creation of the authority resulted in the privatization of water and sewerage services in southeastern Michigan.[15] This type of government likely cannot address the complexity of the problems facing the Detroit water infrastructure and the community facing the water shut-offs.[16]

It is important to incorporate multiple approaches and methods to create a constructive response to the water crisis in Detroit.[17] For one, the Michigan government should not rely on a special purpose government unit approach, which tends to isolate one issue and focus on it as if the issue is not affected by other problems in the community.[18] Instead, this Note proposes that Detroit and the surrounding area should create a representative institution that allows for democratically elected representation proportionate to the community the government serves and takes into account the most

10. Michael A. Fletcher, *Detroit Files Largest Municipal Bankruptcy in U.S. History*, WASH. POST (July 18, 2013), http://www.washingtonpost.com/business/economy/2013/07/18/a8db3f0e-efe6-11e2-bed3-b9b6fe264871_story.html.

11. John Turk, *Oakland and Macomb Counties Officially Approve Great Lakes Water Authority*, OAKLAND PRESS (Oct. 9, 2014), http://www.theoaklandpress.com/government-and-politics/20141009/oakland-and-macomb-counties-officially-approve-great-lakes-water-authority.

12. Jennifer Chambers, *First Payment Made Toward Detroit's 'Grand Bargain'*, DETROIT NEWS (Dec. 11, 2014), http://www.detroitnews.com/story/news/local/wayne-county/2014/12/11/first-payment-made-toward-detroits-grand-bargain/20240369/.

13. Turk, *supra* note 11.

14. Gerald E. Frug, *Beyond Regional Government*, 115 HARV. L. REV. 1763, 1781 (2002) [hereinafter Frug, *Beyond Regional Government*].

15. *Id.*

16. *See id*. at 1783–84, 1788 (outlining critiques of special purpose governments and arguing for governmental approaches other than special purpose governments for metropolitan areas).

17. *Id*. at 1788.

18. *Id*. at 1787–88 ("[Special purpose governments] leave permanently off the table the most divisive issues facing metropolitan America—schools, crime, housing, jobs, and taxes.").

adversely affected individuals and the myriad factors related to and affected by water distribution.[19]

In addition to this representative institution, an advisory committee should be organized to allow for more community input.[20] Communities from each county would have multiple members, and each member would have an opportunity to bring important issues facing their area to the attention of the committee, which would then present these issues and propose possible solutions to the representative institution. These issues need not be directly related to the physical distribution of water, but could be anything that affects the distribution and reception of water services, such as the vast number of water main breakages that interfere with the delivery of water to customers and the inability of some residents to pay for services.

Part I of this Note looks at the history of the Detroit water system, the former management of this system, and the substantial hardships the Detroit community faces. This part specifically focuses on the Detroit Water and Sewerage Department residential water shutoffs that arose as a result of the dilapidated Detroit City water infrastructure, high water prices, and the high level of poverty in Detroit. Part II focuses on various models of local government and how these models approach provision of utilities, specifically in the case of cities in bankruptcy, and more broadly, in the case of cities facing financial hardships. Part III of this Note focuses on the problems arising as a result of the new GLWA and the apparent future of water distribution in southeastern Detroit. Part IV considers productive alternatives to the GLWA and elements that should be considered, particularly in the context of inequities in the Detroit area and the need for a working residential water distribution system.

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19. *Id*. at 1790.

20. Barbara L. Bezdek, *Citizen Engagement in the Shrinking City: Toward Development Justice in an Era of Growing Inequality*, 33 ST. LOUIS U. PUB. L. REV. 3, 48–49 (2013).

II. HISTORY

A. Water and Sewerage in Detroit and Southeastern Michigan

As of April 2014 the average water pipe in Detroit was eighty-five years old, and many of the pipes in the city were over one hundred years old.[21] During the early and mid-1900s, when many of these pipes were laid, the Detroit population grew from 993,078 in 1920 to 1,670,144 in 1960.[22] Since the 1960s, however, the population of Detroit has been steadily declining.[23] Thus, even though the Detroit water system presumably has an infrastructure designed a population of 1 million or more, according to 2014 census data, it now only serves 680,250 residents in the city.[24] Despite this presumed capacity, there were over 5,000 water main breaks in the three years between 2011 and 2014.[25]

Due to the age of the pipes and the disproportionately large water and sewerage infrastructure, pipes are deteriorating and water main breakages are common.[26] The breakages and inefficiency of the system lead to exceptionally high water bills for residents in the

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21. CITY OF DETROIT WATER AND SEWERAGE DEPARTMENT, WATER MAIN REPLACEMENT PROJECT PLAN 9 (2015), *available at* http://archive.dwsd.org/downloads_n/announcements/hearing_notices/PUBLIC_HEARING_NOTICE_FY_16_DWRF_Handout_03-26-15.pdf. According to the EPA, 30 percent of pipes that deliver water to communities over one hundred thousand people are between forty and eighty years old. The EPA estimates that 10 percent of pipes in these systems are older. Alison Kosik, *Experts: U.S. Water Infrastructure in Trouble*, CNN (Jan. 21, 2011), http://www.cnn.com/2011/US/01/20/water.main.infrastructure/.

22. U.S. CENSUS BUREAU, POPULATION OF THE LARGEST 75 CITIES: 1900 TO 2000 (2003), *available at* https://www.census.gov/history/pdf/los_angeles_pop.pdf.

23. Kate Linebaugh, *Detroit's Population Crashes: Census Finds 25% Pluge as Blacks Flee to Suburbs, Shocked Mayor Seeks Recount*, WALL ST. J. (Mar. 23, 2011), http://www.wsj.com/ articles/SB10001424052748704461304576216850733151470.

24. *State and County QuickFacts: Detroit*, U.S. CENSUS BUREAU, http://quickfacts.census.gov/qfd/states/26/2622000.html (last visited Nov. 14, 2014) [hereinafter *Detroit QuickFacts*].

25. *Agreement to Create Water Authority Guarantees Funding to Rebuild Regional System and Assist Customers in Need*, CITY OF DETROIT (Sept. 9, 2014), http://www.detroitmi.gov/How-Do-I/Great-Lakes-Water-Authority [hereinafter *Water Authority Agreement*].

26. Clark, *supra* note 4.

Detroit area, decreasing the ability for residents to pay and increasing the amount of delinquent water bills in Detroit.[27]

B. Detroit City Water Shutoffs

In March 2014, DWSD began shutting off water services to delinquent accounts, which made up about one-half of their customers.[28] These water shutoffs led to extreme hardships for many Detroit residents.[29] When the water was shut off, it was without warning, so residents could not prepare with water saved in buckets, sinks, or tubs.[30] Sick individuals did not have running water or working toilets.[31] If a resident returned home from surgery to a residence without water, they were unable to change bandages and could not carry out everyday tasks, such as cooking and bathing.[32] On July 18, 2014, a coalition of four organizations released an open letter detailing the unlivable conditions Detroit residents faced during these shutoffs and issuing six recommendations to address these hardships.[33]

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27. *Id*. As of July 2014, the average monthly water bill for a family of four in Detroit was $75, nearly twice the United States average. *Id*.

28. Mary M. Chapman, *Detroit Shuts Off Water to Residents but Not to Businesses Who Owe Millions*, DAILY BEAST (July 26, 2014), http://www.thedailybeast.com/articles/2014/07/26/detroit-shuts-off-water-to-residents-but-not-to-businesses-who-owe-millions.html (defining delinquent accounts as those that are 160 days past due or more than $150 behind in payments).

29. Helms & Guillen, *supra* note 1; *see also Detroit Quickfacts*, *supra* note 24 (stating that between 2008–2012, 38.1 percent of Detroit city residents lived below the poverty level in contrast to 16.3 percent living below the poverty level in Michigan).

30. PEOPLE'S WATER BOARD ET AL., *supra* note 5.

31. *Id*.

32. *Id*.

33. PEOPLE'S WATER BOARD ET AL., *supra* note 5, at 7.

Recommendations:

1. We call on the State of Michigan and the U.S. government to respect the human right to water and sanitation.

2. We call on the city to restore services to households that have been cut off immediately.

3. We call on the city to abandon its plan for future cut-offs.

4. We call on the federal and state governments to work with the city to ensure a sustainable financing plan and rate structure that would prevent a transfer of utility's financial burden onto residents who are currently paying exorbitant rates for their water services.

Some Detroit residences experienced a reprieve when the DWSD suspended water shutoffs for fifteen days "to continue public efforts encouraging delinquent account holders to get up-to-date."[34] This moratorium was later extended to August 25, 2016.[35] The day after the moratorium on water shutoffs to delinquent customers ended, August 26, 2014, residents lost access to tap water when the high temperature in Detroit reached 91 degrees Fahrenheit.[36]

On the same day that the moratorium ended, Detroit Mayor Mike Duggan and DWSD Director Sue F. McCormick announced a ten-point plan that attempted to assist residents with the consequences of the water shutoffs.[37] The plan focused on the concerns of the state

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5. We call for fair water rates for the residents of Detroit.

6. We call on the City of Detroit to implement the original water affordability program immediately.

Id.

34. Rod Meloni, *City of Detroit Delays Water Shutoffs 15 Days*, CLICKONDETROIT (July 21, 2014), http://www.clickondetroit.com/news/local/detroit-bankruptcy/city-of-detroit-delays-water-shutoffs-15-days.

35. Editorial Bd., *Detroit Water Department Extends Residential Shutoff Moratorium*, CLICKONDETROIT (Aug. 4, 2014), http://www.clickondetroit.com/news/detroit-water-department-extends-residential-shutoffs-moratorium.

36. *Weather History for KDET—August 2014*, WEATHER UNDERGROUND, https://www.wunderground.com/history/airport/KDET/2014/8/26/DailyHistory.html?req_city=&req_state=&req_statename=&reqdb.zip=&reqdb.magic=&reqdb.wmo= (last accessed Mar. 3, 2016).

37. Detroit Water & Sewage Dep't, *DWDS 10 Point Plan*, DWSD, http://www.dwsd.org/downloads_n/announcements/general_announcements/DWSD-10-point-plan.pdf (accessed Oct. 14, 2014).

1. During the moratorium, which ends August 25th, DWSD will waive turn-on fees for customers whose water had been shut off, as well as all late payment penalties.

2. To simplify getting into a payment plan, customers only need to present a valid state ID. Once a payment is made, service will be restored within 48 hours.

3. Extend hours at DWSD Customer Care Centers . . .

4. Increase staffing at the DWSD Call Center and extend hours . . .

5. Cobo Water Fair August 23rd. A Water Affordability Fair will be held at Cobo Center Saturday August 23rd to give customers one last opportunity to connect with all of the DWSD and community resources available to them before the moratorium ends August 25th.

6. Improve notification for customers in danger of shut-off . . .

7. Implement an Affordable Payment Plan. Any resident with a delinquent account can enter into a 24-month "10/30/50" payment plan by coming to their local DWSD Customer Care Center, showing a valid state ID and paying down only 10 percent of

government to minimize bankruptcy liabilities that the water bills arrearages would present, rather than the well-being of the residents without water. In April 2015, the ACLU reported that this ten-point plan was largely ineffective in helping people maintain up to date payments on water bills.[38]

When the moratorium ended in August 2014, an action was brought in court to continue the moratorium, and on September 29, 2014, U.S. Bankruptcy Judge Steven Rhodes ruled against the plaintiffs, agreeing that there was no constitutional right to water service and that a moratorium would discourage residents from paying their bills, and could potentially lead to high revenue drops for DWSD.[39] Since this suit, the water shutoffs have continued, and as of December 2015, it was reported that twenty-three thousand residential water accounts were shut off since the beginning of 2015, with at least four thousand of those accounts never reconnected.[40]

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their past-due balance. (The previous down payment requirement was 30 percent of the past-due balance.)

8. Provide financial assistance for low-income Detroit customers . . . To be eligible for Detroit Water Fund assistance, customers must be Detroit residents who:

- Have an outstanding balance between $300 and $1000; AND
- Maintain Average Water Usage for their household size; AND
- Are either enrolled in DTE's Low Income Self-Sufficiency Plan (LSP); OR,
- Have income at or below 150 percent of the federal poverty level (for example, a family of 4 must have an annual income below $35,775). This funding is available on a first come first served basis and is subject to availability.

9. Build Neighborhood Partnerships. . . We've established a support network to assist individuals who may not qualify for some of the DWSD assistance programs. Our partners include United Way 211, THAW, WAVE and Wayne Metro.

10. Provide a clear way to give.

Id.

38. FOOD & WATER WATCH, DETROIT NEEDS A WATER AFFORDABILITY PLAN 2 (2015), *available at* http://www.foodandwaterwatch.org/sites/default/files/Detroit%20Water%20Plan%20IB%20May%202015.pdf ("In April 2015, an investigative reporter for the ACLU Michigan disclosed that of the 24,743 residential customers enrolled in the 10-point plan, only about 300 were able to keep up with their payments, leaving 24,450 households to default.").

39. Helms & Guillen, *supra* note 1.

40. Joel Kurth, *Woman Who Survives on Rain Water to Get New Housing*, DETROIT NEWS (Dec. 23, 2015), http://www.detroitnews.com/story/news/local/detroit-city/2015/12/23/woman-survives-rain-water-get-new-housing/77834472/.

C. The Great Lakes Water Authority

The GLWA is a forty-year plan involving the water distribution structure in southeastern Michigan.[41] This deal is part of Detroit's Chapter 9 bankruptcy restructuring plan, approved by US Bankruptcy Judge Steven Rhodes on November 7, 2014.[42] Under the deal, DWSD still maintains ownership of the water supply infrastructure within Detroit city, but the GLWA will lease, operate, and make decisions[43] about the entire regional water and sewage system for forty years.[44] On October 9, 2014, Macomb County commissioners approved the articles of incorporation, officially putting the GLWA into place.[45]

The GLWA consists of six appointees. The Mayor of Detroit appoints two members, county executives from Oakland, Wayne, and Macomb Counties each appoint one member, and the Governor of Michigan appoints the final member.[46] Under the GLWA, these appointees will lease Detroit pipes outside of the city to Oakland, Wayne, and Macomb Counties in exchange for $50 million per year

41. Nathan Bomey & Matt Helms, *Detroit, Suburbs OK Regional Water Deal; $50M Yearly to Upgrade System*, DETROIT FREE PRESS (Sept. 9, 2014), http://www.freep.com/story/news/local/michigan/detroit/2014/09/09/detroit-to-make-major-water-deal-announcement/15323795/.

42. *Id.*; Fletcher, *supra* note 10; Mary Williams Walsh, *Detroit Emerges from Bankruptcy, Yet Pension Risks Linger*, N.Y. TIMES (Nov. 11, 2014), http://dealbook.nytimes.com/2014/11/11/detroit-emerges-from-bankruptcy-pension-risk-still-intact/; Monica Davey & Mary Williams Walsh, *Billions in Debt, Detroit Tumbles Into Insolvency*, N.Y. TIMES (July 18, 2013), http://www.nytimes.com/2013/07/19/us/detroit-files-for-bankruptcy.html?pagewanted=all&_r=0 (On July 18, 2013 the city of Detroit filed for Chapter 9 bankruptcy in the Eastern District of Michigan United States Bankruptcy Court. Detroit's debt was estimated to be between $18 billion and $20 billion at the time).

43. The articles of incorporation states: "The Authority shall be a public body corporate with the power to sue and be sued in any [Michigan] court." Most decisions are made by majority vote. Great Lakes Water Auth., *Articles of Incorporation of Great Lakes Water Authority*, OAKLAND COUNTY MICH. (Oct. 9, 2014), http://www.oakgov.com/exec/Documents/great_lakes_water_authority/All_Comments_Clean_Final_090814_GDP.pdf.

44. *Id.*

45. Turk, *supra* note 11.

46. Bomey & Helms, *supra* note 41. Each appointee to the GLWA will have an initial three-year term with subsequent four-year terms. The appointee by the governor, however, will have an initial term of four years. Five of six votes will be required to make any major changes, such as a rate change. *Water Authority Agreement*, *supra* note 25 ("These include decisions relating to rates, budgets, contracting, and selection of management.").

to be used for infrastructure upgrades, while $4.5 million will be set aside to help low-income residents pay utility bills.[47]

The agreement between the counties that approved the GLWA's articles of incorporation mandates that Oakland County be responsible for $12 million of the rent payment, Detroit be responsible for $17 million, and Macomb and Wayne Counties each be responsible for $10.5 million.[48] The GLWA is not publicly funded, but instead is completely funded by ratepayers.[49]

The GLWA, managed by an appointed government of individuals from several counties and municipalities around southeastern Michigan, moves away from the traditional role of the government which "[f]unctions by allocating resources through city-managed departments with an emphasis on community input. The traditional model is concerned primarily with its social mission—to provide adequate quality and a voice to citizens."[50] The GLWA, by contrast, is a system that puts management in the hands of another entity and leases assets rather than focusing on its social mission or its own citizens.[51]

Detroit's tendency to move away from representation in municipal government operation became apparent prior to the GLWA. In 2011, the Michigan legislature passed Public Act Four, also known as "The Emergency Manager Law." The law allowed the state government to appoint an "emergency manager" to govern financially unstable cities.[52] Some argue that this legislation weakens the authority of

47. Bomey & Helms, *supra* note 41.

48. Turk, *supra* note 11.

49. *Id*.

50. John M. Zervos, *Detroit in Transition: The Restructuring of Governance Through Privatization and Corporatization*, HUFFINGTON POST (Apr. 22, 2012), http://www.huffington post.com/john-m-zervos/detroit-privitization_b_1291869.html.

51. *Id*.; *Water Authority Agreement*, *supra* note 25.

52. Zervos, *supra* note 50. Emergency Financial Managers could intervene and "possess unilateral tools for immediate change, including increased powers and specific training in corporate efficiency and privatization." *Id*.; Mich. Pub. Acts 4, 96th Leg. (2011). This law showcased a preliminary move away from representative government in Detroit to a government based on appointments. Michigan Governor Rick Snyder signed this bill into law on December 27, 2012. WXYZ.com Web Staff, *Governor Rick Snyder signs new Michigan emergency manager bill into law*, WXYZ DETROIT (Dec. 27, 2012), http://www.wxyz. com/news/governor-rick-snyder-signs-new-michigan-emergency-manager-bill-into-law. The Michigan government appointed Kevyn Orr as an emergency manager handing over control of the financial management of the city of Detroit. Monica Davey, *Bankruptcy Lawyer Is Named*

municipal governments in governing their own affairs and allows the state to substitute its authority for that of local governance.[53] Others, such as U.S. Congressman John Conyers, are concerned that while facially neutral, this legislation appears to be an initiative directed at municipalities with a higher proportion of African American residents.[54] While not directly related to distribution of utilities in Detroit, this showcased that Detroit has previously allowed outside authority to take over in the midst of financial crisis. Additionally, this suggests that the city has a tendency to allow outside representation for communities that are largely made up of people of color.

D. Alternatives to the Great Lakes Water Authority

1. Bankruptcy and Cities

As Michelle Wilde Anderson pointed out in a 2014 article, cities facing bankruptcy are in a unique situation: the "creditors" are often retirees of the city hoping to collect their earned pension.[55] The city government's duty in this situation is to protect public safety and public health.[56] Anderson argues that "new minimal city governments,"[57] or governments required to significantly cut services as cities approach bankruptcy, are unable to focus on anything other than violent crime and fire.[58]

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to Manage an Ailing Detroit, N.Y. TIMES (Mar. 14, 2013), http://www.nytimes.com/2013/03/15/us/gov-rick-snyder-kevyn-orr-emergency-manager-detroit.html?_r=0.

53. Meg Cramer, *7 Things to Know About Michigan's Emergency Manager Law*, MICH. RADIO (Dec. 6, 2011), http://michiganradio.org/post/7-things-know-about-michigans-emergency-manager-law#stream/0.

54. *Id.*

55. Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118, 1123 (2014).

56. *Id*.

57. *Id.* at 1122 ("Years, if not decades, of budget cuts and asset sales have left little beyond a stripped-down version of core service functions like irregular police and fire protection, rudimentary sanitation, and water supply. School districts continue to manage education (albeit with budget woes of their own), but the city government itself is no longer pursuing a vision beyond public safety in true emergencies.").

58. *Id.* at 1125–26 ("Whatever the service demands of an impoverished shrinking city might be, in a time of state and federal deficits and redistributive intolerance, local fiscal crisis means that city governments must get smaller . . . I consider the adaptations according to a

While Anderson focuses specifically on Detroit as one of her case studies, her proposal for reforming financially struggling city governments more broadly is a significant shift from the way cities currently operate. Anderson proposes a "re-engineering/modification of city utility systems,"[59] which would include taking some neighborhoods in highly depopulated areas off of the utility grid.[60] To offset the negative effect on residents, she proposes programs such as resident relocation grants, or grants to establish other methods of water and sanitation for the individuals that wish to stay in their residences.[61] Anderson also proposes that the local government provide a warranty of habitability for neighborhoods, which would include access to clean water and access to wastewater disposal.[62] These procedures would provide grounds for individuals to enforce their access to necessary services.

2. Special Purpose Government versus Regional and Local Governments

Legal scholars have similarly analyzed how particular forms of government affect the citizens of the city in which they operate.[63] Kathryn Ann Foster introduces the idea of public authorities, governmental units such as the GLWA, which she defines as

three-part framework that describes the main purpose of local government spending, namely: to provide services (including economic development), to maintain land and equipment for public use, and to regulate public safety. Because there is very little that insolvent cities can do to increase revenues, cities are cutting services, selling assets, and reconsidering their land regulations.").

59. *Id*. at 1196–97.

60. *Id*. ("However, when neighborhoods are substantially depopulated (e.g., by more than eighty percent, as in large swathes of residential Detroit) rather than simply poor, a creditors' efficiency metric might well favor the decommissioning of underground utilities and some aboveground services to those areas. Though it is more sensible in this setting, it is not a practical measure for short-term savings.").

61. *Id*. at 1197.

62. *Id*. at 1197–98.

63. *See generally* Frug, *Beyond Regional Government*, *supra* note 14; Keith Aoki et al., *(In)visible Cities: Three Local Government Models and Immigration Regulation*, 10 OR. REV. INT'L L. 453 (2008); Matthew J. Parlow, *Revolutions in Local Democracy? Neighborhood Councils and Broadening Inclusion in the Political Process*, 16 MICH. J. RACE & L. 81, 90 (2010); Anderson, *supra* note 55, at 1127.

"government corporations without property-taxing powers."[64] While other government units largely rely on taxes, Foster states that "[p]ublic authorities raise most revenues through user fees, grants, and private revenue bonds."[65] Public authorities are authorized for a specific purpose, and the appointment of individuals to these governments can be done in a number of ways, including by vote or by appointment by a public official.[66] After a government creates a special purpose entity, this entity has significant independence from the state and city governments.[67]

Building on Foster's work, Gerald Frug looks at the interaction between local government and the larger region in which these governments operate.[68] Frug writes that special purpose governments, a type of public authority, have an advantage in the ease of their creation and their specific purpose to deal with a specific issue facing the city.[69] However, since special purpose governments are often seen as the easiest answer to a problem, the large number of special purpose entities in any given area often leads to fragmentation and lack of coordination throughout a region.[70] Additionally, Frug notes that within these special purpose entities, when the boards are appointed rather than elected, there is a lack of accountability.[71] The complicated nature of special purpose governments can also lead to confusion, and they are often less cost effective.[72] Frug elaborates that ad-hoc solutions, such as special purpose governments, are not a far-reaching solution to the problem of fragmented city and county governments, but merely a means to deal with one problem at a time.[73]

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64. KATHRYN ANN FOSTER, THE POLITICAL ECONOMY OF SPECIAL-PURPOSE GOVERNMENT 7 (Georgetown U. Press 1997).
65. *Id*.
66. Frug, *Beyond Regional Government*, *supra* note 14, at 1782.
67. *Id*.
68. *Id*. *See also* Aoki et al., *supra* note 63; Parlow, *supra* note 63; Anderson, *supra* note 55.
69. Frug, *Beyond Regional Government*, *supra* note 14, at 1781.
70. *Id*. at 1783.
71. *Id.*; *see also* FOSTER, *supra* note 64.
72. Frug, *Beyond Regional Government*, *supra* note 14, at 1783; FOSTER, *supra* note 64.
73. Frug, *Beyond Regional Government*, *supra* note 14, at 1787.

After Frug's discussion of the failure of ad-hoc solutions to comprehensively address problems in a city and region, he proposes the creation of a regional representative institution by a state's legislature.[74] Regional representative institutions would consist of "democratically elected representatives of the region's cities, one that would put *cities* in control of their collective agenda rather than establish a centralized government."[75] The creation of this institution would likely stem from a specific issue, such as tax policy, transportation, or zoning.[76] Something unique about this form of government is that while it has a set agenda, similar to special purpose governments, the institution would be able to expand its agenda beyond its original mission as issues arose.[77] In this situation, if a problem confronting a region consisted of many different causes and influencing factors, the regional representative institution could expand its mission to also address the additional factors that were not directly related to the original mission.[78]

For the creation of this type of government, Frug writes, there needs to be an issue that would motivate the state legislature to create a regional representative institution.[79] Once a regional representative institution was put into place, however, this government could address issues that perpetuate inequality in the community more comprehensively, instead of focusing on one single problem, as with the narrow focus of special purpose governments.[80]

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74. *Id*. at 1812.

75. *Id*. at 1766.

> American cities today do not have the power to solve their current problems or to control their future development . . . . Firm state control of city decision making is supplemented by federal restrictions on city power . . . . To build support for this new institution's regional agenda, the state legislature should give it authority to deal with an issue that undeniably involves regional concerns (such as transportation).

Gerald Frug, *The City As A Legal Concept*, 93 HARV. L. REV. 6 (1980), at 1059.

76. Frug, *Beyond Regional Government*, *supra* note 14, at 1812–13.

77. The ability to expand its mission would explicitly include the power of the institution to deal with intra-regional inequality. *Id*. at 1766.

78. *Id.*; FOSTER, *supra* note 64, at 7.

79. Frug, *Beyond Regional Government*, *supra* note 14, at 1812–13.

80. *Id.* at 1820–21.

3. Community Involvement in Government

Traditionally, public input in government settings has taken the form of public hearings, where individuals are able to address decision makers but there is little or no meaningful conversation.[81] Legal scholar and professor Barbara Bezdek argues that more comprehensive and useful forms of community involvement are task forces and advisory committees,[82] which include more collaborative measures than public meetings and other forms of information giving.[83] These more collaborative methods are time-consuming and take a significant amount of work,[84] yet would give a voice to individuals in society whose rights have often been ignored.[85] The hope would be that a diverse group could deliberate together, understand differing perspectives, and come to an informed, collaborative decision on issues.[86]

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81. Bezdek, *supra* note 20, at 26–27.

82. *Id*. at 49 ("The premise of [a task force and an advisory committee], through the deliberative-democracy lens, is that representatives of diverse stakeholder groups will work together, gather and consider information, and come to appreciate others' perspectives in reaching proposed solutions.").

83. *Id*. at 48 ("[P]ublic meetings emphasize a one-way flow of information from officials to citizens, with highly constrained channels for feedback and, most tellingly, no power for negotiation.").

84. *Id*. at 48.

85. *Id*. at 49.

> Inclusion to address the needs/concerns of the poorest and most disadvantaged means identifying those who are usually voiceless, or deliberately excluded, and building with them a process of trust and empowerment that allows them to see themselves as citizens, to feel entitled to a voice, to find the confidence to speak, and to find the means of participating. The benefits of intentional attentive inclusion are fairer and more just decision making, accurate targeting of funds (which can save money), stronger community spirit, and reduction of the effects of poverty and exclusion on individuals, families and communities.

Id.

86. *Id*.

III. ANALYSIS/PROPOSAL

A. The Great Lakes Water Authority: A Special Purpose Government Approach

Under the control of DWSD, tens of thousands of Detroit residents were left without water, and without warning of shutoffs, in the middle of the summer.[87] DWSD governance caused massive shutoffs, and its faulty infrastructure left residences to assume the costs of water main breaks.[88] Under such governance and infrastructure, it was apparent that there needed to be a structural change in the provision of water in Detroit. The GLWA, implemented to provide this structural change, leaves Detroit as owner and therefore responsible for the southeastern Michigan water infrastructure results, but it diminishes the representation of Detroit citizens in the decision-making process.[89]

The GLWA is, as Frug outlines, a special purpose government.[90] The GLWA, while easy to create and specific in its goal of water service, isolates the delivery of water from the broader context of the problem.[91] The GLWA provides some financial resources to reconstruct the Detroit city water infrastructure,[92] but it does not account for any larger restructuring of the oversized water infrastructure. The GLWA, with a majority of the representation delegated to representatives from outside of Detroit, fails to address many of the issues that go along with water service in Detroit, such as the rate of poverty paired with the high price of water in Detroit, which are two of the main reasons that so many cannot pay their water bills.[93] The counties that hold representation within the GLWA have a disproportionate amount of wealth in comparison to Detroit,

87. Helms & Guillen, *supra* note 1, at 1–2.

88. *Water Authority Agreement*, *supra* note 25.

89. Detroit city residents previously had four representatives out of seven on the DWSD board of Water Commission (57 percent of the board), and will now only have two appointees from the City of Detroit out of six representatives (33 percent). Great Lakes Water Auth., *supra* note 43.

90. Frug, *Beyond Regional Government*, *supra* note 14, at 1782.

91. *Id*.

92. *Water Authority Agreement*, *supra* note 25.

93. PEOPLE'S WATER BOARD ET AL., *supra* note 5, at 3.

and therefore, they likely have different concerns and interests.[94] Because there is no specific measure put in place for community involvement in the GLWA's decision-making process, it is unlikely that community concerns will be considered in southeastern Michigan's water management.[95] The GLWA structure lacks the give and take that, as Frug and Bezdek note, are essential to the fair and representative nature of local government law, specifically in the allocation of facilities.[96]

Additionally, it is important to note that the GLWA, following in the trend of the Emergency Financial Manager law, is another move away from representation in Detroit.[97] As a disenfranchised population, it is likely that this pattern will continue if there is not a refocus on productive ways of involving Detroit citizens in representation. The city of Detroit is increasingly being politically run by state appointees: individuals less connected with, and less concerned with, the realities of disparities in Detroit.

B. Local Government Law: What Works?

The GLWA reflects Frug's discussion of special purpose governments and, more specifically, Foster's definition of public authority.[98] This type of government was created in a way that offers a relatively simple solution to the water crisis in Detroit. It provides $4.5 million in assistance to those who cannot afford water and offers a source of funding to repair and update the Detroit water system's

94. For U.S. Census Bureau data that illustrates the difference in median household incomes between Detroit residents and surrounding counties, see Bouffard, *supra* note 8.

95. Detroit Water & Sewage Dep't, *supra* note 37.

96. Frug, *Beyond Regional Government*, *supra* note 14; Bezdek *supra* note 20.

97. Zervos, *supra* note 50.

98. FOSTER, *supra* note 64, at 96 (citing DAVID OSBORNE AND TED GAEBLER, REINVENTING GOVERNMENT: HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR (Addison-Wesley, 1992)) ("The most fundamental, indeed definitional, difference between special-purpose and general-purpose governments is their degree of functional specialization. As their names imply, a general-purpose government provides a range of public services, whereas a special district performs a single or limited specified services."). *See generally* JOHN E. CHUBB & TERRY M. MOE, POLITICS, MARKETS, AND AMERICA'S SCHOOLS (Brookings Institution Press 1990) (privatization in schools); JOAN ALLEN, THE PRIVATE SECTOR IN STATE DELIVERY: EXAMPLES OF INNOVATIVE PRACTICES (1989) (privatization in prisons).

plumbing.[99] Special purpose governments, as noted by Foster, however, often falter in certain ways that general government units do not.[100] For example, special purpose governments can delay the planning, financing, and delivery of services.[101] Additionally, Frug's argument that this type of government would be less responsive to public opinion is also true, as shown by the appointment of the GLWA members. The Detroit Mayor is only responsible for two of the positions appointed to the GLWA, when any decision made by the GLWA board requires a super-majority.[102] This super-majority seriously diminishes, and perhaps eliminates, the power of the representatives for Detroit.

Although Anderson's proposal to restructure the utility system in response to city bankruptcy has some relevancy in Detroit, it may be too dramatic of a shift to benefit Detroit citizens.[103] Restructuring the water system in Detroit may help with certain costs and accidents throughout the year, but Anderson's argument to take certain neighborhoods completely off of the system does not seem to take into account the citizens who live in the neighborhoods affected: neither relocation assistance nor vouchers to find other ways to

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99. Bomey & Helms, *supra* note 41.

100. FOSTER, *supra* note 64, at 96–97 (citing Norman Macrae, *A Future History of Privatization, 1922–2022*, ECONOMIST (Jan.1992).

> First, functional specialization may hamper coordination of the planning, financing, and delivery of services in metropolitan areas. General-purpose governments have the ability to coordinate capital investment and social programming. They may also "rob Peter to pay Paul" when revised resident priorities, state mandates, new labor contracts, or political events require a redirection of funds from one department budget to another. By contrast, functionally specialized governments have limited leeway to coordinate services or adjust budgets and programs in response to outside imperatives.
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> Second [], functional specialization may safeguard programs from capricious or merely convenient spending adjustments. . . .
>
> . . . [Third] specialized governments may threaten the viability of popular or needed services that depend on the budgetary refuge provided by service bundling.
>
> Fourth, functional specialization offers a legal, inexpensive, and easily administered means for meeting minimalist or specialized service demands. . . . By the same token, functionally specialized districts also provide a legal escape from collective funding of specific services, possibly frustrating goals for redistribution.

Id.

101. *Id.*

102. *Water Authority Agreement*, *supra* note 25.

103. Anderson, *supra* note 55.

receive services would be an adequate substitute to remaining in ones' own home and receiving the necessary water services there.[104] Ignoring these individuals would break down the important, necessary focus on community.

As previously mentioned, Bezdek argues that community involvement is an important aspect to city governance.[105] In Detroit, the citizens without water are those that know what their community needs most intimately, and it is critical to include them in decision-making in a meaningful way. Bezdek discusses how the public hearing setting does not allow for a true understanding of one's perspective and interests.[106] Her suggestion of a forum, such as a task force or advisory committee, made up of individuals representing diverse interests in the community,[107] is highly unlikely to occur within the insulated GLWA, an authority that has representation from many different regions in southeastern Michigan region, but little representation from the Detroit area. This lack of representation is especially significant because those in Detroit are especially affected by these water shutoffs.

C. Detroit Stakeholders

The means used to address the water crisis in Detroit will affect many groups of people, some with more power than others. The citizens of Detroit, and customers of the city water service, have faced unique and extreme hardships with the water shutoffs and need a system that addresses both access to water and financing for water.[108] With the GLWA, the citizens of Detroit are likely to lose

104. *Id*.
105. Bezdek, *supra* note 20.
106. *Id*.
107. *Id*.
108. PEOPLE'S WATER BOARD ET AL., *supra* note 5, at 5.

> Families concerned about children being taken away by authorities due to lack of water and sanitation services in the home have been sending their children to live with relatives and friends, which has an impact on school attendance and related activities. Teachers and social workers are required to contact authorities when they become aware that children are living without water at home
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> . . . .

much of their influence as they lack seats of representation. The stakeholders most represented by the members in the GLWA are the Michigan State Government and the county governments, which are now jointly controlling most of the water distribution after the GLWA leases the DWSD infrastructure.[109]

Because the state government and county governments will likely receive an increased amount of representation and voice in the GLWA, it is important to focus on the Detroit citizens and how they are directly affected, often in a life-threatening way, by the management of the Detroit water supply.

Additionally, financially imperiled Detroit and its residents are unduly burdened in the maintenance and updating of a water and sewage system that is nearly one hundred years old.[110] It is critical that they be given an effective voice to fairly address these matters that will seriously impact them financially and politically.

D. Proposal

Prior to the GLWA, there was extreme structural instability in the maintenance and operation of the Detroit water system, due in part to the large and unstable infrastructure. This water infrastructure was designed at a time when the city was thriving and had a considerably larger population. The broken water mains, along with other inefficiencies of services, resulted in some of the highest water bills in the country. This infrastructure is no longer fit for the size of Detroit and it will require significant repair, restructuring, and upgrading to provide water to Detroit and the surrounding counties for years to come.

As a short-term goal, I propose that Detroit and the surrounding counties in southeastern Michigan form a more collaborative,

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> The MWRO says that even when people make efforts to pay a portion of their water bill, the water department will not turn their water back on unless they pay 30 per cent of the amount owing, which in many cases is thousands of dollars. In fact, the amount owing on people's bills is often in dispute, and the water department is unwilling to restore service (or to halt the shut-off process) while the dispute is being resolved.

Id.

109. *Water Authority Agreement*, *supra* note 25

110. CITY OF DETROIT WATER AND SEWERAGE DEPARTMENT, *supra* note 21.

responsive, representative institution, the Detroit Regional Water Institution (DRWI), that can address many inequalities that go into the Detroit Water Crisis. It is important that the institution allow cities to control the methods of water distribution, instead of a separate government body. The aforementioned representative institution can be founded on one issue: the distribution of water, but later adapt to meet the needs of the community, specifically focusing on the broader inequities associated with water distribution. This institution should have democratically elected representatives from all geographic areas affected by water service. When there is a problem with the service, the political influence provided by holding officials accountable through election would encourage the government to address issues comprehensively, taking into account what caused the problem originally. If, for example, the problem is created by a broken main, which caused a significant price increase, which then led to residents' inability to pay bills, the underlying issues should be addressed. Because the water shutoffs have specifically affected Detroit residents, it is important that this institution comprise a representative population of those who have been and will continue to be affected. Representatives would be able to bring up issues that affect the citizens they represent. If inability to pay is an issue in one area, this matter could be introduced to the institution. Similarly, if zoning in a certain area is leading to water main breakages or inefficient water use, zoning ordinances could be the focus of that area's representative.

A representative institution alone will not allow residents' concerns to be heard quickly. Residents are directly affected by each change to the water system, and they know from their lived experience what is most urgently in need of attention. It is essential to have a mechanism where residents can voice problems and be quickly and thoroughly understood. As Bezdek notes, one comprehensive way of receiving and incorporating resident feedback is an advisory committee that can bring issues that Detroiters are facing to the water council.[111] It is important that the advisory committee include people from each area of the region served to

111. Bezdek, *supra* note 20, at 40–41.

represent their interests. It is especially important to have adequate representation of Detroit citizens, as they have experienced the most extreme consequences of water shutoffs in their homes without notice.

Although an advisory board may entail more time and work initially, it would ultimately provide a more efficient and responsive system. A regional representative institution, focusing on the problems specific to Detroit residents would eliminate a guess and check process that impedes the goal of efficient water provision. It would also offer additional opportunities for community members to raise important problems, whether they were directly or indirectly connected to water distribution.

A long-term goal of the DWRI should be a restructuring of the current water infrastructure. Consolidation of pipes in less populated areas, as well as the discontinuance of pipes in areas that are no longer occupied, are essential to streamlining the water distribution process. Additionally, identifying and responding to water main breaks as soon as they are brought to the institution's attention would reduce the wasting of resources for the DWRI and for residents affected by the loss of water in their areas, as well as improve water supply to residents.

IV. CONCLUSION

A representative institution that is governed by democratically elected officials and allows for city control of utilities would provide for a more representative and collaborative means of administering water to the Detroit area. The flexible agenda, while originally looking at issues of the water system in southeastern Michigan, would allow the institution to focus on problems that more broadly affect the community in receiving water, such as poverty, accessibility, and infrastructure problems, specifically water main breaks.

The advisory board aspect of a new Detroit Regional Water Institution would be more likely to ensure that community members' concerns and voices were included in decisions. While an advisory board would take more time and effort on behalf of the institution and its advisory board members, community representation would be a

central goal of the organization. The advisory board would be essential in deciding how the agenda would evolve over time. Additionally, a focus on repairs and consolidation, as well as the upgrading of the water infrastructure, will lead to significant savings in money spent on water; water that is currently pouring out into the street, uncontrolled, and unreported, wasting consumers' resources and money.

The Detroit City Water Crisis has brought international attention to the inadequacies and, as some argue, the human rights violations occurring in Detroit.[112] As a response to this attention and to the serious problems with the water and sewerage infrastructure, the GLWA was approved as part of the Detroit bankruptcy-restructuring plan. While changes were needed from the former DWSD management, under which the shutoffs occurred, this shift does not adequately resolve the existing problems. Community representation relating to water distribution in Detroit is critical to respond to the problems the residents are facing daily. It is essential for a change to occur, taking into account the voices of Detroit residents whose livelihoods, health, and well being depend on access to water in their community and their homes. This change, however, needs to be accomplished in an equitable way that allows for fair representation of Detroit residents. Further, systems relying on community representation may present opportunities to prevent crises such as the water shutoffs in Detroit, therefore avoiding the significant hardship on Detroit residents.

112. U.N. Human Rights Office of the High Comm'r, *supra* note 1.