
No. 16-2628

In the
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CONCERNED PASTORS FOR SOCIAL ACTION; MELISSA MAYS;
AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN; and
NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Plaintiffs-Appellees,

v.

NICK A. KHOURI, in his official capacity as Secretary of Treasury of the State of Michigan; FREDERICK HEADEN, in his official capacity as Chairperson of the Flint Receivership Transition Advisory Board; MICHAEL A. TOWNSEND, in his official capacity as Member of the Flint Receivership Transition Advisory Board; DAVID MCGHEE, in his official capacity as Member of the Flint Receivership Transition Advisory Board; MICHAEL A. FINNEY, in his official capacity as Member of the Flint Receivership Transition Advisory Board; and BEVERLY WALKER-GRIFFEA, in her official capacity as Member of the Flint Receivership Transition Advisory Board.

Defendants-Appellants.

Appeal from the United States District Court
Eastern District of Michigan, Southern Division, No. 2:16-cv-10277
Honorable David M. Lawson

**DEFENDANTS STATE TREASURER'S AND MEMBERS OF THE
FLINT RECEIVERSHIP TRANSITION ADVISORY BOARD'S
EMERGENCY MOTION FOR STAY PENDING APPEAL UNDER
FED. R. APP. P 8**

ACTION REQUESTED BY NOVEMBER 23, 2016
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Dated: November 21, 2016

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INTRODUCTION

The Flint water crisis is known to the entire nation and has given rise to numerous lawsuits. This case is based on the citizen-suit provision in the federal Safe Drinking Water Act that authorizes individuals to seek a court order enjoining ongoing violations of the Act.

Massive, ongoing recovery efforts are in place and working well to ensure that every Flint resident has safe drinking water. Despite this, the district court entered a broad injunction requiring, among other things, door-to-door bottled water delivery in Flint.

An emergency stay of that order pending appeal is needed for three reasons. The *first* is timing. The district court's November 10, 2016 injunction comes more than seven months after Plaintiffs requested it and more than eight weeks after the evidentiary hearing in the district court—during which time recovery efforts have evolved and decisions have been made as to how to wisely allocate limited resources. Yet, after significant delay, the injunction sets forth a compressed timeframe for compliance with its massive mandates. This time frame—full compliance by December 16, 2016, just 25 days away—is unreasonable and unachievable given available resources. Water

delivery would be a five-fold increase over current efforts, and require 137 additional trucks and a warehouse so large it is not clear if one even exists in the Flint area. Door-to-door filter support for every Flint resident would require hiring at least 150 additional individuals. All told, the conservative estimate of cost exceeds \$11 million per month.

The *second* reason is that the court's injunction is unnecessary. Filtered water in Flint is safe to drink for everyone, and even unfiltered, the lead content in Flint's water has been below the federal action level since May 2016. Response crews have already visited every residence in Flint more than once, and more than 90% have filters. There are nine primary distribution centers and nearly four dozen additional distribution centers through the City where water and filters are available. Responders maintain a list of elderly or homebound individuals who receive regular deliveries, and anyone can call 211 to request additional deliveries if necessary. Plaintiffs have identified a small number of people they claim are not reached by these services, but have steadfastly refused to provide the addresses of these individuals so responders can provide them relief.

The *third* and most important reason an emergency stay is necessary is that the injunction significantly harms the ongoing recovery efforts in Flint. The ultimate way to address Flint's water issues is to repair the water distribution system, which has been making a steady recovery precisely because residents are using it. Water must move through the system to enable the orthophosphate to coat its pipes and flush out lead particulates (which are removed by filters). Providing four cases of water per week to every Flint resident will dramatically decrease the amount of water moving through Flint's system because residents will stop using their filters for drinking water and possibly replace other water needs with bottled water as well. This will slow recovery.

Additionally, the funds appropriated for Flint's recovery go far beyond providing bottled water and filters. They are being used to provide food, nutritional education, school nurses, guidance counselors, and physical and mental healthcare. Diverting those funds to comply with the herculean effort the district court has mandated will leave other relief programs unfunded—to the detriment of Flint's citizens.

In sum, an emergency stay would maintain the status quo pending appeal and leave the relief efforts to the on-the-ground professionals who are equipped to coordinate this multi-faceted federal/state/local response. Each of the stay factors weighs in favor of a stay: State Defendants are likely to prevail on the merits of the appeal; a stay will not irreparably harm Plaintiffs or others since extensive relief efforts are already in place; and a stay is in the public interest.

STATEMENT OF FACTS

The Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) sets national standards that must be met by drinking water suppliers. 42 U.S.C. § 300g-1(b). States may obtain primary enforcement responsibility under the SDWA (known as “primacy”) by adopting regulations that are no less stringent than the federal standards, 42 U.S.C. § 300g-2. Michigan gained primacy by enacting the Michigan Safe Drinking Water Act, Act 399 of 1976 (Act 399). The Michigan Department of Environmental Quality’s (MDEQ) Office of Drinking Water and Municipal Assistance has regulatory oversight under the SDWA for all public water supplies, including approximately 1,400 community and 10,000 non-community water supplies.

As the owner of the public water supply, Flint is responsible under the SDWA for knowing and following all of Act 399’s requirements, such as ensuring proper design, construction, operations, and maintenance, so that contaminants in tap water do not exceed the standards established by law. *See e.g.*, Mich. Comp. Laws § 325.1007(1). Although Michigan has some enforcement responsibilities, the City is

ultimately responsible for compliance. *See Mich. Comp. Laws* § 325.1007(4).

The SDWA has a citizen-suit provision that authorizes affected persons to file suit “to the extent permitted by the eleventh amendment to the Constitution” in order to enjoin ongoing violations of the Act. 42 U.S.C. § 300j-8(a)(1)(B). This is the provision on which Plaintiffs rely for both their complaint and their motion for a preliminary injunction.

Events leading up to the emergency response in Flint

In November 2011, Governor Snyder declared a financial emergency in Flint after an extensive review of the City’s finances. (Doc. 1, Compl., Pg. ID 24.) Under the authority of Michigan’s Local Government and School District Fiscal Accountability Act, Mich. Comp. Laws § 141.1501 *et. seq.*, the Governor appointed a local emergency manager to “act for and in the place and stead of the governing body and the office of chief administrative officer of the local government.” Mich. Comp. Laws § 141.1549(2). Though appointed by the Governor, emergency managers are local officials. *See Phillips v. Snyder*, 836 F.3d 707, 715 (6th Cir. 2016) (holding that there is no fundamental right that

local officials, such as emergency managers, be elected rather than appointed by the state).

In 2013, the City decided to join a new water supplier, the Karegnondi Water Authority (KWA). (Doc. 1, Compl., Pg. ID 29.) As a result, the City's supplier at the time, the Detroit Water and Sewerage Department (DWSD), indicated it would stop providing water to the City. Therefore, the City decided to temporarily take its water from Flint River until the KWA began operations. (Doc. 1, Compl., Pg. ID 29-30.)

The City's temporary switch to the Flint River necessitated decisions such as how to achieve compliance with the SDWA "Lead and Copper Rule" (LCR). *See* 40 C.F.R. § 141.80 *et seq.*, and Mich. Admin. Code R. 325.10410, 325.10710a-10710d, & 325.10604f. The purpose of the LCR is to protect public health by minimizing lead and copper levels in drinking water. 40 C.F.R. § 141.81; Mich. Admin. Code R. 325.10604f(d). Once a supply has "optimized," it is required to "continue to operate and maintain optimal corrosion control treatment" 40 C.F.R. § 141.81(b); Mich. Admin. Code R. 325.10604f(2)(b).

Because the Flint River was a new supply with chemical characteristics distinct from the water previously provided by DWSD, MDEQ believed Flint could not be required to “maintain” the previous corrosion control treatment under the LCR. Instead, MDEQ required Flint to conduct “initial monitoring” over two, six-month periods to determine if treatment was required. If required, then Flint would need to undergo a study to determine the appropriate treatment. This was consistent with how every other large water system in the Michigan was regulated. *See* 40 C.F.R. § 141.81(d); Mich. Admin. Code R. 325.10604f(2)(d). The U.S. Environmental Protection Agency (EPA) concluded on November 03, 2015 that this interpretation was reasonable. (Ex. F, Memo from EPA’s Director of Ground Water and Drinking Water to all EPA Regional Directors.)

The LCR includes an “action level” for lead that is 15 parts per billion (ppb). Test results are calculated using a 90th percentile standard. In other words, the action level is exceeded if more than ten percent of water samples contains lead in amounts greater than 15 ppb. 40 C.F.R. § 141.80(c)(1). The action level is 15 ppb because the EPA “found that lead levels of 15 ppb or less were representative of effective

corrosion control treatment.” (Doc. 1, Compl., Pg. ID 20, citing 56 Fed. Reg. at 26,490.)

Exceeding an action level does not violate the SDWA. Instead, it triggers other requirements for the water supplier to minimize exposure to lead in drinking water, including: water-quality-parameter monitoring, corrosion-control treatment, source-water monitoring and treatment, public education, and lead-service-line replacement.

40 C.F.R. §§ 141.81, 84-85.

The City switched to the Flint River on April 25, 2014, and shortly thereafter began its first six-month round of monitoring for lead. The City certified that its samples complied with the LCR, submitted them to the MDEQ, and by December 31, 2014, the results of the City’s first six-month lead monitoring period showed that the lead levels in the city were at six ppb, well below the 15 ppb action level. The City then began its second six-month lead monitoring period.

The City also sampled its water to monitor for contaminants other than lead and to try and address complaints from residents about the water’s taste and smell. (Doc. 1, Compl., Pg. ID 32.) The City discovered elevated levels of total chloroform bacteria in some samples,

and added disinfectants to address the problem. (*Id.*) But the disinfectants created a byproduct that increased total trihalomethanes, which are also harmful. (*Id.*) The City hired outside engineering firms, Lockwood, Andrews & Newnam (LAN) and Veolia, to help it better manage its water system. Both LAN's February 2015 report and Veolia's March 2015 report recommend that the City substantially increase the amount of ferric chloride in the water, which substantially increased the corrosiveness of Flint's water. But the reports did not advise Flint on how to control for that corrosiveness.

Following the engineering reports, and during the second six-month testing period for lead, one customer's water had an unusually high amount of lead. The customer contacted the EPA and was visited by an EPA employee. That employee later drafted a memo expressing concerns about lead levels in Flint, which he shared with the customer while the report was still in its draft form. (Doc. 1, Compl., Pg. ID 33-34.) Because of the draft report, media outlets began reporting that lead was a serious concern in all Flint water. In response to media inquiries, MDEQ employees indicated that based on the results of the

City's first six-month monitoring period, lead was actually not a significant concern city-wide.

On April 28, 2015, Flint's emergency manager confirmed that the City's financial emergency had been rectified. (Doc. 1, Compl., Pg. ID 25.) To ease the City out of emergency management, the Governor appointed a receivership transition advisory board (RTAB). (*Id.*) Flint's RTAB reviews the resolutions of Flint's City Council to ensure they are "fiscally responsible" and approves the minimum qualifications and maximum salaries of City department heads. (Ex. B, affidavit and declaration submitted to the district court's chambers on August 29, 2016 in compliance with the district court's August 18, 2016 order (Doc. 73) and admitted into the record at Ex A, 9/14/16 Hearing Tr., p 365:13-14.) Flint's RTAB does not take "an active role in managing or operating the Flint Water System, or directing actions to be taken to ensure compliance with the Safe Drinking Water Act." (*Id.*) Nor does it "search for, interview, hire, supervise, or fire [City] department heads," including the City's director of public works. (*Id.*) The RTAB has no authority to propose affirmative action, nor can it direct Flint's mayor or the City Council to take any action.

On July 31, 2015, based on the City's certified samples, the results of the City's second six-month lead monitoring period showed that the lead levels in the city were at 11 ppb, still below the 15 ppb action level, but the results indicated that lead levels were rising. (Doc. 28-5, Ltr. from Adam Rosenthal, Pg. ID 1644.) Accordingly, on August 17, 2015, MDEQ ordered the City to expedite its corrosion control treatment. (*Id.*)

Shortly after MDEQ ordered the City to expedite its corrosion control treatment, outside researchers from Virginia Tech began gathering water samples in Flint. The researchers announced that their sample results indicated that lead was a problem throughout the City. (Doc. 1, Compl., Pg. ID 35.) The researchers' announcement again triggered media reports that lead was a serious concern in all Flint water. Citing samples certified by the City during its two, six-month testing rounds, MDEQ employees again responded that lead was actually not a significant concern in Flint. (*Id.*)

On September 24, 2015, researchers from Flint's Hurley Medical Center held a press conference announcing that more children in the City than usual had elevated blood lead levels. (Doc. 1, Compl., Pg. ID

35-37.) The Michigan Department of Health and Human Service (MDHHS) responded on September 25, 2015 that the changes in blood lead levels were seasonal and fit an annual pattern. After further analysis, however, it became apparent that elevated blood lead levels in Flint exceeded seasonal levels, even though the levels were still not as high as they were in 2010. (*See id.*) On October 1, 2015, MDHHS reported its findings regarding higher blood lead levels, the Genesee County Health Department declared a public health emergency, and Flint's mayor advised residents not to drink their water without a filter. (*See id.*)

On October 16, 2015, the City, with funding from the State, switched its water source from the untreated Flint River back to the pretreated water delivered by DWSD. (Doc. 1, Compl. Pg. ID 38-39.) The lead levels in Flint's water persisted, however, and in early December 2015, the City began supplementing the pretreated DWSD with additional phosphates to further control for corrosion. (*Id.*) On December 14, 2015, Flint's mayor declared a state of emergency in the City, and on January 5, 2016, Governor Snyder declared an emergency in Genesee County. (*Id.*)

The emergency response in Flint

Following the local and county emergency declarations, the local and state emergency operation centers were activated. (Doc. 40-2, Aff. of Captain Kelenske, Pg. ID 2168, admitted into the record at Ex A, 9/14/16 Hearing Tr., p 363:5-7.) Within weeks, 21,291 homes in Flint had been visited by emergency response teams made up of National Guard, state, local, and American Red Cross personnel. (*Id.*, Pg. ID 2174.) During that time, 84,505 water filters, 195,264 filter cartridges, 153,005 cases of water, and 24,866 water test kits had been distributed. (*Id.*) Emergency response personnel also established distribution sites at fire stations and churches in the City where anyone could come to obtain filters, filter cartridges, bottled water, and test kits. (Doc. 42-8, Ex G to City's resp. to mot. for PI, Pg. ID 2285-2286.) Working with local agencies and non-profit organizations that provided services to elderly and homebound individuals, the State Emergency Operations Center (SEOC) also compiled a "functional needs list" of households that needed regular water deliveries. (Ex. A, 9/14/16 Hearing Tr., p 303-304, admitted into the record at Ex A, 9/14/16 Hearing Tr., p 363:5-7.) For those not on the functional needs list who were unable to access

distribution sites, a 211 call line was established so individuals could request deliveries. The United Way received the calls, and passed information on primarily to the American Red Cross to perform the deliveries. (*See id.*, p 304.)

On January 21, 2016, the EPA issued an emergency order requiring the City and MDEQ to take various actions, some of which they were already doing. (Doc. 1, Compl., Pg. ID 39.) Up to that point, any resident could submit samples for testing and MDEQ had performed extensive water testing in Flint's schools. (*See id.* at 37.) The January 21, 2016 order triggered additional testing initiatives, and MDEQ established sentinel testing sites at high-risk areas of the City. (Ex. A, 9/14/16 Hearing Tr., p 216–217.) Because the City had switched back to DWSD, the City was required to again test for lead for two consecutive six-month periods to determine if the corrosion control treatment was working. Working with the City and the EPA, MDEQ carefully identified the highest risk sites to ensure samples from those sites were consistently monitored to determine lead levels in the City's water system. (Ex. A, 9/14/16 Hearing Tr., p 218.)

By April 2016, the SEOC was in the midst of relocating the distribution sites away from the fire stations initially established by the City because they did not comply with Federal Emergency Management Agency (FEMA) standards. (Ex. A, 9/14/16 Hearing Tr., p 310-311.) As a result, they were not as efficient or effective as necessary. Instead, the SEOC established distribution sites in each ward of the City staffed by Flint residents that operate in compliance with FEMA standards. (*Id.*; see also Doc. 40-2, aff. of Captain Kelenske, Pg. ID 2179-2180.)

Meanwhile, the results of the testing sites MDEQ established with EPA approval in compliance with the EPA's emergency order showed that Flint's distribution system had begun to recover. The May and June results showed that for those months, the lead level in Flint's water system was below the 15 ppb action level. (Ex. A, 9/14/16 Hearing Tr., pp. 218-219.)

In July 2016, the SEOC took over primary responsibility for the 211 requests for deliveries, and incorporated the program into its functional needs list deliveries. (Ex. A, 9/14/16 Hearing Tr., p 304.) Four times each day, the 211 operators send the SEOC a list of people who have called seeking services. The households are then visited and

the SEOC determines whether the household's needs can be satisfied by the single visit, or whether the household needs to be added to the functional needs list, which receives routine visits. (*Id.* at 304-395.)

Also in July 2016, MDEQ implemented the community outreach and resident education program (CORE), in which teams made up of Flint residents are employed full-time to canvass the entire City and provide water filter support to all residents. (*Id.* at 309-310.)

Additionally, the results of the water samples collected under MDEQ's ongoing monitoring program showed that for the months of July and August 2016, the lead levels in Flint's water system were still below the 15 ppb action level. (*Id.* at 218-219.) The latest results from September 2016 show that the lead level in Flint is 9 ppb, which is lower than several other Michigan localities.¹ This is significant because for the warmest months of the year, from June to September, lead levels in water systems are generally at their highest. (*Id.* at 221-222.) The fact that Flint's water system remained under the 15 ppb action level even during the warmest months of 2016 indicates

¹ Monitoring results are posted publicly on www.michigan.gov/flintwater and have been for many months.

significant progress in the repair of Flint's water infrastructure. (*Id.* at 219.)

PROCEDURAL HISTORY

Plaintiffs filed their complaint on January 27, 2016, alleging ongoing violations of the SDWA. (Doc. 1, Compl., Pg ID 1.)

Approximately two months later, on March 24, 2016, Plaintiffs filed a motion seeking a preliminary injunction not to preserve the status quo, but to significantly change the way the City and State were providing drinking water to Flint residents, claiming a need for immediate action. (Doc. 27, Pls.' Mot. for PI, Pg ID 354.) Plaintiffs submitted the declarations of several individuals indicating that they struggled to obtain water, but the declarations did not include addresses. (*Id.*) (These declaration were prepared before the SEOC transitioned distribution sites to FEMA compliant locations and fully took over visits made in response to 211 calls.) State Defendants timely responded to Plaintiffs' motion on April 14, 2016, documenting the efforts being made to ensure that all residents in need had access to water. (Doc. 40, Defs.' Resp. in Opp. to mot. PI, Pg ID 2124.) Rather than proceed to either a decision on the motion or a hearing, Plaintiffs requested a round of

discovery, which the district court allowed. (Doc. 60, Order, Pg ID 2675.)

On July 22, 2016, Plaintiffs filed a reply in support of their March 24, 2016 motion for preliminary injunction. (Doc. 68, Pls.' Reply for PI, Pg ID 2758.) On August 28, 2016 the district court set a hearing on Plaintiffs' motion for September 14, 2016. (Doc. 73, Order, Pg ID 4514.)

Preliminary injunction hearing

At the September 14, 2016 hearing, Plaintiffs presented testimony from community activists who indicated that they had heard others speak about the struggles some have had to obtain access to water. (Ex. A, 9/14/16 Hearing Tr., pp. 28-86, 86-123, 139-159.) Plaintiffs also presented testimony from a Flint resident, Jacqueline Childress, who had struggled to obtain water. (*Id.* at 123-139.) The City presented testimony from its chief financial officer, who explained that the City could not afford to provide the relief Plaintiffs sought. (*Id.* at 167-210.)

State Defendants called three witnesses at the hearing. The chief of MDEQ's Office of Drinking Water and Municipal Assistance described MDEQ's ongoing monitoring efforts and the results of those efforts. (*Id.* at 210-271.) An office director of Michigan's State Budget

Office described the funds Michigan had appropriated to support Flint and the diverse way those funds were used, including the provision of food, health care, and water bill credits. (*Id.* at 271-300.) And the commander of the Emergency Management Homeland Security Division of the Michigan State Police described the efforts being made to ensure that all Flint residents had access to water; estimated that the relief Plaintiffs sought would cost between \$9 and \$11 million per month; and confirmed that in the previous months responders had been able to visit every residence in Flint twice and confirm that more than 90% of all residences, not just inhabited residences, have a filter. (*Id.* at 300-359.)

The districts court's order

At 5:14 p.m. on November 10, 2016, the district court granted Plaintiffs' March 24, 2016 request for a preliminary injunction, concluding that notwithstanding the ongoing relief efforts, and the fact that current lead levels are well below the 15 ppb action level, all Flint residents are in "immediate danger." (Doc. 96, Opinion and Order, Pg ID 6324.) The court ordered defendants to immediately provide each resident of Flint four cases of water each week. This weekly delivery is

required to continue unless a household refuses it, refuses a filter, or defendants verify that a filter is installed and functioning properly. (*Id.* at 6324-6326.) The court further ordered defendants to inspect every installed filter in Flint once a month for three months and every two months thereafter. (*Id.* at 6325-6326.) Additionally, the court ordered that notices be delivered to all Flint households in five languages to further explain the need to use a water filter. (*Id.* at 6326.) The district court gave defendants until December 16, 2016 to document “compliance with each of the provisions” of its order. (*Id.* at 6327.)

On November 17, 2016, State Defendants filed an emergency motion asking the district court to stay its injunction pending an appeal. (Doc. 97, Defs.’ Mot. for Stay, Pg ID 6328.) State Defendants requested that the district court decide the motion by November 21, 2016. Instead, the district court ordered Plaintiffs to respond to State Defendants’ motion by the “close of business” on November 23, 2016. (Doc 98.)

The district court’s order indicates that the court does not intend to decide State Defendants’ emergency motion until, at the soonest, the week after the Thanksgiving holiday. The district court did not provide

a reason for denying State Defendants' request for a response by November 21 other than to explain that the emergency motion "warrants a response." (*Id.*)

ARGUMENT

I. State Defendants request that the Court decide this motion by November 23, 2016.

The week after Thanksgiving is too long to wait. Michigan's Treasurer and the individual members of Flint's RTAB do not control the "water distribution mechanism" the district court seeks to enjoin, nor the tens of millions of dollars in taxpayer funds that must be spent to comply with the court's order. (Doc. 96, Opinion and Order, Pg ID 6324.) Yet these individuals risk being held in contempt for failing to immediately complete an impossible task, which if attempted, will materially harm the ongoing city-wide relief efforts. Accordingly, State Defendants respectfully request that by November 23, 2016, this Court stay the district court's injunction while the merits of the injunction are appealed.

II. The district court’s preliminary injunction should be immediately stayed pending appeal because every stay factor is met.

In *Coalition to Defend Affirmative Action v. Granholm*, the Sixth

Circuit set out the familiar standard for a stay pending appeal:

[W]e consider “(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.” All four factors are not prerequisites but are interconnected considerations that must be balanced together. [473 F.3d 237, 244 (6th Cir. 2006) (citations omitted).]

Here, each of these interconnected considerations counsel in favor of the Court staying the preliminary injunction.

A. The State Defendants are likely to succeed on appeal.

The State Defendants’ appeal is likely to succeed for at least four reasons. First, the State Treasurer and members of the RTAB are not “operators” of the Flint water system; second, the Eleventh Amendment prohibits the remedial relief Plaintiffs seek because Plaintiffs failed to demonstrate an ongoing violation of the SWDA; third, the injunction is

overbroad and unsupported by reliable evidence; and fourth, the Court failed to comply with the security requirement of Rule 65(c).

1. The State Treasurer and individual members of the RTAB are not “operators” of the Flint water system.

To be subject to the SDWA, the State Treasurer and members of the RTAB must be “operators” of the Flint water system. *See generally*, 42 U.S.C. § 300f(5). The forward-looking relief authorized by the SDWA can bind only the *current* operator of a water system. *See* 42 U.S.C. § 300j-8(a)(1)(B). Yet rather than examine whether State Defendants are current operators of Flint’s water system, the district court looked more than two years into the past at decisions made by Flint’s emergency managers. (Doc. 96, Opinion and Order, Pg ID 6302–6306.) Without explanation, the court imputed the actions of the past emergency managers to the State Treasurer and members of Flint’s RTAB, and concluded that State Defendants are the *current* operators of Flint’s water system because of the *past* actions of local emergency managers. (*Id.*) This was error for at least two reasons.

First, to be an “operator,” it is not enough to manage an entity’s “finance and capital budget decisions” or articulate “general policies and

procedures.” *United States v. Bestfoods*, 524 U.S. 51, 72 (1998) (construing the term “operator” found in the Comprehensive Environmental Response, Compensation, and Liability Act). Instead, a person must “manage, direct, or conduct operations specifically related to . . . decisions about compliance with environmental regulations.” *Id.* at 66-67. Frederick Headen, the chairman of Flint’s RTAB, and Larry Steckelberg, a deputy treasurer, submitted sworn statements confirming that neither the Flint RTAB nor the State Treasurer take any action to test or monitor the Flint water system, advise the system how to comply with the SDWA, or otherwise ensure the system’s compliance with the SDWA. These statements also confirm that neither the State Treasurer nor the RTAB members have the ability to comply with the preliminary injunction, such as ordering the Michigan State Police, Michigan Department of Environmental Quality, or State Legislature to take any particular action. (Ex. B, affidavit and declaration submitted to the district court’s chambers on August 29, 2016 in compliance with the district court’s August 18, 2016 order (Doc. 73) and admitted into the record at Ex A, 9/14/16 Hearing Tr., p 365:13-

14.) Plaintiffs have presented no evidence, and cite no law, to contradict these sworn statements.

Second, even if it were correct for the district court to look many years in the past to determine the current operator of Flint's water system, emergency managers are local, not state, officials. As the court acknowledged, emergency managers are only authorized to act "for and in the place . . . of the local government." (Doc. 96, Opinion and Order, Pg. ID 6302, quoting Mich. Comp. Laws § 141.1549(2).) Indeed, this Court recently recognized that emergency managers are local actors. *Phillips v. Snyder*, 836 F.3d 707, 715–716 (6th Cir. 2016) (holding that there is no constitutional right that local officials, such as emergency managers, are elected). Likewise, Michigan's Court of Appeals has ruled that an act of an emergency manager is not an act of the Governor. *Kincaid v City of Flint*, 874 N.W.2d 193, 201–202 (Mich. Ct. App. 2015).²

² The Michigan Court of Claims recently ruled that emergency managers operated as officers of the state while executing their responsibilities. *Mays v. Snyder*, No. 16-000017 (Mich. Ct. Cl., October 26, 2016). This holding contradicts a 2015 opinion of the Michigan Court of Claims which held the opposite: that acts of emergency managers cannot be imputed to the State. *Pillar v. State of Michigan*, No. 13-000164 (Mich. Ct. Cl., September 22, 2015.) Regardless, the

Moreover, neither the State Treasurer nor any individual member of the RTAB can affirmatively make remediation decisions or direct the expenditure or allocation of the “State’s” resources. They lack the authority to spend any money not appropriated by the Legislature, or spend any appropriated money for a purpose other than that for which it was allocated. Mich. Const, art. IX, § 17 (“No money shall be paid out of the state treasury except in pursuance of appropriations made by law.”).

2. The Eleventh Amendment prohibits the relief Plaintiffs seek.

Regardless of whether State Defendants are the current “operators” of Flint’s water system, the citizen-suit provision upon which Plaintiffs rely only authorizes suits to proceed “to the extent permitted by the eleventh amendment to the Constitution.” 42 U.S.C. 300j-8(a)(1)(B). State Defendants are likely to prevail on this issue on appeal.

October 26, 2016 opinion is not binding on Michigan courts, let alone this court, and an appeal of that decision is pending.

It is well-settled that “a federal court's remedial power, consistent with the Eleventh Amendment, is necessarily limited to prospective injunctive relief . . . and may not include a retroactive award which requires the payment of funds from the state treasury” *Edelman v. Jordan*, 415 U.S. 651, 677 (1974). Thus, to avoid State Defendants’ immunity, Plaintiffs must demonstrate, at the very least, an ongoing violation of federal law. *Id.*

Plaintiffs’ motion for a preliminary injunction alleges two ongoing violations of the SDWA: (1) failure to comply with the monitoring requirements; and (2) failure to maintain optimum corrosion control treatment. The district court found that both these requirements continue to be violated. (Doc. 96, Opinion and Order, Pg ID 6295–6301.) This Court is likely to disagree.

In regard to the monitoring requirements, the district court concluded that “defendants do not contest this argument.” (*Id.*, Pg ID 6298). That is not accurate. Bryce Feighner, the Chief of MDEQ’s Office of Drinking Water and Municipal Assistance, testified at length about the current monitoring efforts. (Ex. A, 9/14/16 Hearing Tr., p 216–220.) Mr. Feighner confirmed that the EPA is intimately

involved in the City and MDEQ's monitoring efforts following the EPA's January 21, 2016 emergency order, and that the EPA has confirmed that the monitoring sites MDEQ selected comply with the requirements of the Lead and Copper Rule. (*Id.*) Because of this monitoring, the City, State, and EPA have confirmed that the lead content in Flint's drinking water has been below the 15 ppb action level since May 2016, and the latest monitoring results show that the level is 9 ppb. (*See id.*, p 218-219.) This Court is not likely to agree that the record supports the district court's conclusion that "[t]he defendants have not offered contrary evidence" to contradict Plaintiffs' monitoring allegations. (Doc. 96, Opinion and Order, Pg ID 6301.)

In regard to the corrosion-control requirements, the district court's conclusion that it is "beyond dispute" that there is an ongoing violation of those requirements is based on a legal error. (Doc. 96, Opinion and Order, Pg ID 6298.) The court concluded that the action level of 15 ppb for lead is a "maximum contaminant level." (*Id.*, Pg ID 6295.) That is not accurate. It is an "action level." 40 C.F.R. § 141.80(c)(1). Unlike exceeding a maximum contaminant level, exceeding this action level does not violate the SDWA. Instead, it triggers other requirements for

the water supplier to minimize exposure to lead in drinking water, such as corrosion-control treatment, public education, and lead-service-line replacement. 40 C.F.R. §§ 141.81, 84-85.

The City exceeded the action level during its first six-month testing period of 2016. (Ex. A, 9/14/16 Hearing Tr., p. 219.) Accordingly, MDEQ ordered it to take certain actions, including the replacement of lead pipes. (*Id.*, pp. 220–221.) But MDEQ had no reason to believe the City was not taking those actions. (*Id.*, p. 221.) Furthermore, the City has been treating its water to control for corrosiveness for over a year. (*Id.*, p. 214.) Under the LCR, any “water system that complies with the applicable corrosion control treatment requirements . . . shall be deemed in compliance” with the requirement that all “water systems . . . install and operate optimal corrosion control treatment.” 40 C.F.R. § 141.80(d). As a result, neither MDEQ nor EPA considered the City to be violating the LCR at the time of the hearing before the district court. (Ex. A, 9/14/16 Hearing Tr., pp 213-214).

Contrary to the district court’s apparent interpretation, the City’s lead levels do not need to be reduced to a certain, pre-determined level in order for it to be in compliance with its corrosion control treatment

responsibilities. Regardless, as noted above, the treatment has been working because monitoring results show that Flint's water system has been below the action level since at least May 2016 and is currently at 9 ppb. Again, this Court is unlikely to agree that the record supports the district court's conclusion that there is an ongoing violation of the corrosion control requirements.

3. The district court's finding of irreparable harm to all Flint water users is unsupported by the evidence, and thus the injunction is overbroad.

Injunctive relief against state actors can be no broader than necessary to remedy the harm at issue. *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1069 (6th Cir. 1998). Indeed, the “[f]undamental precepts of comity and federalism admit of no other rule.” *Knop v. Johnson*, 977 F.2d 996, 1008 (6th Cir. 1992). Otherwise, federal courts would “[in]appropriately tell [state actors] how to strike [a] balance” between competing policy proposals. *Id.* The district court's injunction violates this rule. It goes far beyond the scope of what the evidence in this case supports.

For example, the district court recognized that filtered water is safe to drink, and that 90% of homes and 99.7% percent of apartments

have water filters. (Doc. 96, Opinion and Order, Pg ID 6311.) Captain Kelenske, who commands the State's emergency response, testified that not only are water and filters widely available at the nine official points of distribution in the City, but also at 42 to 43 other locations throughout the City. (Ex. A, 9/14/16 Hearing Tr., p 319.) Moreover, as the Court acknowledged, the emergency relief coordinators maintain a list of homebound or other individuals who need regular deliveries, and that list is regularly supplemented as additional people call in to ask for assistance. (Doc. 96, Opinion and Order, Pg ID 6315–6316); (Ex. A, 9/14/16 Hearing Tr., p 303-305.)

The district court concluded that notwithstanding the State's "significant," "substantial," and "commendable" relief efforts, (Doc. 96, Opinion and Order, Pg ID 6311, 6314, 6318), "credible anecdotal evidence" showed that "several households" and "some residents" struggled to get access to drinking water, (*id.*, Pg ID 6313–6319). The court relied primarily on declarations that are four months old, and vague hearsay testimony, to conclude that irreparable harm to *all*—as opposed to some—Flint residents is not merely possible, but "likely." (*Id.*, Pg ID 6319.)

Additionally, notwithstanding the fact that Plaintiffs waited 177 days from the time they filed their complaint to even reply to State Defendants' timely response to their delayed motion for a preliminary injunction, and the court's opinion did not issue until more than eight weeks after the hearing, the district court determined that there is an "immediate danger to Flint residents." (*Id.*, Pg ID 6324.) This Court is unlikely to agree that, under these circumstances, the district court's extraordinary use of an already extraordinary remedy was lawful.

There is simply no basis to grant injunctive relief to each person in every household in Flint, particularly when the record does not support any ongoing violation of federal law. Further, even to the extent the record supported the door-to-door delivery of bottled water to any Flint resident, there does not appear to be any evidence in the record to support the district court's unexplained determination that *each* resident requires four cases of bottled water *per week*.

To the extent the district court was persuaded by the anecdotal evidence, the more proportionate order would have been to require Plaintiffs to provide the addresses of the people they had located who were struggling to obtain access to water—something Plaintiffs have

refused to do. (Ex. A, 9/14/16 Hearing Tr., p 308.) Had the court simply required Plaintiffs to provide the addresses of the small group of people the court concluded were struggling to get access to water, those people could have been provided with immediate relief. For example, Plaintiffs had refused to provide the address of Ms. Childress so relief could be provided to her. When she finally provided the address herself while on the stand, state responders visited her home within hours—by the time Captain Kelenske took the stand to testify. (*Id.*)

In light of the unsupported scope of the injunctive relief granted, State Defendants are likely to succeed on appeal. Therefore, this Court should stay the district court's injunction.

4. The injunction fails to comply with Rule 65(c).

A preliminary injunction may be issued “only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). While the district court could ultimately determine that a bond is not required, the court was still required to exercise that discretion and consider the propriety of a bond. *Roth v. Bank of the Commonwealth*, 583 F.2d 527, 539 (6th Cir.

1978). Here, the district court failed to make that determination. And that failure is significant in light of the millions of dollars in additional costs Michigan taxpayers will incur in order to comply with the injunction. Unlike traditional scenarios in which a preliminary injunction simply preserves the status quo, this injunction is directly calculated to drastically expand current relief efforts and require the expenditure of tens of millions of dollars. Plaintiffs should have been required to post security to ensure that the taxpayers are made whole in the event it is determined that the district court's injunction is not lawful.

The district court's failure to fulfill its obligations under Rule 65 is an additional reason the State Treasurer and members of Flint's RTAB are likely to succeed on appeal. Accordingly, State Defendants request that this Court stay the injunction pending appeal.

B. Neither Plaintiffs nor the residents of Flint will be irreparably harmed by a stay of the injunction.

As noted above, in finding an immediate risk of irreparable harm to the entire City, the Court relied upon anecdotal evidence that "at least some residents have struggled to obtain the water they need to

sustain themselves,” and then went on to suggest that “[w]ith the colder winter months approaching, it is reasonable to conclude that the difficulties will only worsen.” (Doc. 96, Opinion and Order, Pg ID 6320.) That Plaintiffs have, anecdotally, shown that some residents may be inconvenienced, does not equate to a showing of irreparable harm to the entire City. And the inference that the situation will actually get worse is unfounded speculation, particularly in light of the ongoing, concerted, and significant progress being made (independent of the injunction) to ensure that every household in the City of Flint has access to safe drinking water. In fact, the increasingly cold temperatures will cause large quantities of bottled water delivered to porches to freeze and potentially burst, possibly causing damage.

C. The public interest in a stay is strong.

Finally, a stay of the injunction will significantly benefit the public interest in at least four ways.

First, and significantly, delivering a massive amount of bottled water to each Flint resident is almost certain to slow the recovery of Flint’s water system by substantially decreasing the amount of water moving through Flint’s water system. The district court concluded that

“[t]here is no evidence that an injunction will necessarily halt or delay restoration of Flint’s water system.” (Doc. 96, Opinion and Order, Pg ID 6323.) But that is not accurate. Mr. Feighner explained in detail to the district court that a decrease in water use would not only slow the recoating of the system’s pipes by the orthophosphate, but allow lead particulate to remain in the system. (Ex. A, 9/14/16 Hearing Tr., p 227–228.) A stay of the injunction would benefit the public for this reason alone.

Second, the response to Flint involves much more than providing bottled water and filters. It includes, among other things, the provision of fruits and vegetables, food-bank support, and other nutrition assistance to Flint children; the provision of mental health services; the provision of school nurses; and lead-abatement programming. (Ex. C, 11/16/2016 Declaration of Jacques McNeely from the State Budget Office.) The district court made the unsupported assumption that \$100 million is currently available to spend in order to comply with its injunction. (Doc. 96, Opinion and Order, Pg ID 6321.) That is not accurate. If the appropriated funds for Flint relief are redirected solely to comply with the court’s order, some of the broader relief efforts will

be left without funding. (Ex. C, 11/16/2016 Declaration of Jacques McNeely.) It is in the public's interest to continue those broader relief efforts rather than end them in an effort to deliver four cases of unnecessary bottled water per week to every resident of Flint.

Third, complying with the district court's order could add an additional 4.7 million plastic bottles to Flint's recycling system *each week*. (Ex. D, 11/16/2016 Declaration of Captain Kelenske.) This would likely create a severe and unnecessary strain on both the City and the environment.

Fourth, both the Michigan State Police and the Michigan Department of Environmental Quality estimate that to carry out the court's order would require a remarkable expenditure of taxpayer funds. The district court's speculation that what it ordered "may be far less drastic than the defendants believe" because of the "water distribution mechanism [already] in place" is not correct. (Doc. 96, Opinion and Order, Pg ID 6324.)

The scope of door-to-door delivery the court ordered has no known precedent. (Ex. D, 11/16/2016 Declaration of Captain Kelenske.) According to Captain Kelenske, who is well-qualified and supported by

professional staff who specialize in emergency response, the State would need to deliver approximately 395,000 cases of water per week to meet the court's requirement. (*Id.*) This is a *five-fold* increase over the approximately 78,000 cases that are currently distributed per week both through home delivery and through the dozens of distribution sites throughout the City. (*Id.*) To accomplish this task, the State would need to obtain 137 additional trucks. (*Id.*) That will require 137 additional qualified drivers, not to mention additional delivery and warehouse personnel. (*Id.*) On the topic of warehouses, the SEOC does not have the "warehouse capacity, supply, or distribution mechanisms in place to support distribution of water to every resident on the Flint Water System." (*Id.*) The current warehouse capacity is approximately 2.2 million liters of water. To store enough water to make regular deliveries to each Flint resident would require a capacity of approximately 11.4 million liters of water. It is not clear that finding such a large warehouse is even possible. (*Id.*)

The conservative estimate of how much this kind of delivery program would cost is approximately \$10.5 million per month in taxpayer dollars. (*Id.*) As noted above, the available appropriations

cannot simply be rerouted without putting existing relief efforts at risk. Complying with the Court's order would require additional appropriations.

In regards to the door-to-door filter education program the Court ordered, MDEQ already launched the CORE program as of July 2016 in which teams of trained personnel go to each household in Flint. (Ex. A, 9/14/16 Hearing Tr., p 309.) The MDEQ is working to expand the CORE program into a sustainable, long-term program by forging stronger partnerships with the City, Genesee County, and non-profit groups. It is a crucial to include Flint residents on CORE teams in order for them to be successful, but it is challenging to find residents with the necessary qualifications. (Ex. E, 11/16/2016 Declaration of George Krisztian with MDEQ.) For this reason, the CORE program currently has approximately 26 employees. (*Id.*) To comply with the court's order in the tight timeframe the court provided would require at least 54 teams, working eight-hour shifts, seven days a week. (*Id.*) So that those teams could work in shifts, it would require hiring at least 150 additional people. (*Id.*) This is virtually impossible. At the very least, to mobilize this many qualified teams so quickly would require

teams made up of one state employee and one Flint resident, rather than two Flint residents. (*Id.*) The estimated cost just for the state employees alone, and the provision of state vehicles, would be approximately \$955,971 per month. (*Id.*)

Additionally, the estimated cost of printing and mailing out the notices the court ordered is approximately \$20,000 for each instance. (*Id.*) Again, the available appropriations cannot simply be rerouted without putting existing relief efforts at risk. Complying with the court's order would require additional and significant appropriations.

It is in the public's interest to spare taxpayers this great and unnecessary expense while the injunction is appealed, especially in the absence of security from Plaintiffs that will ensure the taxpayers are made whole in the likely event that this Court reverses the district court's order.

RELIEF REQUESTED

The State Treasurer and members of the RTAB respectfully request that this Court grant their emergency motion and stay the district court's November 10, 2016 preliminary injunction pending appeal. State Defendants ask this Court to rule on this emergency motion for stay no later than November 23, 2016, because of the impending December 16, 2016 deadline for full compliance—just 25 days away.

Respectfully submitted,

/s/ Richard S. Kuhl

Richard S. Kuhl (P42042)

Nathan A. Gambill (P75506)

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Dated: November 21, 2016

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2016, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

Respectfully submitted,

/s/ Richard S. Kuhl

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Dated: November 21, 2016

No. 16-2628

In the
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CONCERNED PASTORS FOR SOCIAL ACTION; MELISSA MAYS;
AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN; and
NATURAL RESOURCES DEFENSE COUNCIL, INC.,

Plaintiffs-Appellees,

v.

NICK A. KHOURI, in his official capacity as Secretary of Treasury of the State of Michigan; FREDERICK HEADEN, in his official capacity as Chairperson of the Flint Receivership Transition Advisory Board; MICHAEL A. TOWNSEND, in his official capacity as Member of the Flint Receivership Transition Advisory Board; DAVID MCGHEE, in his official capacity as Member of the Flint Receivership Transition Advisory Board; MICHAEL A. FINNEY, in his official capacity as Member of the Flint Receivership Transition Advisory Board; and BEVERLY WALKER-GRIFFEA, in her official capacity as Member of the Flint Receivership Transition Advisory Board.

Defendants-Appellants.

Appeal from the United States District Court
Eastern District of Michigan, Southern Division, No. 2:16-cv-10277
Honorable David M. Lawson

INDEX OF EXHIBITS

- Exhibit A – September 14, 2016 Hearing Transcript
- Exhibit B – Declaration and Affidavit of Larry Steckelberg and Fredrick Headen,
- Exhibit C – Declaration of Jacques McNeely
- Exhibit D – Declaration of Chris Kelenske
- Exhibit E – Declaration of George Krisztian
- Exhibit F – November 3, 2016 EPA Memo

EXHIBIT
A

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Concerned Pastors for
Social Action, et al.,

Plaintiffs,

v.

Case No. 16-10277

Nick A. Khouri, et al.,

Defendants.

MOTION FOR PRELIMINARY INJUNCTION

BEFORE THE HONORABLE DAVID M. LAWSON
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
September 14, 2016

APPEARANCES:

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(Appearances Continued to Following Page)

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1 Detroit, Michigan

2 September 14, 2016

3 8:03 a.m.

4 * * *

5 THE CLERK: All rise. The United States District
6 Court for the Eastern District of Michigan is now in session.
7 The Honorable David M. Lawson presiding.

8 THE COURT: You may be seated.

9 THE CLERK: Now calling the case of Concerned Pastors
10 versus Khouri, Case Number 16-10277.

11 (Pause in proceedings at 8:04 a.m.)

12 THE COURT: Let's start with appearances, counsel,
13 please. Good morning.

14 MR. MURPHY: Good morning, your Honor.

15 MS. CHAUDHARY: Good morning, your Honor. On behalf
16 of Plaintiffs, Dimple Chaudhary.

17 MR. WALL: Michael Wall, your Honor.

18 MS. TALLMAN: Sarah Tallman, your Honor.

19 MR. KNICLEY: Jared Knicley, your Honor.

20 THE COURT: I didn't hear you.

21 MR. KNICLEY: Jared Knicley, your Honor.

22 MR. STEINBERG: Michael J. Steinberg.

23 MR. SIMMINGTON: Glenn Simmington.

24 THE COURT: And for the State Defendants?

25 MR. MURPHY: Michael Murphy, your Honor, appearing on

1 behalf of the State Defendants.

2 MR. KLEIN: Richard Kuhl on behalf of the State
3 Defendants.

4 MR. GAMBILL: Nathan Gambill also on behalf of the
5 State Defendants.

6 THE COURT: And the Flint Defendants?

7 MR. KLEIN: Sheldon Klein on behalf of the City of
8 Flint.

9 MR. BERG: Frederick Berg on behalf of the City of
10 Flint.

11 THE COURT: Mr. Murphy, who is next to you at counsel
12 table?

13 MR. MURPHY: Mr. Jamison, and he is not appearing on
14 behalf of the Defendant. He's here to help me with this
15 computer.

16 THE COURT: That's good, Mr. Murphy. Stand when you
17 address the Court.

18 MR. MURPHY: I'm sorry. I apologize.

19 THE COURT: The matter is before the Court on a
20 hearing on the Plaintiffs' motion for a preliminary
21 injunction.

22 We have some motions in limine and a motion for
23 a site visit that have been filed in the interim.

24 The Court has reviewed those motions. The
25 Plaintiffs' motion to exclude the testimony of Bryce -- is it

1 pronounced Feighner, is that how that's pronounced?

2 MR. MURPHY: Yes. Go ahead, Nate.

3 MR. GAMBILL: Feighner, your Honor.

4 THE COURT: Again?

5 MR. GAMBILL: Feighner.

6 THE COURT: That motion is denied. The testimony
7 appears to possibly address issues that may relate to one of
8 the four factors that the Court must consider in balance in
9 issuing a preliminary injunction.

10 The Defendants' motion to exclude the declaration of
11 Dr. Caravallah is denied. The information that she offers
12 appears to be reliable and the criticisms go to the weight and
13 not the admissibility.

14 And the State Defendants' motion for a site view is
15 denied without prejudice. We will see how the testimony
16 develops and we will determine whether or not that's indeed
17 necessary.

18 So docket number 74 and 80 are denied and docket
19 number 79 is denied without prejudice.

20 Ms. Chaudhary, are you taking the lead today?

21 MS. CHAUDHARY: I am, your Honor.

22 THE COURT: Do you care to make any opening remarks?

23 MS. CHAUDHARY: I would, your Honor.

24 THE COURT: All right. Briefly, please.

25 MS. CHAUDHARY: Would you like me to use the podium?

1 THE COURT: Well, I have got that lectern set up to
2 face the witness box, so it might be more comfortable for you
3 to address me from there.

4 MS. CHAUDHARY: Okay. Thank you, your Honor.

5 After more than two years, Flint residents still
6 cannot turn on their taps and drink their water without
7 worrying about lead exposure. Day after day they have to find
8 other sources of water to cook, drink and brush their teeth
9 because their water is not safe to drink.

10 At this hearing Plaintiffs will show that many people
11 in Flint do not have reliable, adequate access to safe
12 drinking water right now. We will show that Plaintiffs and
13 many residents are suffering irreparable harm because of the
14 challenges they face in getting working faucet filters and
15 enough bottled water to meet their needs. This Court's
16 intervention is urgently needed to ensure that Flint residents
17 have the same access to safe drinking water that most of us
18 take for granted every day.

19 Plaintiffs will present evidence from four witnesses,
20 including residents, volunteers and community leaders in
21 Flint.

22 First you'll hear from Michael Hood, the Executive
23 Director of a non-profit called Crossing Water. Mr. Hood and
24 his teams of social workers have visited hundreds of homes in
25 Flint that do not have properly installed and maintained

1 faucet filters. He will explain how residents still did not
2 know how to install their filters or when to change the
3 cartridges and don't have faucets that will work with the
4 filters distributed in Flint.

5 Next you'll hear from Cynthia Roper. Ms. Roper is a
6 volunteer with Flint Rising, a coalition of volunteers and
7 non-profits in Flint. She will describe how she meets many
8 residents in Flint who are struggling to get enough water to
9 meet their daily needs. She will testify that the residents
10 she speaks with cannot travel to the State-run bottled water
11 distribution sites regularly. She will testify that from
12 January right up until the present she regularly meets
13 residents who need bottled water delivery and are not
14 receiving it.

15 Next you will hear from Jacqueline Childress.
16 Ms. Childress is a Flint resident. She is retired and cares
17 for her disabled son. She does not own a car. Ms. Childress
18 will testify that she struggles to get to the State
19 distribution sites and bring home enough water for her family.
20 Her experiences are not uncommon in Flint.

21 Finally, you will hear from Robert Blake, a pastor
22 at Vernon Chapel AME Church in Flint. He is also a Flint
23 resident. Pastor Blake will testify about how the struggle
24 for safe water has stretched the limited resources of his
25 congregation and burdened the residents that he meets. He

1 will describe the efforts that he and his church are making to
2 supplement the City and State's emergency response efforts and
3 how dwindling donations have made those efforts difficult to
4 sustain.

5 In addition to the testimony that you will hear
6 today, Plaintiffs have submitted more than 20 declarations
7 from Flint residents, volunteers and relief workers detailing
8 the extraordinary efforts that many residents are taking to
9 get safe drinking water right now.

10 And while the evidence we present today will
11 primarily address the harm to Flint residents and why the
12 requested relief is in the public interest, we have
13 extensively briefed the other elements of the preliminary
14 injunction standard.

15 In particular, Plaintiffs have shown that they are
16 likely to succeed on the merits of their claims because the
17 system continues to violate the Safe Drinking Water Act
18 corrosion control requirements. Plaintiffs have also offered
19 significant evidence that the State Defendants are operators
20 of the water system.

21 In response to Plaintiffs' evidence, we expect
22 Defendants to present testimony saying that all is well in
23 Flint, the State has spent a lot of money addressing these
24 problems, and there is no reason for the Court to intervene
25 because the water is almost safe to drink.

1 Defendants' responses fail for three reasons.

2 First --

3 THE COURT: I'm not entertaining argument at this
4 point. I am just wanting to hear what it is that you're going
5 to offer.

6 MS. CHAUDHARY: Yes, your Honor.

7 As a remedy today, Plaintiffs will ask for a targeted
8 door-to-door bottled water delivery system in Flint.

9 Households may opt out of this program because they
10 have a working faucet filter and they understand how to
11 maintain that filter, but the default should be delivery until
12 a household affirmatively removes themselves from the list
13 because they have access to safe drinking water.

14 Plaintiffs seek nothing more than the same relief
15 that's offered in U.S. EPA's regulations in directly analogous
16 circumstances.

17 When a water system seeks an exemption from the lead
18 and copper rules corrosion control requirements it must do one
19 of two things: It can either implement a bottled water
20 delivery program or it can implement a filter installation/
21 maintenance program. The Defendants should be required to do
22 the same here.

23 Defendants will say that this kind of relief will
24 cost too much money, but this remedy is needed because people
25 deserve to have access to safe drinking water right now. And

1 if many residents have properly installed filters and adequate
2 access to safe drinking water, the remedy we seek should not
3 be overly burdensome. If the Court disagrees, there are ways
4 to tailor the remedy.

5 There is no question that the City and State have
6 mobilized significant resources to respond to this crisis, but
7 the fact remains that there are still residents in Flint who
8 are struggling every day to access bottled water distribution
9 sites and understand how to maintain their faucet filters.

10 The obligation should not be on already overburdened
11 residents to go out day after day and pick up bottled water
12 and try to install and understand these filters and wonder if
13 they are doing it correctly and wonder if they are exposing
14 themselves and their children to lead.

15 Thank you.

16 THE COURT: I understood you to indicate that the
17 plan that you want in place is a targeted door-to-door
18 delivery system that requires opt-out rather than registration
19 or something like that. Are you backing off from your remedy
20 with respect to installation of filters?

21 MS. CHAUDHARY: No, your Honor. We think that -- we
22 presented that as an alternative remedy. We think that
23 bottled water delivery right now is the best mechanism. If
24 that could be supplemented or coupled with a filter education
25 and installation program that would be ideal, but we think the

1 focus right now on the remedy has to be getting bottled water
2 to people who need it, who are not getting enough drinking
3 water right now. I think there is sufficient questions about
4 maintenance of these filters such that the bottled water
5 remedy in this short-term emergency period is more
6 appropriate.

7 THE COURT: All right. Thank you.

8 Mr. Murphy, would you care to make any opening
9 remarks at this time? I take it you're taking the lead for
10 the State Defendants, is that correct?

11 MR. MURPHY: Yes, your Honor, I am.

12 THE COURT: All right.

13 MR. MURPHY: It's going to be difficult to explain
14 the Flint water situation in words, but what the Plaintiff
15 is seeking here is preliminary injunctive relief under the
16 Federal statute, and that's obvious.

17 What we're going to show is what is being done today
18 in the City of Flint is a continuation of what began when
19 this problem first arose and that the water system is being
20 repaired consistently over time.

21 Corrosion control, which seems to be the focus here,
22 has been identified and addressed and implemented. The
23 present water source is the City of Detroit Great Lakes Water
24 Authority and has been for a considerable time, which covers
25 all the corrosion control.

1 THE COURT: I'm sorry, covers?

2 MR. MURPHY: Which covers corrosion control. It's
3 automatically set up from the City water system before it gets
4 to Flint. Plus they are adding additional orthophosphate
5 which is what is used for corrosion control.

6 Testing samples that we're going to be presenting
7 shows in the first six-month testing period of January to July
8 2016 and continuing samples to the present show the lead
9 content is dropping significantly. We also show and we find
10 it interesting in Exhibit 60 that Plaintiffs have proposed the
11 initial report from Dr. Edwards which will be presented, and
12 Dr. Edwards is the same person, the independent person who
13 first identified the lead problem. Our Exhibit 27 is his
14 update which shows considerable drop in the lead as of today
15 and below the action amount, which is 15 parts per billion.
16 So even the independent expert says that the lead content
17 satisfies the LCR.

18 As the Court is aware from attachments in previous
19 submissions, the EPA has entered an emergency order. That is
20 being complied with by the State and by the City of Flint.

21 So just what the science expects to occur in the
22 water system when introducing corrosion control to it is
23 occurring on a regular basis. And it's occurring in the
24 six-month period since January through July of this year as
25 well as continuing from July to the present.

1 It's not perfect, but it's a reasonable and measured
2 approach and it's an excellent approach to what seems to be
3 like an overwhelming problem.

4 What began as a drinking water problem is not being
5 addressed with just bottled water or just filters. I think
6 the Court has to look beyond just bottled water and just
7 filters to what the State has done as a full frontal response
8 to the water situation that's occurring daily in Flint.

9 It's about repairing the system, which is occurring.
10 The test results show that the system is being repaired. The
11 testimony will show that the situation is being addressed
12 daily.

13 What has happened since the beginning of this case to
14 the present time, it seems like every time the State does
15 something that the Plaintiffs ask or say should be done then
16 their position becomes, it's not enough and we need to do
17 more.

18 The State in the motion has said that the lead will
19 be controlled, and even the Plaintiffs indicate in their
20 filings that this lead situation will be controlled, and their
21 experts are saying over a period of six months, that six
22 months has occurred, and in fact, the scientific evidence will
23 show that it is, in fact, being repaired.

24 What's being done today, I think, is important. And
25 the Court has made it clear, I think, in its order that it

1 wants to know what's happening in Flint today and where do
2 we need to get. And I think that's the relevance of this
3 particular hearing.

4 Well, bottled water is available in nine different
5 PODs, and those are points of distribution that we indicate.
6 Filters and bottled water, excuse me, is also delivered to
7 those who can't get it. It's delivered today. There is a
8 functional leads list that is kept for those unable to get
9 the water themselves. Filters and cartridges are not only
10 available at the PODs for pickup free, they are delivered to
11 the people who need them.

12 Filter teams right now by DEQ are being hired to go
13 throughout Flint to educate the public on filter usage, to
14 assess where they are needed, to install them, and to change
15 cartridges if needed. There is going to be a team in every
16 ward in Flint. There's nine wards, and there will be a team
17 in every ward. There are certain -- they are working and to
18 show how to replace the cartridges when they are needed.

19 And it's important to know, to get the water system
20 working again, which I think is everyone's goal here, it has
21 to be used. The water with corrosion control has to flush and
22 rebuild the protective barrier in those lead lines that still
23 exist in Flint and to get people off of bottled water if they
24 wish to get off.

25 And that's an important point. If they wish to get

1 off, they can. The EPA will show, and the CDC and the DEQ,
2 have all indicated that filtered tap water is safe to drink
3 for all Flint water customers today, but we are still
4 providing bottled water to anyone who wants it.

5 Lead service lines. There will be a report entered,
6 and one of the requests in the complaint, not in this motion
7 for preliminary injunctive relief, but in the complaint was
8 replacement of lead service lines. That's been ordered,
9 recommended, and is being implemented by the City of Flint
10 right now.

11 Water is not only supplied to individuals as much as
12 they want, but it's supplied to faith-based groups, food
13 banks, community groups, anyone who wants it, and wants to
14 deliver it, can.

15 Information, again, is disseminated by the press, on
16 line, at group meetings, in different languages, and by the
17 211 call. Meaningful, important information is being provided
18 to the public.

19 Filter instruction is being provided to the public.
20 Updates on the water system progress is being provided to the
21 public and the EPA order is in place.

22 There are also wellness programs in place. Medicaid
23 extension has been implemented for those who need medical
24 review, examination, treatment, whatever. Based upon supposed
25 lead contamination, that Medicaid extension has been granted

1 to those residents that need it, that can get that help.

2 Water customer bills have been credited to the tune
3 of \$30 million for past water usage and future water usage.
4 As an example, presently Flint residents pay only a sewer
5 charge for the waste water. They pay no water usage charge,
6 yet they can use the water freely for watering the grass,
7 showering and bathing or any other use.

8 What's needed and reasonable to expect to be done to
9 face this emergency is being done and it's being done every
10 day. To accomplish these things, of course, costs an
11 extraordinary amount of money. Regardless of anyone's beliefs
12 or their needs or their problems, everything that needs to be
13 done today is being done.

14 Our Exhibit 28 will show the total amount of dollars
15 being spent by various State departments to address what is
16 every aspect of Flint water. It shows the amounts being
17 spent, the amounts appropriated and the amounts that are
18 obligated to be spent and have yet to be spent.

19 So what remains to address the situation? The
20 amounts dedicated presently to Flint are staggering to me.
21 Over 200 million has been appropriated. Over 100 million has
22 presently been spent by various State agencies covering every
23 aspect of the problem, not just water, not just filters, but
24 every aspect. So this is being addressed adequately and
25 reasonably.

1 Mr. McNeely will testify before the Court regarding
2 the budgeting in the State through appropriations and
3 expenditures on the Flint response by the State Government,
4 from the provision of water to the food and nutrition aspect,
5 to social development, to physical and medical issues, to
6 economic development, and to crediting water customer bills.

7 There will also be testimony, and we have had Captain
8 Kelenske take a look at the financial people on the potential
9 costs if the relief requested were considered by the Court.
10 They will provide estimates of costs in dollars and manpower
11 if that relief were considered. So what must be asked in
12 conjunction with this entire hearing is, what's adequate,
13 what's reasonable, what's necessary, and what has to be done
14 to address the problem.

15 Right now our initial estimate, if five cases of
16 water were delivered on a weekly basis in Flint as Plaintiffs
17 have requested, just five cases would be \$9 million a month
18 and it would take probably a callout of the National Guard to
19 accomplish it. If it's ten cases of water delivered, the cost
20 goes to 11.4 million a month.

21 Those are just numbers of delivering water. It
22 doesn't include the hidden economic costs of man-hours,
23 logistics, loss of services to all the other programs being
24 provided and the loss of services to other parts of the State,
25 costs that can't be readily calculated, but the Court should

1 consider in any decision that would require an injunction.

2 It's important to note that filter teams, as I stated
3 earlier, are in place for every ward in Flint now and are
4 going, eventually, hopefully, to every home that needs a
5 filter to help to assist and educate the public in how it
6 should be used.

7 THE COURT: How do you determine who needs a filter?

8 MR. MURPHY: Someone that doesn't have one, that
9 isn't hooked up, and it's done by canvassing. So they will go
10 to each Flint water customer's house.

11 THE COURT: Oh, so they are going door to door to
12 determine --

13 MR. MURPHY: Door to door to see if they have a
14 filter, and if they do, educate them on its use. If it's not
15 installed, install it, leave them instructions, leave them
16 cartridges and tell them how and when to replace those.

17 And the position being --

18 THE COURT: I'm sorry, did you say that's in place?

19 MR. MURPHY: That's -- yeah, they are ramping that up
20 right now. It's been -- it's started and they are hiring
21 Flint residents to do these things.

22 THE COURT: So it's not in place, it's --

23 MR. MURPHY: Training and --

24 THE COURT: In process?

25 MR. MURPHY: Yes, it's in process. It's being --

1 those people have to be trained. They have to concern
2 themselves, obviously, with not just how to do this, but how
3 to approach residents, residents that refuse them, safety
4 issues.

5 We have had one officer already torn up by a pit bull
6 in Flint, so there's safety issues involved as well. Those
7 people have to be trained to do that. They are being trained
8 and they are being set up in each ward in the City of Flint.

9 So those things are ongoing and I think the Court has
10 to take into consideration what we're dealing with here. This
11 can be a very emotional situation. It's emotional for me.
12 It's emotional for my colleagues. It's emotional for
13 Plaintiffs. But at the same time, we have to look at what's
14 happening, how it's happening, what is being provided by the
15 State to the residents in the City of Flint and that it's
16 adequate and it's not deficient and it is available to them on
17 a regular basis.

18 THE COURT: Thank you, Mr. Murphy.

19 Mr. Klein, are you taking the lead for the City?

20 MR. KLEIN: I will be, your Honor.

21 THE COURT: Do you have any opening remarks you would
22 like to make?

23 MR. KLEIN: I will be very brief, your Honor, and
24 mostly I'm going to be brief because at least implicit in what
25 Mr. Murphy just said, it is the State, not the City of Flint,

1 that is responsible for the remediation effort that's at issue
2 in this proceeding.

3 What the City's evidence will demonstrate is going to
4 be focused on the financial impact, and indeed, the complete
5 impossibility of the City of Flint to provide the requested
6 relief because of its financial circumstances, as well as
7 the fact that the City of Flint has no infrastructure for -- I
8 mean, that is, you know, no logistical setup, no trucks, no
9 et cetera to provide the relief, but the evidence will mostly
10 focus on the financial implications.

11 The Court is going to hear testimony from David
12 Sabuda. Mr. Sabuda is the City of Flint's interim chief
13 financial officer. And his testimony will show that, for
14 example, in the current fiscal year which began July 1 and
15 will end June 30 of 2017, Flint's water fund is going to have
16 a negative cash flow of \$19 million.

17 His evidence will demonstrate that largely as a
18 result of the water crisis, money isn't coming in for water
19 bills, and as a result that, typically the City's water fund
20 overwhelmingly operates off of residents paying water bills to
21 pay its operating expenses, that's not happening, and thus,
22 the City is more than \$10 million short of being able to pay
23 even its ordinary operating expenses.

24 The gap has been filled of necessity by taking many
25 millions of dollars out of its reserves, which it needs to

1 maintain to properly operate, and also by roughly half through
2 grants provided both by private organizations and the State,
3 but the fact is that the City's Water Department is not
4 operating normally because dollars aren't coming in in
5 anything like the normal, normal rate.

6 And I spoke in terms of operating expenses because
7 that doesn't take into account the fact that as Plaintiffs are
8 seeking in their ultimate end case, that doesn't include the
9 dollars required to replace lead service lines. Those are
10 capital expenses. It's going to be an enormous amount of
11 money. The City is very aggressively rolling out that
12 program, but it takes dollars.

13 We believe that when the evidence is complete a
14 couple of things are going to be clear:

15 First, we don't believe the Plaintiffs will be able
16 to demonstrate irreparable harm.

17 And second, that the balance of equities in the
18 public interest overwhelmingly militates against ordering the
19 City of Flint to provide the requested relief because of its
20 financial circumstances, the devastating impact that this
21 enormous incremental expense would have, and also because the
22 need, and it's been expressed by Plaintiffs in depositions
23 and their pleadings, that the need for the City of Flint to
24 maintain -- they have only recently partially regained control
25 of their destiny through its elected officials. It's

1 necessary for the elected official be allowed to exercise
2 their judgment as to what the best use of limited resources is
3 for the citizens of Flint if that is going to occur and if the
4 Plaintiffs, if the Plaintiffs are going to receive what they
5 indicate they seek.

6 So for these reasons we believe that the motion
7 should be denied.

8 THE COURT: Thank you.

9 MR. KLEIN: Thank you, your Honor.

10 THE COURT: Ms. Chaudhary, you may call your first
11 witness.

12 MS. CHAUDHARY: Thank you, your Honor. Plaintiffs
13 call Michael Hood to the stand.

14 MR. MURPHY: Your Honor, if I may, we got an e-mail
15 yesterday from your case manager indicating where the
16 witnesses should be. I don't know if they are sequestered or
17 not or whether you wish them sequestered.

18 THE COURT: I have no reason to want the witnesses
19 sequestered. Do you have a motion to that effect?

20 MR. MURPHY: Your Honor, I would suggest that they
21 should be, under the circumstances.

22 THE COURT: Well, if you want. If you want that
23 relief, I think the Rules of Evidence entitle you to it just
24 by making the motion, unless there is somebody that's presence
25 is necessary for the development of the case.

1 MR. MURPHY: I only have one witness that is
2 necessary for the development of the case and I would move to
3 sequester the witnesses under the rule.

4 THE COURT: Any objection?

5 MS. CHAUDHARY: Your Honor, we don't think
6 sequestration is necessary in these circumstances. These
7 witnesses have their own scope of testimony. They are not
8 testifying about the same, you know, incident. But if the
9 Court orders sequestration, we would request that Pastor
10 Robert Blake, who is a member of our Plaintiff group,
11 Concerned Pastors for Social Action, be allowed to remain as
12 a party representative.

13 THE COURT: Is he a party representative?

14 MS. CHAUDHARY: He is, your Honor.

15 THE COURT: Okay. Pastor Blake may remain. The
16 other witnesses will be sequestered on both sides and I will
17 leave it to the parties to enforce the sequestration rule with
18 respect to their own witnesses.

19 MR. MURPHY: The only witness I have that would also
20 be a party representative is Captain Kelenske. The other
21 witnesses will be sequestered.

22 THE COURT: Do you have any comment?

23 MS. CHAUDHARY: Your Honor, the Michigan State Police
24 are not a party here.

25 MR. MURPHY: He is State of Michigan and in charge of

1 the emergency operation of Flint. I believe he is a party
2 representative, clearly.

3 MS. CHAUDHARY: We have not sued the Michigan State
4 Police. We have sued certain entities within the State and
5 that is not one of them.

6 THE COURT: No, I'm aware that you haven't sued the
7 State Police, but apparently he has been detailed to the water
8 remediation task force, if I could characterize it as that.

9 Are you concerned that Mr. Kelenske will be able to
10 go to school on the testimony of other witnesses?

11 MS. CHAUDHARY: I am concerned about that, your
12 Honor. We would request that he be sequestered just as our
13 witnesses are being sequestered.

14 MR. MURPHY: I can't see where he is not a party
15 representative, your Honor. He is a State Police Trooper.
16 He works for the State of Michigan.

17 The Plaintiffs have approached this consistently not
18 to any Defendant, not to the State Treasurer, not to the
19 members of the RTAB. They have consistently said this is the
20 State of Michigan; that we want the State of Michigan to do
21 this. They have never once in any of their pleadings
22 indicated anything else.

23 THE COURT: Yeah, all right. I'll permit Mr. Kelenske
24 to remain, I'll permit Pastor Blake to remain, both as party
25 representatives.

1 Frankly, I'm not sure that a sequestration order
2 serves any useful purpose, but under the rule, I leave that to
3 the judgment of the parties, which I think is what the rule
4 provides. So as I mentioned, each side will be responsible
5 for enforcing the rule with respect to their own witnesses.

6 Ms. Chaudhary, is your first witness in the
7 courtroom?

8 MS. CHAUDHARY: Yes, he is. Plaintiffs call Michael
9 Hood to the stand.

10 THE COURT: I'm sorry, who is that now?

11 MS. CHAUDHARY: Michael Hood, your Honor.

12 THE COURT: Mr. Hood, would you step forward, please?
13 Just step between the tables there, pause for a minute, and
14 raise your right hand.

15 * * *

16 MICHAEL HOOD

17 was called as a witness, after having
18 been duly sworn to testify to the truth.

19 * * *

20 THE COURT: Would you have a seat right over here in
21 the witness box, please?

22 Mr. Hood, pull that microphone up, if you would, so
23 that you can speak into the tip of it.

24 THE WITNESS: Yes, sir.

25 THE COURT: You won't be able to move the chair, just

1 the microphone.

2 THE WITNESS: Yes, sir.

3 THE COURT: And keep your voice up.

4 Would you state your full name and spell your last
5 name?

6 THE WITNESS: Michael Francis Hood, H-o-o-d.

7 THE COURT: Thank you.

8 Ms. Chaudhary, you may proceed.

9 MS. CHAUDHARY: Thank you, your Honor.

10 DIRECT EXAMINATION

11 BY MR. HOOD:

12 Q. Good morning, Mr. Hood.

13 A. Good morning.

14 Q. What is your educational background?

15 A. Emergency medical technician, and Bachelors in social
16 work, and wilderness medicine technician.

17 Q. Are you employed right now?

18 A. No.

19 THE COURT: Mr. Hood, I didn't hear the third thing.

20 THE WITNESS: Wilderness medicine technician.

21 THE COURT: Wilderness. Thank you.

22 BY MS. CHAUDHARY:

23 Q. What are you doing right now, Mr. Hood?

24 A. I'm working full-time as a volunteer, Executive Director
25 for Crossing Water.

1 Q. And what is Crossing Water?

2 A. Crossing Water is a frontline crisis intervention
3 humanitarian relief agency working with the water crisis.

4 Q. Working with the water crisis, what do you mean by that?

5 A. We're intervening on behalf of residents, getting them
6 critical services and support and relief.

7 Q. Where is Crossing Water located?

8 A. We're up in the dusty attic of Salem Lutheran Church in
9 Flint, a mile from downtown.

10 Q. And what does Crossing Water do in Flint?

11 A. We do a lot. We, we do public health campaigns. We also
12 do interventions and relief work through a program called the
13 RRST team, rapid response service teams, and those are
14 multidisciplinary teams headed by social workers. We have
15 sometimes nurses, paramedics, plumbers, skilled tradespeople,
16 all kinds of social service people.

17 They go into homes as those teams delivering water,
18 water filters, putting in filters, putting in new plumbing if
19 need be, doing lots of social service interventions, as well,
20 along the way, and doing referrals out to other agencies where
21 we see other critical needs that are being met. We deliver not
22 just water, but filters, formula, food, clothing, whatever that
23 home might need.

24 Q. Can you tell me a little bit more about these rapid
25 response service teams that you referred to?

1 A. We put them together back in January when we saw the need.
2 We called around looking to see if there was some help we could
3 be. I have a got cadre of volunteers that I use for some other
4 volunteer work I do. And after determining that no one was
5 really doing any collaborative work or no one really wanted any
6 help at the time, we put together this agency and then tried to
7 assess and research what this crisis was really about.

8 So we did some field recons out there in Flint at
9 Bobby Jackson's Mission of Hope and other places, and then
10 through that we determined to make this team, to create these
11 teams called the rapid response service teams. We thought that
12 was the very best response to this crisis for those, those in
13 communities with the most underserved and vulnerable in the
14 City of Flint who are not getting services or getting very
15 little services.

16 Q. And do these response teams go into Flint residents'
17 homes?

18 A. Absolutely. They are referred by various agencies and
19 groups throughout the City and they will go to a home, go
20 into a homes in 99 percent of cases and then deliver those
21 services and do education programs. And as I said, you know,
22 we sometimes replace plumbing, we sometimes replace a sink or
23 faucets, and then we also do the filters and do lots of filter
24 education, filter maintenance, and a lot of things around water
25 and other things that -- associated trauma with that situation.

1 Q. And how many homes has Flint -- has Crossing Waters
2 visited in Flint since these response teams were formed?

3 A. I hope my numbers are right. I think about 1,000 homes we
4 have been to. We have probably done face-to-faces with about,
5 I'm going to say, 400 or 500 families and then that probably
6 represents, well, maybe 800 families, maybe about 400
7 individual homes we have been to, 400 or 500 individual homes,
8 somewhere in that neighborhood. I apologize.

9 Q. And when you say --

10 THE COURT: And over what period of time?

11 THE WITNESS: Since January, sir.

12 THE COURT: Thank you.

13 BY MS. CHAUDHARY:

14 Q. And when you say face-to-face, what does that mean?

15 A. That means our teams have actually met with and interacted
16 with those residents.

17 Q. And do you go to homes once only?

18 A. Sometimes. If we're able to ascertain that they are
19 self-sufficient and can get through this crisis without any
20 more interventions, then hopefully just once, but oftentimes we
21 go back repeatedly.

22 Q. And do you personally go on home visits for Crossing
23 Water?

24 A. I do, yes.

25 Q. And how often do you do that?

1 A. Less now. I went on a lot of them early on and now I try
2 to direct activities at the operations center. So I go maybe
3 once every couple weeks, but I see residents on a daily basis.

4 Q. And how do you see residents on a daily basis?

5 A. They walk into our operation center. They walk in the
6 church. Our church is also a distribution center for water and
7 food and other services, so I meet residents there where I do
8 interviews and interventions in the parking lot sometimes,
9 sometimes through the car window.

10 Q. And how often do you meet those residents?

11 A. Just about every day I'm there.

12 Q. What happens when a response team comes back from visiting
13 Flint homes?

14 A. They come back and they log in their notes on what they
15 have seen, what material support they have given. We also do a
16 pretty extensive debrief with the entire -- with all the teams
17 that went out that day and discuss what was given, what was
18 done, what things we need to get more services to that home,
19 how we can do a better job. So we have, you know, critical
20 debriefs for every team that goes out every single time we do a
21 deployment.

22 Q. And you participate in those debriefs?

23 A. I run those, yes.

24 Q. Are response team members paid for their time?

25 A. No. Although some are given, you know, a few dollars for

1 gas money. We have some volunteers that come as far away as
2 Chicago. So we try to scrape together some money to give them,
3 but no, no one is paid.

4 Q. Are you paid for your time with Crossing Water?

5 A. No, ma'am.

6 MS. CHAUDHARY: Showing opposing counsel, Plaintiffs'
7 Exhibits 377 and 378.

8 Your Honor, may I approach the witness?

9 THE COURT: You may.

10 Those are all premarked, right?

11 MS. CHAUDHARY: Yes, they are, your Honor.

12 BY MS. CHAUDHARY:

13 Q. Mr. Hood, I have just handed you Plaintiffs' Exhibits 377
14 and 378. Can you say, what is Exhibit 377?

15 A. It's a package of a Pur filter and cartridge package.

16 Q. And what is Exhibit 378?

17 A. It's a Brita version of that same filter.

18 Q. And have you seen these filters before?

19 A. Too much.

20 Q. When have you seen them, Mr. Hood?

21 A. I have seen them in Flint. I have seen them in my living
22 room. They are all over the place. We're seeing them in
23 people's homes.

24 Q. Are these the water -- are these the filters, excuse me,
25 that are being distributed in Flint right now, to your

1 knowledge?

2 A. Yes, ma'am.

3 Q. The faucet filters, I should say?

4 A. Yes, ma'am.

5 Q. If you could turn to Exhibit 378, do you know how to
6 install this filter on a faucet?

7 A. I do.

8 Q. And how do you know how to do that?

9 A. I have done a number of them myself.

10 Q. And how many have you installed?

11 A. It's hard to say. Before we even activated as Crossing
12 Water I was in the field doing these every day for a couple of
13 weeks. I want to say 50 to 75, somewhere in there. It's hard
14 to say.

15 Q. And have you ever taught anyone else how to install a
16 filter?

17 A. Yes, ma'am.

18 Q. And who have you taught?

19 A. I have taught our staff to do it. We have also -- we also
20 were asked by Genesee Health Systems, which is the largest
21 provider of services in town, they asked us to train their
22 targeted case managers to do that, so we put on a training for
23 them, as well, earlier in this crisis.

24 Q. And has anyone else -- have you trained any residents in
25 how to install these filters?

1 A. Absolutely.

2 Q. And anyone else?

3 A. Our staff and other folks' staff, other volunteers and
4 other groups, we also are putting together trainings for other
5 canvass groups now to learn how to do this.

6 MS. CHAUDHARY: Okay. Thank you.

7 Your Honor, we have a mockup of a faucet that we
8 would like to give Mr. Hood to demonstrate installation of the
9 filter. It's a demonstrative. May we use that to show the
10 use with him?

11 THE COURT: Sure. You want him to do it in the
12 witness box?

13 MS. CHAUDHARY: I would, your Honor.

14 THE COURT: All right.

15 THE WITNESS: Your Honor --

16 THE COURT: Wait for a question.

17 BY MS. CHAUDHARY:

18 Q. Mr. Hood, I have just given you a faucet and placed that
19 in front of you. Could you explain fro the Court, using the
20 filter and the faucet, how to install a faucet filter?

21 And if you could pick up Exhibit 378, please, to use
22 with that. That is the Brita faucet filter you identified
23 earlier.

24 THE WITNESS: Can I take my jacket off to do this?

25 THE COURT: Well, if installation is going to make

1 you sweat, I guess you can.

2 THE WITNESS: I have got a bad shoulder, so it just
3 gives me more mobility. Thank you.

4 So explain how to do this at the same time?

5 MS. CHAUDHARY: If you can.

6 THE COURT: If you want to step around in front,
7 that's okay.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Just do it so it's most convenient for
10 you.

11 THE WITNESS: Thank you, sir.

12 THE COURT: Just make sure you don't get between me
13 and the demonstration so I can see it, please.

14 THE WITNESS: Yes, sir.

15 So hopefully a home has a faucet like this.
16 Sometimes they will not. Sometimes the faucet is damaged.

17 But the first thing we do is we run water to make
18 sure the faucet -- make sure the faucet is working and make
19 sure that there is no water coming out under the sink, which
20 is oftentimes the case.

21 We will then attempt to take off the end here where
22 the aerator is, and we will explain to the residents how
23 important it is to make sure to keep their aerators clean on
24 the other faucets in their home, like the bathroom and so on.
25 And oftentimes we will find lots of debris and solid parts in

1 there, so we will scrape it out for them and show them how to
2 do it with the other ones.

3 We take that off --

4 THE COURT: How many times do you -- can you take the
5 aerator off by hand, loosening it?

6 THE WITNESS: Sometimes you can do it by hand, but
7 oftentimes it's corroded on there with all kinds of debris, so
8 we have -- our teams all are equipped with plumbing tools to
9 take it off with tools if need be.

10 If this was corroded on, I couldn't take it off by
11 hand. And some residents are also unable to do that. They
12 have no tools or don't have the dexterity to take it off on
13 their own.

14 THE COURT: Can you install a filter with the aerator
15 on the faucet or does it have to be removed?

16 THE WITNESS: This comes off and this actually has a
17 screen on it to keep debris out, as well, as part of the
18 filter.

19 THE COURT: Got it. But did you hear my question?

20 THE WITNESS: I'm sorry.

21 THE COURT: Can you install a filter with the aerator
22 on the faucet or do you have to remove it to install the
23 filter?

24 THE WITNESS: I think you have to take it off to put
25 it on. I believe you -- I have never put one on with it on

1 there, so you have to take it off. And some of the faucets
2 will not actually -- you won't be able to take this aerator
3 off. Some faucets won't even accept this filter with any of
4 the four adapters that are on here.

5 So we have never put one on with the aerator on, we
6 have tried to, but it's very difficult. It's almost
7 impossible.

8 THE COURT: All right.

9 THE WITNESS: So we go through the different adapters
10 here and hopefully one will fit this particular sink. No
11 knife today.

12 BY MS. CHAUDHARY:

13 Q. Mr. Hood, what are you doing right now?

14 A. I'm putting a washer into this, into one of the adapters,
15 to see if I can get one to fit in here.

16 Q. And why do you need to put the washer in?

17 A. It's part of the adapter that goes in here to make sure
18 the water doesn't spray out and leak out of here. So I'm
19 trying to find one that fits here.

20 THE COURT: So you're trying to locate an adapter
21 that has the same thread pattern as the faucet aerator
22 receiver?

23 THE WITNESS: That is correct, sir. And we don't
24 have one here, it looks like. So what we do then if we can't
25 fit one on this, we would go to another filter, which is

1 our -- which, actually, Britas -- I'm sorry, Britas are
2 backups. Our Purs are primary. We find that's the easiest
3 one for residents to use and for us to put on, as well.

4 May I go to this one?

5 THE COURT: Is that what you want him to do?

6 BY MS. CHAUDHARY:

7 Q. Yes, Mr. Hood, please refer to Exhibit 378 -- or excuse
8 me -- 377, the Pur filter, and attempt installation of that.

9 A. Starting to feel more at home here now.

10 So the Pur is a different critter. They work the
11 same, but they go on very differently. Where this, where the
12 Brita has a screw here which is very difficult for some people
13 to manage to put on, this one has been easier and more
14 preferred because it has just two buttons here and you push
15 those in and it opens up the O-ring and then just pops on once
16 you get the adapter on, if that makes sense.

17 THE COURT: Now, with the Pur brand filter do you
18 still have to remove the aerator in order to install it or can
19 you install it over the aerator?

20 THE WITNESS: Yes, you take it off and put it on. It
21 has another set of adapters it has, as well.

22 THE COURT: All right. Can you install the filter
23 over the aerator?

24 THE WITNESS: No, sir.

25 THE COURT: Thank you.

1 THE WITNESS: Not to my knowledge.

2 We have a winner. So that fits on pretty snug. And
3 then we would next put the filter on. And again, going back
4 you would make sure that we talk about the aerator and clean
5 that, how important that is.

6 So the two buttons here -- and while we're doing this
7 we will actually have a resident in the home, an adult or
8 caretaker in the home doing this with us, and optimally, they
9 would be doing this with us there so that they -- we actually
10 get a chance to see them do this.

11 There. I heard that catch. So that's on. And then
12 next you put the cartridge in.

13 And this is the cartridge which is really the working
14 operation of the entire filter, and this is really the
15 critical piece, obviously. And this fits right down inside.
16 And then you put the lid on. There.

17 And now the filter is now attached and then you would
18 run water to check to see if the light works. And on this
19 filter it has a light right here that will go red or green and
20 then you can turn it on to see, you know, if it's actually
21 going.

22 When the filter is off the water will run right
23 through beneath where the faucet normally goes, and when the
24 filter is turned on with this little switch here, then this
25 will direct the water to go through the cartridge, through the

1 filter and down here.

2 And it's pretty easy to tell, because the water has
3 got a regular flow when it's under the faucet. When it's
4 using the filter it's more of a trickle, if that makes sense.

5 And we also instruct residents that once they get
6 their filter in or a new cartridge, that they should run water
7 through it for five minutes, cold water only.

8 BY MS. CHAUDHARY:

9 Q. Thank you, Mr. Hood. You can sit down.

10 A. Thank you.

11 Q. Mr. Hood, do you have any knowledge about whether Flint
12 residents are able to install these filters in the way you have
13 described?

14 A. I'm sorry, can you ask that question again, please?

15 Q. Sure. Do you have any knowledge about whether Flint
16 residents can install these filters in the way you just
17 described?

18 A. Yes, I do.

19 Q. And what do you know?

20 A. I know that some residents can put these in fairly easily
21 just like I did and a number of residents are unable to for a
22 large number of reasons.

23 Q. And what are those reasons?

24 A. Well, one, it might be that they were never offered a
25 filter; they don't have a filter.

1 There is a pretty high illiteracy rate in some areas
2 of Flint, upwards of 35 or 37 percent, and that's, and that's a
3 complication for folks reading instructions.

4 There's some folks that we encounter that don't speak
5 English, it may be their second language, or they have no
6 English at all.

7 We have run into folks who have cognitive issues or
8 who are elderly or don't have tools.

9 We have folks who have faucets that don't work where
10 the corrosion has rusted the arm of this so that now they have
11 got water coming out the faucet here or it's coming out in the
12 pipes below.

13 We have some folks who don't even understand why they
14 need to put a filter in because of lead. We have actually had
15 those conversations, as well.

16 And we have folks who have faucets that are not
17 compatible with the filters, maybe they are a cheap faucet,
18 might even be an expensive faucet, but they don't have the
19 infrastructure to accept a filter.

20 So there is a number of reasons.

21 Q. And are you still seeing those problems in Flint recently?

22 A. Absolutely.

23 Q. You mentioned there is a difference between the Pur filter
24 and the Brita filter. Can you explain the difference in
25 installation of those two filters?

1 A. They are pretty close in some ways, but the biggest
2 difference is the mechanism that locks them to the faucet.

3 The Brita has a screw top which makes it difficult
4 for a lot of people and for some reason it's just more
5 problematic.

6 The Pur is just two buttons which, as I said, opens
7 the O-ring so that it can join with an adapter. You release it
8 and it pops in. So we're just having a lot more success with
9 those.

10 So we have issues with Britas, and then if we're able
11 to do that with some households and they are having problems
12 with that filter we will swap it out and give them a Pur and
13 explain the differences in it, if that makes sense.

14 Q. And to your knowledge, is the State distributing both
15 kinds of filters in Flint?

16 A. Yes, they are.

17 Q. So do you know how to maintain a faucet filter after it's
18 installed?

19 A. Yes, I do.

20 Q. Can you describe for the Court how to maintain a faucet
21 filter after installation?

22 A. A faucet filter, just putting it in is really just the
23 smallest part of the situation. Really, maintenance is the key
24 here. One of them is that you need to check your light, the
25 light that's on the side of this filter or on the Brita, it's a

1 different spot, but you want to check the light which tells you
2 the condition of the cartridge.

3 The cartridge can be either working well, which is a
4 green light, or not working, which is a red light, or you may
5 have a yellow light or an orange light that tells you that
6 that cartridge is about to expire. So that's part of the
7 maintenance, is checking your cartridge every day.

8 Another thing which is a real critical piece which a
9 lot of people aren't able, for whatever reason aren't able to
10 do, they run hot water through the cartridge and that can
11 damage that cartridge, which means they have to have the
12 cartridge replaced. And that ends up being problematic for a
13 number of people because they weren't given extra cartridges,
14 or in some cases we found a couple weeks ago folks did not have
15 the right cartridges for the filter that they were given. And
16 I ran -- and we ran into a family, a residence, who were
17 running a filter without any cartridge at all in it, which
18 means the filter is worthless.

19 Q. And when was that?

20 A. I want to say a couple weeks ago.

21 Q. And so have you seen these issues recently?

22 A. I have, yes. Our teams, actually, our teams have, and I
23 have as well, personally.

24 Q. Mr. Hood, does Crossing Water keep any data on its home
25 visits to Flint residents?

1 A. Yes, we do.

2 Q. And what kind of data do you keep?

3 A. We keep every -- lots of demographic data in terms of, you
4 know, how many people are in the home, how many children, any
5 kind of medical conditions or at-risk situations, if they are
6 pregnant, if women are nursing. We talk about if they are
7 homebound or not.

8 We also discuss in our notes what kind of material
9 support we have given them, what kind of material support they
10 need. If they need health care referrals or any other
11 referrals from other agencies, we document that as well. We
12 document if they need ongoing visits, interventions, or whether
13 or not that's a closed case, which means that they are doing
14 okay and they are fine.

15 And what kind of education services we give them,
16 what kind of written documentation we give them as well.

17 Q. And why does Crossing Water keep these data?

18 A. Because we -- it's really critical for us to know what
19 services these folks have gotten in case they need more, or in
20 case they are good so that we can cross them off the list, or
21 continue to give those services and make sure those needs are
22 met. These are, in most cases, critical needs, so with the
23 number of people that we're seeing we just have to keep track
24 and we have to keep really strong notes, so we do that. And
25 we keep them, also, so that we can find out better how to

1 intervene in these homes and how to ramp up or better our
2 services and inventions.

3 Q. And does Crossing Water keep this data in the regular
4 course of its operations?

5 A. Yes, every week.

6 Q. And did you review this, these data before your testimony
7 today?

8 A. Yes.

9 MS. CHAUDHARY: I'm showing to opposing counsel,
10 Plaintiffs' Exhibit 390.

11 Your Honor, may I approach the witness?

12 THE COURT: Yes.

13 THE WITNESS: Thank you.

14 BY MS. CHAUDHARY:

15 Q. Mr. Hood, if I could direct you to the last page of
16 Exhibit 390, and could you tell me what Crossing Waters data
17 show on filter use in Flint?

18 THE COURT: What is that document characterized as?

19 MS. CHAUDHARY: Your Honor, this is -- the name of
20 the document? I'm sorry, I'm not following.

21 THE COURT: Yes.

22 MS. CHAUDHARY: I believe we named it Crossing Waters
23 data, if I'm correct, if that's correct.

24 Crossing Waters spreadsheet, excuse me.

25 THE COURT: So it's a data compilation?

1 MS. CHAUDHARY: It is, your Honor.

2 THE COURT: All right. Proceed.

3 BY MS. CHAUDHARY:

4 Q. Do you recognize this document, Mr. Hood?

5 A. It looks familiar, although it's in real small print. I
6 can't --

7 Q. And have you seen this document before?

8 A. I believe so. I believe so.

9 Q. Is this the data that you were referring to earlier?

10 A. This is the data, yes.

11 Q. And if I could direct you to the last page of this
12 document?

13 A. Yes, ma'am.

14 Q. What percentage of homes that Flint -- that Crossing Water
15 has visited have had filter problems?

16 A. What percentage, you said?

17 Q. Yes.

18 A. 52 percent. We think -- well, yeah, 52 percent.

19 Q. And is that number -- was that number ascertained from the
20 records that Flint -- that Crossing Water keeps?

21 A. Yes, ma'am.

22 Q. And does that mean that 50 percent of all homes in Flint
23 do not have a working faucet filter?

24 A. No, it does not.

25 Q. What does it mean, Mr. Hood?

1 A. It means 52 percent of the homes that we have had visits
2 with have those problems. And I should say that we think it's
3 more than that now because we weren't keeping the best records
4 in the very first part of this crisis, we didn't keep all that
5 data stuff, but at least 52 percent of the folks documented
6 have this issue.

7 Q. And do you have any reason to think that you have
8 identified all the homes in Flint without working faucet
9 filters?

10 A. Absolutely not. We think there is a lot of folks still
11 having problems.

12 Q. And why do you think that?

13 A. Well, because early on we targeted at-risk populations,
14 which as I mentioned were homes with children, pregnant
15 mothers, nursing women, elderly, folks with long-term illnesses
16 or injuries, folks homebound or disabled. We didn't target
17 other folks in these neighborhoods that we think have the same
18 issues, the same educational issues, same literacy issues,
19 other things, and other, and other issues being homebound. We
20 think there is a wealth of, a wealth of residents in this city
21 that have not gotten services and who need filters desperately
22 and we're trying to get our teams into these homes as soon as
23 we can.

24 Q. And has Crossing Water been able to serve all the requests
25 that it's gotten for filter installation and maintenance?

1 A. We still have a list of folks that we need to see.

2 Q. Mr. Hood, you described Crossing Water's efforts to
3 educate residents when they, when they install their filter.
4 I'm wondering if you could talk about any other education
5 efforts that -- on filter use and installation that Crossing
6 Water undertakes?

7 A. Early on in January when we arrived we found that there
8 were no significant public service announcements or public
9 health information, PSA's out there for people to see, and
10 given that the residents that we see, the most underserved and
11 vulnerable populations, the most poverty stricken, these are
12 folks who have really low access to the internet, some of them
13 don't have TVs, many of them don't have phones of any kind,
14 and so we set up a public service campaign using billboards
15 throughout the City of Flint. We have put up, since we
16 started, about 33 billboards, local neighborhood posters which
17 are, you know, 20 feet by 10 feet. We have also -- we also had
18 postcards made up for about 15,000 homes and distributed those.
19 We have put PSAs out on different, three different TV stations,
20 five different radio situations, in English and Espanol. We
21 also did newspaper ads, as well, and interviews, and tried to
22 get the word out in every medium we can, because we recognize
23 that there is just no way to reach everybody with any
24 single medium. We also had some videos made that we put
25 online, but online is really not the best, best method for this

1 population.

2 Q. And are Crossing Water's resident education efforts
3 primarily focused in these home visits?

4 A. With the campaign I just mentioned aside, this is our
5 primary bread and butter of response and intervention, is the
6 RRST teams, yes.

7 Q. Have you been in homes where residents have already been
8 visited by filter representatives from MDEQ, for example?

9 A. We have been in homes where folks have been given a filter
10 or had a filter put in by someone. We don't know who that
11 would be. The residents don't know.

12 Q. And have you seen that recently?

13 A. I don't recall if we have seen someone that had a filter
14 put in by someone else, but we may have.

15 Q. And besides residents, has Crossing Water trained other
16 folks on filter installation? You mentioned the Genesee Health
17 Systems, County Health Systems earlier. Have any other
18 Government or non-profit agencies worked with you on filter
19 education or installation?

20 A. I sit in a number of Flint recovery subgroups and groups
21 and we are developing a citywide model for different churches
22 and their canvass operations to train up their volunteers as
23 their own RRST teams, as well, so they have as much information
24 on how to put in filters and how to maintain them as we have
25 and we are trying to set them up with this education program so

1 they can go out and supplement the RRST team work that we're
2 doing.

3 Q. Does Crossing Water provide bottled water to residents?

4 A. We do.

5 Q. How do you do that?

6 A. Through our RRST teams. Our RRST teams, when they arrive,
7 we provision up our --

8 THE COURT: I'm sorry, the what team?

9 THE WITNESS: I'm sorry, our rapid response service
10 teams.

11 THE COURT: Oh, that's an acronym.

12 THE WITNESS: Yeah. We call them RRST teams, I'm
13 sorry.

14 And so before the teams go out we determine, we call
15 the residents or we find out from the notes we have what those
16 residents need and then we will provision up those vehicles
17 with all the equipment and material support we can get in
18 there, and then we show up with water on our shoulder,
19 literally. That's why my shoulder is bad. And then we have
20 filters, of course, and all the rest of the material support.

21 BY MS. CHAUDHARY:

22 Q. And does Crossing Water provide any regular deliveries to
23 Flint residents?

24 A. Yes, we do.

25 Q. And who receives those deliveries?

1 A. Residents that have no other method of getting water,
2 they're homebound, they have no relatives that can bring them
3 water, they don't have a car. They may have been folks that
4 have been falling through the 211 system, where they were maybe
5 formerly using that, but they found they weren't getting
6 regular deliveries or their deliveries were cut back or cut off
7 altogether. And these are residents that we, that we deem as
8 critical needs folks and so we do those deliveries as well.

9 Q. You mentioned the 211 system. What do you know about 211
10 services?

11 A. I know it's -- it works for a lot of people. I know for
12 some people it does not work. It's a tough system to get
13 through sometimes. I think it's gotten, it's gotten better at
14 times, but we have residents that have been dropped from their
15 lists for no reason that they can determine and, you know, at
16 one point in this crisis we were asked to pick up the filter
17 calls and water calls for all the 211 call-ins. We said we
18 would be happy to do that and then we asked how we could get
19 compensated for the extra workload and capacity and they became
20 uninterested at that point.

21 Q. Have you recently spoken with any residents that have had
22 trouble getting bottled water deliveries through 211?

23 A. Yes.

24 Q. And how recently?

25 A. Last week.

1 Q. Mr. Hood, why did you choose to testify at this hearing
2 today?

3 A. I didn't want to come here. I didn't want to testify. My
4 work is in the field. And I feel like every time I spend an
5 hour doing something else -- I'm sorry, we have so many people
6 in need. We see it every day. We can't reach everybody. I
7 call us a little goldfish of an agency, but we're a small
8 agency, but we do everything we can. We just pour our heart
9 and soul into getting residents what they need, but we can't
10 reach everybody. And we know there is a lot of people that
11 don't have services and they need them.

12 So I'm here today to maybe have a bigger impact on
13 this. If we can compel this Court to make the State do what it
14 needs to do to respond to residents in a way that's humane and
15 fair and ensures that every family and every kid has drinking
16 water, then I'm doing some good here, in spite of wearing this
17 suit and being here today. I'm hoping it will, it will have
18 some measure of good come out of it.

19 MS. CHAUDHARY: Thank you, Mr. Hood.

20 No further questions, your Honor.

21 THE COURT: What's Crossing Water's funding source?

22 THE WITNESS: We are self-funded, sir. We have a
23 small online go-fund-me or crowd-fund-me thing that we have
24 gotten some money, but mostly just small individual donations,
25 and it's out of my pocket and my partner's pocket. We have

1 not gotten any large grants of any kind. The State actually
2 approached us about funding us briefly, but in the end they
3 didn't end up wanting to fund us.

4 THE COURT: Very well.

5 Mr. Murphy, do you have any questions for Mr. Hood?

6 MR. BERG: I do, your Honor.

7 MR. MURPHY: I was going to let the City go first,
8 your Honor.

9 The City wanted to go first, if that's okay with you.

10 THE COURT: Well, it's not. Do you have any
11 questions?

12 MR. MURPHY: Yes, I do.

13 THE COURT: Proceed.

14 MR. MURPHY: All right. Thank you, your Honor.

15 CROSS EXAMINATION

16 BY MR. MURPHY:

17 Q. Good morning, Mr. Hood.

18 A. Good morning, sir.

19 Q. My name is Michael Murphy. I represent the State of
20 Michigan, State Treasurer, and others.

21 Plaintiff showed you exhibit -- what they call
22 Exhibit 390, I believe, was the number. I have it, but I have
23 it bigger so you can actually read it, which, of course, was
24 provided to me and to the Court just this week. You have that
25 in front of you, don't you, sir?

1 A. I do, sir.

2 Q. All right. On September 2nd you indicated to me that
3 Crossing Water had no data, no records and no written material
4 of any kind, do you recall that, sir?

5 A. No, I do not.

6 Q. All right.

7 MR. MURPHY: May I approach the witness, your Honor?

8 THE COURT: Yes.

9 BY MR. MURPHY:

10 Q. I'm going to show you a subpoena response from your
11 attorney, Mr. Hood, and ask if you have seen that before?

12 MS. CHAUDHARY: Do you have a copy of that subpoena,
13 Mr. Murphy?

14 MR. MURPHY: Pardon me?

15 MS. CHAUDHARY: Can I have a copy?

16 MR. MURPHY: I have only one copy, so I'll show you
17 as soon as he's done with it. I'm sorry, I only had one copy.

18 THE COURT: In the future show it to counsel first
19 and then the witness.

20 MR. MURPHY: Agreed.

21 THE WITNESS: All right.

22 THE COURT: Wait for a question.

23 THE WITNESS: Yes, sir. Thank you.

24 BY MR. MURPHY:

25 Q. My question, Mr. Hood, is: Do you recognize that? Is

1 that signed by Mr. Roumel, who was, at least as of that point,
2 was the attorney for Crossing Water?

3 A. I recognize it now that I'm seeing it. I mean, this is
4 the first time I have seen this document.

5 Q. And your attorney has indicated to me as of September 2nd
6 that you have no records, no data, nothing whatsoever in
7 response to the subpoena that was issued to your organization
8 for records; is that what that response states?

9 MS. CHAUDHARY: Objection, your Honor. The document
10 speaks for itself.

11 THE COURT: Overruled.

12 THE WITNESS: I'm sorry?

13 BY MR. MURPHY:

14 Q. Is that what that document states?

15 A. Relating to -- relating to what the subpoena asks for,
16 yes, I believe it does.

17 Q. Okay. Thank you.

18 Regarding bottled water delivery and filters in the
19 community, nothing on Exhibit 390 indicates any address
20 whatsoever that you visited to install any filter or deliver
21 water, does it?

22 A. No, it does not.

23 Q. It doesn't indicate anyone's name that has needed a filter
24 or water delivered, sir?

25 A. I hope it does not.

1 Q. You said you have been collecting this data since the
2 beginning of your operations with Crossing Water?

3 A. Yes, sir.

4 Q. And this was never provided to me until this week, correct?

5 A. That's correct, sir.

6 Q. You have requested from the State of Michigan deliveries
7 of filters and water, haven't you, sir?

8 A. Yes, we have.

9 Q. You have asked for 700 Pur tube packs and those were
10 delivered to you by the State of Michigan, haven't you, sir?

11 A. That's incorrect.

12 Q. You having also asked for 300 Brita filters and those were
13 delivered to Crossing Water, correct?

14 A. We made an order to the State and they gave us half of
15 what we asked for or something less, sir.

16 Q. In August you received 352 Pur two-pack filters, correct?

17 A. If you say that that number is correct. I couldn't quote
18 that number off the top of my head.

19 Q. That you have been asked on numerous occasions by the
20 State Police in charge of the emergency operation in Flint for
21 addresses of where these filters are being installed and you
22 have refused to give that information to the State Police or
23 just neglected to, haven't you, sir?

24 A. That's not true, sir.

25 Q. You have refused to provide the State Emergency Operations

1 Center the names and addresses of anyone whose gotten a filter
2 from your organization, haven't you, sir?

3 A. That's not true, sir.

4 Q. Pallets of bottled water have been delivered to you
5 regularly for distributing in Flint, haven't they, by the State
6 of Michigan?

7 A. Yes, although they have cut our shipments.

8 Q. As recently as this June you were given info and a list by
9 the State of Michigan of addresses where attempts have been
10 made by the Genesee County Sheriff to visit residents, weren't
11 you, sir?

12 A. Can you repeat that question?

13 Q. As recently as this June you have been given a list of
14 addresses and information on people where attempts have been
15 made to deliver water or filters and that information was given
16 to you by the Genesee County Sheriff's Department, correct?

17 A. No. It was given to us by Lieutenant Roach at the
18 Emergency Operations Center to compare to see if we had given
19 services to any of those people.

20 Q. And you have provided no records to the State indicating
21 who you have assisted, have you, sir?

22 A. That's not correct, sir.

23 Q. You have been consistently asked by the State Emergency
24 Operations Department of who you have visited in Flint that
25 needs deliveries or needs filters so that we can do that and

1 yet you haven't given that information?

2 MS. CHAUDHARY: Objection, your Honor. Asked and
3 answered.

4 THE COURT: The objection is overruled.

5 Did you understand the question?

6 THE WITNESS: I would like to have it repeated, sir,
7 if I could. Thank you.

8 BY MR. MURPHY:

9 Q. You have been asked on numerous occasions by the State
10 Emergency Operations Center and the State Police who run it for
11 the names and addresses of where these filters and water that
12 you are being given are being delivered and you have refused or
13 neglected to give the State Police that information, correct?

14 A. We have never refused and we have never neglected. We
15 have given out addresses for where filters have been put in in
16 the most recent asks and we do not give out names. We, we
17 respect individual residents' confidentiality and privacy. So
18 we have negotiated with them in the affirmative to give them
19 addresses for those where those filters were installed.

20 Q. And there is nothing on Exhibit 390 that would tell the
21 Court or anyone else where any of this stuff has gone, other
22 than a zip code, correct?

23 A. Sir, we're a social service agency, so yes, it's -- they
24 are not on this data. We redacted. We had it deidentified for
25 the purposes of this hearing and spent many, many hours doing

1 that.

2 Q. And the subpoena response that you gave me is, you have no
3 records, that is also correct?

4 A. The records that you asked for which are specific to Flint
5 Rising referrals in paper, we don't. Many of those were given
6 over the phone or in person. There was no paper for those.

7 Q. Did you receive data from other organizations?

8 A. We have received referrals from other organizations.

9 Q. Didn't Flint Rising, on a regular basis, give your group
10 their information that they collected in Flint?

11 A. Yes. They gave us referrals from, from -- that we asked
12 for from -- as a result of their canvassing, sir, yes.

13 Q. And it's also true you never recorded any of that
14 information or retained it, did you, sir?

15 A. We recorded all that information. We recorded every
16 referral we got from them.

17 Q. Yet you told me you had no documents to support that?

18 A. We transferred those original documents or whatever they
19 might have been, either a verbal conversation or otherwise,
20 into our database. So those documents you speak of do not
21 exist, sir.

22 MR. MURPHY: That's all I have, your Honor. Thank
23 you.

24 THE COURT: Thank you.

25 Who is it from Flint that wanted to examine?

1 MR. BERG: Rick Berg here on behalf of the City of
2 Flint, your Honor.

3 THE COURT: Mr. Berg, you may proceed.

4 MR. BERG: Thank you.

5 CROSS EXAMINATION

6 BY MR. BERG:

7 Q. Mr. Hood, good morning. I'm Rick Berg. I'm an attorney
8 for the City of Flint.

9 I'll just say first, on behalf of the City, thank you
10 for all the good work that you have been doing. It is
11 appreciated.

12 A. Thank you, sir.

13 Q. It's my understanding, having had a look at your Facebook
14 page for Crossing Water, that you have had some success with
15 working with the City of Flint in connection with some solar
16 showers, if I have that correct. Is that correct?

17 A. Very correct. We are indebted to the City Chief of Staff,
18 Steve, and he has been wonderful helping us get services to
19 folks, yes. So thank you.

20 Q. And there were some posts, as I recall, seeing that you
21 were offering the thanks on behalf of Crossing Water to the
22 City, to Mr. Branch and to Mayor Weaver, do I have that right?

23 A. You may well, absolutely.

24 Q. When we see Facebook posts for Crossing Water's Facebook
25 page that have written commentary on behalf of Crossing Water,

1 those come from you?

2 A. Amongst others.

3 Q. Certainly there may be news feeds or news reports or
4 things like that that people post, but when there is commentary
5 about events taking place or soliciting help or thanking
6 people, that's usually your -- those are your posts, correct?

7 A. They are sometimes my posts, sometimes my co-director or
8 other staff, but most oftentimes they are mine, yes.

9 Q. Do you recall that in one of those posts in connection
10 with the thank you that you gave the City that you stated that
11 if we all come together we can move mountains, do you remember
12 that statement?

13 A. Absolutely.

14 Q. And that was your statement?

15 A. Probably.

16 Q. So Crossing Water was formed in January of 2016, is that
17 correct?

18 A. We activated in January, yes, sir.

19 Q. Activated meaning you began carrying out services?

20 A. Yes, sir.

21 Q. It is officially now a non-profit corporation, is that
22 true?

23 A. Yes. A not-for-profit corporation, I believe that's the
24 correct designation. I think so.

25 Q. Do you recall signing Articles of Incorporation for that

1 entity and having them filed by an attorney in April of this
2 year?

3 A. My, my co-director did that.

4 Q. Would it surprise you to learn that your signature appears
5 on that?

6 A. I, I may have been asked to sign it and I probably signed
7 it, so -- but she dealt -- she deals with the legal aspects and
8 I just do what I'm told.

9 Q. And were there donations made to Crossing Water prior to
10 the time it became a corporation, a non-profit corporation?

11 A. We get donations from individuals that just give us some
12 money to give to volunteers to pay for meals or gas or
13 whatever, so we have gotten a few donations, yes.

14 Q. So what's the answer to my question?

15 A. I'm sorry. Yes, sir.

16 Q. The answer is, you did receive donations beforehand?

17 A. Yes, sir.

18 Q. And was there a bank account set up in the name of
19 Crossing Water or a doing/business/as, then?

20 A. I believe we have a bank account with that, with money in
21 it, yes, sir.

22 Q. Thank you. And that was formed before the corporation was
23 formed?

24 A. I don't know for sure, sir, honestly.

25 Q. All of the people who work for Crossing Water are

1 volunteers, is that true or not true?

2 A. From top to bottom, yes, sir.

3 Q. So there is no payroll, is that correct?

4 A. That's correct, sir.

5 Q. Is it also true that the City of Flint is the sole focus
6 of Crossing Water's mission at this time?

7 A. That's, that's correct, sir.

8 Q. It has no other crises or disasters or relief efforts that
9 it is pursuing during 2016, it's solely the Flint water crisis?

10 A. We have our hands full with this, yes, sir.

11 Q. Crossing Water has not only a Facebook page but also has a
12 web page, correct?

13 A. Yes, sir.

14 Q. And you're the Executive Director for Crossing Water?

15 A. Yes, sir.

16 Q. And so you would be responsible for the message that your
17 organization sends out through its public communications like
18 its website, correct?

19 A. Yes, sir.

20 Q. So if there are things on the Crossing Water website, they
21 would be things that you would support. You wouldn't put
22 anything on there that you believed was not true?

23 A. I don't put things on the website, sir.

24 Q. But you are familiar with what is on the website?

25 A. I, I visit it on occasion, but --

1 Q. And you supervise the people who do put those things on
2 the website?

3 A. No, I don't supervise it. I delegate that to other people
4 and we have other people that do that, so.

5 Q. Well, all right. Let's take an example. In the Crossing
6 Water frequently asked questions of its website, it says:
7 Filtered water is safe for everyone to drink and cook with so
8 long as your filter is properly installed and working
9 correctly.

10 Do you agree with that?

11 A. I do agree with that.

12 Q. All right. It also says that -- it also lists the nine
13 wards where -- and the addresses where people can pick up
14 water, right? Do you --

15 A. I believe it does have that, sir.

16 Q. There are other places besides the nine wards where people
17 can pick up water, correct?

18 A. That's also correct, yes, sir.

19 Q. There are many community organizations?

20 A. Including Salem Lutheran where we work out of, yes.

21 Q. Is there a reason that you would not have included those
22 on your website?

23 A. Many of these sites are operated and don't operate, their
24 hours change, or they run out of water or those locations
25 shift, so it's hard to keep up on those on a timely basis, but

1 ideally we would, but we don't have -- I don't know that we
2 have them on there or we don't have them on there.

3 Q. It's your understanding that at those websites at the
4 various wards that replacement cartridges can be picked up for
5 free, correct?

6 A. Yes, sir.

7 Q. And is it -- I'll state one more thing here on your
8 website, it says: At this time it is considered safe for
9 adults and older children to shower in unfiltered water.

10 Do you disagree with that? Is that something on your
11 web page that you would be posting without your approval?

12 A. That's a generalization about the condition of water for
13 bathing. We do have residents that have issues with that water
14 and then we give those folks that we visit and have issues
15 different instructions than that.

16 Q. You're familiar with the website, LinkedIn?

17 A. Yes, sir.

18 Q. And you have a personal Michael Hood LinkedIn page?

19 A. Yes, sir.

20 Q. And on that page it indicates that you are Executive
21 Director, Volunteer Coordinator, Training and Education
22 Director for Crossing Water?

23 A. Yes, sir.

24 Q. The description of your job here, I will read, because
25 it's rather interesting. It says: Currently direct and manage

1 multiple crisis intervention strategies and operations
2 throughout the City of Flint during what is now known as the
3 Flint water crisis. Current efforts include direct water
4 distribution, water filter distribution, installation and
5 replacement, citizen education and awareness, multilingual
6 public health information dissemination campaign, asset and
7 resource sourcing, acquisition and distribution, volunteer
8 training and coordination for creation of a rapid response
9 services team, RRST, directing field operations, risk
10 management assessments, and public policy analysis, media
11 relations, evaluation and engagement at the local, county,
12 state and federal level, and training center director, training
13 director for all outside collaborative education programs.

14 Did you write that?

15 A. I might have. It's a lot of stuff, isn't it?

16 Q. Well, did you have someone create your LinkedIn page for
17 you?

18 A. No, sir. I wrote it.

19 Q. Regarding the prior employment that you have on your list,
20 your LinkedIn page, it indicates that you are the Director,
21 founder, lead guide and instructor/trainer for 32 years at
22 Vertical Ventures Rock Climbing, is that correct?

23 A. Vertical Ventures Rock Climbing and Wilderness Programs.

24 Q. And are you still employed in that capacity?

25 A. It's -- that business is on hold while we work with this

1 Crossing Water.

2 Q. Do you recall posting on your Facebook page for Crossing
3 Water a picture of what you are calling your war room?

4 A. Yes, sir.

5 Q. With whom is Crossing Water at war?

6 A. I wouldn't say whom. We're at war with the crisis. We're
7 trying to get -- we're trying to win this, this war, this
8 battle with getting clean water and safe water into people's
9 homes.

10 Q. Are you at war, are you at war with the State?

11 A. No, we're not at war with the State. We get services from
12 the State and we appreciate their support, but we wish they
13 expanded their response.

14 Q. Do you recall posting a post in which you indicated that
15 you had gone to a home and had expressed dismay at the fact
16 that the home had a filter but there was no cartridge in the
17 filter?

18 A. That's something that sounds like I would say.

19 Q. Would you agree that based on your demonstration today
20 that the process of installing a cartridge is equivalent of
21 installing batteries in a flashlight?

22 A. No, I wouldn't.

23 Q. You drop it in and you screw the top on, isn't that what
24 you did here today?

25 THE COURT: Are you talking about installing the

1 filter or installing a cartridge?

2 MR. BERG: I beg your pardon. If I said filter, I
3 did mean cartridge. Thank you.

4 THE COURT: You said filter, so why don't you reask
5 the question.

6 MR. BERG: You bet.

7 BY MR. BERG:

8 Q. Would you agree that installing a cartridge in a filter is
9 the equivalent of installing a battery in a flashlight?

10 A. It can be, in certain cases. In some cases it's more
11 complicated than that. If a person, a family doesn't have the
12 right cartridges, for example.

13 Q. With regard to your Exhibit 390, do you still have a copy
14 of it?

15 A. Yes, sir.

16 MR. BERG: If I might just ask if the Court has a
17 copy. If not, I think it's -- I want to walk through some
18 detail.

19 THE COURT: No, I don't have a copy. Nobody has
20 furnished me with a copy this morning.

21 MR. BERG: May I approach?

22 THE COURT: You can hand it to the clerk right here.

23 (Document tendered to the Court.)

24 THE WITNESS: Is it a bigger version of this?

25 MR. BERG: It is.

1 THE WITNESS: Thank you so much.

2 BY MR. BERG:

3 Q. Can you confirm that is a larger version of the exhibit?

4 A. It appears to be, sir. Thank you.

5 Q. And on the left-hand side you can see that we have added
6 some handwritten numbers?

7 A. Yes, sir.

8 Q. And that those handwritten numbers appear on each page?

9 MS. CHAUDHARY: Counsel, can I have a copy of the
10 exhibit that you gave the witness?

11 MR. BERG: Sure.

12 BY MR. BERG:

13 Q. Now, I'll save us all the trouble. I have done the math.
14 If you look at all of the pages and add up the number of line
15 items on each page, you get 607.

16 A. Okay.

17 Q. Is it your understanding of Exhibit 390 that each of these
18 line items is a different home to which your organization
19 visited?

20 A. I don't know if they are different homes or if they are
21 home -- if they are individual visits. I can't tell you if
22 they are individual visits or if they are all different homes.

23 Q. Okay. And on the last page, Ms. Chaudhary directed your
24 attention to a figure, correct?

25 A. Yes, sir.

1 Q. It says total filter problems, and then percentage of
2 households with filter problems, and it says 52 percent,
3 correct?

4 A. Yes, sir. Documented problems, yes.

5 Q. Which of the data on this exhibit were used to arrive at
6 that 52 percent calculation, if any?

7 A. I'm not sure what you're asking. Can you --

8 Q. You understand how to arrive at a percentage, correct?

9 A. Yes, sir.

10 Q. It's a division problem. You take the total --

11 A. Yes, sir.

12 Q. -- and then you divide that total into a smaller number to
13 get to the percentage, correct?

14 A. Yes, sir.

15 Q. What I'm asking you is, where are the numbers on here,
16 what can we look at to understand how you arrived at that
17 52 percent?

18 A. I don't know. I didn't produce this. This is from our
19 data. This is done by our staff that works with the data. And
20 we spent -- we combed over this for a long time and those
21 computations were shown to me by the person that put this, the
22 people that put this document together, and I trusted that this
23 is accurate.

24 Q. Okay.

25 A. And we actually believe these numbers to be low.

1 Q. All right. So taking a look at the first page of the
2 document, then.

3 A. Yes, sir.

4 Q. If we read across the top and read the columns that say
5 what data is being represented, we see zip code, call name,
6 previous RRST visit, number of visits, delivery visits, RRST
7 visit notes, and then a column that says, documented filter
8 problem.

9 A. Yes, sir.

10 Q. Do you see that?

11 And if we go down that column you can see the words,
12 no, yes, no, yes, right?

13 A. Yes, sir.

14 Q. And then immediately to the right of that column we see
15 something that says problem detail, correct?

16 A. Yes, sir.

17 Q. And then if we go all the way to the right it says,
18 follow-up call notes, right?

19 A. Yes, sir.

20 Q. All right. And if -- let's turn to the last page one more
21 time.

22 At the -- underneath the last line, 17, in the
23 middle, there is a number between two NA's, 142. Do you see
24 that?

25 A. Yes, sir.

1 Q. And then under that number it says 29 percent, correct?

2 A. Yes, sir.

3 Q. Well, I have added the number of yeses in the documented
4 filter problems and I come up with 140, not 142. You're
5 welcome to try, but I'll take either number, 140 or 142.

6 A. So your question is?

7 Q. My question is, 142 into 607 is not 52 percent.

8 A. I can tell you --

9 Q. So I'll ask, would you agree with that?

10 A. Do I agree with what, sir?

11 Q. That, that 607 into 142 is not 52 percent, it's not half?

12 A. Okay.

13 Q. You would agree with that?

14 A. Sure.

15 Q. What other data on this report would demonstrate that half
16 of the homes have, quote, filter problems?

17 A. If you went through all the notes as well as the yeses and
18 nos you will see that some of those things aren't matching.
19 We didn't keep the same level of data that we're keeping in
20 September as we kept in January. In January we were just
21 trying to respond as quickly as we could. We kept whatever
22 data we could get. We have, since this whole crisis has
23 unfolded and our agency has gotten smarter and better and
24 better skilled, we have done what we could to keep as much and
25 as deep data as we can.

1 So if on a yes and a no it doesn't quite match up,
2 you can go to the notes and it might fill in some of that, but
3 some of this data we weren't able to catch early on, but we
4 believe these numbers to be very strong. And as I said, we
5 believe the percentages of folks with filter problems is higher
6 than what is represented on here, not lower.

7 Q. But you can't tell us how you arrived at that figure from
8 this data, you can't sit here and show us how it is arrived at,
9 isn't that correct?

10 A. It was shown to --

11 Q. Is that correct?

12 A. Is what correct?

13 Q. That you cannot tell us here on the witness stand today
14 how you arrived at that figure?

15 A. I cannot.

16 Q. On 52 percent?

17 A. This --

18 Q. Okay. You said, I cannot?

19 A. I cannot, at this moment.

20 Q. That's an answer to the question.

21 A. Yes. Yes, sir.

22 Q. Now --

23 THE COURT: Did you complete the answer?

24 THE WITNESS: I'm sorry?

25 THE COURT: Was that your complete answer?

1 THE WITNESS: No, sir. May I --

2 THE COURT: Finish your answer.

3 THE WITNESS: Thank you.

4 Our data person showed me how she arrived at this
5 through her computations and she has a great deal of expertise
6 in this. This is a realm outside of my own. So we relied on
7 her and she showed us how we arrived at these numbers and they
8 made sense to me and my co-director and we trust these numbers
9 based on what she did and what she put together.

10 BY MR. BERG:

11 Q. So in the problem detail you will see that a number of the
12 problems that the homeowners are having are plumbing
13 incompatible.

14 A. Where am I looking on this?

15 Q. In the problem detail column. You could look at the --

16 A. Yes, sir, I'm sorry. Ask your question again, please,
17 sir.

18 Q. Sure. Do you see that in the problem detail column in a
19 number of places it indicates plumbing incompatible?

20 A. Yes, sir.

21 Q. And sometimes it indicates filter not working, correct?

22 A. Yes, sir.

23 Q. Or sometimes it indicates hot water?

24 A. Yes, sir.

25 Q. Or cartridge problems?

1 A. Yes, sir.

2 Q. Would it surprise you to learn that three out of 607
3 indicated that there was no filter in the home, by your own
4 data, only three?

5 A. Only three didn't have any filter at all?

6 Q. That's correct.

7 A. If that's what it says, then that's what it says. But I
8 can -- I can -- I don't believe that's what this says, though.

9 How did you arrive at that, may I ask you that?

10 Q. Certainly. You can look through the -- you're welcome to
11 do it yourself. There are 140 yeses, and with regard to each
12 of those yeses there is a problem detail that explains why
13 there is a yes, and among those 140 problem detail explanations
14 there are three that say no filter.

15 A. All I can tell you is, is if I can respond to that, is
16 that we only give out filters when folks need a filter. If
17 they don't have a filter or their filter is not functioning,
18 then we give out a filter. We don't even, we don't even ask
19 the question, do you need a filter. We ask people how your
20 filter is working. That way we make sure that people aren't
21 getting filters to sell, to resell to someone else. So if we
22 have given out a filter, we have got pretty strong reason to
23 give it and then to install it. We don't give out filters
24 helter-skelter. We have no interest in that and no one profits
25 from that, not us, not the state recovery, nothing. So if

1 this only says three, I think you're misreading the data,
2 because that's not accurate. We have given out many more
3 filters than that and we have given out all of them with need.

4 Q. Can you tell us here how I'm misreading the data by your
5 reference to that data summary?

6 A. How would I be able to tell how you misread it, sir?

7 Q. Fair point. Can you explain why there are more than three
8 homes without filters, based on your data, if that's all your
9 data shows?

10 A. I don't believe the data shows that, so I'm taking
11 exception with your interpretation of that data.

12 Q. But you can't point to a reason on that document why that
13 interpretation is incorrect?

14 A. Again, I can't speak to your interpretation of it, sir. I
15 can tell you this data was combed through and we spent dozens
16 and dozens of hours, our staff, putting this together. But I
17 can tell you this: Every filter we have given out in a home
18 was needed and critically needed. We have no interest in
19 giving out filters as parting gifts or anything else. We
20 simply give them out in homes of need and we also install them
21 and make sure people know how to use them.

22 So that you say that there is only three on this
23 list, if it only speaks to anything, it might speak to that,
24 you know, early on we weren't able to keep the best data, but
25 this, I think you're misinterpreting this greatly.

1 THE COURT: I'm kind of confused about the question
2 and maybe there is a disconnect here.

3 Are you suggesting to the witness, Mr. Berg, that the
4 data compilation indicates that at the time of the visit all
5 of the homes had filters except for three?

6 MR. BERG: I'm -- the point that I'm trying to make,
7 your Honor, is that over time their data, their collected data
8 as accumulated has reported to us that on three occasions
9 throughout the duration of their effort they have found homes
10 without filters on three occasions, because that's what their
11 filter problem notes say.

12 THE COURT: All right. Are you looking at the RRST
13 visit notes? Because some of those seem to indicate that at
14 the time of the visit what they did is installed a filter,
15 left cases of water and so forth, which suggests to me that if
16 they installed a filter, there wasn't one there to begin with.
17 Is that what you're dealing with or are you dealing with a
18 different column?

19 MR. BERG: It could be that there was one there and
20 they installed the one that was there. I mean, it's hard to
21 tell.

22 THE COURT: Okay. Maybe that. Is that where you're
23 trying to take this?

24 MR. BERG: I'm trying to demonstrate that there has
25 been adequate distribution of filters to the City.

1 THE COURT: Oh, no, I know that's your ultimate goal,
2 but I'm -- you have suggested a conclusion to the witness that
3 the data yields and I am trying to get that cleared up, but
4 maybe I'm not doing any better job either, so why don't you
5 proceed with your questioning.

6 MR. BERG: It's certainly within the ability of this
7 witness, or it could have been, for him to explain what this
8 means. It was my understanding that if they were going to
9 document filter problems they would write it in the column
10 that says, documented filter problems, and so that's the
11 column on which I have focused.

12 THE COURT: Well, documented filter problems is
13 either a yes or a no, right?

14 MR. BERG: And then the column immediately to the
15 right says, problem detail, which then describes -- you will
16 note that the problem detail is -- it appears whenever there
17 is a yes for filter problems.

18 THE COURT: Okay. But there is no narrative.

19 MR. BERG: Correct. There is some narrative over to
20 the right in terms of how matters have been resolved.

21 BY MR. BERG:

22 Q. And in many cases you, Mr. Hood, have resolved whatever
23 filter problems you found, would you agree with that?

24 A. Again, please, sir.

25 Q. In many cases throughout the data which is represented on

1 this exhibit, when a filter problem is noted, your team has
2 managed to resolve that filter problem?

3 A. We have done our best, and we haven't been able to do it
4 in every case, but we have done our best.

5 Q. For example, in the very first yes on the first page, at
6 the end it says: She got a new faucet, has a filter and a lot
7 of water, all set.

8 So there are records on the resolution of these
9 problems as well, correct?

10 A. I'm not really sure what you're asking, sir.

11 Q. That your record indicates that many of the filter
12 problems that you found are now resolved.

13 A. You're asking overall, that many of the problems we found
14 have resolved?

15 Q. Yes.

16 A. I would say some of them are resolved. That is pretty
17 vague to say most or all or many. I don't agree with that.

18 MR. BERG: All right. I don't have anything further,
19 your Honor.

20 THE COURT: All right. Thank you.

21 Any follow-up questions?

22 MS. CHAUDHARY: Yes, your Honor.

23 REDIRECT EXAMINATION

24 BY MS. CHAUDHARY:

25 Q. Mr. Hood, if I could direct you back to the version of

1 Exhibit 390, the data the City was just directing you to, if
2 you could go back to the last page, you were just discussing
3 that 29 percent number at the bottom of the filter, documented
4 filter problem column, is that correct?

5 A. Again, please.

6 Q. You were just discussing the sum at the bottom of the
7 documented filter problem column?

8 A. Yes, ma'am.

9 Q. And there it says 142 and 29, correct? 29 percent,
10 correct?

11 A. Yes, ma'am.

12 Q. If you could look to the right of that, there is another
13 set of numbers there. Could you read those numbers for the
14 Court?

15 A. 168 and 35 percent.

16 Q. And if you could go up to the top of the -- of the
17 document, can you tell which column those numbers are
18 associated with? All the way up to the front page, I think.

19 A. Yeah.

20 Q. It looks as though it's one, two, three, four columns from
21 the documented filter problem column.

22 A. Okay. Mine is smeared or blurred. Let me try this one.
23 Filter or replacement cartridges?

24 Q. I think it looks to me it's the filter column, it would be
25 one, two, three, four. Can you count four to the right of the

1 documented filter problem column?

2 A. Yes, ma'am.

3 Q. And trace that down. Do you see the numbers at the very
4 bottom of that column, and can you -- can you read those off
5 again?

6 A. Pardon me?

7 Q. Do they say 168 and 35 percent?

8 A. Pardon me. Yes, ma'am. They do.

9 Q. Do you know what that filter column indicates? You have
10 documented filter problems, problem detail, cases water, gallon
11 jugs, and then it says filter. And then it looks like there is
12 zero and one, zero and one. Do you know what that column
13 represents?

14 A. Not at this moment, pardon me. Give me a second, please.

15 Q. Sure.

16 A. I'm going to have to ask my co-director about that, what
17 that means exactly. I can't quite recall, I'm sorry.

18 Q. Mr. Hood, why did you produce a redacted version of this
19 data sheet today?

20 A. We are in the business of providing services to the most
21 poor and impoverished neighborhoods in the City of Flint.
22 These are social service visits as much as they are anything
23 else and we abide by the code of ethics which says that
24 confidentiality of our clients and residents is of the utmost
25 importance. We all signed documents to that effect and we

1 don't, we don't get releases from any of our clients, any of
2 our residents to release their personal information, so we
3 don't. We guard it very religiously.

4 Q. And are there licensed social workers on your response
5 teams?

6 A. Absolutely.

7 Q. And do they have privileged conversations with the
8 residents that you speak with at times?

9 A. Absolutely.

10 Q. If I could direct you now to the subpoena that Mr. Murphy
11 gave you, and direct you to paragraph 3 of that subpoena --
12 excuse me -- subpoena response, could you read the language in
13 the quotation marks in paragraph 3 of the subpoena response,
14 please?

15 A. After number 3?

16 Q. Yes. Describing the documents requested from Crossing
17 Water by the State.

18 A. Yes, ma'am. It says: Any and all records, data,
19 electronically-stored records, documents, and all material
20 provided to Crossing Water for storage or use provided by Flint
21 Rising, Concerned Pastors, or any other Flint community group
22 regarding water, bottled or otherwise, and/or filter
23 availability, delivery or any other use by residents of Flint
24 and customers of the Flint water system.

25 Q. Does Crossing Water have any documents that the subpoena

1 describes?

2 A. No.

3 Q. Okay. Did you, through your attorney, offer a
4 deidentified list of Crossing Waters data two weeks ago to the
5 State?

6 A. Absolutely, yes.

7 Q. And did you, through your attorney, offer to compare that
8 list with the State's list to determine whether there was any
9 overlap with the State's -- with the State's information?

10 A. Yes.

11 Q. Did the State take you up on that offer?

12 A. No.

13 Q. And in the past have you given the State emergency relief
14 workers the addresses of the homes that Crossing Water has
15 visited?

16 A. Can you repeat the question?

17 Q. Have you ever given the State, any emergency response,
18 anybody at the EOC, at the Emergency Operations Center or
19 anyone at the State, have you ever given them the addresses of
20 the homes that Crossing Water has visited and installed filters
21 in?

22 A. We, we did, regrettably, yes.

23 Q. When did you do that?

24 A. Would have been months ago, I think.

25 MS. CHAUDHARY: Okay. I have nothing further, your

1 Honor, but I would like to move Plaintiffs' Exhibits 377, 378
2 and 390 into evidence.

3 THE COURT: Any objection?

4 MR. MURPHY: None, your Honor.

5 MR. BERG: No, your Honor.

6 THE COURT: Very well. Those are received.

7 Thank you, Mr. Hood. You may stand down.

8 THE WITNESS: Thank you, sir. Should I take all this
9 with me?

10 THE COURT: Counsel will take care of it. We're
11 going to take a break and see if I can get this computer feed
12 working.

13 Ten minutes. Court is in recess.

14 (Recess taken from 9:48 a.m. to 10:07 a.m.)

15 * * *

16 THE CLERK: All rise. Court is back in session.

17 THE COURT: You may be seated.

18 You may call your next witness.

19 MS. CHAUDHARY: Your Honor, the Plaintiffs call
20 Cynthia Roper to the stand.

21 THE COURT: Is Ms. Roper in the courtroom?

22 Ms. Roper, would you step forward, please?

23 Just pause right there for a moment. Raise your
24 right hand to take the oath.

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* * *

CYNTHIA ROPER

was called as a witness, after having
been duly sworn to testify to the truth.

* * *

THE COURT: Ms. Roper, would you have a seat right up
here in the witness box, please?

Would you adjust the microphone so that you can speak
into the tip of it.

State your full name and spell your last name.

THE WITNESS: Cynthia Jean Roper, R-o-p-e-r.

THE COURT: Thank you.

Ms. Chaudhary, you may proceed.

DIRECT EXAMINATION

BY MS. CHAUDHARY:

Q. Ms. Roper, have you ever testified in court before?

A. No.

Q. Are you employed right now?

A. Yes.

Q. What do you do?

A. I work for Michigan Voice as the Director.

Q. And what is Michigan Voice?

A. Michigan Voice is an organization that works with a lot of
other groups to help them engage the public in issues around
democracy and voting and that type of thing in communities

1 throughout Michigan.

2 Q. And what is your role there?

3 A. I'm the Director.

4 Q. And is Michigan Voice a partisan organization?

5 A. No.

6 Q. Ms. Roper, what is Flint Rising?

7 A. Flint Rising is a coalition of organizations and
8 individuals working together to help restore democracy in the
9 community and to build leadership and other skills that are
10 needed in order for the people of Flint to be more engaged in
11 the community and the quality of life in the community.

12 Q. And are you a volunteer for Flint Rising?

13 A. I am.

14 Q. And so how does Flint Rising try to achieve these goals
15 that you have described?

16 A. Flint Rising does a variety of things and one of them
17 including, they have been running a volunteer canvass that goes
18 out into the community to talk with residents about issues
19 related to the water crisis, but also to work to get them
20 involved in community meetings and in other ways that they can
21 be more active in solving the problems that are facing the City
22 of Flint.

23 Q. And when you say canvass, what do you mean by that?

24 A. Going out in -- door to door and talking with people or
25 going to events and talking with people or other gatherings and

1 talking with residents of Flint.

2 Q. And how do Flint Rising volunteers decide which homes to
3 visit, for example?

4 A. Well, the -- most of the work that's been done with Flint
5 Rising has been on the north and the east side of the city,
6 which is the households where people are less economically
7 advantaged and there is more diversity in terms of people of
8 color in that part of the city, as well as their income issue.

9 Q. And how often do volunteers for Flint Rising go out and
10 canvass?

11 A. The canvass is run almost every -- almost every Saturday
12 and Sunday. And I say almost, because there are times when
13 other events come up or perhaps, for example, over Labor Day
14 weekend.

15 Q. And when did Flint Rising, what month, when did they start
16 these canvassing operations?

17 A. January of 2016.

18 Q. And has Flint Rising consistently held canvasses every
19 weekend since then?

20 A. Almost every weekend.

21 Q. And how many volunteers typically turn out for a
22 canvassing event?

23 A. Well, initially we would have 100 a day that would show
24 up, maybe through January, and I'm sorry, we started the last
25 weekend of January, so throughout February, maybe into early

1 March, and then the numbers have dropped off significantly from
2 then until now.

3 Q. And what are those numbers like now?

4 A. The numbers now could be anywhere from a week ago Friday
5 there were ten people who went out. I was the only person who
6 went out on Saturday.

7 Q. And some days you have no volunteers available to go out
8 and canvass?

9 A. That's correct.

10 Q. Do you personally canvass for Flint Rising?

11 A. Yes, I do.

12 Q. And how often do you go out?

13 A. So I now would go out about once a week. This past week I
14 went out two days, and there have been different times, early
15 on I was going every Saturday and Sunday through the month of
16 February.

17 Q. And then was there a time when you went less than that, as
18 well?

19 A. Yes.

20 Q. And do you speak with Flint residents in any other ways
21 besides canvassing for Flint Rising?

22 A. Yes.

23 Q. What are those ways?

24 A. I participate in the regular calls of the Flint Rising,
25 what they call their core team, calls and meetings of that

1 group.

2 I also have participated in the community meetings
3 that are held at St. Michaels Church.

4 I have also been involved in other community events
5 that Flint Rising has organized, as well.

6 Q. And you know, how often do you visit Flint now?

7 A. I visit at least once a week and twice last week.

8 Q. And when was the last time you were in Flint Rising as a
9 volunteer, was it last week?

10 A. Saturday, correct.

11 Q. Okay. Have you personally then spoken with residents
12 about access to drinking water in Flint?

13 A. Yes.

14 Q. How many residents would you estimate that you have
15 talked -- spoken with, excuse me, about these issues?

16 A. Since January, over 200 residents.

17 Q. And what about in the past month?

18 A. Over 100.

19 Q. Can you describe what they tell you about water access?

20 A. They tell me that they are struggling to get to the water,
21 in particular those residents without vehicles. They -- there
22 are so many stories of people who are relying on friends to
23 help them, when the friends are able to do that, as well as
24 paying people to go pick up water.

25 I had a woman just last week who told me that as long

1 as she was able to get water, there was water available in her
2 direct neighborhood, she only had to pay \$5, but if they took
3 her outside of her neighborhood she had to pay \$10. And that's
4 just one example of people who have regularly been budgeting,
5 so to speak, to pay for water to be picked up.

6 Q. And when you say get to the water, what do you mean by
7 that?

8 A. The water, wherever the water may be. So, for instance,
9 if there -- if they know that the PODs exist, they may be going
10 to the PODs to pick up water, but many times you will hear
11 people talk about the church or the network of churches that
12 are -- that they go around to see who happens to have water.

13 Q. And what is a POD?

14 A. It's a -- I'm trying to remember exactly. Point of -- I
15 forget what the acronym is for, but it's the place where they
16 can go to pick up water and filters and educational
17 information, as well as the plastic bags for recycling.

18 Q. And do you know if those PODs are run by the state?

19 A. Yes.

20 Q. And you mentioned lack of vehicles. Are there any
21 other -- have you heard from Flint residents about any other
22 issues in terms of accessing these distribution sites that you
23 described?

24 A. Sure. Excuse me. There are people whose hours don't
25 coordinate with the time that the PODs are open. They also

1 have issues with their physical abilities to get to the PODs
2 and so they have been relying on other people. Or there are
3 people who have children who are having trouble getting to the
4 PODs.

5 And one example of that is a woman who has four
6 children, ages two, three, four and five, and she and her
7 husband have to walk with the kids to the POD to pick up the
8 water to bring it back, and again, the question is like, how
9 much water can they carry in one of those, those trips with the
10 kids with them because they don't have childcare.

11 Q. And does that -- when did you speak with that family?

12 A. It would have been the beginning of August.

13 Q. And did they have a car?

14 A. No, they do not have a car.

15 Q. And do you know what proportion of Flint residents have a
16 car --

17 A. According --

18 Q. -- or do not have a car?

19 A. Don't have a car. According to the American Communities
20 Survey that I referenced in my deposition, 18 percent of
21 households in Flint do not have vehicles.

22 Q. When was the last time you spoke with someone in Flint
23 having trouble getting access to a point of distribution, a POD
24 that you referenced?

25 A. Last Wednesday.

1 Q. Do you have any reason to believe that you have spoken
2 with all the residents in Flint who are having trouble
3 accessing these PODs?

4 A. No.

5 Q. Do you know of any bottled water delivery efforts in
6 Flint?

7 A. I'm familiar with a couple. One is 211 and the other is
8 the informal system that has developed with either people
9 voluntarily getting water to friends, family, people in need in
10 their neighborhood or people who are paying for, essentially,
11 the service.

12 Q. What do you know about 211 services?

13 A. Well, from personal experience I have noted previously in
14 testimony that I have called 211 and had conversations, but
15 more recently the experience that I have had is in having
16 conversations with people.

17 Specifically, I'll give an example, at the Greater
18 Flint Outreach Center there is a regular weekly food bank
19 distribution that happens there, and so in talking with some of
20 the residents that are waiting there, three different people
21 I was talking with just last Wednesday had three different
22 experiences with 211.

23 And so one person was blind and she was getting
24 regular deliveries of, like, five cases a week. And there was
25 another man who, he and his wife oftentimes take care of their

1 grandchildren and they were getting it every two weeks, if they
2 happened to be home when 211 comes, because 211 doesn't leave
3 the water unless they are home. Another person said he is only
4 getting one to two cases every three weeks.

5 So between the three of them, in their conversation,
6 they were all surprised by how different their experience was.
7 And the two of them said that they get the amount that they get
8 which is not enough. So they are getting some water from 211,
9 but they -- with the number of people in their household, they
10 are having to go elsewhere and look for water from other
11 sources.

12 Q. Have you ever spoken with anyone who has requested
13 deliveries from 211 and not received them?

14 A. Yes.

15 Q. Okay.

16 A. I have.

17 Q. And have you ever spoken with folks who have never heard
18 of 211?

19 A. Absolutely.

20 Q. And how recently was that?

21 A. Just every -- just this past Wednesday at the outreach
22 center. And so other people in the space at the facility that
23 I was at would say, well, don't you know about 211? And so
24 some of them did know, but then there are people who say, no, I
25 didn't know about 211, or I tried to call them before and they

1 never delivered the water. So I haven't viewed that as a
2 reliable source. Or they delivered it for a while and then
3 they suddenly stopped delivering it, and so I don't, I don't
4 know, it's not a reliable source for them.

5 Q. Do you know if information about 211 services or the PODs
6 is available online?

7 A. It is available online. I know that the Flint Cares
8 website does have information about the PODs and their
9 location. I went and looked at it just again over the weekend.
10 And one of the PODs has moved, and so on the Flint Cares
11 website, the section that listed the addresses had it listed
12 correctly, but the map was wrong, and I was working off of the
13 map, so I ended up over at a facility by -- close to the Flint
14 water treatment plant that was no longer the place. And then I
15 was driving back to St. Mikes's Church and happened to find the
16 place where I believe that it's been relocated to.

17 Q. And what is the Flint Cares website that you referred to?

18 A. It's the Flint Water Recovery Group's communications
19 source. And so the Water Recovery Group is the network of
20 organizations like the Red Cross, United Way, the Hurley
21 Medical Center is listed on that site, food bank, and also the
22 U.S. Department of Health and Human Services and others.

23 Q. Do you know how many homes in Flint or what proportion of
24 Flint residents have access to the internet?

25 A. I have seen the census data indicates that I believe about

1 16,000 homes in Flint have -- are without access. I believe
2 there are 39,000 residents in Flint and so roughly half of
3 those homes do not have internet access.

4 Q. Have you ever met anyone in your canvassing work or in
5 your conversations that doesn't have internet access?

6 A. Yes. And I have met people who don't even have it through
7 their phones, as well.

8 Q. Do you have reason, any reason to believe that you have
9 spoken with all of the residents in Flint who are having
10 trouble getting water deliveries through 211?

11 A. No. I'm just one person.

12 Q. And Ms. Roper, you just also described informal
13 arrangements to get water delivery. Could you tell us a little
14 bit more about those?

15 A. There are all kinds of those, but often they will just
16 boil down to my -- you know, someone's son or their daughter or
17 their uncle or cousin or whatever who happens to have a vehicle
18 will rely on that individual for, again, for a certain amount.

19 For example, I spoke with one man last week, it was
20 the second time I had connected with him, and he was still
21 having the same difficulty of not being able to access water,
22 that he said their place had apparently been dropped from the
23 list of places that was getting water delivery. And it's hard
24 to tell in Flint whether that means through something like the
25 211 or through social service groups or churches or others that

1 have been filling in that gap, but he told me that when he is
2 able to have his son pick it up, it's free, but when his son
3 isn't available and they need water, he is having to pay
4 someone to do it.

5 Q. Do you know how much he has to pay someone to pick up
6 water?

7 A. He told me he has to pay \$10.

8 Q. Have you spoken with Flint residents about their filter
9 use at all?

10 A. I have.

11 Q. And what have you heard?

12 A. Well, I have heard a lot of confusion. One example is,
13 was about five weeks ago, and I have checked back with this
14 person, as well, but she said that she didn't -- she got the
15 filters. She didn't know how to install it, her 15-year-old
16 son installed it. She wasn't confident she was using it right.
17 I asked her when the filter was last changed. She said five
18 months ago.

19 And another man was standing beside her and said, you
20 know, I'm sure you need to change that by now. And she said,
21 well, I only use it for like washing the dishes. And he said,
22 so you have been running hot water through it? And she said
23 yes. And he said, you're not supposed to run hot water through
24 it.

25 And these are just, you know, people that were

1 standing there together having that conversation. That's one
2 example.

3 And there are many examples of people who don't know
4 how to -- they are not confident that they know how to install
5 the filters, faucets, and the right size or shape. They would
6 need to have a faucet adjusted.

7 I educated one person two weeks ago who said that his
8 faucet wouldn't take a filter that he could get a pitcher
9 instead of having to use the faucet. He had no idea that
10 there were pitchers out there. So again, the access to the
11 information about what is there is a very informal network of
12 conversations between people with a lot of the individuals that
13 I have spoken with.

14 Q. And you have spoken with these people directly?

15 A. Absolutely.

16 Q. Are you aware of EPA's recommendation that Flint residents
17 can drink their filtered tap water?

18 A. I am aware of it.

19 Q. And do you know whether people in Flint with installed
20 filters are drinking filtered water?

21 A. I don't know -- let me put it this way, the conversations
22 I have had, they -- people are not using it for drinking. If
23 they are using filtered water, they are using it for maybe
24 rinsing vegetables and that type of thing, but again, I think
25 there is a lot of confidence -- a lot of lacking confidence

1 that they are using it properly and so it's kind of a device
2 that's there but it's not something that they are comfortable
3 relying on.

4 Q. Okay. And are you -- you're still regularly meeting
5 people who don't have filters installed?

6 A. Yes.

7 Q. And do you have any reason to believe that you have spoken
8 with all of the residents in Flint who are having these
9 problems with filters?

10 A. No.

11 Q. Ms. Roper, what could be done about the water access
12 issues that you have described today?

13 A. Well, in my view, getting water delivered in particular to
14 those who don't have vehicles is very critical. I think also
15 doing an intensive effort of educating people and not relying
16 on informal networks or internet or whatever for that filter
17 education is really important.

18 But I do believe that people are struggling. I have
19 people say to me, can't you just fix this so that we can get
20 water delivered? It's exhausting for us to have to be tracking
21 water down day in and day out and planning how we are going to
22 get our water for our family. And so I think that is one thing
23 that would make a huge difference in terms of restoring
24 confidence in the people of Flint that the Government is
25 working.

1 Q. Okay. And if it were not possible to deliver water to
2 every household, you know, what other steps could be taken?
3 You mentioned targeting people without vehicles. Is there
4 anything else that you would recommend?

5 A. Again, I think if they were at the least, at the very
6 least, being able to get the bottled water delivered. I go
7 home and I turn on my tap and I am able to drink my water and
8 I don't have to stop and think about it and it's not -- and I
9 think the more that we can do to get the drinking water
10 delivered, to get the filter education going, and to obviously
11 fix the system, the better.

12 Q. Okay. And do you have any thoughts on how you would
13 identify people without vehicles?

14 A. Well, I haven't spent a lot of time thinking about this,
15 but it seems as if going, you know, doing an actual intensive
16 canvass, with not dragging it out for months and months, but
17 doing an intensive canvass would be one way to figure out who,
18 which homes lack vehicles. There may be something that could
19 be done with vehicle registrations as a filter for prioritizing
20 where one might go, but I haven't thought that through
21 thoroughly.

22 Q. Ms. Roper, why did you choose to testify today?

23 A. Because the -- I have spent a lot of years working on
24 issues related to drinking water through my prior work at Clean
25 Water Action and when I heard what was happening in Flint it

1 was -- it wasn't an option. It wasn't a choice. I really felt
2 like I needed to be there and do whatever I could as a
3 volunteer to help correct the situation.

4 Q. And why are you here today?

5 A. The same reason. I think that this has just continued to
6 cause a lot of pain and suffering for families that already
7 have a lot of suffering and pain and I'm very concerned that
8 the communication that's happening around Flint is beginning
9 to make it look as if things are fixed. And when I go and have
10 these conversations, and I would encourage anybody to go
11 actually talk to the people who are on the front line of trying
12 to find access to water, to try to restore their -- not only
13 the safety of their water, but their confidence in the safety
14 of the water. It's heart wrenching.

15 And that is why I'm here today, is to be able to help
16 make sure that this does not get glossed over and that people
17 know that is happening. It's happening now.

18 MS. CHAUDHARY: Thank you, Ms. Roper.

19 No further questions, your Honor.

20 THE COURT: Thank you.

21 Mr. Murphy.

22 MR. KLEIN: Excuse me, your Honor, before Mr. Murphy
23 begins, I'm told that the video system has been turned off, so
24 we're not able to use it for exhibits. I don't know if there
25 is something that someone could do about that.

1 THE COURT: Nobody has offered an exhibit.

2 MR. KLEIN: At the moment, no. So that's -- sorry,
3 if it will be turned on when that happens.

4 CROSS EXAMINATION

5 BY MR. MURPHY:

6 Q. Good morning, Ms. Roper. How are you?

7 A. I'm fine, thank you.

8 Q. You presently work for an advocacy group called Michigan
9 Voice, correct?

10 A. I work for an organization called Michigan Voice.

11 Q. And that's a function of State Voices out of Washington
12 D.C., isn't it?

13 A. State Voices is a network of organizations. We are what's
14 called a fiscally sponsored project of State Voices.

15 Q. All right. And as we sit here today and as you are
16 testifying, you're not considering yourself an expert on
17 drinking water issues, do you?

18 A. I do not.

19 Q. Your first involvement in Flint was early in February
20 sometime in 20 -- or not in February, but was it late 2015?

21 A. My first trip to Flint was January 26th of 2016. My first
22 real awareness of everything that was happening in Flint was
23 probably in December of 2015, although I had heard previously
24 that there were problems, it just hadn't been front and center.

25 Q. And your main purpose when you went there was to train

1 people to what you have indicated to the Court is canvassing,
2 correct?

3 A. That was the main purpose, I was originally asked to come
4 to Flint, that is correct.

5 Q. Your role at the time you started was also dealing with
6 the fiscal emergency management situation in Flint, wasn't it?

7 A. I'm sorry, could you restate that?

8 Q. The fiscal emergency management situation in Flint, that
9 was also part of your agenda, correct?

10 A. No.

11 Q. You never addressed in any way, shape or form educating
12 Flint residents on their democratic rights vis-à-vis an
13 emergency manager who handled the City?

14 A. No.

15 Q. In your deposition that you gave, I just want to get the
16 date right, in July of this year, July 29th, you recall that,
17 don't you?

18 A. I do.

19 Q. On page 33 of your deposition I asked you that the City
20 Government has been under some type of emergency manager. You
21 recall those questions?

22 A. I do. I don't have my transcript in front of me, but --

23 Q. Which is what I was hoping to bring up.

24 THE COURT: Do you want to put that on the screen?

25 MR. MURPHY: On the screen.

1 THE COURT: Okay.

2 MR. JAMISON: Which page did you say that was,
3 Mr. Murphy?

4 MR. MURPHY: 33.

5 BY MR. MURPHY:

6 Q. And I hope it shows up on your screen, Ms. Roper.

7 A. I have language up here. Okay.

8 Q. Is your transcript up there? Since it does show up on the
9 main --

10 THE COURT: Mr. Murphy, do you have it there?

11 MR. MURPHY: No. This is blank, nothing. Yours is
12 working, your Honor, right? And the big one.

13 THE COURT: Ms. Roper, do you have an image on the
14 screen?

15 THE WITNESS: I do.

16 BY MR. MURPHY:

17 Q. Is it your transcript that we're looking at right now?

18 A. From all -- from what I can tell, yes, I can see up in the
19 URL.

20 Q. Can you get to page 33 for me?

21 A. I can't tell what page this is. Do I do this or --

22 THE COURT: No, no, he is asking his technician to do
23 that for you.

24 MR. JAMISON: It's on page 33.

25 Q. It's on page 33. Scroll down a little bit where it says:

1 They have been out from under emergency management for some
2 time now, haven't they?

3 Do you see that question and answer?

4 A. Me? Okay, yes, I do.

5 THE COURT: I think he wants you to read that to
6 yourself for a minute.

7 MR. MURPHY: Yes.

8 THE WITNESS: Right.

9 BY MR. MURPHY:

10 Q. So when you told me that part of your function was not
11 dealing with the emergency manager situation, taking the power
12 of the City over from a democratically elected -- you recall
13 answering that differently in your deposition now today?

14 A. No, my -- the point I was making just now is that the
15 community was coming out from under that and we are working
16 just with that fact on the ground to help with leadership
17 development, to help with community engagement, to get people
18 back involved in the community. So we weren't talking about
19 the emergency management and the emergency manager.

20 The reality, and I think I might have said the fact
21 on the ground was they were just coming out and clearly there
22 was a need for community members in any way that they could to
23 get reconnected to their local community so that they could
24 work towards improving the quality of life of their community,
25 so that they could work to do a lot of things that would help

1 them, help prevent them from coming back under emergency
2 management.

3 Q. Ma'am, would you look at line 13 through line 20 for me?

4 A. I think that's what I just said. That's how I -- that's
5 what I --

6 Q. What you state, what is in -- what I just asked you about,
7 you read that?

8 A. Yes.

9 Q. That was your statement at the time and that's correct?

10 A. That is correct.

11 Q. Thank you.

12 You have no municipal finance background, do you,
13 ma'am?

14 A. That is correct, no management background.

15 Q. Now, the canvassers that you assisted or trained, what
16 were they -- they were looking for what in particular?

17 A. When they were initially -- we were called in to help set
18 the canvass up because there were reports of people who were
19 either non-English speaking or were perhaps undocumented
20 residents that knew nothing about the crisis, that didn't have
21 access to water, and so the initial work that was being done
22 was to really find those situations both within the Hispanic/
23 Latino communities as well as within the public housing
24 projects, because the public housing projects had not, to our
25 knowledge, been on the radar screen for anyone to go to.

1 So I spent several weekends myself directly, as well
2 as working with other volunteers, to get into every public
3 housing project, to have conversations with people there and to
4 try to help identify critical water needs.

5 However, we were also asking people if they wanted to
6 get involved in community meetings, in coming out to receive
7 updates and briefings from EPA, from other noted individuals
8 coming in from all over the Federal Government to talk to the
9 community. So we were helping get people out, let them know
10 about those, and get them engaged in those meetings as well.

11 Q. As you're sitting here today you have no idea how many
12 homes they contacted, do you, ma'am?

13 A. I'm sorry?

14 Q. You have no idea how many homes they contacted, do you?

15 A. Well, the estimate that I am --

16 Q. Ma'am, do you have any idea at all as we sit here today
17 how many homes they contacted?

18 A. I know that as of the time of my deposition we had reached
19 10,000 households, and of those we had spoken with 4,000. I
20 don't know the exact number this moment.

21 Q. You never retained any of that data, did you, ma'am?

22 A. That is correct.

23 Q. You have no record of that whatsoever?

24 A. I do not.

25 Q. And in fact, you indicated to me you gave it all to

1 Crossing Water?

2 A. No. My deposition clearly states that the only data we
3 gave to Crossing Waters was the conversations that we were
4 having with people who were in immediate need of receiving
5 filters and water.

6 Q. Take a look at page 64 and 65 of your transcript, ma'am,
7 and read it for yourself.

8 A. May I just say something about this?

9 Q. No. I just asked you to read it and let me know if you
10 have read it.

11 A. I have read it.

12 Q. Okay. You indicated to me that all the raw statistics
13 were put up on the wall and given to Crossing Water, isn't that
14 what you told me?

15 A. No.

16 Q. That's not what you told me on these pages?

17 A. No, it is not.

18 Q. Okay. That's all I wanted to know. Thank you, ma'am.

19 You have no idea where that data is right today or
20 how it was collected, do you, ma'am?

21 A. Which data are you referring to?

22 Q. About the canvassers' data they collected from all these
23 thousands of households that they visited, you have no idea
24 where their data is, do you?

25 A. I do not have that data.

1 Q. You have no idea what it says, do you?

2 A. I don't. I have been working on -- no.

3 Q. You have had no emergency management crisis training
4 whatsoever, have you, ma'am?

5 A. I have not.

6 Q. You have no basis in fact to sit here today and tell the
7 Court how many people have no access to water, whether filtered
8 or bottled, do you?

9 A. I do not.

10 Q. You can't tell me a number at all?

11 A. I cannot.

12 Q. You turned over any names you had to Crossing Waters as
13 well, didn't you?

14 A. No.

15 Q. You did not?

16 A. Turned over what we --

17 Q. Names of people who couldn't access water or didn't have
18 filters, you turned over those names to Crossing Waters?

19 A. Yes.

20 Q. You have no knowledge of who those people are today?

21 A. I do not.

22 Q. At no time did you ever contact the emergency management
23 situation that the State has set up to provide those names to
24 them, did you, ma'am?

25 A. No.

1 Q. And you knew the State was delivering water to people who
2 couldn't access it at the time you turned the names over to
3 Crossing Water, didn't you, ma'am?

4 A. We did, but we also let people know that --

5 Q. Thank you, ma'am.

6 A. -- about 211.

7 THE COURT: Mr. Murphy, don't interrupt the witness.

8 MR. MURPHY: Oh, I'm sorry. I thought she was done,
9 your Honor. I apologize.

10 THE COURT: Evidence to the contrary, Mr. Murphy.
11 Let's not play games here.

12 MR. MURPHY: Okay.

13 THE COURT: Had you finished your answer?

14 THE WITNESS: I forgot the question. I'm sorry.

15 THE COURT: Never mind. Let's move on.

16 BY MR. MURPHY:

17 Q. You have no personal knowledge that people cannot get
18 bottled water delivered, nor filters delivered, do you, ma'am,
19 personal knowledge?

20 A. Could you repeat that? I'm sorry.

21 Q. You have no personal knowledge as we sit here today that
22 people cannot get bottled water delivered or filters delivered,
23 do you?

24 A. I do have that knowledge.

25 Q. And that's based upon stories that other people have told

1 you, correct?

2 A. It's based on my taking the time to go into the community
3 and have conversations and actually work to help people access
4 those resources.

5 Q. You also disagree with the EPA on the use of filters,
6 correct?

7 A. I agree with the EPA that the filters should be used
8 correctly, properly maintained, and that the filtered water
9 would provide safe drinking water to individuals if they used
10 the filtering properly; that is, EPA's guidance.

11 Q. Do you --

12 A. Pardon?

13 Q. I was just waiting. I wanted to make sure you were done.

14 A. I'm finished.

15 Q. Do you have any personal knowledge -- or you really don't
16 have any personal knowledge to support your opinion that the
17 Government is not doing enough, do you, personal knowledge?

18 A. I have personal knowledge to know that as people sit and
19 tell me their stories of struggles to access water and their
20 lack of understanding in how to install filters and their lack
21 of confidence at this juncture in filtered water from personal
22 experience.

23 Q. Do you have any personal knowledge of how long filters
24 last or how long the cartridges last?

25 A. I testified to this in my deposition that there was

1 confusion early on even within the EPA of conflicting reports
2 of how long filters should be used. I know that now there is
3 more information available to residents about how long they
4 should be used and that they should follow the manufacturer's
5 instructions.

6 Q. You also have no personal knowledge, ma'am, of how many
7 Flint homes today have filters?

8 A. I do not.

9 Q. Do you have any personal knowledge, ma'am, of the lead
10 levels in the water in Flint?

11 A. I do not.

12 Q. If it were below the action levels of 15 parts per
13 billion, would that surprise you?

14 A. I -- I don't have anything to base that on.

15 Q. You have drank Flint water, haven't you, ma'am?

16 A. I have.

17 Q. How often -- how many times have you been tested for lead?

18 A. I have never been tested for lead.

19 Q. How many times have you been tested for Legionella?

20 A. I haven't been tested for Legionella.

21 Q. Did you ever discuss this case with Mr. Hood at any time?

22 A. I talked with Mr. Hood after the deposition.

23 Q. Did you inform Mr. Hood that you gave all the data that
24 Flint Rising had that you have collected during your canvasses
25 to him?

1 A. We did not give Crossing Water all of the data. We put
2 data on the wall for the number of doors we contacted, the
3 number of doors we knocked, the number of contacts we made,
4 that kind of data. The only data we gave to Crossing Water was
5 the urgent responses that we believed needed to be dealt with
6 immediately, and that if 211 would be potentially able to
7 deliver, they might not be able to get there in time, and so
8 those were the urgent, more desperate cases that we would have
9 given to Crossing Water.

10 Q. It never occurred to you to give the urgent, desperate
11 cases to the State Emergency Operation Center?

12 A. No.

13 MR. MURPHY: That's all I have. Thank you.

14 THE COURT: Mr. Berg, is this your witness?

15 MR. BERG: This is Mr. Klein's witness, your Honor.

16 THE COURT: Mr. Klein, you may proceed.

17 MR. KLEIN: Thank you, your Honor.

18 CROSS EXAMINATION

19 BY MR. KLEIN:

20 Q. Good morning, Ms. Roper.

21 A. Good morning.

22 Q. Good to see you again.

23 A. Likewise.

24 Q. You testified that you do your volunteer work in Flint
25 through an organization called Flint Rising?

1 A. Correct.

2 Q. Do you recall testifying at your deposition that Flint
3 Rising is a coalition of organizations working together to
4 help the community recover from both being under emergency
5 management as well as from the water crisis?

6 A. That is correct.

7 Q. And that's an accurate statement of the purpose of Flint
8 Rising?

9 A. I would say that from my perspective that's how I view my
10 involvement with Flint Rising.

11 Q. Now, does recovering from emergency management include
12 returning responsibility for the city to local elected
13 officials rather than outside decision makers?

14 A. That's part of it.

15 Q. I know you testified before that you have no financial
16 expertise. Do you have any knowledge regarding the financial
17 resources of the City of Flint?

18 A. I do not, no.

19 Q. And do you recall testifying at deposition you have no
20 knowledge regarding the cost of relief that you're asking this
21 Court to provide?

22 A. I do not know the cost.

23 Q. Am I correct that it's your opinion that the citizens of
24 Flint lack adequate access to water even if they were able to
25 drive to a POD and pick up bottled water?

1 A. I believe that is the case, given that in this country we
2 should be able to turn on our tap and get safe drinking water.
3 So yes.

4 Q. And is it also your opinion that citizens of Flint lack
5 adequate access to water even if they have a properly installed
6 filter?

7 A. No.

8 Q. Do you recall at your deposition you were asked --

9 A. Excuse me. I'm sorry. Could I just add one thing to what
10 I just said?

11 Q. Certainly.

12 A. Properly installed and maintained. I just want to add
13 maintained.

14 Q. Okay.

15 A. Thank you.

16 Q. Do you recall at your deposition that you were asked: If
17 a person had no vehicle but had a filter that was installed
18 properly with the right cartridge in their house, would they
19 have adequate access to safe drink water, in your opinion?

20 And you answered: Well, not in my opinion.

21 A. My -- again, my concern is maintained, because I have
22 talked with people who have had the filters properly installed,
23 but they may have been there for months. So the issue is
24 maintaining those filters, as well. So if I -- if my
25 deposition wasn't clear on that point, that's what I intended

1 to communicate.

2 Q. You recall you submitted a declaration in this matter or
3 a --

4 A. Yes.

5 Q. You might think of it as an affidavit.

6 A. Yes.

7 Q. And do you recall as part of that document you indicated
8 that, quote, "Many people do not want sheriffs showing up at
9 their home."

10 A. Yes.

11 Q. And that remains true, in your opinion?

12 A. It does remain true.

13 Q. Have any of those people that don't want sheriffs showing
14 up at their home told you that they don't want the Government
15 showing up at their home, delivering water and entering their
16 home to install filters?

17 A. Again, I think the concern was around law enforcement in
18 particular and so that concern about law enforcement is not
19 necessarily the same as Government.

20 And as we discussed in the deposition, there are many
21 different ways Government can manage a program, either through
22 directly delivering the water through a Government agency or by
23 teaming up with non-profits that are resourced to be able to
24 support the delivery efforts.

25 Q. And those, those are the same non-profits that are

1 currently providing services in the City of Flint?

2 A. I don't know for sure.

3 Q. You testified when Mr. Murphy was asking you questions, if
4 I heard it correctly, that part of your long-term goal here --
5 and I'm paraphrasing, and if I get it wrong, please correct
6 me -- that you're looking to fix the system?

7 A. Could you clarify which system?

8 Q. Well, that --

9 A. I'm sorry.

10 Q. I was assuming, but correct me if I'm wrong, but by fixing
11 the system, you were referring to returning to a state where
12 citizens can drink tap water.

13 A. The drinking water system?

14 Q. Yes.

15 A. Yes.

16 Q. Now, if the cost of providing this relief that you're
17 seeking was such that the City would have to abandon its
18 efforts to replace lead pipes, do you believe that that's in
19 the best interest of the people of Flint?

20 A. No, because they need to do both. And we are a part of
21 helping to get support from the Federal Government, for
22 instance, to help repair the pipes. A lot of people who were
23 involved with this effort on the ground in the community are in
24 Washington, D.C. today rather than perhaps here, to try to help
25 get federal dollars to come and help with the water, you know,

1 replacing the pipe and all of that. So I -- we aren't viewing
2 it as an either/or.

3 Q. But right now you don't know whether -- you don't know
4 anything about the City of Flint's financial resources?

5 A. No.

6 Q. So you don't know whether it's either/or?

7 A. No.

8 Q. And likewise, your answer would be the same with respect
9 to the City abandoning its efforts to hire additional -- hiring
10 additional personnel for the water plant and improving the
11 training of the personnel at the water plant?

12 A. I don't know.

13 Q. You testified that you went to a website, and I forget
14 which organization it was, but a private organizations that had
15 information regarding the location of PODs?

16 A. Well, FlintCares.com is the -- as I understand it, it's
17 the official website for the Flint Recovery Group, and the
18 Flint Recovery Group includes all of the organizations like the
19 Red Cross, the United Way, the food bank. Also listed on their
20 website is Hurley Medical Center, the U.S. Department of Health
21 and Human Services and other organizations. So that's their
22 communications channel.

23 Q. But are you aware that the City also communicates
24 information regarding the location of PODs?

25 A. No.

1 Q. And you weren't aware that the State also communicates
2 information regarding the location of PODs?

3 A. No.

4 Q. Through websites?

5 A. No.

6 Q. And so you don't know whether the City or the State had
7 current information as to location of all the PODs?

8 A. I do not know.

9 Q. You testified that many of the people that you have
10 encountered who lacked a vehicle are relying on friends to
11 access water, correct?

12 A. That is correct.

13 Q. And you think that's improper?

14 A. I think it's wrong for a system to be put in place where
15 residents of Flint are relying upon the charity of others,
16 whether it's family, who may not always be available, or
17 friends or social service groups or churches to be providing
18 safe drinking water.

19 Q. You testified that some people are paying people for
20 assistance obtaining water?

21 A. That's correct.

22 Q. Am I correct you have no knowledge regarding how many
23 people are in that situation?

24 A. That is correct.

25 MR. KLEIN: I have nothing further, Ms. Roper. Thank

1 you.

2 THE COURT: Thank you, Mr. Klein.

3 Ms. Chaudhary, do you have any follow-up?

4 MS. CHAUDHARY: Just a few questions, your Honor.

5 THE COURT: Go ahead.

6 REDIRECT EXAMINATION

7 BY MS. CHAUDHARY:

8 Q. Ms. Roper, is Flint Rising's purpose in canvassing to
9 collect data?

10 A. No.

11 Q. What is the purpose of Flint Rising when they go out to
12 canvass?

13 A. Well, Flint Rising is out reaching out to people in the
14 community to find out how they are doing with accessing water,
15 to share information with them about where they can get water,
16 but to find out which of those individuals are having trouble
17 getting there.

18 In addition, its goal is to, again, reengage or in
19 many cases engage community members in helping with their local
20 community, quality of life, helping to solve problems that the
21 community is facing, even before the water crisis.

22 Q. And when a Flint Rising volunteer identifies someone with
23 problems, what happens? Just describe that referral process
24 that you were discussing with Mr. Murphy.

25 A. So if we find someone who is having problems, our

1 partnership has been with Crossing Waters. And so we would
2 give that information to Crossing Waters, but we would also
3 make sure that they know about 211 as another way to get the
4 resources that they need.

5 Q. And is everyone in need that you identified through Flint
6 Rising referred to Crossing Waters?

7 A. Not everyone, no.

8 Q. Who is referred to Crossing Waters?

9 A. We refer the people who are really, as I said earlier, the
10 most urgent needs, who are out of water, running out of water.
11 They don't have a filter. They don't know how to install or
12 replace their filter. They might have a faucet that doesn't
13 accommodate the particular filter, that type of thing. Those
14 are the ones that we have been sending to Crossing Waters.

15 Q. But there are other folks with water problems that are not
16 referred to Crossing Waters, is that correct?

17 A. That's correct.

18 MS. CHAUDHARY: Nothing further, your Honor.

19 THE COURT: Thank you, Ms. Roper. You may stand
20 down.

21 THE WITNESS: Thank you.

22 THE COURT: You may call your next witness.

23 MS. CHAUDHARY: Your Honor, we're just retrieving her
24 from the witness room.

25 THE COURT: And that would be?

1 MS. CHAUDHARY: Jacqueline Childress.

2 THE COURT: Thank you.

3 (Pause in the proceedings at 10:57 a.m.)

4 MS. CHAUDHARY: Your Honor, Ms. Childress has a
5 problem with her dentures. If the Court has difficulty
6 understanding her, we will do our best to assist in any way
7 that we can, but I wanted to mention that.

8 THE COURT: Does she need a glass of water or
9 anything like that?

10 MS. CHAUDHARY: That might be a good idea.

11 THE COURT: Are you Ms. Childress?

12 THE WITNESS: I am.

13 THE COURT: Would you come forward, please? Just
14 step right up. Pause right there a minute. Raise your right
15 hand to take the oath.

16 * * *

17 JACQUELINE CHILDRESS

18 was called as a witness, after having
19 been duly sworn to testify to the truth.

20 * * *

21 THE COURT: Ma'am, would you have a seat right over
22 here in this witness box?

23 Could you pull that microphone up so that you can
24 speak right into the tip of it, please? And just pull it a
25 little forward. There you go.

1 And there is a cup of water there if you need it.

2 And state your full name and spell your last name,
3 please.

4 THE WITNESS: Jacqueline Childress Thompson.
5 T-h-o-m-p-s-o-n.

6 THE COURT: Your last name is Thompson?

7 THE WITNESS: Yes.

8 THE COURT: But are you also known as Jacqueline
9 Childress?

10 THE WITNESS: I am.

11 THE COURT: All right. You may proceed.

12 DIRECT EXAMINATION

13 BY MS. CHAUDHARY:

14 Q. Ms. Childress, where do you live, the city that you live
15 in?

16 A. Flint, Michigan.

17 Q. Flint, Michigan, is that correct?

18 A. Correct.

19 Q. And how old are you?

20 A. Sixty.

21 Q. And how long have you lived in Flint?

22 A. Most of my life.

23 Q. And do you rent your home in Flint?

24 A. I do.

25 Q. And do you live alone?

- 1 A. No.
- 2 Q. Who do you live with?
- 3 A. I have a son and two dogs.
- 4 Q. And how old is your son?
- 5 A. Forty.
- 6 Q. Forty?
- 7 A. Forty.
- 8 Q. And why does he live with you?
- 9 A. He's -- he has a disability.
- 10 Q. And what kind of disability does he have?
- 11 A. A mental disorder.
- 12 Q. And do you have any other children?
- 13 A. I do.
- 14 Q. And how many do you have?
- 15 A. Just two now.
- 16 Q. And does your other son -- excuse me. And is that -- is
- 17 your other child a son?
- 18 A. He is.
- 19 Q. And does he live with you?
- 20 A. No.
- 21 Q. Where does he live?
- 22 A. On the other side of town, in Flint, Michigan, also.
- 23 Q. And do you have any grandchildren?
- 24 A. Eight.
- 25 Q. And how old are they?

- 1 A. From six to 22.
- 2 Q. And do they visit you?
- 3 A. All the time.
- 4 Q. Do you work now, Ms. Childress?
- 5 A. I'm retired.
- 6 Q. And where did you work before you retired?
- 7 A. Truck and Bus.
- 8 Q. General Motors, is that right?
- 9 A. General Motors.
- 10 Q. And how long did you work there?
- 11 A. Almost 20 years.
- 12 Q. Almost 30 years?
- 13 A. Almost 20.
- 14 Q. Twenty 20 years. And what did you do at General Motors?
- 15 A. I was an inspector.
- 16 Q. Inspector. How do you support yourself financially now?
- 17 A. I get a pension.
- 18 Q. Your pension?
- 19 A. Uh-huh.
- 20 Q. And do you receive any other payments?
- 21 A. Social Security.
- 22 Q. And Ms. Childress, do you have a car?
- 23 A. No.
- 24 Q. Does your son who lives with you have a car?
- 25 A. No.

1 Q. Ms. Childress, do you drink the tap water in your home?

2 A. No.

3 Q. And what do you use for drink water?

4 A. Bottled water.

5 Q. Where do you get your bottled water?

6 A. Um, from local stations and churches and fire departments
7 and just water sites.

8 Q. How do you get to those water sites?

9 A. I have to get a ride.

10 Q. And who do you get a ride from?

11 A. Different people.

12 Q. Is it difficult to get rides to the sites?

13 A. It is.

14 Q. Why is it difficult?

15 A. Because it's difficult to get rides to the sites, I don't
16 drive, so I have got to ask somebody to take me.

17 Q. Do you have to ask somebody to take you?

18 A. Yeah.

19 Q. And is it hard to find people to take you to the sites?

20 A. It is.

21 Q. Have you ever paid anyone to take you to a water
22 distribution site?

23 A. Yeah, I have paid, yeah.

24 Q. How much do you pay, pay them?

25 A. Anywhere from 10, 20 bucks.

1 Q. And has your son ever taken you to a water distribution
2 site to pick up water?

3 A. My youngest son, yeah. Not the one that lives with me.

4 Q. And how often has he taken you?

5 A. Maybe a couple times a month.

6 Q. And could he take you more often than that?

7 A. He works, his wife works, and they are on the other side
8 of town.

9 Q. And I'm sorry, they have what?

10 A. They are on the other side of down.

11 Q. They don't have a lot of time?

12 A. They are on the other side of town.

13 Q. They are on the other side of town, excuse me.

14 And do they have children?

15 A. Two.

16 Q. Okay. Have you ever had any bottled water deliveries to
17 your home?

18 A. I have.

19 Q. How many times have you had deliveries to your home?

20 A. At first they were coming down a lot. At first I -- now
21 they don't come as much no more. And we called 211, but they
22 never come.

23 Q. And when you say they first started coming a lot, when,
24 when are you talking about?

25 A. When the water -- when we first heard about the water,

1 they were coming down the street, State Police even, and lots
2 of cars and trucks, but then it slowed down.

3 And then they had other sites open where you could go
4 get it. And it's okay if you have got a car or transportation,
5 but I don't.

6 And then they got a number 211 you supposed to call
7 and they would bring it out to people. Because I have a plate
8 and screw in both my legs, right. So they would bring it out
9 to people, but I -- they maybe bring something, but they never
10 brought it to people on my street.

11 Q. How many times have you called 211 to ask for bottled
12 water delivery?

13 A. Several times.

14 Q. More than once?

15 A. More than once.

16 Q. More than twice?

17 A. More than twice.

18 Q. More than three times?

19 A. More than three times.

20 Q. And to your knowledge, have you ever received a bottled
21 water delivery from 211?

22 A. No.

23 Q. And has that -- have you ever seen deliveries being made
24 in your neighborhood of bottled water?

25 A. Yes. And I stopped them.

1 Q. I'm sorry, you said you --

2 A. I stopped them.

3 Q. You said you stopped them?

4 A. Uh-huh.

5 Q. What do you do when you stop them?

6 A. I ask them, can I get water.

7 Q. And what usually happens what that happens in those
8 situations?

9 A. Last time they said they didn't have anymore, but they
10 would bring me some, and they did bring me some the next day.

11 Q. Can you take the bus to your closest distribution site?

12 A. Well, you can take the bus, but how you going to get back
13 with water?

14 Q. And why -- when you say how can you get back with water,
15 what do you mean by that?

16 A. I mean, what are you going to bring, just one? It's like
17 twelve packs, six packs or twelve packs? So you going to bring
18 one pack back? No, one pack is not going to last long, right?
19 So why would you take the bus?

20 Q. And you can only bring one pack back because they are
21 heavy or --

22 A. Yeah.

23 Q. What is the --

24 A. They're very heavy. I mean, you can only walk with one
25 pack back, because I have to walk from the bus site back home.

1 Q. And how much bottled water do you use in a day?

2 A. About anywhere between six and 24 bottles a day.

3 Q. Do you have a filter on your kitchen faucet, Ms. Childress?

4 A. Not now. I did, but not now.

5 Q. How long -- what -- when you say that you did, what do you
6 mean by that?

7 A. It was one placed on there, right, but that kind of broke
8 the faucet, so now the faucet head is broke. So no faucet
9 head, no filter.

10 Q. And when was that filter installed, if you can recall?

11 A. Months ago.

12 Q. Months ago. Do you know, do you recall who installed that
13 filter?

14 A. A social worker.

15 Q. A social worker. And why was a social worker in your
16 home?

17 A. For my son.

18 Q. For your son?

19 A. Who is disabled.

20 Q. And how long has your faucet been broken now?

21 A. A few months.

22 Q. Ms. Childress, have you ever run out of bottled water?

23 A. I have.

24 Q. Do you know how many times you have run out of bottled
25 water?

1 A. A couple times.

2 Q. What do you do when you run out of bottled water?

3 A. I have got to go to the neighbor's house, a neighbor.

4 Q. How do you feel about those situations when you have run
5 out of bottled water?

6 A. It's not nice. You don't want to ask no one for water,
7 you know, but -- and then you got to have water. So it's not
8 good.

9 Q. Have you ever drank unfiltered tap water?

10 A. No, I haven't.

11 Q. So since you have heard about this, the problems with
12 Flint's drinking water, you have not had to drink unfiltered
13 tap water, is this right?

14 A. No, I wouldn't.

15 Q. If you received regular deliveries of bottled water to
16 your home, would that help you?

17 A. A lot.

18 Q. How would that help you?

19 A. I mean, I could cook. You know, you can't cook without
20 water. You have to wash food. You have to wash countertops.
21 I got dogs. I got to feed them water. I got to have water
22 every day. They can't have tap water because it leaves a ring
23 in the bowl, okay, so they got to have bottled water. And you
24 just got to have it. You can't live without it. You have got
25 to have water for everything.

1 Q. What else do you use your bottled water for?

2 A. Brushing your teeth. You can't brush your teeth with tap
3 water. Washing the chicken, fish, the food. You know, you got
4 to wash dishes, countertops, you know. So you got to have
5 bottled water. You have got to have it.

6 Q. Are you struggling right now to get enough bottled water
7 to meet your needs?

8 A. It's a struggle, uh-huh. Yeah. It's a big struggle.

9 Q. And how do you feel about that?

10 A. Bad.

11 MS. CHAUDHARY: No further questions, your Honor.

12 THE COURT: Mr. Murphy.

13 MR. MURPHY: Thank you, your Honor.

14 CROSS EXAMINATION

15 BY MR. MURPHY:

16 Q. Good morning, Ms. Childress.

17 A. Good morning.

18 Q. Do you live in a house or apartment?

19 A. A house.

20 Q. And you rent it, right?

21 A. I do.

22 Q. Did you ask the landlord to fix your faucet ever?

23 A. Yes. I have a -- he's like a slum lord. He's not good.

24 Q. Do you have a filter in the house other than the one you
25 tried or the one that was in the kitchen? Is there a filter

1 somewhere else hooked up?

2 A. No, just for the kitchen. They don't have them for the
3 bathroom yet.

4 Q. Ma'am, what address do you live at?

5 A. [REDACTED].

6 Q. [REDACTED] --

7 A. [REDACTED].

8 Q. [REDACTED]?

9 A. [REDACTED].

10 THE COURT: [REDACTED], I think.

11 BY MR. MURPHY:

12 Q. [REDACTED]. Okay. Thank you, ma'am. And that's right in
13 the City of Flint, correct?

14 A. It is.

15 MR. MURPHY: Thank you. That's all I have, your
16 Honor.

17 THE COURT: Thank you.

18 Mr. Klein, Mr. Berg? Mr. Klein.

19 MR. KLEIN: Thank you, your Honor.

20 CROSS EXAMINATION

21 BY MR. KLEIN:

22 Q. Good morning, Ms. Childress.

23 A. Good morning.

24 Q. How long have you not had a car?

25 A. It's been a while. I was in an accident and I was in a

1 cast for three years, so I had three surgeries on my leg, so
2 when I tried to drive after that my leg went out, so I'm kind
3 of fearful of driving.

4 Q. So it's been a number of years?

5 A. Yeah.

6 Q. In that time have you ever had to ask anyone else for help
7 doing things that required a car?

8 A. Yes.

9 Q. Other than the water?

10 A. Correct.

11 Q. Now, do you remember signing a declaration in this
12 lawsuit, a piece of paper where you gave certain facts about
13 your situation?

14 A. No. Yes, I did.

15 Q. You now recall it?

16 A. Yeah.

17 Q. Do you recall in your declaration that you said there were
18 lots of people on your block who were getting deliveries of
19 bottled water?

20 A. I said there -- I knew a lady, she is an elderly lady down
21 the street, and I -- she gets water delivered to her, and I
22 know it's because of the age difference, but they never
23 delivered to me.

24 Q. And you don't know why that is?

25 A. I don't know. But other people have the same problem on

1 my block.

2 Q. I'm sorry, I couldn't hear you.

3 A. Other people have the same problem. Other people have the
4 same problem I did, a lot of people.

5 Q. You have done nothing to determine why you -- why the
6 water isn't being delivered to you?

7 A. I keep calling. They are very nice when you call them,
8 but they just don't come.

9 Q. Now, do you recall -- well, you testified that right now
10 you're not using a water filter in your kitchen because of a
11 broken faucet?

12 A. Correct.

13 Q. And am I correct that it would be a \$90 repair to fix that
14 problem?

15 A. Correct.

16 Q. The only thing you have done to try and repair or replace
17 the faucet is to ask your landlord to do so?

18 A. Yeah. I thought about it, but it's not in my budget. And
19 then so I thought about moving, also.

20 Q. You never called, for example, 211 for help with your
21 faucet problem?

22 A. No, I didn't. I didn't know they did that.

23 Q. And were you aware that the plumbers in Flint, the
24 plumbers union are installing faucets and installing filters
25 for free?

1 A. They install faucets? They do faucets, too?

2 Q. And so you never reached out to the plumbers union for
3 assistance to --

4 A. I would like to know whether they did faucets.

5 Q. I'm sorry, if you could let me finish the question, and
6 then it's just -- it's hard for me to hear and for the court
7 reporter to get it down if we're talking at the same time. So
8 let me repeat the question.

9 You never reached out to the plumbers union for their
10 assistance in getting your faucet repaired or replaced for
11 free?

12 A. No.

13 Q. Okay. Would it surprise you to know that the plumbers
14 union has replaced more than 4,500 faucets for free in the City
15 of Flint?

16 A. It would.

17 Q. Now, are you aware that in addition to faucet filters the
18 State is offering free filtered water pitchers?

19 A. No.

20 Q. And so you never -- you never asked for a filtered -- a
21 filtered water pitcher to help you with your water problems?

22 A. I don't know what you mean by water filter or water --
23 explain it to me.

24 Q. Okay.

25 A. You mean the gallon jugs? You mean the big bottles of

1 water?

2 Q. No, that's not what I mean.

3 A. Okay.

4 Q. Now, you testified that you had a number of grandchildren,
5 including some who are of driving age?

6 A. Yes.

7 Q. And they, they have access to a car?

8 A. Yes.

9 Q. Have they assisted you with obtaining water?

10 A. Yes.

11 Q. You testified that early -- if I understood you correctly,
12 you testified that earlier someone came a lot with bottled
13 water. Do you recall?

14 A. I didn't understand you.

15 Q. You don't understand, is that what you said?

16 A. I didn't understand what you said.

17 Q. Okay. And perhaps I misunderstood your testimony, but I
18 heard you say that some -- at some earlier point they came a
19 lot with bottled water.

20 A. Yes. People did come.

21 Q. So when was that?

22 A. When it first started.

23 Q. And who was the "they?" Who was it that came a lot with
24 bottled water?

25 A. I don't know where they came from, but they were led by

1 the State Police and they would come up and down every street.

2 That was months ago.

3 Q. And have you reached out to the State Police to learn if
4 those services are still available?

5 A. Well, they didn't have a lot of water sites then. Now
6 they have water sites where you go and get the water.

7 MR. KLEIN: I have no further questions.

8 THE COURT: Okay. Anything else?

9 MS. CHAUDHARY: No, your Honor.

10 THE COURT: Ms. Childress, thank you very much. You
11 are excused.

12 THE WITNESS: Thank you.

13 You may call your next witness.

14 MS. TALLMAN: Your Honor, Sarah Tallman on behalf of
15 Plaintiffs. Our next witness is Pastor Blake.

16 THE COURT: Ms. Tallman, you're taking this witness?

17 MS. TALLMAN: Yes.

18 THE COURT: Mr. Blake, would you step forward,
19 please?

20 Just come on up right here in the middle, into the
21 well of the court. Pause right there, raise your right hand,
22 and take the oath.

23 * * *

24 ROBERT BLAKE

25 was called as a witness, after having

1 Church in Flint, Michigan.

2 Q. And when did you become the Pastor at Vernon Chapel?

3 A. January 13, 2016.

4 Q. And the church is in Flint. Where do you live?

5 A. I live on [REDACTED].

6 Q. And is that also in Flint?

7 A. In Flint, yes.

8 Q. Does anyone live with you in Flint?

9 A. My wife.

10 Q. Is your home served by Flint's water system?

11 A. Yes, it is.

12 Q. I would like to ask you a few questions about your history
13 of your work as a pastor. When were you ordained as a pastor?

14 A. I was ordained in 1986, the hundredth session of the
15 Michigan Annual Conference.

16 Q. Why did you become a pastor?

17 A. It was my calling.

18 Q. Are you -- do you have any other pastors in your family?

19 A. I have. I'm a fourth generation, actually, and so great
20 grandfather, grandfather, uncle, first cousin, so I'm fourth
21 generation.

22 Q. Prior to coming to Vernon Chapel in Flint, were you a
23 pastor anywhere else?

24 A. Yes. I was pastoring here in Highland Park, Michigan, at
25 St. Luke AME Church for twelve years.

1 Q. For twelve years. Okay. So why did you leave the church
2 in Highland Park to come to Vernon Chapel in Flint?

3 A. I was asked to come to Flint by my presiding elder. He
4 wanted to know if I would move. Their pastor had to move and
5 go out of state and so he asked me to come and I agreed; by our
6 Bishop, actually.

7 Q. So I would like to --

8 THE COURT: Mr. Blake, try to keep your voice up a
9 little bit.

10 THE WITNESS: Yes, sir.

11 THE COURT: Thank you.

12 BY MS. TALLMAN:

13 Q. I would like to talk a little bit about the lawsuit and
14 why you're here today. Are you a member of any of the groups
15 that filed this lawsuit?

16 A. I'm part of the Concerned Pastors of Flint.

17 Q. What is Concerned Pastors?

18 A. We are a community of pastors who believe that justice
19 must be served when injustice has been served to us, and we are
20 also a voice for the voiceless of the community. As I said,
21 we're a community, a community of pastors who try to be leaders
22 in the community for those who seek the leadership of the
23 clergy.

24 Q. How many members does Vernon Chapel have?

25 A. Somewhere around -- we say 404 on the roll, but we

1 probably see around 125, 130 each Sunday. It fluctuates.

2 Q. And other than the services that you and the staff at
3 Vernon Chapel provide to the congregants, does Vernon Chapel do
4 any other outreach in the broader Flint community?

5 A. We do have a missionary society. They do outreach. Our
6 major outreach since I have been there since January is our,
7 what we call our water ministry.

8 Q. What is the water ministry?

9 A. Our water ministry, under the coordinatorship of Tammy
10 Kellum, we receive water from different parts of the country
11 from our denomination. They have stepped up greatly and we
12 distribute water and deliver water to the Flint community.

13 Q. Why do you refer to it as a ministry?

14 A. Because ministry is about service and ministers are about
15 service or servants and so we see that as a service to the
16 community. Anything we do in our church, it's a ministry.

17 Q. So let's go back to when you first started at Vernon
18 Chapel in January of this year. What work at that time did
19 Vernon Chapel undertake as part of the water ministry?

20 A. Well, we formed a water ministry team and we -- and I
21 actually assigned a coordinator, because at the time this was
22 the biggest news in the nation. We were what I would call the
23 flavor of the month, and because of that I felt that if we were
24 to organize and if we had great organization we would be able
25 to serve the community the way it needed to be served. We were

1 getting calls from around the country from all different
2 denominations and churches who wanted to help Flint, who wanted
3 to make sure that there was a supply of water and resources for
4 the city, and so we organized it and began to distribute it at
5 least four days a week and delivered two days a week.

6 Q. When other churches donate water to Flint, how does the
7 water get to Vernon Chapel in Flint?

8 A. They will either call a distributing company and they will
9 send trucks. We have had, we have had U-Haul trucks, we have
10 had semis. We have had persons that drive from down south with
11 semis. They will call Sam's or they will call Walmart and we
12 will be able to go and pick it up. And so.

13 Q. And who unloads the trucks when they arrive at the church?

14 A. Volunteers at the church. I myself have unloaded some
15 trucks as well.

16 Q. And so you mentioned that Vernon Chapel gets its bottled
17 water from other churches?

18 A. Yes. We have gotten it from other churches, other
19 denominations. Not as much now. It's slowed way down.

20 Q. And so as a result of this slowing down, have you, have
21 you gone to any other sources to get bottled water for the
22 water ministry?

23 A. Yes, we have. We have gone to EMU food bank and asked
24 them to supply us with water.

25 Q. And have you been able to get water from the food bank?

1 A. Yes, we have.

2 Q. What hours is the church open to distribute water to
3 people in Flint?

4 A. We have been distributing 11:00 to 4:00, but we also found
5 that if we were -- if somebody was in the building, people
6 would still drive up and say, are you still delivering water?
7 And so that might be 5:00 or 5:30, and so we put this time
8 together that might help the citizens of Flint.

9 Q. Other than the hours when Vernon Chapel is open, does the
10 water ministry make water available to residents outside of
11 those hours?

12 A. Well, we really do now. It was something that I was -- I
13 have to be honest, I was against it at first, because I would
14 see churches that left water out, and yet my coordinator and
15 the team began to say, Pastor, you know you have people that
16 don't get off until after 6:00 and they might need some water
17 and so that's when we began to leave it outside and they
18 literally come all hours of the day to pick up water.

19 Q. You mentioned that volunteers help unload the trucks. Are
20 there any other parts of the water ministry that volunteers
21 help with?

22 A. No, primarily just distribution and delivery, sometimes
23 delivery. And we would also -- because of the way the water
24 was coming into Flint, the frequency of it and the amount of
25 it, we began to solicit help from even the County when it came

1 to volunteers, because it was just so much water. When you're
2 talking about unloading a semi that has about 1,600 cases, you
3 need more than seven or eight people.

4 Q. And are you still feeling overwhelmed or understaffed in
5 terms of the amount of water donations you're receiving?

6 A. Not at this moment, but we're feeling understaffed because
7 of the volunteerism of the church. One of the concerns of not
8 only myself but other concerned clergy was that our volunteers,
9 our staff would get burned out, and it has happened. We have
10 persons who were integral parts of our ministry who are sick,
11 and physically, they just can't do it. And then the physical
12 wear and tear on those who have been unloading trucks, it's
13 certainly taken a toll.

14 Q. So you mentioned that the church gives out water,
15 distributes water, people come to pick it up. Does the church
16 also deliver water to people's homes?

17 A. Yes, we do.

18 Q. How often does Vernon Chapel do that?

19 A. Really, from January to, I would say, August, we were
20 delivering Tuesday through Thursday and Saturday. We had
21 groups that would come in and partner with us, different
22 colleges and universities, Antioch from Ohio, Michigan State,
23 and a great partnership with Western Michigan, and their kids
24 would come up from the school of social work and not only, not
25 only deliver, but they would walk through the neighborhoods

1 with us, as well to give out water. And other groups, other
2 groups have come out of Detroit to help deliver to the citizens
3 of Flint.

4 Q. Who receives these deliveries?

5 A. We have had persons who would call, church members who
6 knew someone or knew a complex or a place that wasn't getting
7 water. If we received information from the concerned clergy,
8 we would do our best to drop off water, whether it was the
9 north side or the south side or the east side.

10 Q. What's the most recent occasion when you learned about
11 people in Flint that were in need of water delivery?

12 A. Just the other day we were in a meeting and we learned
13 that some senior citizens complexes on Court Street,
14 high-risers, were not getting water. And I got a name of a
15 person by the name of Boaz who had mentioned to, I believe,
16 one of the pastors that they were not getting water at these
17 high-rise apartments on Court Street in Flint.

18 Q. And so what is the water -- what is Vernon Chapel doing
19 once they learned about that?

20 A. Well, actually, just learned about it about three days ago
21 and so we will look at what we can do, but we haven't done
22 anything up to this point, so.

23 Q. Do you intend to attempt to deliver water or provide other
24 services?

25 A. We really will if they need the water, we will try to do

1 it. I will talk to the coordinator and make her aware of it
2 and she will make the rest of the team aware of it and we will
3 see if we can handle it. And then, of course, there by now
4 maybe they have talked to some of the other resources in Flint
5 that can help them get the water.

6 Q. So does Vernon Chapel keep records about how much water
7 it's distributing?

8 A. Yes, we do.

9 Q. Do you know about how much water the church has
10 distributed since the water ministry began in January?

11 A. I believe it's around 55,000 cases, almost a quarter of a
12 million gallons, actually.

13 Q. And do you know how many -- 55,000 cases, how many bottles
14 are in a case?

15 A. It just depends, because what people donate to you is
16 so -- it's so different. You might get a six-pack, you might
17 get a 42-bottle pack, okay. So it's -- you can never really
18 tell. The Geyser that comes, you'll get a 32-ounce bottle. So
19 when you're trying to really come up with a number, per se, of
20 how many bottles do you get, each pallet is different, okay.

21 Q. And what is your role personally in the water pickup and
22 deliveries provided by Vernon Chapel?

23 A. I'm just really the pastor who delegates to our
24 coordinator and she coordinates the pickup and the delivery. A
25 person might call me from out of state or they might call me

1 and then I will give them over to a water coordinator, our
2 coordinator, and she handles that.

3 Q. About how much of your time personally working in the
4 church is devoted to the water ministry?

5 A. Too much of it, if I may be honest. Back in March I
6 preached a sermon, and hadn't been there all that long, but I
7 talked to my congregation about other ministries that we needed
8 to do and how this was just taking up so much of our time. And
9 I didn't want to get caught just doing water ministry, simply
10 because we have had persons who have suffered from Alzheimer's
11 and diabetes, and we wanted to really turn our attention to
12 those problems.

13 And also, the educational problem that has happened
14 in Flint, as well as our denomination wanted us to host a camp
15 for the inner city kids of Flint for the whole month of July,
16 and we really just kind of turned it down simply because of the
17 fact that we're not drinking the water at Vernon either.

18 Q. So if you weren't spending the time that you are spending
19 on the water ministry, are there more things that you would
20 spend time on? You mentioned some of them in terms of outreach
21 to the broader community.

22 A. Sure. Sure. And you know, it's -- we have adapted
23 ourselves to working that ministry and to making sure that
24 people have water, but that's not the only thing that Flint
25 needs.

1 Q. What other things, from your perspective, do the people of
2 Flint need or what would the church want to provide?

3 A. As I stated earlier, the educational situation in Flint is
4 to me quite dire and we just received a couple reports about
5 the reading skills of many of our kids and so there are
6 mentoring programs that we could possibly do and tutoring
7 programs for them that we could and will have; in fact, we will
8 have at the church, okay.

9 We also are involved in some of the parks at the
10 church. We have got a great outreach for cleaning up the parks
11 in Flint. And one of the major problems is the plastic that's
12 being thrown around, in that it was a great concern of ours
13 that what happens to the plastic bottles once people are done,
14 and we found that one of the parks right up the street had a
15 great number of them and -- but we do have persons in our
16 church who work, volunteer cleaning up parks, painting, cutting
17 down shrubs, the whole bit, just to beautify the parks. So
18 it's another one of our outreach ministries. It might be
19 strange, but I'm very proud of us that we do that.

20 Q. If you and the volunteers that work for the water ministry
21 were spending less time on the water ministry, would you have
22 more time to do some of these other things?

23 A. We would have more time to do it and also we wouldn't
24 experience the burnout physically, the burnout of moving cases,
25 moving water and hearing the complaints of my congregation who

1 says that we are tearing up one of the parts of the church,
2 because when the cases and the pallets come in, we have been
3 doing this now for the last eight months, nine months, it has
4 caused a wear and a tear in some of the church. And you know,
5 we -- pastoring a church, everybody doesn't agree with what
6 you're doing, and so you have that as well.

7 Q. From your vantage point as a pastor in the community, how
8 has the water crisis in Flint affected the people that you
9 interact with as part of the water ministry?

10 A. I have never seen anything like this in all of my life.
11 Lived in Baton Rouge for a time, so I had an understanding of
12 what happened when New Orleans suffered from their situation
13 with Katrina, when you're talking about not being able to drink
14 water, use water, and it's amazing how much you use water.

15 I know you call it the liquid gold. You can fight
16 over oil, you can fight over silver, but you can't drink oil
17 and silver, but you can drink water. And when you no longer
18 have that, the opportunity to do it the way you just always
19 used to do it, it has caused great harm to the citizens of
20 Flint.

21 It's more than just a crisis. Lifestyles have been
22 totally disrupted, because they are not able to drink the water
23 in Flint. Living out of a bottle, and that's what I call it, I
24 call it living out of a bottle, and we live out of a bottle at
25 the parsonage.

1 We have our bottle of water for our bathroom where
2 we, too, brush our teeth. And so in cooking you can use
3 anywhere from two, three, four gallons of water. And people
4 are very kind in passing or giving us water and giving the
5 citizens water, but the reality is that when you're trying to
6 pour 12-ounce bottles or 16-ounce bottles of water in a pan or
7 a bathtub, it really doesn't work too well.

8 The other part of it is the trust issue in Flint
9 concerning the water. It was the EPA that told the members of
10 Flint that the water was okay to drink, and so the reality of
11 it is that because of this, this crisis that has happened in
12 this city, the lack of trust is certainly there with the
13 citizens.

14 So the lack of trust causes frustration. The lack of
15 trust causes anxiety. The lack of trust causes anger. People
16 are quite angry with the State right now, quite angry in the
17 City of Flint.

18 Q. Do you know whether the City and the State are
19 distributing faucet filters for Flint residents?

20 A. Yes, I believe they are. I have myself, I myself have
21 driven by the PODs and just kind of asked questions, find out
22 about their times, what they have. And so I know they have
23 Brita filters and other resources for the persons.

24 We ourselves were getting filters. We ourselves were
25 getting bath wipes and baby wipes, body wipes, and -- but I'm

1 not sure whether they are doing hand sanitizers and those type
2 of things at the PODs, but we ourselves have been trying to do
3 that, pass out hand sanitizers. We were passing out diapers at
4 one time.

5 And certainly the body wipes for people, because they
6 just at one point, they just weren't bathing and you couldn't,
7 you couldn't tell them to bathe. They weren't going to bathe,
8 okay. And then we know about the breakouts of kids who had
9 been bathing in the water. We know about the persons whose
10 wife's hair, their hair had fallen out. We know about those
11 situations. So.

12 Q. From your perspective, and based on the congregants and
13 the people you have talked to, would additional distribution of
14 faucet filters alleviate the need for Vernon Chapel to continue
15 distributing and delivering bottled water?

16 A. Hopefully, it would, in a timely manner. You know, it's
17 very interesting, when people come by the church they know the
18 PODs are there, some do, some don't, but it's some of the
19 reaction. And it happened very early that people would come by
20 the church and say, you know, it's like I'm being blamed for
21 the situation I'm in. And you know, we always give out water
22 with a smile and give out as much as we can to citizens who
23 need it. And so, yes, it would probably alleviate that. And
24 we're not in the water business, okay.

25 Q. And specifically with the faucet filters, have your

1 congregants told you anything about their experiences with the
2 faucet filters?

3 A. I have had people to come through the church picking up
4 water and I would ask them, how is your filter or how is -- you
5 know, and they said, well, my -- and I just heard this a few
6 minutes ago, and so this is the second time I have heard this,
7 that somebody's filter broke -- I mean, somebody's faucet broke
8 while trying to put on the filter and I found that to be very
9 interesting. So it does seem to be a problem.

10 And talking to maybe one of the seniors who, you
11 know, I talked to a person a couple weeks ago, I said, how long
12 was it before you changed your filter? And she said, I haven't
13 changed it in a while. I'm like, wow. So.

14 Q. And that, did that trouble you, that comment?

15 A. Yes. When you talk to a senior and she says, I haven't
16 gotten a filter, or I haven't changed it in a while, and what
17 is it, you're supposed to change them every month? And so it's
18 like anything else, often you change your furnace filter,
19 sometimes you forget and you go three months without changing
20 it, think about the water filter and people are not changing
21 it.

22 Q. Pastor Blake, do you have a busy schedule?

23 A. Yes, I do.

24 Q. And are you taking time out of that schedule to come and
25 talk to the Court today?

1 A. Yes, I am.

2 Q. Why did you choose to come here and testify today?

3 A. Because of the hurting of the people in Flint. I have
4 been to countless meetings, meetings with the State, meetings
5 with the Governor, countless meetings. And still listening to
6 the people say, this has got to be fixed.

7 The fact that the persons of Flint, whether it's in
8 my church or other churches or the community just coming by
9 the church, they don't trust what anybody says, really.

10 And a question has been posed to me, well, Pastor,
11 how do we get the trust back? And I don't know. Maybe if the
12 lead lines are changed, that will be a start. If more lines
13 are changed, that will be a tremendous start. That will begin
14 to win the people, I think, their trust back to them.

15 No one should have to drink out of filtered water.
16 And that's not the norm. And it seems like it's supposed to be
17 the norm for Flint. Yes, poverty is high, poverty is high in a
18 lot of cities, okay, but just because you have impoverished
19 people, we ought not treat them like third-world people.

20 MS. TALLMAN: No further questions, your Honor.

21 THE COURT: Thank you.

22 Mr. Murphy.

23 MR. MURPHY: Thank you, your Honor.

24 CROSS EXAMINATION

25 BY MR. MURPHY:

1 Q. Good morning, Pastor.

2 A. Good morning, sir.

3 Q. The food bank you mentioned to the Court that you get the
4 bottled water from --

5 A. Yes, sir.

6 Q. -- that food bank gets all that water from the State?

7 A. Yes, I know. I did a -- I had -- I went out there to meet
8 them, been part of their meetings, and yes, I do know.

9 Q. Is there a point of distribution in every ward in the
10 city, to your knowledge?

11 A. To my knowledge, yes.

12 Q. And water is readily available during the hours of
13 operation, correct?

14 A. Yes. I believe those hours, as he told me, might have
15 been 12:00 to 6:00 now.

16 Q. The high-rise apartment on Court Street that you
17 mentioned --

18 A. Yes, sir.

19 Q. -- do you know how many floors?

20 A. No, I don't. I understand there's two of them, the senior
21 complexes.

22 Q. Yeah, you said there was a high-rise apartment on Court
23 Street.

24 A. I think two towers there on Court.

25 Q. But you don't know how high?

1 A. No. When I got the information, I hadn't even had a
2 chance to go down there yet, just to see. I was going to go
3 down and see and just see what we could do and what -- a lot of
4 it is fact finding, when you hear something and you go find out
5 about it. So we haven't had a chance, because it was just this
6 week, we haven't had a chance to do the fact finding on it.

7 Q. Do you know if those apartments have filters in them?

8 A. No, I don't know, no, sir.

9 Q. Do you have a filter in your house, Pastor?

10 A. No, sir, I don't.

11 Q. And why don't you use a filter?

12 A. Because of the fixture that we have on our sink. It's a
13 sprayer and filters don't work on sprayers.

14 Q. Do you have a filtered pitcher?

15 A. No, sir, I don't. And we have looked at -- we did the
16 research on the Zero, we know that Zero is a very good pitcher,
17 but the reality is, why do I need a Zero pitcher when I have a
18 bottle of water? I'm just taking, going from one to the other.

19 Q. How many pastors are involved in Concerned Pastors?

20 A. It does fluctuate. I would say over 20.

21 Q. So if I say there's 20 churches involved, would that be
22 right, too?

23 A. The number, like I said, it fluctuates. I'm not sure. In
24 fact, we have a list that's more than 20, but when you have a
25 meeting you don't get a chance to see everybody.

1 Q. Do all 20 churches pass out water?

2 A. No.

3 Q. Do all 20 churches deliver water in some way, shape or
4 form?

5 A. No, sir, not that I know of.

6 Q. How do you get your bottled water, Pastor?

7 A. How do I get my bottled water?

8 THE COURT: You mean his church or personally?

9 MR. MURPHY: No, personally.

10 BY MR. MURPHY:

11 Q. I'm sorry, personally.

12 A. Personally, I go to Sam's and get a four-gallon bottle of
13 water.

14 Q. Have you ever been to a POD to get bottled water?

15 A. Have I gone to a POD to pick up -- no, I have gone to a
16 POD to look at their situation and see what they are doing, so
17 no. And I get water from my church, as well, because we pass
18 it out to our members.

19 Q. You said you probably distributed 55,000 cases of water?

20 A. Yes, sir.

21 Q. Just your church or the Concerned Pastors group?

22 A. No, sir, just our church.

23 Q. Of that 55,000 cases, was the bulk of that from the food
24 bank?

25 A. No, sir. Between January, between January and June, like

1 I said, when we were the flavor of the month, we were getting
2 donations from all over the country. We're a major
3 denomination in America and so -- and then just different
4 ministries across the nation. We have done numerous interviews
5 across the nation concerning the water situation in Flint and
6 so we were getting these donations and then when we would run
7 low and when we would run out we would call EMU food bank. So.
8 But I would say more than half of it came out of Vernon Chapel.

9 Q. You indicated you don't have a filter at your house
10 because you have a sprayer?

11 A. Yes, sir.

12 Q. Do you have other faucets in your house where you could
13 put a filter on them?

14 A. Quite possibly maybe in the bathroom. I'm not sure of
15 whether a filter can be put on that fixture, as well.

16 And I can hear you, one might say, well, why doesn't
17 he have a filter in the kitchen on the sprayer? Because the
18 reality is that I guess it's the way you live and the way you
19 are used to living. And the reality is that, again, if you're
20 not in Flint, you don't have to live by filtered water. And
21 not always living in Flint, the reality is that I want the
22 comforts of life and the comforts that I have had. And so
23 that's why I don't have a filter. That's why I'm not going to
24 change that fixture, while that will cost me some more money if
25 I go to the change the fixture as well, okay?

1 Q. So the needs of your congregation are served by what it is
2 that you are doing within your church water ministry?

3 A. Well, the reality is that we look at ourselves as a POD.
4 We wanted to be a POD and recognized as one at that moment.

5 Q. And what you say with respect to your church being a water
6 resource is true for quite a number of churches throughout the
7 Flint community, correct?

8 A. Yes, sir.

9 Q. Some within the Concerned Pastors may be carrying out that
10 water ministry like yours and some may not, is that correct?

11 A. True. True. And what we learned in all of that was that
12 at an evening meeting with the Concerned Pastors that Vernon
13 was doing a lot more than a whole lot of other churches where,
14 I mean, this was really almost a five-day, six-day operation
15 for us when this first started happening because of the
16 intensity of people needing water.

17 Q. Have you had the opportunity to look at a website, happens
18 to be called H2O Flint, I have a copy of it if you have never
19 seen it, at which the list of churches is made available to
20 everyone to see the 20 or 25 churches that have done the kind
21 of volunteer work that you have been doing?

22 A. Yes, sir, I believe I have seen some of those lists, and
23 even on the City of Flint's website, as well, going to some of
24 those sites and just kind of looked.

25 Q. Is there any kind of coordination among the churches to

1 pool their resources or allocate the work load or somehow reach
2 economies of scale to coordinate and work together to service
3 the community?

4 A. Yes, sir. We are trying. The problem with ministers is
5 interesting, to say the least.

6 Q. Is that organization that I was asking about taking place
7 within the Concerned Pastors that is the Plaintiff here, or in
8 some other form or some other organization or coalition?

9 A. The Concerned Pastors have discussed that coming together
10 and pooling our resources together so that we come out as one
11 voice and one body, and because each church is getting water
12 from different sources and we just wanted to make sure that we
13 could have an impact on the distribution of water in Flint to
14 help the citizens.

15 Q. The water that your church gets is at least in part from
16 the State?

17 A. Yes, the EMU food bank, yes, sir.

18 Q. And the EMU food bank?

19 A. Well, EMU food bank, yes, sir.

20 Q. And which means indirectly you're getting it from the
21 State --

22 A. Indirectly, yes, sir.

23 Q. -- as Mr. Murphy clarified.

24 Do you know if the other churches, this is if you
25 know, whether the other churches are also getting their water

1 from the State?

2 A. No, sir, I don't know where they are getting their water
3 from. Some denomination churches are getting still from their
4 denominations and we will return to getting water from our
5 denomination. They just approved something for Michigan, for
6 us. And so.

7 Q. You were here during the testimony in which there was
8 questions asked about the local plumbers, Local Union 370 and
9 their volunteering and offering to do plumbing work?

10 A. Sure. I heard that.

11 Q. And you were familiar with that offer and opportunity
12 given by those plumbers even before you heard it here today,
13 I suppose?

14 A. No, actually, I didn't, I didn't know they were doing
15 that. I thought they were just doing lead lines and that's
16 about it. It might be on a site. I didn't read it. I guess
17 if I could ask most of my congregants, they wouldn't say, oh,
18 yeah, that plumber will come and put your faucet on or
19 whatever. So no, I don't think it's out there like some
20 believe it's out there. They just think they are -- I don't
21 know who is really working it right now.

22 Q. That's not a resource that you have advertised or made
23 available to the people that you work with?

24 A. No, sir.

25 Q. What about the 211 call line, is that something that you

1 make known and use as a resource?

2 A. Actually, I have been in other meetings where people made
3 it, made it known to me that the 211 line was out there. And
4 reality is, I guess since we are distributing water, if it's
5 for something else that we don't have the resource, I have
6 told some persons, yes, call 211 and see if 211 can help you
7 out on that, because it's not always just about water, okay.

8 Q. Have you been made aware at any point in time of the
9 program that's being called Flint Water Works whereby young
10 unemployed people are being put to work through Mott Community
11 College and then sort of distributed throughout the community
12 to work at the various water centers?

13 A. Yes, I have.

14 Q. Have you?

15 A. I have. I have. Also, we filled out applications for
16 persons. We had persons to fill out applications to be trained
17 by Mott Community College. Quite possibly, we understand
18 Michigan Works does a liaison on a filter liaison situation
19 that will train, and also do some persons who might possibly
20 have a CDL be able to be truck drivers. So yeah, I have been
21 made aware of that.

22 Q. And have you received any assistance by the people coming
23 in, actually working with you?

24 A. No, we haven't.

25 Q. And is that something that is in process by your

1 application?

2 A. Would like to have spoken to certain several people about
3 it and -- but it hasn't happened yet. And we don't have an
4 application in for that. We have just -- we have called people
5 to say, do you need a job? Well, this is what's going on.
6 Okay, you can be a filter liaison. Mott will train you.
7 Because that's our responsibility as well to the community, to
8 give them those educational opportunities.

9 Q. And as a filter liaison, that's somebody who would assist
10 people in their homes with their filters?

11 A. Sure.

12 Q. Is that what you understand it to be?

13 A. Sure. And I guess judging from the State and the
14 testimony from the State this morning, that's still a work in
15 progress. It's not quite off the ground yet. Is that correct?

16 Q. I -- you may be speaking of a different program.

17 A. Okay.

18 Q. Flint Water Works, if you have made application, is well
19 under way.

20 A. Okay.

21 Q. Have you spoken with any of the other Concerned Pastors or
22 other clergy who have made use of the Flint Water Works program
23 and have found it effective?

24 A. No, I haven't.

25 Q. Do you work together with Crossing Water and Michael

1 Hood's organization?

2 A. No, we don't.

3 Q. So have you met with him in the past?

4 A. No, I haven't.

5 Q. Not even in the context of this lawsuit?

6 A. No.

7 Q. So this would have been the very first time seeing him or
8 hearing him today?

9 A. And hearing about their ministry, yes, sir.

10 MR. BERG: I have no further questions. Thank you.

11 THE COURT: Ms. Tallman, do you have any further
12 follow-up questions?

13 MS. TALLMAN: Nothing further, your Honor.

14 THE COURT: Do you need a minute to consult?

15 MS. TALLMAN: No. Nothing further.

16 THE COURT: Thank you, Reverend Blake. You may stand
17 down.

18 THE WITNESS: Thank you, your Honor.

19 THE COURT: Ms. Chaudhary, you have no further
20 witnesses, correct?

21 MS. CHAUDHARY: No, your Honor, we do not.

22 THE COURT: Let's reconvene at 12:35 and we will
23 continue with the State's witnesses. Did you want to --

24 MR. MURPHY: Only that, your Honor, we had discussed
25 this prior, and Flint was going to go after Plaintiffs closed.

1 THE COURT: You just have one witness, correct?

2 MR. KLEIN: Correct, your Honor.

3 THE COURT: And you want to call that person first,
4 then?

5 MR. KLEIN: Yes.

6 THE COURT: All right. We will do it that way.

7 MR. MURPHY: Thank you, Judge.

8 THE COURT: Court will stand in recess.

9 MR. MURPHY: 12:35, right?

10 THE COURT: About 45 minutes.

11 MR. MURPHY: 40, 45, minutes.

12 THE COURT: You may recess court.

13 THE CLERK: All rise. Court is now in recess.

14 (Recess taken from 11:53 a.m. to 12:49 p.m.)

15 * * *

16 THE CLERK: All rise. Court is back in session.

17 THE COURT: You may be seated.

18 Mr. Klein, are you taking the lead on this witness or
19 is it Mr. Berg?

20 MR. KLEIN: I am, your Honor.

21 THE COURT: Mr. Klein, you may call your first
22 witness.

23 MR. KLEIN: The City calls David Sabuda.

24 THE COURT: Mr. Sabuda, would you step forward,
25 please?

1 Would you pause right there for a minute. Raise your
2 right hand and be sworn.

3 * * *

4 DAVID SABUDA

5 was called as a witness, after having
6 been duly sworn to testify to the truth.

7 * * *

8 THE COURT: Please have a seat right up here in the
9 witness box.

10 THE WITNESS: Thank you, your Honor.

11 MR. KLEIN: Good afternoon, Mr. Sabuda.

12 THE COURT: Excuse me, counsel.

13 MR. KLEIN: Oh, I'm sorry.

14 THE COURT: You wait for the Court before you get to
15 start.

16 Would you pull the microphone up so that you can
17 speak right into the tip of it? Perfect.

18 THE WITNESS: That will work?

19 THE COURT: I think it will.

20 State your full name and spell your last name,
21 please.

22 THE WITNESS: My name is David Leonard Sabuda,
23 S-a-b, as in boy, -u-d, as in David, -a.

24 THE COURT: Now, Mr. Klein, you made proceed.
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DIRECT EXAMINATION

BY MR. KLEIN:

Q. Mr. Sabuda, do you currently hold a position with the City of Flint?

A. Yes, I do.

Q. What is that position?

A. I'm the Interim CFO, Chief Financial Officer.

Q. And that's the senior finance-related position in the City of Flint?

A. That is correct.

Q. If we can pull up Exhibit NN, and you will see there is a screen in front of you, Mr. Sabuda. Is Exhibit NN a copy of your bio through the time that you took your position with the City of Flint?

THE COURT: I don't think there is -- I don't think your exhibit is up on your screen.

MR. KLEIN: I have paper, if we're having trouble.

THE WITNESS: It's there.

THE COURT: Do you see it now?

THE WITNESS: Yes, it is.

BY MR. KLEIN:

Q. Okay. And does it fairly summarize your experience and education?

A. Will the pages move? There should be multiple pages.

THE COURT: How many pages is your CV?

1 THE WITNESS: There are, I believe, three.

2 THE COURT: Three pages, okay.

3 THE WITNESS: Three, two. Yes, absolutely.

4 THE COURT: Any objection to NN, Ms. Chaudhary?

5 MS. CHAUDHARY: Your Honor, Mr. Wall will be
6 responding.

7 MR. WALL: No objection, your Honor.

8 THE COURT: All right. NN is received.

9 MR. KLEIN: Thank you, your Honor.

10 BY MR. KLEIN:

11 Q. Very briefly, in terms of your background, am I correct
12 you're a CPA?

13 A. Yes, I am.

14 Q. And you have more than 25 years experience in senior
15 municipal finance positions?

16 A. That is correct.

17 Q. How long have you held your position with the City of
18 Flint?

19 A. Approximately 40 days.

20 Q. And since you took your position with the City of Flint
21 have you familiarized yourself with the City of Flint's
22 financial condition and financial resources?

23 A. Yes.

24 Q. How did you do that?

25 A. Speaking with staff, reviewing the general ledger and

1 reviewing the detailed general ledgers, working with cash
2 flows, and also working with the independent auditors in
3 various project activities.

4 MR. KLEIN: If we can pull up Exhibit MM.

5 THE COURT: Is that Mary, Mary?

6 MR. KLEIN: Yes.

7 BY MR. KLEIN:

8 Q. And I'll first ask you, is it large enough to read? I
9 know it's in fine print.

10 A. A little bit bigger, please.

11 Perfect. That's great.

12 Q. Thank you. What is that document?

13 A. This is a water fund 24-month cash flow for the City of
14 Flint.

15 Q. Okay. And is it a document that is maintained by the City
16 in the ordinary course of its business?

17 A. Yes.

18 Q. First of all, you said it's the water fund cash flow. Can
19 you briefly explain what the water fund is?

20 A. Absolutely. The water fund is a fund that accounts for
21 the water revenues and the water expenses for the City of
22 Flint.

23 Q. Okay. And does this exhibit include historical
24 information?

25 A. Yes, it does.

1 Q. Does it also include projected future information as far
2 as cash flow?

3 A. Yes, it does.

4 Q. And can you point out where on the document the future
5 information begins, if you can refer to a column heading?

6 A. Certainly. Can you --

7 Q. When I say point to, I don't mean literally point to it.

8 A. No, I got it.

9 Keep moving to your left, please. That will work
10 nicely.

11 The current information, we're currently working in
12 June 2016. We're in the middle of our independent audit and
13 we're working in June. July is also being worked on at the
14 same time because of the audit, and then we are projecting
15 August 2016 through June of 2017, which will be the last third
16 of the report.

17 Q. And is that, is July '16 through June of '17 the City's
18 current fiscal year?

19 A. Yes, it is.

20 Q. And that information begins to the right of the second
21 vertical bar on the graph, vertical line?

22 A. Yes.

23 Q. Okay. Is there a row or a line on the document that
24 summarizes the City's projected cash flow for the current
25 fiscal year through June of 2017?

1 A. There are two lines that would do that.

2 Q. And which two lines are that?

3 A. That would be the lines that are focused in red. That
4 would be the monthly cash flow that is either coming in or
5 going out as we are projecting for each month from July '16
6 through June of '17 and then the final line shows our expected
7 cash or projected cash position as we progress through the
8 fiscal year.

9 Q. So the two lines you're referring to are at the very left
10 entitled, net cash flow and then water fund ending cash
11 balance?

12 A. That is correct.

13 Q. Okay. With respect to net cash flow for the current
14 fiscal year, how many months are projected?

15 First of all, am I correct that the numbers in red
16 and in parentheses are negative numbers?

17 A. That is correct.

18 Q. And meaning that more cash is going out than is coming in?

19 A. That is correct.

20 Q. And for the current fiscal year how many months are in
21 red?

22 A. Eleven out of the twelve.

23 Q. What does the bottom line, literally and figuratively, the
24 water fund ending cash balance represent?

25 A. That is basically the cash balance that is available

1 within the water fund.

2 Q. And if you were to look at the actual cash balance for
3 June of 2016, so in other words, the last month of the just
4 completed fiscal year, what is the amount?

5 A. 28.6 million.

6 Q. And if you look at the projected cash balance for the last
7 month of the current fiscal year, that is, June of 2017, what
8 does that reflect?

9 A. 9.7.

10 Q. Okay. And I'll save you doing the math and represent to
11 you that the difference between the two is 18,899,080. Does
12 that sound about right?

13 A. Sounds about right.

14 Q. And does that reflect that the City projects a negative
15 cash flow in that amount for the current fiscal year?

16 A. That is correct.

17 Q. Okay. I want to look at some particular -- well, before I
18 move on, just as a matter of arithmetic to understand how the
19 math works here, am I correct that if you were to -- in the net
20 cash flow line for the current fiscal year, if you were to sum
21 the numbers there and then subtract it from the ending cash
22 balance at the end of June 2016, that would equal the July --
23 the June 2017 --

24 A. Correct.

25 Q. -- cash balance?

1 A. That is correct.

2 Q. Or stated differently, the net cash flow is flowing out of
3 the cash balance?

4 A. That is correct.

5 Q. Thank you.

6 I want to review a few particular line items on this
7 document and they are all in the cash disbursement section, so
8 the bottom half, more or less.

9 Do you see a line entitled purchase of water?

10 A. Thank you.

11 Q. Four lines down?

12 A. Yes. Okay. If you can move to the right, please.

13 Q. And in the upcoming -- well, I should say in the current
14 fiscal year, what is the projected amount the City will use to
15 purchase water?

16 A. We're anticipating that we're looking at \$12.9 million,
17 approximately, to purchase water.

18 Q. And that's the sum of the 5.9 million and the 7 million?

19 A. That is correct.

20 Q. And what is the -- strike that.

21 Can that money be used for any purpose other than
22 purchasing water?

23 A. Can only be used for purchasing water.

24 Q. And so it couldn't, for example, be used to establish a
25 door-to-door water delivery system for bottled water?

1 A. No.

2 Q. If you can look at a line entitled, lead line replacement
3 program, just about exactly halfway down, a little bit below
4 halfway down, do you see that?

5 A. I do.

6 Q. And what is the total expected expenditure for lead line
7 replacement in the current fiscal year?

8 A. We're anticipating \$11.1 million.

9 Q. Okay. And is that money that could be used for any
10 purpose other than lead line replacement?

11 A. No. Just lead line replacement only.

12 Q. And if you could look at a line entitled, KWA bond payment?

13 A. Yes.

14 Q. Approximately six lines from the bottom.

15 A. Uh-huh.

16 Q. Do you know what amount, the approximate amount that that
17 line item totals to?

18 A. 4.5 million.

19 Q. And is that money that can be used for any other purpose?

20 A. It's just for the bond payment.

21 Q. If we can look at Exhibit LL, first, is this a document
22 that's maintained by the City of Flint in the ordinary course
23 of its payment?

24 A. Yes.

25 Q. Excuse me one minute.

1 And what is this document?

2 A. This is a cash summary by account for the City of Flint
3 and it outlines the cash positions of the major funds of the
4 City of Flint.

5 Q. Okay. And is there a portion of the document that relates
6 to the water fund?

7 A. Yes, there is.

8 Q. And where is that on the document?

9 A. It would be fund 591.

10 Q. And is that on the second page of the document?

11 A. I believe so.

12 Q. If you can turn to the second page and, in fact, it's the
13 very last section of the document?

14 A. Yes.

15 Q. Okay. There's three, I assume the correct word is
16 accounts, identified under the water fund?

17 A. That is correct.

18 Q. The second account is labeled cash reserve. What does --
19 what do those dollars represent?

20 A. The 5.48 million represents a reserve that is required by
21 a bond covenant and must stay in position while the bond is in
22 position.

23 Q. Is -- are those dollars available for any other purpose?

24 A. No.

25 Q. If we can pull up Exhibit II, what is this document?

1 A. This is a transmittal document to the RTAB, which is --
2 the R stands for the --

3 Q. Receivership Transition Advisory Board?

4 A. That is correct. Thank you very much. I'm sorry.
5 Receivership Transition Advisory Board for the City of Flint.

6 Q. And is this a document maintained by the City in the
7 ordinary course of its business?

8 A. Yes, it is.

9 Q. And by the way, the last document that we looked at, the
10 cash flow document, was that also a document that was submitted
11 to RTAB?

12 A. That is correct.

13 Q. Okay. You -- first of all, am I correct that the
14 transmittal letter is from you?

15 A. That's correct.

16 Q. And you satisfied yourself as to the accuracy of the
17 information?

18 A. That is correct.

19 Q. Before submitting it to the RTAB?

20 A. That is correct.

21 Q. If we can just start with the -- well, page 1 of 10, which
22 is the first page following the transmittal memorandum, it's
23 entitled general fund, is that correct, fund 101?

24 A. That is correct.

25 Q. And does the City organize its finances by different

1 funds?

2 A. Yes, it does.

3 Q. And what do the different funds represent?

4 A. They represent different activities and different revenue
5 streams that the City receives for those activities in order to
6 conduct City business.

7 Q. And do each of the fund -- each of the fund -- the pages
8 for each of the funds identify the revenues and expenses
9 associated with the particular fund?

10 A. Yes.

11 Q. Is there a portion of this document that relates to the
12 water fund?

13 A. On this page, no.

14 Q. Of the document as a whole?

15 A. Oh, yes.

16 Q. And which page is that?

17 A. I want -- I believe it would be the last page, since it's
18 a 591, which would be 10 of 10, I believe.

19 Q. So 10 of 10, Bates 000223.

20 Okay. Do you have that in front of you?

21 A. Yes, I do.

22 Q. Very good. Before going through some of the line items, I
23 just want to have you explain the information in a few of the
24 columns that we're going to be focusing on.

25 There is a column captioned 2016 -17 amended budget.

1 Do you see that?

2 A. I do.

3 Q. Is that the budget for the current fiscal year?

4 A. Yes, it is.

5 Q. And next to that is 2016-17 activity, 7-31-2016. Is that
6 the activity for the first month of the current fiscal year?

7 A. Yes, it is.

8 Q. And is this the most recent report that's been prepared?

9 A. Yes, it is.

10 Q. I'm going to ask you questions about some of the line
11 items beginning with the revenue line items. The first is
12 labeled charges for services rendered. What does that
13 represent?

14 A. That would represent water billings to the customers of
15 the City of Flint.

16 Q. So that's the sum of all the water bills that the City
17 expects to issue in the current fiscal year?

18 A. That is correct.

19 Q. Now, does that represent water bills that were paid?

20 A. No, it does not.

21 Q. Does the City maintain its books on an accrual or cash
22 accounting basis?

23 A. On an accrual basis for this operating fund.

24 Q. Okay. So this doesn't mean that the City expects to
25 receive \$32,211,749 in payments on the water bills, correct?

1 A. That is correct.

2 Q. And likewise, for the year-to-date balance as of
3 6-30-2016, it did not, in fact, receive 30,032,025, correct?

4 A. That is correct.

5 Q. Have Flint residents been paying their water bills at
6 normal rates?

7 A. No, they have not.

8 Q. At approximately what rate have they been paying them?

9 A. Approximately 44 percent.

10 Q. And what's a typical rate for the City of Flint?

11 A. Approximately 90 to 92 percent.

12 Q. Now, are the unpaid water bills reflected on this page,
13 this income and expense report?

14 A. The charges for services rendered number would be a net
15 value at the end of the fiscal year. So yes, to answer your
16 question, yes, the -- it would be reflected on that, on that
17 number.

18 Q. Well, does the -- does the charges for services rendered
19 reflect the total of the bills that are sent out or the cash
20 received?

21 A. Total of the bills sent out.

22 Q. Okay. And for -- how are unpaid bills reflected in the
23 City's financial reports?

24 A. They would be, the unpaid bills would be on the balance
25 sheet as a receivable.

1 Q. So it's an account receivable?

2 A. That's correct.

3 Q. Now, are you familiar with the State's statute that
4 granted Flint water users some relief from their unpaid water
5 bills?

6 A. Yes, I am.

7 Q. Can you describe that statute?

8 A. Yes. Each rate payer, if you're a residential, would
9 receive a 65 percent credit on their monthly bill. If you're a
10 commercial rate payer you would receive a 20 percent credit on
11 your monthly bill.

12 Q. Okay. So if I understand, if hypothetically a Flint water
13 user had used \$1,000 worth of water during a certain period of
14 time they would receive a \$650 correct credit, assuming it's a
15 residential user?

16 A. That is correct.

17 Q. And the same calculation with a different percentage for
18 commercial users?

19 A. That is correct.

20 Q. Now, did the State, in fact, grant a portion of that
21 relief -- let me take a step back.

22 How much, how many dollars are we talking about?

23 A. So the initial, the initial draw from the State was in
24 June, we received \$29 million.

25 Q. Okay. So the City has, in fact, received \$29 million from

1 the State to be applied against the water bills of Flint water
2 users, correct?

3 A. The outstanding water balances, yes.

4 Q. Now, does that 29 million reflect revenue on this report?

5 A. No, it does not.

6 Q. Where, where would it be reflected in the financial
7 reports of the City of Flint?

8 A. It would reduce the receivable balance that's due and
9 outstanding.

10 Q. Now, in the 2016-17 budget that we're looking at, what is
11 the difference, that is, what is the mathematical difference
12 between the changes, charges for services rendered and the
13 total revenues of the water fund, approximately?

14 A. 10 million -- if you don't include the State revenues,
15 you're looking at \$10.3 million.

16 Q. Okay. So even if the City collected all of its water
17 bills, it would be roughly \$10 million short of paying the
18 operating expenses of the Water Department, correct?

19 A. That is correct.

20 Q. Now, is that typical?

21 A. No, it is not.

22 Q. What, approximately, what percentage of the City's
23 operating expenses for its Water Department are typically
24 covered by water bills, charges for services rendered?

25 A. I'm sorry, could you repeat the question?

1 Q. Yes.

2 Actually, let me go at it a little different way, so
3 we can strike that question.

4 If you can pull up Exhibit JJ.

5 Do you have it in front of you now?

6 A. Yes, I do.

7 Q. Thank you. What is this document?

8 A. This is the City of Flint, Michigan, comprehensive annual
9 financial report, fiscal year ending June 30th, 2015.

10 Q. Is it the last -- is it the most current comprehensive
11 annual financial report?

12 A. Yes, it is.

13 Q. And in laymen's terms, might this be referred to as an
14 audited financial statement?

15 A. Yes.

16 Q. If you can turn to page 1 of 2, and by Bates number I'm
17 referring to the numbers in the lower left corner of the
18 document.

19 A. Okay.

20 Q. If you can, that would be on page 0240. Does this reflect
21 the author -- the auditor's opinion as to the soundness of the
22 City's financial reporting?

23 A. I'm not on that page. We're not on that page.

24 Q. 0240?

25 A. Oh, 0240. Okay. Where are we here? Okay. I'm sorry.

1 At the top here.

2 Q. So let me reask the question.

3 A. Please.

4 Q. Does that page reflect the auditor's opinions as to the
5 soundness of the City's financial reporting?

6 A. Yes, it does.

7 Q. And what is that opinion?

8 A. The opinion is that it fairly represents in all material
9 respects the respective financial position of the governmental
10 activities and the business-type activities of the City.

11 Q. Okay. If you can turn to page 3 of 12, 3-12, which is
12 Bates 0270, and if you can let me know when you have that in
13 front of you?

14 A. Very good.

15 Q. Because my eyes aren't good enough to read this screen.

16 A. I'm there.

17 Q. Okay. What financial information is on this page?

18 A. This would be the statement of revenues, expenses and
19 changes in fund net position for the proprietary funds, which
20 would be the sewer fund and the water fund.

21 Q. So the information here includes the audited financials, a
22 portion of the audited financials for the water fund?

23 A. That is correct.

24 Q. In those audited financials, what percentage of revenues
25 does user charges represent?

1 A. Pretty close -- almost all of it.

2 Q. So there is not a \$10 million difference between user
3 charges and operating expenses in the last completed fiscal
4 year?

5 A. That is correct.

6 Q. Or I should say the last audited fiscal year?

7 A. That is correct.

8 Q. I misspoke.

9 In your experience, in a normally operating,
10 financially healthy water system, would you expect user charges
11 to represent the -- substantially all of the revenues of the
12 Water Department?

13 A. Yes.

14 Q. If you can return to the Exhibit II, which is the report,
15 the budget and expense report or revenue and expenditure
16 reports submitted to RTAB, and still on page 10 of 10, moving
17 on to the next or the third line item, State revenues, what do
18 State revenues represent?

19 A. These would be State grants received from the State of
20 Michigan to the City of Flint.

21 Q. And for what purposes were the -- in the current fiscal
22 year reflected in the amended budget, what purpose were those
23 grants given?

24 A. They would be used for our water purchases.

25 Q. From the Great Lakes Water Authority?

1 A. That's correct.

2 Q. And is the City able to use those dollars for any other
3 purpose?

4 A. No, we are not.

5 Q. Moving down, what does local grant revenue represent?

6 A. That would be, there is a local foundation that is also
7 granting dollars to the City of Flint and those dollars are
8 represented in the budget to actual.

9 Q. And were those dollars granted for a specific purpose?

10 A. Yes, they were.

11 Q. And what is that purpose?

12 A. Water purchases for the Great Lakes Water Authority.

13 Q. Is the City able to use those dollars for any other
14 purpose?

15 A. No, we are not.

16 Q. Okay. Now, I note that there are no dollars budgeted for
17 local grant revenues in the 16-17 budget, but that there is
18 approximately \$1.94 million recorded in the July 31, 2016
19 accounting period. Why is that?

20 A. We initially, in 15-16, the City of Flint was expecting
21 \$4 million. We received 2 million of the 4 million in fiscal
22 year 15-16 and then in July of 16-17 we received the balance of
23 the \$2 million. There is a little -- there is an accrual there
24 that's being cashed out, but at the end of the day, \$2 million
25 that was supposed to be in '16 is now received in '17.

1 Q. So hypothetically it showed up July 1 instead of June 30
2 and that makes a difference in the financial period in which
3 it's recorded?

4 A. That's correct.

5 Q. Moving down a line entitled, drawings from fund balance,
6 what does that represent?

7 A. I'm sorry, repeat the question.

8 Q. Drawing from fund balance.

9 A. Oh.

10 Q. Do you see that line?

11 A. I do.

12 Q. What does that represent?

13 A. That would -- that would be we're drawing -- we're looking
14 for 4.2 million from the fund balance of the water fund to pay
15 our bills.

16 Q. And in laymen's terms, what does that mean, looking to the
17 fund balance?

18 A. We're -- we are -- we are -- we are drawing funds from
19 basically the balance of assets that are available to pay our
20 bills.

21 Q. So even with the substantial grant money received from
22 the State and from a private, private source, the City was
23 approximately \$4.2 million short of being able to balance its
24 operating budget?

25 A. That's correct.

1 Q. Do you see a line beginning net position and earning net
2 position about two-thirds of the way down?

3 A. Yes.

4 Q. And am I correct, and for the amended budget the beginning
5 number is 14.2 million, approximately, and the ending net
6 position is 10 million, approximately?

7 A. Yes.

8 Q. Is that difference, the 4.2 million, drawings from fund
9 balance, reflected in the revenue portion of this statement?

10 A. Yes.

11 Q. Okay. Let's turn to the expense side of the report,
12 beginning with general government.

13 What does general government represent?

14 A. General government is the indirect costs and the retiree
15 health care costs that this fund is obligated to pay on an
16 annual basis.

17 Q. Okay. By indirect costs, can you explain what you mean?

18 A. Certainly. There are support departments that support the
19 water fund, such as treasurer, IT, and those funds, finance,
20 administration, those funds support the water fund and then
21 they are charged, the water fund is charged a fee for those
22 services.

23 Q. So if I understand, for example, the water fund and every
24 other department within the City pays some portion of your
25 salary?

1 A. That is correct.

2 Q. And in your experience, is that typical for indirect cost
3 allocations to be charged to subunits of municipal governments?

4 A. Yes.

5 Q. Now, you also mentioned retiree health care benefits would
6 be reflected in that line?

7 A. Yes.

8 Q. Is that a substantial expense to the City?

9 A. Yes, it is.

10 Q. In your experience, does the City have disproportionately
11 large obligations to health care, health benefit obligations to
12 its retired work force?

13 A. This is larger than normal.

14 Q. Is the City a substantially smaller city than it was a
15 number of years ago?

16 A. Yes.

17 Q. Now, on what basis does the City make the indirect cost
18 allocations that are reflected in this statement?

19 A. The City, a couple of years ago, hired a third-party
20 accounting firm to develop an indirect cost rate and the City
21 follows that plan in charging the indirect costs.

22 Q. Okay. So the amount of those indirect costs isn't an
23 arbitrary number, it's a formula that was recommended by an
24 independent third party?

25 A. Yes.

1 Q. Okay. Now, if you can move down a line for public works,
2 what does public works represent?

3 A. That would be a -- where the City would record
4 capital-type expenditures that would be invested into the
5 water plant or into the distribution system.

6 Q. Can you give me an example of what those sorts of
7 expenditures -- for example, in fiscal year ended 2016 it
8 reflects expenditures of \$1.58 million. Can you give me an
9 example of what those dollars went for?

10 A. Water meters that would be placed into people's homes and
11 repair -- or then repair of machinery.

12 Q. And I note that in the 2016-17 amended budget there are no
13 dollars budgeted for public works, is that correct?

14 A. That is correct.

15 Q. Why is that?

16 A. We, we have a declining cash flow and we are watching
17 every penny that we can in order to pay our bills on a monthly
18 basis and on an annual basis and the budget was set up so that
19 we could make -- we could make our -- make payments that we can
20 afford.

21 Q. Okay. The next line is labeled utilities. What does that
22 represent?

23 A. That would be the operation of the water plant at the City
24 of Flint and the water distribution system for the City of
25 Flint.

1 Q. Would that include the purchase of water from the Great
2 Lakes Water Authority?

3 A. Yes, it would.

4 Q. Okay. Now, I note that the year-to-date balance as of the
5 end of last fiscal year is approximately 24.4 million and the
6 budgeted amount for the current fiscal year is 33.6 million.
7 What explains the roughly, oh, I guess \$8 million or \$9 million,
8 \$9 million difference between those two numbers?

9 A. What took place back in 15-16 is that with everything
10 being developed with the State and how credits were going to be
11 determined, the cash flow position was uncertain to the water
12 fund, so the City stopped making major repairs and basically
13 held back spending to ensure that it stayed within its revenue
14 stream that it was receiving and to stay within its cash
15 balance, if it had one -- or its fund balance, excuse me -- if
16 it had one. And so they basically stopped spending in order
17 to, in order to maintain the fund and stay in compliance with
18 State law.

19 MR. KLEIN: Excuse me for a minute. I have gotten my
20 pages shuffled a bit here.

21 THE COURT: Mr. Klein, do you have much more for this
22 witness?

23 MR. KLEIN: I have perhaps five minutes, your Honor.

24 THE COURT: All right. You're at your time.

25 MR. KLEIN: Okay. I apologize. I was hoping since

1 we only had one witness.

2 BY MR. KLEIN:

3 Q. Now, the line item we haven't talked about yet is
4 transfers out. What does transfers out represent?

5 A. That is a return on equity to the general fund.

6 Q. And is that a transfer that was recognized by the external
7 auditor in the last completed financial -- last audited
8 financial we looked at a few minutes ago?

9 A. Yes, it was.

10 Q. Now, assume hypothetically that the City did not make the
11 transfer out to the general fund. What effect would that have
12 on the City's overall finances?

13 A. The general fund would then fall short on their revenue
14 picture and services and that side of the City's operation
15 could theoretically be reduced because the \$1.259 million
16 didn't come into the general fund.

17 Q. Well, when you say theoretically be reduced, if, in fact,
18 the general fund had \$1.25 million less money, would there be
19 any alternative but to reduce other operations?

20 A. Either other operations or to reduce fund balance, if
21 there was any fund balance available.

22 Q. Okay. I want you to assume that Plaintiffs have submitted
23 a proposed order to the Court asking that the Court require the
24 City to provide, quote, "door-to-door delivery for every
25 household connected to the Flint water system."

1 And I also want you to assume that the State will
2 offer evidence that the expected cost of doing so is in the
3 neighborhood of \$9 million a month. I just want you to make
4 those assumptions. What effect would an unbudgeted \$9 million
5 expense have on the City of Flint?

6 A. It would, it would be devastating. Especially we would
7 pay that out of the water fund and there would be no funds
8 available and there would be no fund balance in order to make
9 that payment.

10 Q. Is it possible to operate the -- let me take a step back.

11 When you say no fund balance, how many months of
12 \$9 million a month before the water fund was completely drained
13 dry?

14 If you can look back at Exhibit II, page 10, I think
15 there is some information as to the fund balance.

16 A. That would help.

17 Could you repeat the question again, please?

18 Q. Yeah. If the City was forced to pay \$9 million a month
19 for this relief, how long before the water fund balance was
20 completely drained, emptied?

21 A. One and-a-half months.

22 Q. And is it feasible for the City to operate with a zero or
23 negative fund balance?

24 A. We would -- on a negative fund balance we would be not in
25 compliance with State law.

1 Q. Would your answer -- well, let me ask it differently. If
2 the cost of the proposed relief was only half of the initial
3 estimate, or four and-a-half million dollars a month, would
4 you -- would your answer be different as to the effect on the
5 City?

6 A. No, it would not.

7 Q. Would your answer be different if the cost were a million
8 dollars a month?

9 A. No, it would not.

10 Q. Would even a half million dollars a month have severe
11 consequences for the City's finances?

12 A. It would be a severe consequence.

13 MR. KLEIN: Okay. I have no further questions.

14 THE COURT: Mr. Murphy, do you have any questions?

15 MR. MURPHY: No, your Honor.

16 THE COURT: Thank you.

17 MR. MURPHY: None.

18 THE COURT: Mr. Wall, are you taking this witness,
19 then?

20 MR. WALL: I am, your Honor.

21 THE COURT: You may cross examine.

22 THE WITNESS: Excuse me, your Honor, the water on the
23 bench, may I? Is this for me or --

24 THE COURT: That was for another witness. There is a
25 cup behind you in the pitcher. Help yourself.

1 CROSS EXAMINATION

2 BY MR. WALL:

3 Q. Good afternoon, sir. I just have a few questions.

4 You said you have been in your position for about
5 40 days?

6 A. That is correct.

7 Q. And your predecessor in the position was somebody named
8 Jody Lundquist, correct?

9 A. That is correct.

10 Q. She left in May, right?

11 A. Late May, early June.

12 Q. And in between the Jody Lundquist departure and your start
13 there was a Deputy CFO, Dawn Steele?

14 A. That is correct.

15 Q. Is she still in that position?

16 A. She is.

17 Q. She works for you, correct?

18 A. That is correct.

19 Q. And you said that in the 40 days you have been with the
20 City of Flint you have familiarized yourself with the City's
21 finances with the help of staff, is that right?

22 A. Yes.

23 Q. Was Ms. Steele among the staff who helped you familiarize
24 yourself?

25 A. Yes, she was.

1 Q. And did she have a role in the preparation of the
2 documents that you have been presenting to the Court today?

3 A. Yes.

4 Q. Could we have Exhibit II, please?

5 We're looking at Exhibit II on the page about the
6 water fund. There was a line on there you were just discussing
7 called transfers out?

8 A. That is correct.

9 Q. That's transfers from the water fund to the general fund,
10 correct?

11 A. That is correct.

12 Q. And you have described that as return on equity, correct?

13 A. Correct.

14 Q. It's a way of using water fund money to support the rest
15 of the operations of the City, correct?

16 A. It's moved to the general fund, yes.

17 Q. Now, the water fund isn't the only fund in the City's
18 budget, is it?

19 A. That is correct.

20 Q. The City has a general fund?

21 A. Yes.

22 Q. Among others?

23 A. Yes.

24 Q. And the general fund began July of 2016 with a balance of
25 around 11 million, is that right?

1 A. I would have to see the sheets, but --

2 Q. Which document would that have been in?

3 A. Here we go. It's coming up here on my screen.

4 Okay. We had a -- so what fiscal year are we in?

5 Q. Beginning of fiscal, this fiscal year, so July 1.

6 A. We're looking at a \$5.832 million beginning fund balance
7 for the general fund, as the budget reflects.

8 Q. Now, you have mentioned that the City has received about
9 \$29 million from the State in response to the water crisis, is
10 that correct?

11 A. Correct.

12 Q. And that money was to apply as an offset to water bills
13 that the City wasn't receiving, correct?

14 A. Correct.

15 Q. And the State has provided other money to the City,
16 correct?

17 A. Yes.

18 Q. In response to the water crisis?

19 A. Yes.

20 Q. About how much is that?

21 A. I would have to go to the cash flow sheet that we have.

22 Q. You don't know. It's millions of dollars, though,
23 correct?

24 A. No, I would -- in order to give you a good answer, I would
25 like to see the cash flow sheet, if we have the cash flow

1 sheet.

2 Q. How much money has the State paid to cover the City's
3 transfer, the City's purchase of water from the Great Lakes
4 Water Authority?

5 A. Approximately -- let's see, it would be -- I know of 3.9,
6 and then there is another 3.9 coming up, so we're looking at 8,
7 approximately 14 million.

8 Q. Right. So that's millions of dollars, correct?

9 A. Yes.

10 Q. That's in addition to the \$29 million to offset receipts
11 from water bills to customers, correct?

12 A. Yes.

13 Q. Now, you said that the difference, the projected
14 difference for fiscal year '17 between revenue and expenses for
15 the water fund would be about \$10 million, correct?

16 A. I'm sorry, repeat the question.

17 Q. I may have misheard this, so correct me if I'm wrong, but
18 I understood you to testify that the difference between revenue
19 and expenses for fiscal year '17 for the water fund would be
20 about \$10 million.

21 A. I don't think I testified to that.

22 Q. Well then, I may have misheard you and let's move on.

23 A. Okay. I would -- okay.

24 Q. If we could pull up Exhibit JJ, the comprehensive
25 financial report, if you could turn to the 48th PDF page of

1 that, it's the water fund page.

2 So for fiscal year 2015 the water fund began with a
3 negative balance of 1.9 million, correct?

4 A. Yes.

5 Q. And it ended, the water fund ended fiscal year 2015 with a
6 positive balance of \$9.9 million, correct?

7 A. Yes.

8 Q. Now, are you aware that your predecessor as CFO for the
9 City of Flint, Jody Lundquist, submitted a declaration in this
10 case?

11 A. That's my understanding that she did.

12 Q. Have you reviewed that declaration?

13 A. No.

14 Q. She would have been relying on the same financial
15 information you now have available to make her declaration,
16 correct?

17 A. I'm sorry, repeat that question.

18 Q. She would have been relying on the same City financial
19 information to make her declaration that you have, the same
20 sorts of records?

21 A. I don't know.

22 Q. Okay. Well, let's have City's Exhibit O brought up.

23 If you could just take a moment, actually, I have --
24 may I approach? I have a copy I could give the witness.

25 THE COURT: Excuse me?

1 MR. WALL: May I approach to give the witness an
2 exhibit?

3 THE COURT: A hard copy, sure.

4 BY MR. WALL:

5 Q. Could you take a moment to just look at that? I'm going
6 to direct your attention to a couple of paragraphs in this
7 declaration.

8 You see at the bottom that on the last page of the
9 exhibit, if you could bring that up, that's Ms. Lundquist's
10 signature there, right?

11 A. I can't --

12 Q. Well, I'll ask you to assume that it's Ms. Lundquist's
13 signature right above the notary's seal.

14 A. Very good.

15 Q. Now, if you could look at paragraph 5 of this declaration,
16 you see that Ms. Lundquist projected that the Water Department
17 would incur a deficit of \$9 million for the current fiscal year
18 ending June 30th, 2016?

19 A. I see that.

20 Q. And she signed this declaration in April of 2016?

21 A. Yes.

22 Q. So that was two months before the end of the fiscal year,
23 right?

24 A. Correct.

25 Q. She was projecting a deficit for the water fund of

1 \$9 million?

2 A. That's what it says here, yes.

3 Q. The City water fund did not run a deficit for the fiscal
4 year ending June 30th, 2016, did it?

5 A. I don't know yet. We are in the middle of the audit and
6 we're putting that information together right now.

7 Q. Are you aware that Dawn Steele submitted a declaration in
8 this case?

9 A. Yes.

10 Q. Could we bring that up? It's Plaintiffs' Exhibit 167.

11 MR. WALL: May I approach, your Honor?

12 THE COURT: Yes.

13 THE WITNESS: Thank you.

14 BY MR. WALL:

15 Q. If you could just turn to the last page, you see this was
16 signed by Dawn Steele?

17 A. Okay.

18 Q. She signed it on June 21, 2016. Do you see that?

19 A. Yes.

20 Q. It was what, nine days before the close of the fiscal
21 year?

22 A. Yes.

23 Q. Now, this would have been, what, two months, roughly,
24 after the Lundquist declaration, correct?

25 A. Yes.

1 Q. Turn to paragraph 5 of Ms. Steele's declaration. Do you
2 see it says that the City projects that the Water Department
3 will incur a deficit of \$5.7 million for the current fiscal
4 year ending June 30th, 2016?

5 A. I see that, yes.

6 Q. Now, that didn't turn out to be correct, either, did it?

7 A. I don't know. We're in the middle of the audit.

8 Q. We will get there.

9 If you look at the next sentence of her -- next
10 sentence of paragraph 5 of this declaration, do you see that it
11 indicates that the City will run out of unrestricted cash funds
12 by December?

13 A. I see that line, yes.

14 Q. That's the City Water Department, the water fund, correct?

15 A. Yes.

16 Q. It's your understanding she is saying that the City water
17 fund would run out of unrestricted cash funds by December of
18 2016?

19 A. That's what she is saying here.

20 Q. This declaration was submitted nine days before the close
21 of the fiscal year?

22 A. Yes.

23 MR. WALL: One moment, your Honor. I'm worried about
24 my exhibits falling off the podium here, so let me just
25 collect them here.

1 THE COURT: You can set them over here, if you want.

2 MR. WALL: Thank you, your Honor.

3 BY MR. WALL:

4 Q. Could we bring up City Exhibit II?

5 You recognize this document, sir, do you not?

6 A. Yes.

7 Q. What is it?

8 A. This is the budget to actual revenue expenditure report
9 for the City of Flint for the period ending July 31st, 2016.

10 Q. Right. And let me direct your attention, if I --

11 MR. WALL: I'm having trouble reading the screen,
12 your Honor. May I just step away from the mic. to get close
13 enough to the screen to read it?

14 THE COURT: Do what you have to do.

15 MR. WALL: Okay. Thank you. If you have trouble
16 hearing me, let me know.

17 BY MR. WALL:

18 Q. If you could look at the 2015-2016 amended budget column.

19 A. Yes.

20 Q. Now, that was the budget that was approved by the City,
21 correct?

22 A. Yes.

23 Q. For fiscal year '16?

24 A. For fiscal year 15-16, yes.

25 Q. And the City's budget had predicted a net of revenues and

1 expenditures of minus \$5.2 million and some change, correct?

2 A. Correct.

3 Q. The year-to-date balance on June 30th, 2016, was positive
4 \$7.5 million and change, correct?

5 A. I'm sorry, could you repeat the question?

6 Q. Well, if you look at the next column over, you look at the
7 year-to-date balance for June 30, 2016.

8 A. Yes, okay. Go ahead.

9 Q. The revenues and expenditures was positive \$7.5 million?

10 A. Yes.

11 Q. And June 30th, 2016 was what, nine days after Dawn Steele
12 signed her declaration?

13 A. Yes.

14 Q. If you could look a little bit further down on the line
15 that says ending that position, do you see that?

16 A. Yes.

17 Q. That's the ending net position for the water fund,
18 correct?

19 A. That's the estimated ending net position for the water
20 fund.

21 Q. Estimated under the 2015-2016 amended budget, correct?

22 A. At 6-30-16, that would be the estimated ending net
23 position.

24 Q. Okay. Well, let me just direct your attention to the
25 first column there, 2015-2016 amended budget, and look at the

1 row ending net position. What's the figure there?

2 A. 6.7 million.

3 Q. If I'm looking -- that's the beginning net position, I
4 believe. Could you look at the ending net position?

5 A. Oh, I'm sorry. 1.489 million.

6 Q. So the City's amended budget for 2015-2016 assumed
7 that the ending net position for the water fund would be
8 1.489 million?

9 A. At the end of 15-16.

10 Q. And based on the documents you have used today, the
11 year-to-date balance on 6-30-2016 was, in fact, 14.25 million,
12 more or less?

13 A. That's what the report is showing.

14 Q. Well, do you expect that report is off by 13 million?

15 A. We're in the middle of an audit and that number will
16 change and that number could go up or it could go down.

17 Q. Do you expect it to be off by \$13 million?

18 A. It could go -- at the end of the day it could -- I don't
19 know until we finish the audit and the numbers are in the books
20 and we're final. I don't know what that number is going to be.

21 Q. So it could be \$1.5 million when you're done with the
22 audit?

23 A. It could be.

24 Q. Or it could be 13 million higher than 14 million?

25 A. Could be.

1 Q. Now, the City has a policy about the balance and reserves,
2 right?

3 A. Yes.

4 Q. Each fund is supposed to have a reserve?

5 A. I'm sorry, could you repeat the question?

6 Q. Each fund is supposed to have a reserve under the City's
7 policy?

8 A. Yes.

9 Q. And the reserve of the City's policy for the water fund
10 calls for a 25 percent reserve, is that correct?

11 A. Yes.

12 Q. That's 25 percent of projected expenditures, correct?

13 A. Yes.

14 Q. Now, if you look at the document we have just been looking
15 at, there is a row near the bottom called, designated reserve
16 for policy. Do you see that?

17 A. Yes.

18 Q. And that's the calculation of how much money should be in
19 the reserve under the City's policy, correct?

20 A. Correct.

21 Q. And on June 30th, 2016, the amount of money that the
22 City's policy suggested should be in that reserve was
23 \$11.95 million?

24 A. I'm sorry, you're going to have to repeat the question.

25 Q. Just a second. I need to look at this.

1 The designated reserve per policy for June 30th,
2 2016, was \$11.95 million?

3 A. The designated reserve was 11.954 million.

4 Q. That's the amount the City's policy would have required to
5 be available as a reserve, correct?

6 A. Correct.

7 Q. And according to this document, at least, subject to
8 future audits, the actual amount in the water fund was
9 \$14.25 million?

10 A. Can you define amount?

11 Q. Well, I'm looking at the figure that's listed on the row,
12 ending net position.

13 A. Okay. So the ending net position would be \$2.295 million
14 more than the designated reserve policy.

15 Q. All right. So there was more money the City had in
16 reserve in the water fund than called for by the City's policy?

17 A. No. Where you're missing is, this is an accrual
18 statement. The revenues, when we talked about the charge for
19 services rendered, that's an accrual. That doesn't represent
20 cash coming in. That represents bills that have been -- that
21 have been sent out, okay. And now we're going to collect on
22 those bills. It doesn't represent cash.

23 Q. That wasn't my question. But let me ask you, let me ask
24 you a different question.

25 A. Very good.

1 Q. This does not reflect the cash that the State is going to
2 pay the City to offset customers' bills in the upcoming fiscal
3 year, correct?

4 A. That's correct. It's on the balance sheet.

5 MR. WALL: Give me one moment.

6 (Pause in the proceedings at 1:48 p.m.)

7 Q. You haven't done any calculations yourself about how much
8 any particular remedy in this case would cost, have you?

9 A. No.

10 Q. Now, you testified to some millions of dollars that the
11 State has provided the City in response to the water crisis and
12 during your testimony with the City's counsel you indicated
13 that some of that money was for the purchase of water, correct?

14 A. Yes.

15 Q. That was for the purchase of water from the Great Lakes
16 Water Authority that's delivered through the City's pipes to
17 customers, correct?

18 A. Correct.

19 Q. The City -- the State has provided the City with no money
20 to purchase bottled water for its residents, has it?

21 A. To the best of my knowledge, no.

22 Q. And the State has provided no money to the City to provide
23 water filters to its residents, correct?

24 A. To the best of my knowledge, no.

25 Q. And the State has provided no money to the City to teach

1 its residents how to use and maintain and install water
2 filters, correct?

3 A. To the best of my knowledge, no.

4 MR. WALL: Nothing further, your Honor.

5 THE COURT: Thank you.

6 Mr. Klein, do you have any follow-up questions?

7 MR. KLEIN: No, I don't, your Honor.

8 THE COURT: Very well. Mr. Sabuda, thank you. You
9 may stand down.

10 THE WITNESS: Thank you, your Honor.

11 THE COURT: Mr. Klein, does the City have any further
12 witnesses?

13 MR. KLEIN: No, it does not, your Honor.

14 THE COURT: Mr. Murphy, you may call your first
15 witness.

16 MR. MURPHY: Thank you, your Honor. Mr. Kuhl will be
17 taking this first witness.

18 MR. KUHL: We're going to call Bryce Feighner of the
19 DEQ.

20 THE COURT: Is Mr. Feighner in the courtroom?

21 MR. KUHL: He is right there.

22 THE COURT: Are you Mr. Feighner?

23 THE WITNESS: Yes, I am.

24 THE COURT: Come forward, please. Pause right there.
25 Raise your right hand and be sworn.

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* * *

BRYCE FEIGHNER

was called as a witness, after having
been duly sworn to testify to the truth.

* * *

THE COURT: Have a seat right over here, please, in
the witness box.

Please adjust that microphone so that you can speak
into the tip of it. Pull it close if you need to.

Would you state your full name and spell your last
name, please?

THE WITNESS: Bryce Elwin Feighner. The last name is
spelled F, as in Frank, e-i-g-h-n-e-r.

THE COURT: Pronounce it again.

THE WITNESS: It's a hard g, Feighner.

THE COURT: Feighner. Thank you, sir.

Counsel, you may proceed.

MR. KUHL: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. KUHL:

Q. Good afternoon, Mr. Feighner. Can you tell us who you're
currently employed by?

A. I'm employed by the Department of Environmental Quality.

Q. And what position do you hold at DEQ?

A. I'm Chief of the Office of Drinking Water and Municipal

1 Assistance.

2 Q. Does the Office of Drinking Water and Municipal Assistance
3 have any regulatory responsibility with respect to the Flint
4 water supply?

5 A. Yes. We are the primacy agency for administering the
6 EPA's Federal Safe Drinking Water Act in the State of Michigan.

7 Q. When did you become chief of the office?

8 A. August 1st of this year.

9 Q. Did you have any involvement in the office's or DEQ's
10 responsibility for enforcing the Safe Drinking Water Act in
11 Flint in 2014 or 2015?

12 A. I did not.

13 Q. So you had no responsibility when the City was drawing its
14 water source from the Flint River, is that correct?

15 A. That's correct.

16 Q. Now, when did you become chief of the office?

17 A. August 1st of this year, 2016.

18 Q. Was August the first time that you had worked for the
19 Office of Drinking Water and Municipal Assistance?

20 A. No. I spent most of my early career in the drinking water
21 program, first with public health beginning in 1990, and then
22 in response to this particular incident after the first of this
23 year, the Director asked me, because of my drinking water
24 experience, to work on the response efforts. And so I started
25 working in Flint virtually every day beginning in January of

1 this year.

2 Q. Are you the only person at DEQ that's working on resolving
3 the issues with respect to the Flint water supply?

4 A. No. There is approximately ten folks in the DEQ that
5 basically are working full-time on Flint response efforts and
6 then there is another 30 or so folks that have some portion of
7 their responsibility working on Flint.

8 MR. KUHL: Eric, can you pull up Exhibit 30?

9 BY MR. KUHL:

10 Q. Do you recognize this letter, sir?

11 A. I do.

12 Q. What is it?

13 A. It's a letter to the City of Flint informing them of the
14 results of their first six-month monitoring period for lead and
15 copper under the lead copper rule.

16 Q. Who is this letter addressed to?

17 A. Addressed to the Mayor of Flint.

18 Q. And what's date on the letter?

19 A. The date is August 15, 2016.

20 MR. KUHL: Eric, can you turn to page 5?

21 BY MR. KUHL:

22 Q. And can you tell us, sir, is this your signature on this
23 letter?

24 A. Yes, it is.

25 Q. Since Eric has went through the pages, does this appear to

1 be a true and correct copy of your August 15 letter to Mayor
2 Weaver?

3 A. I believe it is, yes.

4 Q. Is the Flint water system currently violating the lead and
5 copper rule of the Safe Drinking Water Act?

6 A. No.

7 MR. KUHL: Eric, can you turn back to the first page?

8 BY MR. KUHL:

9 Q. Now, on the first page of this letter, sir, did you advise
10 the City of DEQ's belief that it was not violating the lead and
11 copper rule of the Safe Drinking Water Act?

12 A. Yes, we did.

13 Q. Now, didn't you send a draft of this letter to the
14 U.S. EPA before it was sent to Mayor Weaver?

15 A. Yes, we did.

16 Q. And why did you do that?

17 A. Because of EPA's direct involvements in the response to
18 this crisis and partnership with the City and the State, and
19 because we, the DEQ, report to the EPA on these matters, we
20 wanted to make sure all the details were correct.

21 Q. Was a final version of this letter sent to the U.S. EPA?

22 A. Yes, it was.

23 MR. KUHL: Eric, can you go back to page 5?

24 BY MR. KUHL:

25 Q. And did you copy an individual from the U.S. EPA on your

1 letter?

2 A. Yes, we did.

3 Q. Since the sending of this letter have you had meetings
4 with the U.S. EPA?

5 A. Yes. We meet essentially once per week with EPA technical
6 folks to discuss the current situations.

7 Q. Since, since the time you sent this letter, has the U.S.
8 EPA ever advised you that it disagreed with DEQ's conclusion
9 that Flint was not violating the lead and copper rule of the
10 Safe Drinking Water Act?

11 A. They have not.

12 Q. All right. I'm going to come back to this letter in just
13 a minute, but I first want to ask you, is Flint currently
14 adding corrosion control treatment to its water?

15 A. Yes. In October of last year they went back on the Great
16 Lakes Water Authority water which contained an orthophosphate
17 treatment at approximately 1 part per million, but then in
18 December of last year, based on the recommendations of EPA and
19 other academic experts, the City boosted that level up to
20 approximately 3.1 parts per million to enhance and expedite the
21 recoating of the pipes.

22 Q. And is it still adding that supplemental orthophosphate at
23 this time?

24 A. Yes, it is.

25 Q. What's the purpose of adding orthophosphate to the water?

1 A. Essentially it's to coat the pipes so that the water is
2 not in direct contact with the metals to prevent the leaching
3 of those metals into the water.

4 Q. And in this case, it's to prevent the leaching of lead
5 into the drinking water, is that correct?

6 A. That is correct.

7 Q. What is the action level in drinking water that is
8 established by the lead and copper rule?

9 A. The 90th percentile of all the compliance samples
10 collected during a monitoring procedure must be at or below
11 15 parts per billion.

12 Q. Can you generally tell us how it is a water supply
13 calculates the 90th percentile?

14 A. So the 90th percentile is a statistical analysis, but in
15 simple terms, basically, ten percent of the compliance samples
16 during a monitoring period could have a result in excess of
17 15 percent per billion.

18 Q. And so if a 90th percentile calculation comes back and
19 it's below the 15 part per billion action level, the water
20 supply is under the action level, correct?

21 A. If the 90th percentile is at or below 15 parts per
22 billion, there is no action required in response to that.

23 Q. Does the lead and copper rule set any requirements as
24 to how often a water supply has to monitor its system?

25 A. Yes. So Flint is doing what we would call full-scale

1 monitoring now because of the source change, but they are
2 required to monitor a certain number of samples based on
3 population, and in the case of Flint that number is 60 samples
4 for a six-month monitoring period.

5 Q. And how many monitoring periods per year are required
6 under the lead and copper rule?

7 A. They have to do two six-month monitoring periods at this
8 point.

9 Q. All right. And is the first period from January to June?

10 A. Correct.

11 Q. And the second period is from July to December, right?

12 A. Correct.

13 Q. Now, if a water supply is adding corrosion control
14 treatment and it's under the action level, does that water meet
15 the requirements of the lead and copper rule of the Safe
16 Drinking Water Act?

17 A. Yes.

18 Q. Now, does, does Flint have a sampling program to determine
19 compliance with the lead and copper rule?

20 A. Yes.

21 Q. Can you describe that program for us?

22 A. Yes. So during the first six-month period we established,
23 in cooperation with EPA and the City, a number of compliance
24 sites of sentinel monitoring that we established as sentinel
25 sites. The purpose of those sentinel sites was to track the

1 progress of the corrosion control treatment to see how
2 effective it was during that first six-month monitoring period.

3 MR. KUHL: Eric, can you pull up Exhibit 20?

4 Your Honor, can I approach the witness?

5 THE COURT: Yes.

6 MR. KUHL: I have a hard copy.

7 BY MR. KUHL:

8 Q. Do you recognize what that document is?

9 A. This appears to be a list of all of the lead and copper
10 sample results from February. I'm not sure what the end date
11 is here, but these appear to be sentinel monitoring results.

12 Q. Based upon the data DEQ obtained from the sentinel
13 sampling program, can you describe what it's learned about
14 the situation in Flint?

15 A. Sure. So the sentinel monitoring program really started
16 the end of February and continued through April of this year
17 and then the purpose was to assess the effectiveness of that
18 orthophosphate treatment to see if we were, in fact, recoating
19 the pipes. So there were five rounds of sentinel samples
20 during that period of time. And the 90th percentile during the
21 first round, I believe, was 40 parts per billion, and during
22 the last round, I believe it was 16, still over the action
23 level. However, you can see that it showed significant
24 progress in terms of lead leaching and inhibiting that, so.

25 Q. All right. That's a description of the sentinel sampling

1 program. Is there another sampling program being implemented
2 in Flint now?

3 A. Yes. So once we completed the sentinel monitoring and
4 established that the corrosion control treatment was working,
5 then we wanted to establish a longer term program to determine
6 compliance at the qualifying tier one sites.

7 The federal lead and copper rule requires that
8 compliance monitoring be conducted at tier one sites or
9 high-risk sites if they are available, and essentially, those
10 consist of single-family homes with lead service lines or
11 copper plumbing built between '82 and '88 with lead solder.
12 And so by the time the sentinel monitoring was over, through a
13 cooperative effort between the State, the City and EPA, we had
14 personally inspected something like 3,700 homes in the City of
15 Flint and identified about 120 lead service lines. And so we
16 wanted to include in the extended sentinel monitoring program
17 those highest risk sites, number one, so that we could assure
18 that when we were completed with that program we knew the state
19 of compliance, and we wanted to do that over a longer period of
20 time; so monthly as opposed to every two weeks.

21 Q. Can you describe what DEQ has learned from the extended
22 sentinel sampling program?

23 A. Yes. So we have had four consecutive monitoring periods
24 under the extended sentinel program, so May, June, July and
25 August, for which the 90th percentile value of lead was at

1 or below the 15 part per billion action level, and so that's
2 significant progress particularly when you compare those sites
3 which have higher risk factors associated with them over the
4 original sentinel sites.

5 MR. KUHL: Eric, can you bring up Exhibit 22?

6 May I approach the witness, your Honor?

7 THE COURT: Yes.

8 BY MR. KUHL:

9 Q. I have handed you Exhibit 22, which is a hard copy of the
10 extended sentinel sampling program. Do you recognize that,
11 sir?

12 A. These appear to be the results from the extended sentinel
13 sample program for lead and copper.

14 MR. KUHL: All right. At this point I want to go
15 back to your August 15 letter. Eric, can you pull that back
16 up?

17 BY MR. KUHL:

18 Q. And we talked about the two six-month sampling periods,
19 and is it correct that the first six-month sampling period for
20 the City of Flint was January to June 2016?

21 A. Correct.

22 Q. Did Flint exceed the 15 part per billion action level for
23 that monitoring period?

24 A. Yes, they did.

25 Q. Doesn't that exceedance create a violation of the Safe

1 Drinking Water Act?

2 A. Not really. The way the lead copper rule is written is
3 that it's called a treatment technique exceedance. And so if
4 the qualifying compliance sites collected -- the results from
5 those sites collected during the defined monitoring period
6 exceed the action level of 15 parts per billion, then the
7 public water supply has to complete certain actions, such as
8 public education, lead service line replacement, et cetera.

9 MR. WALL: Your Honor, I don't have an objection to
10 him testifying to his understanding of the lead and copper
11 rule, but the meaning of the lead and copper rule is obviously
12 a legal conclusion, and I would object if this is coming in
13 for the truth of what he is saying.

14 MR. KUHL: That's absolutely right. Well, the
15 Court, of course, is going to make the determination.

16 THE COURT: The objection is sustained.

17 Proceed, counsel.

18 BY MR. KUHL:

19 Q. Did DEQ order Flint to undertake those actions required
20 under the rule?

21 A. Yes, we did.

22 Q. And are those actions outlined in this letter?

23 A. Yes, they are.

24 MR. KUHL: Eric, can I ask you to turn to page 3 of
25 this letter?

1 BY MR. KUHL:

2 Q. Is one of those requirements that DEQ ordered Flint to
3 undertake to begin replacing the lead service lines?

4 A. Yes.

5 Q. As you sit here today, do you have any reason to believe
6 that Flint is not complying with the requirements outlined by
7 the DEQ?

8 A. I have no reason to believe that.

9 Q. All right. We talked about the sampling for the first
10 six-month period. Is the sampling now being conducted for the
11 second six-month period in Flint?

12 A. Yes.

13 Q. And that runs from July to December of 2016, correct?

14 A. Correct.

15 Q. And are those initial results -- well, have initial
16 results been obtained?

17 A. So four rounds of -- or excuse me -- three rounds during
18 that monitoring period of the extended sentinel sampling have
19 been obtained, and to date, all three of those rounds have a
20 90th percentile value less than the action level of 15.

21 Q. So those are, what months are those results from?

22 A. Those would be June, July and August.

23 Q. Does the outside temperature affect the levels of lead
24 found in drinking water?

25 A. Absolutely. In fact, when water supplies are allowed to

1 go on reduced monitoring after they meet certain criteria and
2 then they are below the action level, et cetera, then some
3 supplies are allowed to sample only once per year instead of
4 during six-month periods. And when that annual monitoring
5 period is allowed, they must collect those samples during the
6 warmest months, June, July, August and September.

7 Q. And why is it that those samples have to be taken in the
8 warmest months?

9 A. Because warm water enhances all sorts of chemical
10 activity, including leaching of lead, and so it's a worst-case
11 scenario, if you will.

12 Q. So you would expect to see higher levels of lead in the
13 water during the summer months of June, July, August, is that
14 correct?

15 A. Everything else being equal, yes, absolutely.

16 Q. And so now we have went through that sampling period in
17 June, July and August, and it was under -- the sampling results
18 came back under the 15 parts per billion action level, correct?

19 A. At or below the 15 parts, yes.

20 Q. And now as we get into the cooler months, the expectation
21 is that would -- the lead levels would be reduced?

22 A. That is the expectation.

23 Q. Can you tell me, sir, has Flint ever requested an
24 exemption from having to meet the 15 part per billion action
25 level?

1 A. They have not.

2 Q. Now, at this time is DEQ still recommending that people
3 filter the drinking water before drinking it?

4 A. Yes, we are.

5 Q. Well, if the drinking water is currently under the 15 part
6 per billion action level, why is DEQ still recommending the use
7 of filters?

8 A. Well, we can't actually make a compliance determination in
9 terms of the action level until after the six-month monitoring
10 period is over, so that's going to be in January of next year
11 when we can actually look at all the results collected during
12 the six-month period.

13 Also, our experts, which include experts from EPA,
14 experts from academia such as Virginia Tech, et cetera, when we
15 have looked at the data, they have concluded that most of the
16 high results are from particulates. And so we want to make
17 sure that all residents are protected even though the 90th
18 percentile values are good, even though the average dissolved
19 concentrations are good, we still want to make sure all the
20 residents are protected in case there is some particulates that
21 are still floating about, if you will.

22 Q. And so you will revisit that decision in January 2017, is
23 that correct?

24 A. Yes.

25 Q. All right. I want to change gears here now. Have you

1 | seen the filters that have been distributed for use in the City
2 | of Flint?

3 | A. I have.

4 | Q. Are those filters rated to remove a certain amount of lead
5 | in the drinking water?

6 | A. So they are certified by NSF at the 150 part per billion
7 | level to be effective.

8 | Q. Has DEQ found --

9 | THE COURT: What is NSF?

10 | THE WITNESS: National Sanitation Foundation, a
11 | third-party testing organization with headquarters in Ann
12 | Arbor, but they are used to certify many different drinking
13 | water products, additives, appurtenances, et cetera.

14 | THE COURT: Is it a Government agency?

15 | THE WITNESS: No, it is not a Government agency.

16 | BY MR. KUHL:

17 | Q. Has DEQ found some of the drinking water samples in Flint
18 | that contained lead in excess of the 150 parts per billion?

19 | A. Yes, we have.

20 | Q. Has DEQ participated in a study to determine if the
21 | filters were effective in removing lead above the 150 parts per
22 | billion rating?

23 | A. Yes. The Unified Coordination Group, which was a group of
24 | all of the Federal and State partners working on the response
25 | efforts in Flint which I was a part of, commissioned the CDC to

1 do a study of the filters and how effective they were on those
2 very high levels.

3 MR. KUHL: Eric, can you pull up Exhibit 3, please?

4 BY MR. KUHL:

5 Q. Now, is this a copy of that report that was requested from
6 CDC?

7 A. I believe it is, yes.

8 MR. KUHL: Eric, can you just flip through it real
9 quick so we can see the pages?

10 BY MR. KUHL:

11 Q. Do you recognize that as the report you're referring to,
12 sir?

13 A. Yes.

14 MR. KUHL: Eric, can I ask you to turn to page 4 of
15 this report?

16 BY MR. KUHL:

17 Q. Now, the chart that's depicted on page 4, did it identify
18 the levels of lead that were used to test the effectiveness of
19 these filters?

20 A. Yes.

21 Q. What was the highest level of lead that was used to
22 determine the effectiveness of these filters?

23 A. 4,080 parts per billion.

24 Q. Now, samples have been found in Flint that have exceeded
25 the 4,080, is that correct?

1 A. I believe they have, yes, uh-huh.

2 Q. Has it been a lot?

3 A. No. It's been a small handful. None of the sentinel
4 samples or extended sentinels have exceeded that number.

5 Q. So there has been no samples that have come back since
6 June of 2016, is that correct, that have exceeded the 4,080
7 level?

8 A. I believe that's correct, yes.

9 Q. Now, was CDC asked to opine as to whether or not they
10 thought the filters were effectively treating the water to
11 remove lead?

12 A. Yes, they were.

13 Q. And just so it's clear, CDC, we're referring to what, sir?

14 A. Center for Disease Control.

15 Q. Did CDC issue a letter?

16 A. Yes, they did.

17 MR. KUHL: Eric, can you go to the last page of this
18 exhibit?

19 BY MR. KUHL:

20 Q. Is that the letter, sir, that CDC issued?

21 A. Yes.

22 Q. And in this letter did CDC find that the filters were
23 effective in treating the water to remove lead?

24 A. Yes, they did.

25 Q. Based upon this report and the CDC letter, has DEQ

1 concluded that the use of filtered water would protect all
2 Flint residents, including pregnant women and children, from
3 exposure to lead contaminated water?

4 A. Yes.

5 Q. Just a couple more questions, sir.

6 Is it important for people in Flint to use water from
7 the tap for purposes of helping to remediate the water system?

8 A. Yes. The treatment of orthophosphate is more effective
9 the more people normally use their water for all purposes and
10 the water has to move through the system to recoat the pipes.

11 Q. And so the orthophosphates are in the water and unless it
12 moves through the system it can't coat the pipes properly, is
13 that correct?

14 A. Correct, yes.

15 Q. And, in fact --

16 THE COURT: So which one of you are testifying?

17 MR. KUHL: I'm sorry, your Honor.

18 BY MR. KUHL:

19 Q. Why is it important to have orthophosphate move through
20 the water system?

21 A. Because --

22 THE COURT: Didn't he just answer that question?

23 MR. KUHL: I didn't believe he did, but I apologize.

24 THE COURT: Well, take an answer if you need to.

25 ///

1 BY MR. KUHL:

2 Q. Go ahead.

3 A. The source of the lead in the tap water is primarily from
4 customer-owned piping, either from the service line or interior
5 plumbing in the house, and so unless the customer uses that
6 water to pull the phosphate through their own pipes to the tap,
7 the effectiveness of that treatment will not be realized.

8 Q. Have you heard of the Flush for Flint program?

9 A. Yes. So in April a number of the technical experts got
10 together and looked at all the data available to date, which
11 included the thousands upon thousands of residential samples
12 collected by residents in the City of Flint, including the
13 sentinel sample results I referenced earlier, it included the
14 sampling results collected by Virginia Tech University.

15 The conclusion of that data summit was that the water
16 itself was getting dramatically better in terms of dissolved
17 lead, but whenever we were seeing a high lead result, it was
18 because of particulates still in the system; hence, that group
19 recommended that the State and the City implement a flushing
20 campaign to remove those particulates out of the system. That
21 became known as the Flush for Flint campaign.

22 Q. All right. So it was important for people to use the
23 system in order to effectively continue the treatment, correct?

24 A. Correct.

25 Q. And if people are using bottled water instead of using tap

1 water, will that negatively affect the ability of the system to
2 heal itself?

3 A. It definitely would reduce the amount of water flowing
4 through the system.

5 MR. KUHL: I think that's all the questions I have,
6 your Honor. I would like to move to exhibit -- excuse me --
7 admit Exhibits 3, 30, 20 and 22.

8 THE COURT: Which ones are those?

9 MR. KUHL: Exhibit 3 was the -- excuse me.

10 Exhibit 30 was the August 15 letter from Mr. Feighner
11 to Mayor Weaver.

12 Exhibit 20 was the sentinel sampling program.

13 Exhibit 22 was the extended sentinel sampling
14 program.

15 And Exhibit 3 was the Flint filter challenge
16 assessment.

17 THE COURT: Is there some reason you didn't move to
18 admit those when you were dealing with them?

19 MR. KUHL: My practice has been to always do it at
20 the end just for continuity purposes.

21 THE COURT: Any objection?

22 MR. KUHL: No objection, your Honor.

23 THE COURT: The exhibits are received.

24 Mr. Klein, do you have any questions for this
25 witness?

1 MR. KLEIN: I do not, your Honor.

2 THE COURT: Thank you.

3 Mr. Wall, you may cross examine.

4 MR. WALL: I do have a few, your Honor.

5 THE COURT: Let me suggest that you don't balance
6 those on the rail. Why don't you put them on the top there.

7 MR. KLEIN: Your Honor, part of the problem might be
8 that I left some papers up there that are taking his space.
9 May I remove them?

10 THE COURT: Sure.

11 MR. WALL: Thank you, your Honor. May I proceed?

12 THE COURT: Please.

13 CROSS EXAMINATION

14 BY MR. WALL:

15 Q. Mr. Feighner, is it?

16 A. Feighner.

17 Q. I'm sorry.

18 A. That's all right.

19 Q. I have been wondering how to pronounce your name.

20 You're Chief of the Office of Drinking Water and
21 Municipal Assistance?

22 A. Correct.

23 Q. And you have held that position since the beginning of
24 August of this year?

25 A. Correct.

1 Q. So for about a month and-a-half, correct?

2 A. Correct.

3 MR. WALL: Could we pull up Exhibit 30, please?

4 That's State's 30.

5 If you could turn to the next page, please. And then
6 focus, scroll down to there, stop there.

7 BY MR. WALL:

8 Q. Now, let me read, this is the letter that you sent to the
9 City of Flint about their exceedance of the action level for
10 the first half of 2016, correct, sir?

11 A. Yes.

12 Q. Let me just read you this paragraph, because I want to
13 focus on the precise language of it.

14 An action level exceedance is not a violation of the
15 Michigan Safe Drinking Water Act -- I'll skip the citation --
16 but it does trigger other requirements under Act 399. Do you
17 see that?

18 A. Yes.

19 Q. So an exceedance of the action level is not a violation of
20 the Safe Drinking Water Act, correct?

21 A. Correct.

22 Q. And by the same token, being below the action level
23 doesn't mean you're in compliance with the Safe Drinking Water
24 Act's lead and copper rule, correct?

25 A. That in and of itself, correct, yeah.

1 Q. In fact, there is nothing in this letter which you copied
2 to the U.S. EPA that find that the City of Flint is in
3 compliance with the Safe Drinking Water Act, is there?

4 A. I don't believe so. You're correct.

5 Q. The lead and copper rule requires that a municipal
6 drinking water system such as the City of Flint optimize
7 corrosion control, correct?

8 A. Correct.

9 Q. And you have some familiarity with those regulations?

10 A. I do.

11 Q. They -- optimizing corrosion control is defined to mean
12 that lead levels at the consumer's tap must be minimized,
13 correct?

14 MR. KUHL: Objection, your Honor. That misstates the
15 rule. Why don't you show him a copy? I think that would be
16 fair.

17 MR. WALL: I'm asking him for his understanding; I'll
18 then show him the rule.

19 THE COURT: The objection is overruled.

20 Do you understand the question?

21 THE WITNESS: Could you repeat it? And could I go
22 back to a previous question he asked me, your Honor?

23 THE COURT: Well, that kind of confuses things.

24 THE WITNESS: Okay, well, that's fine.

25 THE COURT: You can pick that up on redirect.

1 THE WITNESS: Okay. Sure.

2 THE COURT: So rephrase, please.

3 BY MR. WALL:

4 Q. Do you know how optimizing corrosion control is defined?

5 A. Essentially, yes.

6 Q. What's your understanding?

7 A. It's different for small and larger systems. Flint is a
8 little bit unusual in the fact that they are operating under
9 an EPA order, and the optimum corrosion control treatment has
10 set -- has been set by EPA under this order situation until
11 their distribution system is optimized.

12 MR. WALL: Your Honor, I didn't expect that we would
13 be discussing the language of the lead and copper rule before
14 he began testifying about compliance, but I do have a copy of
15 it here. Would you mind if it's not marked as -- pre-marked
16 as an exhibit, but would you mind if I show the witness?

17 THE COURT: To show the witness, no, go ahead.

18 BY MR. WALL:

19 Q. Mr. Feighner, I have shown you a copy of an excerpt from
20 the Federal regulations. Are you familiar with that document?

21 A. Basically, yes.

22 Q. Not expecting you to have memorized every word of it, but
23 section -- this is part -- Title 40 of the Code of Federal
24 Regulations, isn't it?

25 A. Yes.

1 Q. And we have their Section 141.2 definitions, correct?

2 A. Yes.

3 Q. Could you please turn to page 375 where there is a
4 definition of optimum corrosion control?

5 A. Yes. I'm there.

6 Q. I'm just going to read it to you and I'm going to ask you
7 if I have read it correctly, so if you would follow along, I'd
8 appreciate it.

9 Optimal corrosion control treatment for the purposes
10 of subpart I of this part only means the corrosion control
11 treatment that minimizes the lead and copper concentrations at
12 users taps, while ensuring that the treatment does not cause
13 the water system to violate any national primary drinking water
14 regulations.

15 Did I read that correctly?

16 A. I believe you did, yes.

17 Q. And subpart I is the lead and copper rule, isn't it?

18 A. Yes.

19 Q. The definition of optimum corrosion control doesn't
20 mention the action level for lead, does it?

21 A. No.

22 Q. In fact, an exceedance of the action level for lead
23 triggers additional requirements under the lead and copper
24 rule, correct?

25 A. That's correct.

1 Q. And those additional requirements are not imposed if you
2 do not exceed the action level for lead, correct?

3 A. For a large system, that's correct.

4 Q. A large system such as the City of Flint, correct?

5 A. Correct, yep.

6 Q. Mr. Feighner, you discussed a -- some decline, I don't
7 want to put words in your mouth, but I think it would be fair
8 to summarize your testimony this afternoon as suggesting there
9 has been some decline in the 90th percentile lead levels in the
10 City of Flint, is that fair?

11 A. That's fair.

12 Q. Now, when you speak of a decline, you're not necessarily
13 referring to the lead levels in any individual home, are you?

14 A. That's correct. It's the 90th percentile value.

15 Q. So in some levels -- I mean, I'm sorry, in some homes in
16 Flint lead levels have actually increased in the last four
17 months, isn't that correct?

18 A. That's probably true. I would guess that's true with
19 25,000 samples, yes.

20 Q. The 90th percentile lead levels are statistics that look
21 across the aggregate of many individual homes, correct?

22 A. Correct.

23 Q. But people aren't drinking water from the aggregate of all
24 the homes in the City of Flint, are they?

25 A. No.

1 Q. It's the home, the water in their own home that they care
2 about?

3 A. Certainly.

4 Q. In their individual homes in Flint where there have been
5 dramatic spikes in lead levels in particular months, isn't that
6 correct?

7 A. I suspect that's true.

8 MR. WALL: Could we pull up the State's Exhibit --
9 State's amended Exhibit 22?

10 BY MR. WALL:

11 Q. Now, you're familiar with this document, right?

12 A. Yes.

13 Q. And this has lead results for different homes within the
14 extended sentinel sampling program?

15 A. Yes.

16 Q. That's a sampling program that your agency is conducting,
17 correct?

18 A. Well, to clarify, residents collect the samples and we are
19 assisting community members and the City with that sampling.

20 Q. You're collecting, your staff are collecting the samples,
21 correct?

22 A. No. Residents collect their own samples.

23 Q. Sorry, let me rephrase that question.

24 The residents are turning the samples in to MDEQ
25 staff, correct?

1 A. They go to the State lab, yes.

2 Q. And the State is analyzing those samples?

3 A. Correct.

4 Q. The City itself isn't either collecting or analyzing the
5 samples, correct?

6 A. Some City members have assisted in collecting.

7 Q. Why don't we just scroll down so we can see this includes
8 four different sentinel sampling sets, this first page, and I
9 believe the next page say X1 over at the far light. That's for
10 the extended sentinel sampling round one, correct?

11 A. Yes.

12 Q. If you could just flip down a page.

13 I believe this is the second page and it is also for
14 extended sentinel sampling, page one, round one, correct?

15 A. I --

16 Q. Could you flip down until we get to round two?

17 So there we have results for extended sentinel
18 sampling round two, correct?

19 A. (Nodding head.)

20 Q. If you could answer verbally?

21 A. Yes.

22 Q. And further down there is results for extended sentinel
23 sampling rounds three and four, correct?

24 A. Yes.

25 Q. Now, these are the most recent rounds of sampling that the

1 City of Flint -- sorry -- the MDEQ has conducted, correct?

2 A. Correct.

3 Q. And they began in late May of -- and early June and ran
4 through, what was it?

5 A. August.

6 Q. August, right.

7 Now, on the very first page I would like to direct
8 your attention -- if you could scroll down, please. Hold on.

9 I'm sorry, the next page, please.

10 I hate to have to do that, but please go back up.

11 I'm sorry. I must have missed it.

12 And scroll down on the first page here. Can you
13 scroll down slightly further?

14 Well, I'm going to have to come back to this exhibit.

15 Are we sure this is State's Exhibit 22, amended?

16 (Discussion held off the record at 2:31 p.m.)

17 BY MR. WALL:

18 Q. Let me move on. We may come back to that.

19 Now, the sentinel sampling program and the extended
20 sampling program are different, correct?

21 A. Yes.

22 Q. They have different sampling pools, correct?

23 A. Correct.

24 Q. So the residences where they are sampling are different,
25 correct?

1 A. Not all of them. There is a good bit of overlap.

2 Q. There is overlap, but the sentinel sampling program had a
3 much larger pool, correct?

4 A. That's correct.

5 Q. And it included some tier one homes and some tier two
6 homes?

7 A. Correct.

8 Q. And the extended sentinel sampling program has a much
9 smaller pool, correct?

10 A. That's correct.

11 Q. And not all the homes that are in the extended sentinel
12 sampling program were tested during each round of the sentinel
13 sampling program, correct?

14 A. That's probably -- I'm sure that's true, yes.

15 Q. And vice versa?

16 A. Uh-huh, yes.

17 Q. Not all the homes tested during the sentinel sampling
18 program were tested during the extended sentinel sampling
19 program, correct?

20 A. That's true.

21 Q. So that the sampling pools are -- I mean, they are not
22 directly comparable, so the results wouldn't be comparable
23 between the two types of sampling, correct?

24 A. I wouldn't say that. There is a good bit of overlap
25 between that had the same samples, and the second extended

1 sentinel samples had the higher risk tier one sites, more of
2 them. So there was a higher percentage of high-risk sites.

3 Q. Let me just ask you about the 90th percentiles for the
4 extended sampling.

5 A. Sure.

6 Q. Sentinel -- I'm tripping over my words. I apologize.

7 The extended sentinel sampling rounds one through
8 four, you indicated that each of the 90th percentile values for
9 those sampling rounds were 15 parts per billion or below,
10 correct?

11 A. That's correct.

12 Q. That means nine out of ten homes are at 15 parts per
13 billion or below in each of those rounds of sampling, correct?

14 A. Correct.

15 Q. But as many as potentially ten out of every 100 homes were
16 above that, correct?

17 A. Well, we could give you the exact percentage, but as many
18 as could be, to be below the action level, yes, but they
19 weren't.

20 Q. Well, we will go through that.

21 A. Okay.

22 Q. Did you calculate the 90th percentile for the extended
23 sentinel sampling round one sites?

24 A. Did I do it personally, no, I did not.

25 Q. Do you happen to know what it is?

1 A. For the extended --

2 Q. If was 12 parts per billion, correct?

3 A. Yeah, that's correct.

4 Q. And for the second round of extended sentinel sampling
5 which was conducted in June, the 90th percentile value was
6 15 parts per billion?

7 A. Correct, yeah.

8 Q. And for the third round of extended sentinel sampling
9 which was conducted in July, the 90th percentile was back to
10 12 parts per billion, correct?

11 A. That's correct.

12 Q. And then for the fourth round of extending sentinel
13 sampling conducted in August, the 90th percentile was 15 parts
14 per billion, correct?

15 A. I don't believe that's correct.

16 Q. Well, we have the spreadsheet here.

17 A. I believe it was --

18 Q. If I brought it up on the computer, could you show us how
19 to calculate it?

20 A. I could, but I, I thought it was 14. Didn't we -- don't
21 we have that exhibit? But it's close to that.

22 Q. So, there is this -- well, there is a difference between
23 14 and 15. But when you look at the Excel spreadsheet, your
24 row one is actually a header rather than a data field, and if
25 you count down the 90th percentile including the header, you

1 get to 14, but if you include just the data you get to 15. Do
2 you recall that?

3 A. I know that the header exists and it counts as a row, but
4 we did take that into account when we looked at the results.

5 Q. Okay. We have all the data here. Would you be able to --
6 if I put up the data on the screen would you be able to show us
7 how to calculate the 15 or the 90th percentile?

8 A. I'm not sure I could, without looking at our actual
9 exhibit that we prepared and our results.

10 THE COURT: The exhibit has what, the raw data in it?
11 Is that what you're trying to find?

12 THE WITNESS: Can you list them in sequential order?

13 THE COURT: Mr. Feighner --

14 MR. WALL: Yes, we have that spreadsheet.

15 THE COURT: Excuse me, counsel. I'm trying to get an
16 answer from the witness.

17 Is the exhibit that you're trying to find one that
18 has the raw data in it, is that what you're looking for?

19 MR. WALL: I think --

20 THE COURT: Mr. Feighner, is that what you're looking
21 for?

22 THE WITNESS: Yes. Are they listed in -- yes, this
23 is the data, yes.

24 THE COURT: And what are you looking at there?

25 THE WITNESS: I want to see the tier one results

1 listed in sequential order so you can see the -- pick out the
2 90th percentile.

3 THE COURT: Oh, I see.

4 THE WITNESS: You see what I'm saying? You can't
5 easily look at a whole spreadsheet and pick that number out.

6 THE COURT: Right. And what do you have in your hand
7 there? What exhibit number is that?

8 THE WITNESS: 22, I believe.

9 THE COURT: 22. All right. Thank you. Go ahead.

10 MR. WALL: We have the Excel spreadsheet that was
11 provided by the State that is the data in Exhibit 22.

12 THE WITNESS: Okay.

13 BY MR. WALL:

14 Q. Any objection to me putting that on the screen and having
15 you walk us through the calculation of the 90th percentile?

16 A. Basically you have to list them in sequential order and
17 you have to take .9 times the total number of compliance sites
18 and that value is the 90th percentile value.

19 Q. All right.

20 A. Without counting them, I'm not sure I could do that. And
21 honestly, your Honor, but, I mean, that is -- but we have done
22 this, and those figures we submitted, I believe, are correct.
23 So the 12, I agree with; the 15, I agree with; the 12, I agree
24 with; and I thought we had 14 for the most recent extended
25 sentinel round, so.

1 Q. As you sit here today do you know whether the final number
2 is 14 or 15 parts per billion?

3 A. I believe it's 14.

4 Q. Okay. So if you have a sampling that shows 12 parts per
5 billion in round one, 15 parts per billion in round two,
6 12 rounds per billion in round three, and -- sorry -- 12 parts
7 per billion in round three, and either 14 or 15 parts per
8 billion in round four, does that look like a declining trend to
9 you, sir?

10 A. It looks like a declining trend to me when I compare those
11 results to the early samples that we collected in the sentinel
12 round. And it looks like a declining trend even in the
13 extended sentinel rounds when you consider the fact that they
14 are the higher risk sites, the higher percentage of lead
15 service lines, and it's warmer water temperature.

16 Q. All of the rounds included the same sampling pool for
17 extended sampling rounds one through four, correct?

18 A. All of the rounds included exactly the same -- no, that's
19 not true.

20 Q. The same sampling pool, sir.

21 A. The attempt was, we offered the opportunity to the same
22 set of sampling sites, but not every resident chose to
23 participate, so they were not the exact same number of samples.

24 Q. Now, for the extended sentinel round four, the State
25 submitted samples to the State or the samples were submitted to

1 the State lab on several different days, correct?

2 A. Correct, yeah.

3 Q. The first samples were submitted to the State lab on
4 August 18th, correct?

5 A. I believe that's correct, yeah.

6 Q. And the lab results came back before the remainder of the
7 sampling was done for that round, correct?

8 A. I'm not sure about that. I don't know.

9 Q. Well, let me ask you to assume that for a second.

10 A. Okay. Uh-huh.

11 Q. Do you happen to know how many samples were collected on
12 that first day of sampling?

13 A. I don't know that.

14 Q. Do you know if it was more than the required 60 samples?

15 A. I don't know that.

16 Q. And do you know if the State had stopped right there and
17 looked just at the results, and maybe it did, looked just at
18 the results that were achieved on that first day of extended
19 sentinel round sampling for round four, what the action level
20 or what the 90th percentile would have been?

21 A. No, I don't know that.

22 Q. So you don't know whether it would have been over 15 parts
23 per billion?

24 A. I don't.

25 Q. And if I gave you that data now would you be able to

1 calculate that for the Court?

2 A. If we could list them in sequential order.

3 Q. Sir, this is the data set that's comprised of extended
4 sentinel sampling round four. Do you see that?

5 A. Yes.

6 Q. And do you see that up at the top there is a column,
7 sub date?

8 A. Yes.

9 Q. Is that the date that the samples were submitted to the
10 lab?

11 A. I believe so, yes.

12 Q. Okay. Do you know how to organize data by field in Excel?

13 A. You click on the top of the column and it usually lists
14 them in date order if you clicked on the date order date, yes.

15 Q. Well, let me -- let me just walk you through something and
16 ask you to -- if I could walk you through this, and if you
17 disagree with what I'm doing, let me know.

18 A. Okay. Sure.

19 Q. But if you could, sir, my colleague could just select all
20 of the data in this spreadsheet.

21 A. Uh-huh.

22 MR. WALL: And then if you could go to the data
23 button at the top there, click on data -- sorry, sort. Click
24 on sort.

25 And if you could change the sort-by column to the

1 first thing being sub dates.

2 BY MR. WALL:

3 Q. Now, before we hit okay, would you agree that this would
4 organize the data in order of submission date?

5 A. I believe it would.

6 Q. Okay. So why don't we go ahead and hit okay.

7 Now, do you see that all of the first entries are --
8 have a sub date of August 18th?

9 THE COURT: 16th?

10 THE WITNESS: August 18.

11 MR. WALL: August 18th, the sub date.

12 THE COURT: Oh, I see. I have got it. All right.

13 THE WITNESS: Yes, I see that.

14 BY MR. WALL:

15 Q. And could we scroll down until we get to a different date?

16 Okay. Do you see that the last August 18th data
17 entry is in row 138?

18 A. Yes.

19 Q. And would you agree with me that that means there were 137
20 samples submitted on to the State lab on August 18th, 137,
21 because row one is the header?

22 A. I believe that's correct, yep.

23 Q. Now, I would just like to focus in on the data that was
24 submitted on August 18th. Could you please select just the
25 sampling results, all the sampling results from August 18th and

1 above?

2 And let's sort that according to result (pb).

3 Now pb, sir, is the code for lead, right, the
4 elemental symbol for lead?

5 A. Yes.

6 Q. And the result, lead, is the lead result that came back
7 from the State laboratory, correct?

8 A. Yes.

9 Q. Okay. So if we put in the top sort field, result lead,
10 that will order these by -- from lowest lead level to highest
11 lead level, correct?

12 A. I believe it will, yes.

13 Q. Could we go ahead and hit okay, then?

14 Now, which sample are you going to want to look at
15 for the 90th percentile if you were calculating the 90th
16 percentile of these sampling results?

17 A. Well, it would be 137 times .9; what sample is that?

18 Q. I have a calculator if you need it.

19 A. Yeah, please calculate that, .9 times 137.

20 MR. WALL: May I approach, your Honor?

21 THE COURT: You may.

22 THE WITNESS: It would be the 123.3 place, so go up
23 there to 123.

24 BY MR. WALL:

25 Q. Actually, you don't you need to go to 123, because the top

1 row is --

2 A. Because you're using the header, I understand.

3 So basically, it's an interpolation between the 123
4 and the 124. Actually, 16, because they are both 16. So 16
5 would be the, would be the action level.

6 Q. Right. So if the State had stopped collecting samples
7 after it had those 137 on its first day of sampling under
8 extended sentinel sampling round four, that would have been
9 enough samples to meet the 60-sample requirement, correct?

10 A. It probably would. It would have, absolutely, yes.

11 Q. And the action level would have exceeded -- sorry --
12 the 90th percentile would have exceeded the action level of
13 15 parts per billion, correct?

14 A. On that sample pool, you're correct, yes.

15 Q. But then the State went out and collected and analyzed
16 additional samples and that brought the action level down to
17 15 parts per billion, correct, or 14, I think you weren't sure
18 of the -- is that right?

19 A. They were part of the original sampling plan, but yes,
20 that's true, those additional samples, we did not for any of
21 the sentinel sampling rounds, we did not collect them all on
22 the same day, by any means.

23 Q. But I guess the point is, it's a little bit of
24 happenstance whether you were 14 or 15 or 16, you could have
25 collected samples that would have ended up at 16 and still been

1 in compliance with the lead and copper rules' monitoring
2 requirements, correct?

3 A. Correct.

4 Q. Sir, you have testified about drinking water through
5 filtered water filters on taps being safe. There is no known
6 safe level of lead exposure for children, is there?

7 A. I don't pretend to be an expert in that. I can't answer
8 that.

9 Q. You can't answer the safe level of lead?

10 A. I can answer what the Safe Drinking Water Act requires.

11 Q. Well, the MDEQ, you're a fairly senior official at the
12 MDEQ, correct?

13 A. Correct.

14 Q. And the MDEQ has a position on whether there is a safe
15 level of lead for children, isn't there?

16 A. In fact, we agree with the CDC study that the filtered
17 water is safe for all populations.

18 Q. That's not quite my answer, sir.

19 MDEQ has a position that there's no safe level of
20 lead for children, correct?

21 A. Yes, that's true.

22 Q. In fact, that's what you notify residents when you send
23 them their sampling results, correct?

24 A. That's correct. It's on the result form.

25 Q. Do you have any basis to disagree with that?

1 A. No.

2 Q. Are you familiar with the types of filters that are being
3 distributed in the City of Flint?

4 A. Yes, basically, the Brita and the Pur filter, yes.

5 Q. There is also a filter pitcher that's being distributed by
6 the State and others, correct?

7 A. Correct, yeah.

8 Q. The State buys those pitcher filters?

9 A. I'm not sure about that. I know we buy the tap filters.

10 Q. There is a Zero water filter that -- pitcher filter that's
11 distributed?

12 A. Uh-huh.

13 Q. And as far as -- you have no information that that's not
14 among the filters that the State is distributing, correct?

15 A. I know those are available, yes. I think we have --

16 Q. At the point of distribution, the PODs?

17 A. I believe so. But that is not -- that's not an area I
18 have worked at, so I think there is other witnesses coming up
19 to talk about that perhaps, so.

20 Q. But as far as you know, the Zero water filter, pitcher
21 filters are called pour-through filters, is that correct?

22 A. Some people call them that, yes.

23 Q. Now, do you believe that the EPA filter study that you
24 talked about here earlier today concluded that the Zero water
25 pour-through pitcher filters are safe?

1 A. I don't know that, no. I don't believe it did.

2 Q. Did you consider it important to think about that before
3 you testified that filtered water in Flint is safe?

4 A. The filters that I have been involved in distributing have
5 been tap filters, so.

6 MR. WALL: Now, if we could just bring up State's
7 Exhibit 3. If you could scroll down to the first real page of
8 text there.

9 BY MR. WALL:

10 Q. On the first sentence it identifies the types of filters
11 that were assessed by the U.S. EPA as the Brita and Pur brand
12 filters, correct?

13 A. Correct.

14 Q. The Zero water pitcher filter isn't identified, correct?

15 A. I don't believe so, no.

16 Q. Now, if you could turn to the second paragraph, it didn't
17 say that all filtered water in Flint was safe, did it? It said
18 that analysis revealed that these filters when installed and
19 operating properly effectively reduce lead. Do you see that?

20 A. Yes.

21 Q. The premise is that the filters have to be -- the Pur and
22 Brita filters have to be installed and operating properly,
23 correct?

24 A. Correct.

25 Q. Do you have any information about whether the Pur and

1 Brita brand filters that have been distributed in Flint are or
2 are not being operated and installed properly?

3 A. We have field teams that assist people when they have
4 questions about installing them and we have other folks in the
5 City of Flint have gone door to door assisting folks, asking
6 them if they need assistance with that, so I know there has
7 been folks working on that.

8 Q. You haven't done that yourself?

9 A. I haven't done this personally, no, so.

10 Q. Now, the -- did you look at the data EPA relied on for
11 this study?

12 A. I looked at some of it, yes.

13 Q. Okay. Good. Well, let's bring that up. I think that
14 would be -- if we could just -- this will be Exhibit 2 to
15 Plaintiffs' Exhibit 361.

16 Bear with us a moment.

17 (Pause in the proceedings at 2:53 p.m.)

18 THE COURT: Counsel, we're going to take about ten
19 minutes.

20 The Court will stand in recess.

21 THE CLERK: All rise. Court is now in recess.

22 (Recess taken from 2:53 p.m. to 3:07 p.m.)

23 * * *

24 THE CLERK: All rise. Court is back in session.

25 THE COURT: You may be seated.

1 You may proceed.

2 MR. WALL: May I approach the witness?

3 THE COURT: Yes.

4 BY MR. WALL:

5 Q. I'm showing you what's been marked -- or handed you what's
6 been marked Plaintiffs' Exhibit 361, declaration of Laura
7 Caravallah, M.D. Do you see that?

8 A. This?

9 Q. Yes.

10 A. I see this, yes.

11 Q. Okay. And if you could turn to -- there is an index of
12 exhibits a few pages in.

13 A. Is that this?

14 Q. It says at the bottom P00317, it's a big stamp. If we
15 could bring that up.

16 Well, let me go ahead while he is looking for the
17 video image.

18 Do you see that the Exhibit 1 there is U.S. EPA
19 Flint, Michigan filter challenge assessment?

20 A. Is that the first sheet? Which one is it?

21 Q. Do you see on the exhibit at the bottom right-hand corner
22 of each page there is a little number that says P00-something,
23 3-something? It's a very small number.

24 MR. WALL: I could help the witness find it if --

25 THE COURT: Go ahead.

1 THE WITNESS: No, I don't see it, but okay.

2 MR. WALL: (Indicating.)

3 THE WITNESS: Thank you. Thank you.

4 BY MR. WALL:

5 Q. Do you see the index of exhibits that Exhibit 1 is listed
6 as the U.S. EPA Flint, Michigan filter challenge assessment?

7 A. Yes.

8 Q. And Exhibit 2 is listed as data set summary of filter grab
9 results, January 30, 2016 to May 6, 2016 downloaded from an
10 EPA website?

11 A. Yes.

12 Q. Okay. I'll just ask you to turn to Exhibit 1. It is sort
13 of starting on the next page, essentially. Flint, Michigan
14 filter challenge assessment, do you see that? That's the
15 filter study on which MDEQ has relied, correct?

16 A. Yes.

17 Q. Okay. And then if you flip a few more pages, you'll see a
18 heading, Exhibit 2.

19 MR. WALL: If I might help the witness, I think he is
20 in the wrong part of the document.

21 THE WITNESS: I see Exhibit 2 here. Okay. Yeah.

22 BY MR. WALL:

23 Q. This is the -- you testified that you looked at the data
24 underlying the U.S. EPA study. This is that data, correct?

25 A. I believe it is.

1 Q. Okay. So I just want to walk you through a few examples
2 of the data they found. They went out and collected samples at
3 people's homes and tested them before and after or with or
4 without a filter, isn't that correct?

5 A. That is my understanding, yes.

6 Q. And they took some notes on the condition of the filters
7 and that sort of thing, is that correct?

8 A. According to their spreadsheet, yes.

9 Q. Okay. So let me just ask you, I put some post-it marks on
10 some of these pages, but if you could turn to the page that
11 says at the bottom in tiny numbering T000 -- that's three
12 zeros -- 319. Do you see that?

13 A. I see it here, yes.

14 Q. Can you -- you see there is a column with some notes, it's
15 the second -- sorry, row -- column with some notes, it's the
16 second-to-last column there?

17 A. Yes.

18 Q. And that reads for a number of these entries, of note,
19 they may not have been using the filter correctly or they might
20 have just switched it to the off position. Do you see that?

21 A. I see that.

22 Q. Okay. So let's just jump forward to -- let's jump to page
23 T000333, should be the next post-it note in your exhibit. It's
24 also on your screen, if that's easier.

25 Do you see it says: Resident did not think filter

1 was working, for a number of the entries there?

2 A. Yes.

3 Q. And if we could just jump forward to page T000339, and up
4 at the top do you see where it says: Kitchen sink, no filter,
5 no aerator, for a number of the entries?

6 A. Yes.

7 Q. And then lower down on the same page it says: Filter was
8 blinking red. Changed filter after sample collection.

9 A. Yes.

10 Q. And then if we could jump forward a couple pages to
11 T000340. It's on your screen, as well.

12 Sorry, 341, I had the wrong page, I'm sorry.

13 See there at the top there is a number of entries:
14 Filter was blinking red, changed filter after sample
15 collection?

16 A. Yes.

17 Q. Blinking red filter means that the filter cartridge is
18 expired, correct?

19 A. It means it has filtered more than the rated capacity of
20 it to filter, typically 100 gallons, yes.

21 Q. So if we could jump forward to T000347, up at the --
22 towards the top of that page, do you see there is a number of
23 entries that say: Indicator light on filter was red?

24 A. Yes.

25 Q. And I'm not going to do all of these, I'll just skip

1 forward a ways.

2 If we could turn to page T000369, see at the top
3 there it says: Pur filter, four weeks old, but needed a new
4 filter cartridge, for a number of the entries there?

5 A. Yes.

6 Q. And then if we could jump forward, this will be the last
7 one just illustratively, T000373, do you see how there is a
8 number of entries there that indicate: Opened filter and there
9 was no cartridge. Bathroom sink, no filter.

10 A. Yes.

11 Q. Does it appear that EPA found that a number of people
12 didn't have correctly installed and maintained filters, right?

13 A. It appears based on that, yes.

14 Q. I want to go back to State's Exhibit 22. We had talked
15 earlier about how lead levels weren't, weren't declining in
16 every home, in some homes they might be increasing, correct?

17 A. Correct.

18 Q. I don't want to walk you through this entire exhibit, so
19 I'm just going to walk you through one example of that to see
20 if you will agree with my assessment of the situation.

21 Now, the site code column, which is about two-thirds
22 of the way through at the top, the site code represents the
23 location where the sample was taken, correct?

24 A. Correct.

25 Q. So if you have a sample with a particular site code for

1 round one of the testing and the same site code for round two
2 of the testing and round three of the testing and round four of
3 the testing, those are all the same locations where the lead
4 sampling results came from, correct?

5 A. Yes.

6 Q. Okay. So if we just would jump forward to the third page
7 of this document, and do you see a little more than halfway
8 down the page there is a location that's on Concord Street,
9 there's actually a couple locations on Concord Street?

10 A. Yes.

11 Q. And one of those is for a location code FS 90 -- 9034?

12 A. I see 9031. There it is. Yes, I see 9034.

13 Q. So for extended sentinel round -- sampling round one, back
14 at the end of May, the lead level for that location was 4 parts
15 per billion, correct?

16 A. Yes.

17 Q. Okay. Now let's look at what happened at FS 9034, that
18 same site in extended sentinel rounds two, three and four.
19 Let's go to extended sentinel round two. You're going to jump
20 forward two pages.

21 And again, about three quarters of the way down the
22 page there is a few entries for Concord Street. It's
23 highlighted on the screen --

24 A. Yep.

25 Q. -- if you want to look at the screen.

1 A. Uh-huh.

2 Q. Do you see the location FS 9034?

3 A. Yes.

4 Q. And this is for extended sentinel round two, correct?

5 A. Yes.

6 Q. The lead level of that person's home was 3 parts per
7 billion, correct?

8 A. Yes.

9 Q. Now, if we could jump forward to extended sentinel round
10 three, look at the same location, are you looking at the hard
11 copy or the screen?

12 A. I'm looking at the screen.

13 Q. Okay. So my colleague here will pinpoint it for you on
14 the screen.

15 Again, FS 9034, Concord Street, extended sentinel
16 round three indicated on the right-hand column.

17 Do you see what the lead level was there?

18 A. It says 3 there.

19 Q. Right. So let's just jump to the extended sentinel round
20 four sampling. And here we're going to have to look at the
21 very end of the document. Do you see there, FS 9034?

22 A. Uh-huh.

23 Q. Extended sentinel round four?

24 A. Uh-huh.

25 Q. Concord Street?

1 A. Yes.

2 Q. What was the lead value?

3 A. It stays 2,169.

4 Q. That's 2,169 parts per billion?

5 A. Uh-huh.

6 Q. That's how many times the 15 part per billion action
7 limit?

8 A. More than ten.

9 Q. More than 100, correct?

10 A. Uh-huh. Yeah.

11 Q. Now, you would attribute that to particulate lead in the
12 person's water?

13 A. It could be attributed to a lot of things. It could be a
14 change in the fixture, change in internal plumbing, it could be
15 a particulate. There are many explanations for that, but we
16 never know for sure. That is why the lead copper rule is
17 written the way it is, a statistical percentile to assess the
18 overall corrosion control, not a particular site. But that's
19 why we continue to recommend filters to protect the particular
20 sites.

21 Q. Let's turn to filters for a second. For people who can't
22 use faucet filters the State has handed out these Zero water
23 pitcher filters, we talked about that earlier, correct?

24 A. I don't know that personally, but I believe you're right.

25 Q. Let me ask you to assume that's true. I think that

1 Captain Kelenske may have some testimony on that point.

2 And we also noted that the EPA filter study that you
3 discussed did not look at pitcher filters, correct?

4 A. Correct.

5 Q. The EPA filter study did point to an earlier study of
6 filters by DesHombres and colleagues; do you recall that?

7 A. I recall it. Not the details, but yes, I do recall it.

8 Q. Have you looked at the DesHombres study?

9 A. A summary of the study, I believe, was shared at one of
10 our UCG meetings, but I have not studied the details, so.

11 Q. Do you recall that it looked at both faucet filters like
12 the Brita and Pur filter and also pour-through pitcher filters
13 like the Zero water filter?

14 A. I don't recall that.

15 Q. Do you recall that those two types of filters use
16 different technology?

17 A. I assume they use different technology, but I don't recall
18 reading that in that study or anything else, so.

19 Q. Well, are you familiar with the Journal of American Water
20 Works Association?

21 A. Yes.

22 Q. It's a reputable peer-reviewed journal, correct?

23 A. Yes, it is.

24 Q. And do you recall that this DesHombres study, one of the
25 co-authors was a certain Mark Edwards? And you know Mr. Mark

1 Edwards, correct?

2 A. Yes.

3 Q. And you respect him, right?

4 A. Yes, I do.

5 MR. WALL: Okay. Let me -- this is Plaintiffs' 371,
6 if I might approach the witness.

7 THE COURT: Okay.

8 BY MR. WALL:

9 Q. The State tells people that the filters they use, the
10 State is handing out are safe, correct? People should rely on
11 the drinking water that goes through these filters?

12 A. Correct.

13 Q. The DesHommes study looked at lead removal from tap water
14 using point-of-use devices, correct?

15 A. I'm reading this for the first time now, so.

16 Q. Okay. Well, let me just direct your attention to a few
17 parts of it.

18 If you look at Figure 4 -- sorry -- Figure 1, which
19 is a few pages in, there is a depiction of different types of
20 filters, correct?

21 A. Yes.

22 Q. And there we have the tap-mounted device like the --
23 similar to the Brita or Pur, which is the second illustration
24 on that figure?

25 A. Yes.

1 Q. And then we have the pour-through device, the pitcher
2 filter, that will be the top illustration there, correct?

3 A. Yes.

4 Q. Could we just flip quickly to State's Exhibit 3, the EPA
5 filter study, and if you could jump to the fourth page of that.

6 Now, do you see there right at the top it says:
7 During initial discussions with field staff and subject matter
8 experts it was largely believed that these filters were likely
9 effective at levels much higher than 150 milligrams -- sorry --
10 micrograms per liter based on, one, a study conducted by
11 Virginia Tech University DesHombres and colleagues 2010?

12 A. Yes.

13 Q. So EPA was relying on this DesHombres and colleagues 2010
14 study, correct?

15 A. Yes.

16 Q. Okay. Let me just read you some of the conclusions of
17 that study and see if you have any basis to disagree with them.

18 If we could look at page P000121, it's page 99 of the
19 study, the journal page number is 99.

20 I would like to just direct your attention to the
21 upper left-hand corner of this page where it says: Inconsistent
22 and sometimes low removals, 26 percent to 99 percent, were
23 observed for the pour-through POU's.

24 Those are point-of-use devices, correct?

25 Sir, POU is a point-of-use device?

1 A. Yes.

2 Q. And did I read that correctly?

3 A. I believe you did, yes.

4 Q. The two pour-through devices G and H were ineffective
5 at removing particulate lead and elevated particulate lead
6 remained in the filtered water up to 57 micrograms per liter?

7 A. That's what it says, yes.

8 Q. 57 micrograms per liter would be 57 parts per billion?

9 A. Correct.

10 Q. So that's several times the EPA action level?

11 A. Correct.

12 Q. If we could turn to study page 101, that's Plaintiffs'
13 000124, I'm going to direct your attention to the left-hand
14 column about two-thirds of the way down the page, where it
15 begins, in view of the results. I'm going to read that to you.

16 In view of the results of test two, pour-through
17 POU devices, even if certified for lead before 2007, might no
18 longer be considered in the effort to reduce lead exposure at
19 the tap because particulate lead can potentially be released
20 into the filtered water. Do you see that?

21 A. I see that.

22 Q. Do you have any basis to disagree with that?

23 A. I do, because at the data summit in Chicago Dr. Edwards
24 was present and he said he supported the filter study completed
25 by CDC.

1 Q. Yes. And that filter study looked at faucet devices,
2 correct?

3 A. That's correct.

4 Q. It did not look at pour-through pitcher filters like those
5 being handed out in Flint, correct?

6 A. Perhaps.

7 Q. Well, we can take another look at it. I thought we --

8 A. I do want to read this paper. I have not, so. And I do
9 want to talk to Mark Edwards, too, who I talk to routinely.

10 MR. WALL: Give me one moment.

11 THE COURT: All right.

12 (Pause in the proceedings at 3:27 p.m.)

13 MR. WALL: Thank you. Nothing further, your Honor.

14 THE COURT: Any redirect?

15 MR. KUHL: Just a few questions, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. KUHL:

18 Q. Mr. Feighner, when the State started conducting the
19 sentinel sampling program, what was the first 90th percentile
20 that came back?

21 THE COURT: Counsel, would you just adjust the
22 microphone?

23 THE WITNESS: I believe it was 40 parts per billion
24 for that first round that started the end of February.

25 ///

1 BY MR. KUHL:

2 Q. And what's the last round that has been conducted, what
3 did the results come back at?

4 A. I believe it's -- in the extended or the first set?

5 Q. Extended.

6 A. In the extended, I believe it's 14 parts per billion.

7 Q. So it went down from 46 to 14, is that correct?

8 A. Correct.

9 Q. And so is it correct we're seeing improvement in the
10 system?

11 A. I believe so, yes.

12 Q. Is the system perfect at this time?

13 A. Of course not.

14 Q. Are we continuing to work on the system?

15 A. Of course.

16 Q. But have we seen improvement in the system?

17 A. Yes, we have.

18 Q. Now, counsel asked you to calculate the 90th percentile
19 for August 2016 by stopping and looking at just the data that
20 had been submitted by August 18, I believe the date was. Is
21 that correct?

22 A. Yes.

23 Q. Does DEQ typically stop and consider only partial data
24 submitted during a month?

25 A. We're not allowed to, in terms of compliance. It has to

1 be a further defined monitoring period, which now is between
2 July 1 and December 31st.

3 Q. And in fact, DEQ is required under federal law to consider
4 all samples submitted, isn't that correct?

5 A. That's correct.

6 Q. Is it surprising to anybody that a tap that is sampled on
7 one day and come back and sampled on another day may have
8 different levels of lead?

9 A. Not at all. That's why the rule is written the way it is.

10 Q. You expect to see fluctuations, don't you?

11 A. Yes.

12 Q. And does the 90th percentile calculation take that factor
13 in effect?

14 A. Yes.

15 Q. And how does that take that into effect?

16 A. Well, again, it's a statistical calculation to consider
17 the overall effectiveness of corrosion control treatment. It's
18 not designed necessarily to indicate the level at each and
19 every tap.

20 Q. Now, counsel asked questions about seeing spikes in the
21 samples that are coming back, is that correct?

22 A. Correct.

23 Q. And you certainly -- we have seen spikes in the samples
24 that have come back, isn't that correct?

25 A. That's correct.

1 Q. Now, are you required to sample for spikes and levels
2 under the lead and copper rule?

3 A. Not required to, no.

4 Q. What you're required to test for is the 90th percentile,
5 is that correct?

6 A. You're required to collect a certain number of samples
7 during the monitoring period based on the population and
8 calculate the 90th percentile of that sample pool.

9 Q. You were asked questions as to whether or not there is no
10 safe level of lead, is that right?

11 A. That's right.

12 Q. Does the Safe Drinking Water Act or the lead copper rule
13 require lead in drinking water to be reduced to zero?

14 A. It does not.

15 Q. Does the rule set an action level?

16 A. It sets an action level, yes. The 90th percentile has to
17 be at or below 15 parts per billion.

18 Q. And that's a level set by the U.S. Environmental
19 Protection Agency, correct?

20 A. That's correct.

21 MR. KUHL: That's all the questions I have, your
22 Honor.

23 THE COURT: Anything else?

24 MR. WALL: No, your Honor.

25 THE COURT: Thank you.

1 Mr. Feighner, are you able to say that --

2 THE WITNESS: Yeah. Oh, stay, I thought you said.

3 THE COURT: Let me start again.

4 Are you able to say that the unfiltered tap water in
5 Flint is safe for the residents to drink today?

6 THE WITNESS: I'm not able to say that, your Honor.

7 THE COURT: All right. Thank you. You are excused.

8 Mr. Murphy, you may call your next witness.

9 MR. MURPHY: Thank you, your Honor.

10 MR. KLEIN: Excuse me, your Honor. If I may, before
11 the next witness is called I realized at the break that I had
12 failed to move with Mr. Sabuda for the admission of a handful
13 of exhibits.

14 THE COURT: Do you have any objection to the exhibits
15 from the Flint witness?

16 MR. WALL: No, your Honor.

17 MR. KLEIN: That would be JJ, II, LL and MM. Thank
18 you, your Honor.

19 THE COURT: You're repeating yourself.

20 Mr. Murphy, who is your next witness?

21 MR. MURPHY: Mr. Gambill will be calling the next
22 witness, your Honor.

23 THE COURT: Well, who is it?

24 MR. GAMBILL: Your Honor, we call Jacques McNeely.

25 THE COURT: Are you Mr. McNeely?

1 THE WITNESS: I am.

2 THE COURT: Would you step up here, please? Pause
3 right there for a moment, please. Raise your right hand to
4 take the oath.

5 * * *

6 JACQUES McNEELY

7 was called as a witness, after having
8 been duly sworn to testify to the truth.

9 * * *

10 THE COURT: Would you have a seat right over here in
11 the witness box, please?

12 Good afternoon, sir.

13 THE WITNESS: Good afternoon.

14 THE COURT: Would you pull that microphone up so that
15 you can speak into the tip of it, please.

16 THE WITNESS: All righty.

17 THE COURT: That sounds good. Would you state your
18 full name and spell your last name?

19 THE WITNESS: My name is Jacques McNeely,
20 M-c-N-e-e-l-y.

21 THE COURT: All right. Please try to keep your voice
22 up when you answer questions today.

23 Mr. Gambill, you may proceed.

24 MR. GAMBILL: Thank you, your Honor.

25 DIRECT EXAMINATION

1 BY MR. GAMBILL:

2 Q. Mr. McNeely, who is your employer?

3 A. I am employed with the State of Michigan, the State Budget
4 Office.

5 Q. How long have you been employed with the State Budget
6 Office?

7 A. Roughly 23 years.

8 Q. And what is your current title?

9 A. I am the Office Director for the Office of Public
10 Protection and Resources.

11 Q. And how long have you held that title?

12 A. Approximately 15 years.

13 Q. So what does the Office of Public Protection and Resources
14 do?

15 A. We are part of the executive branch of government. We
16 prepare the Governor's budget recommendations annually and
17 submit them to the legislature for consideration for
18 appropriation and then track them accordingly.

19 Q. And specifically the office of which you're a director,
20 what does your office focus on?

21 A. Roughly 13 areas. We handle the public protection areas
22 of corrections, Department of Corrections, Department of
23 Military and Veterans Affairs, Department of State Police, the
24 Attorney General, and the Judicial branch of Government.

25 On the resource side, we handle the natural resource

1 budgets of Environmental Quality, Natural Resources, Department
2 of Agriculture, and then you throw in a couple of more,
3 Department of Treasury, Department of State, the Legislature,
4 the Executive Office, and ancillary type one agencies, the
5 Lottery Bureau and the Gaming Commission.

6 MR. GAMBILL: And I'm going to ask my colleague to
7 bring up Exhibit 28, State Defendant's Exhibit 28. And Eric,
8 could you scroll through those pages?

9 Those should come up on your screen, Mr. McNeely. I
10 want to give you a chance to look through these.

11 THE COURT: Can you read that as it is going by?

12 THE WITNESS: Yes. I'm quite familiar with this
13 document.

14 THE COURT: All right.

15 MR. GAMBILL: Okay. Could you go back to the top,
16 please?

17 BY MR. GAMBILL:

18 Q. Mr. McNeely, have you seen this exhibit before?

19 A. Yes. This is posted on our website.

20 Q. Could you describe it for us?

21 A. This is a document our office created to provide a sense
22 of transparency surrounding the appropriations for the Flint
23 water crisis. It's the summary of expenditure activity
24 associated with those appropriations over the past year.

25 Q. So does the Office of Public Protection and Resources

1 regularly do this sort of tracking activity?

2 A. Yes. Our office and the State Budget Office as a whole,
3 this is part of what we do.

4 MR. GAMBILL: Your Honor, I would like to move for
5 the admission of Exhibit 28, State Defendant's Exhibit 28.

6 THE COURT: And it's entitled what?

7 MR. GAMBILL: Its title would be Flint Financial
8 Summary by Outcome Category.

9 THE COURT: Any objection?

10 MR. WALL: No objection, your Honor.

11 THE COURT: Exhibit 28 is received.

12 BY MR. GAMBILL:

13 Q. Mr. McNeely, how does the information, how does your
14 office get the information that's put into this sheet?

15 A. We, we developed a tracking tool for the impacted
16 agencies, actually, it's for all executive branch agencies to
17 use, that we shared with them electronically and they provide
18 data back on a biweekly basis. The data is gleaned from our
19 management information system, our statewide accounting
20 database. It's populated by the agencies and submitted to our
21 office biweekly and then we dump the data into these respective
22 categories.

23 Q. And so the different agencies, they collect the data from
24 the main accounting database?

25 A. Correct. Correct.

1 Q. Does that database have a name?

2 A. It's the Michigan Administrative Information Network. We
3 call it our MAIN system. It's our primary statewide accounting
4 system.

5 Q. So this information comes from the MAIN system?

6 A. Yes.

7 Q. Okay. Do you have any experience determining the accuracy
8 of the MAIN system?

9 A. The MAIN system has been in place since 1992. It is, it
10 is quite accurate.

11 Q. Has it been audited before?

12 A. It's audited on an annual basis, yes.

13 Q. What have been the results of those audits?

14 A. We have had very successful audits. As a matter of
15 fact, we have won national awards, our Office of Financial
16 Management, for the capturing and recording and then reporting
17 of our data and fiscal management overall, so it's very
18 credible.

19 MR. GAMBILL: Eric, could you go down five pages,
20 please?

21 BY MR. GAMBILL:

22 Q. So Mr. McNeely, could you describe this sheet? If you
23 look at the very bottom it says pages 1 of 26, so there is 26
24 pages. Could you describe what those are for us?

25 A. Yes. This is, this is if we went back to the beginning

1 document, this is the drill, the final drill down, what we call
2 the base level detail. This is the info that we are receiving
3 from agencies on a biweekly basis. The number one agency,
4 Department of Agriculture, is the top category there. They
5 update their expenditure activity and we change the numbers
6 accordingly.

7 Q. And so pages 1 through 26, those are the bottom level?

8 A. Bottom level, base, base budget detail through which
9 everything else is filtered, or if you want to reverse drill,
10 if you will.

11 Q. Okay.

12 A. It's a buildup --

13 Q. Thank you.

14 A. -- to the summary.

15 MR. GAMBILL: Eric, could you click up three, please?

16 BY MR. GAMBILL:

17 Q. And so this is pages 1 of 3. Could you read the title of
18 this summary, please?

19 A. Yes. Flint financial summary by department and outcome
20 category.

21 Q. So could you describe what this is?

22 A. So the outcome category is the very first of the top cover
23 page. We have consolidated all of this information into some
24 very easy to understand and comprehend categories for ease of
25 transparency, for ease of the user, for your average person

1 hitting this website.

2 This is the category of safe drinking water and these
3 are the respective agencies that have expenditures or have
4 incurred expenditures associated with this water category.

5 MR. GAMBILL: Okay. Thank you. And Eric, could you
6 click up one, please?

7 BY MR. GAMBILL:

8 Q. And Mr. McNeely, could you read the title of this, please?

9 A. This is the Flint Financial Summary By Department. And
10 this is if we were building up, if you will, this is the agency
11 level summary data by public act or appropriation bill, if you
12 will.

13 MR. GAMBILL: Eric, could you click up one more,
14 please?

15 BY MR. GAMBILL:

16 Q. So Mr. McNeely, please describe what this is.

17 A. This is our summary page. This is the first page. This
18 is what the reader will see if they hit the website. And this
19 summarizes all of the information in the preceding spreadsheets.

20 Q. And so the initial set of pages that we looked at, pages 1
21 through 36, that's the fundamental level of detail, correct?

22 A. Base level, yes.

23 Q. And then the three different summaries we have seen, those
24 are different ways to restate?

25 A. Exactly. Just a presentation issue. It's summarizing

1 the same information, just differently so that the user can --
2 if, if -- for instance, if someone is only concerned about
3 water-related expenditures, they can focus on that throughout
4 the entire report and ignore the nutrition, ignore the physical,
5 ignore the filter and the other categories of expenditures. So
6 it's a tool. It's a tool designed for ease of anyone surfing
7 the website.

8 MR. GAMBILL: And let's look at the second column
9 titled, Flint Water Appropriations. Eric, could you zoom in
10 on that for us?

11 BY MR. GAMBILL:

12 Q. So could you explain what those are, please, Mr. McNeely?

13 A. Yes. The appropriations are public acts. The
14 Legislature, the Executive recommends budget actions, the
15 Legislature actually appropriates those resources. And once
16 that occurs it becomes law. And these are the summaries of the
17 various public acts that have provided appropriations for these
18 specific categories.

19 Q. So based on this information as of August 12 of this year,
20 how much money has the Michigan Legislature appropriated for
21 the Flint -- specifically for the Flint water crisis?

22 A. Based on this summary, 212, but there has actually been
23 more. We're just only capturing a snippet.

24 Q. And so this is just a moment in time?

25 A. This is a moment in time. This actually does not reflect

1 the full appropriations that have been made for the Flint
2 water.

3 Q. So there is more than what we're seeing here?

4 A. There is more than what is captured here.

5 Q. Would you say this is changing on a regular basis?

6 A. The appropriations, no. They will change in the near
7 future. I'm sure we will have more to add to this as the
8 Legislature gets back in session in September and we have more
9 dialog on Flint needs. This will probably go up.

10 MR. GAMBILL: And so if we move to the next column,
11 Eric.

12 BY MR. GAMBILL:

13 Q. Titled, Flint Specific Appropriations Spent, how is that
14 related to the first column we just saw?

15 A. Of the 212 in total appropriations that we're showing
16 here, approximately 57 million has been expended to date of
17 those resources.

18 Q. All right. Thank you. Moving on to the next column
19 titled, Flint Specific Incumbrances and Obligations, how does
20 that relate to that first set of information we looked at?

21 A. Over and above the Flint specific appropriations spent,
22 what we're capturing here, that total of the 10.5 million are
23 incumbrances and obligations. Incumbrance is an accounting
24 legal term which reflects contractual obligations that we have
25 that we have to honor.

1 Obligations is more of a budgetary term which we
2 utilize to reflect something not yet incumbered, fully
3 incumbered, but in the process of being incumbered. We may
4 have a request for proposal or some other bid process out there
5 that we're, we're working through the logistics on, so we don't
6 yet have a contract in place, but there will be soon. So we're
7 just reflecting what we know will be a future obligation, a
8 future incumbrance.

9 Q. So you could say that the previous column described money
10 that had been actually paid out?

11 A. Correct.

12 Q. And this column describes money that we have simply agreed
13 to pay out?

14 A. And will be paid out in the very near future, yes.

15 Q. Moving on to the next column, what does this column
16 describe?

17 A. This is just the basic math. That's a percentage of the
18 appropriations spent to date and incumbered obligations, a
19 percentage of what that Flint water appropriation in the first
20 column reflects. So it's, for example, the first category,
21 safe drinking water, of the 72.1 million appropriated there,
22 approximately 40.4 percent has been either spent out the door
23 or is incumbered or obligated.

24 Q. Thank you. Moving on to the next column titled, Non-Flint
25 Specific Appropriations Spent, could you please explain that

1 for us?

2 A. What we're -- what we're capturing here, if I can go back
3 to the first column, these are the Flint water appropriations
4 with specific dollars appropriated to the Flint water crisis.

5 Q. The first column?

6 A. The first column. Over and above our overall \$55 billion
7 State budget, we found \$212 million and appropriated it
8 specifically for that.

9 What this column, this \$30.2 million column is
10 reflecting are Flint expenditures that have occurred outside --
11 inside of agency budgets. We have 19 agencies, a \$55 billion
12 State gross budget, \$10.1 billion in general fund resources in
13 the current year. What we're showing here is, of those current
14 operational resources, we have spent roughly 30.2 million over
15 and above this 212 million that's reflected in the first
16 column.

17 Q. So the 30.2 billion or million is money that agencies
18 found already existing in their budget?

19 A. We, we were -- we had -- we are actually required to do
20 that. We're required under law. Whenever the Governor
21 declares an emergency, all of its cabinet is charged with
22 scrubbing their budgets, finding vacancies, cancelling
23 contracts, doing whatever they have to do to manage their own
24 operational budgets and squeeze out resources to address this
25 Flint emergency.

1 And that's what occurred at the beginning of this
2 fiscal year in October, and what this reflects is expenditures
3 that have happened out of agency operational budgets. Again,
4 over and beyond the 212, which is actually 234, but that's --
5 so these are appropriations out of agency operations, budgets,
6 that have occurred for Flint specific needs.

7 Q. Thank you. And moving on to the next column, could you
8 explain that, please? What are --

9 A. Component unit, we define a component unit as our -- some
10 of our ancillary type one entities, the Michigan Economic
11 Development Corporation, the Michigan State Housing Development
12 Commission, or MSHDA, Michigan State Housing Development
13 Authority, sorry. Government acronyms.

14 Both incurred expenditures associated with Flint and
15 we're reflecting these separately, just an accounting,
16 governmental accounting.

17 Q. So describing expenditures by a particular type of State
18 entity?

19 A. Correct. Correct.

20 Q. Okay. And moving on to the final column, could you please
21 explain this for us?

22 A. This is again just math across the spreadsheet. This is
23 the total of the second column there, the resources that have
24 been spent or out the door, and the total of the expended,
25 incumbered and obligated, as well as the other non-Flint

1 appropriations and component unit spending. So all total
2 spending, all total spending and incumbrances, obligations to
3 date, are roughly 101 millions.

4 Q. And that's just for Flint water?

5 A. That's just -- this is all, this is all Flint.

6 MR. GAMBILL: And so if we go back to the very first
7 column, Eric.

8 BY MR. GAMBILL:

9 Q. August 12, the very first to the left of that, so is the
10 spending just for -- to provide water?

11 A. Oh, no. This is, this is comprehensive. If these -- this
12 is a very summarized version. We have captured major themes,
13 if you will. If you go to the base level detail you will see
14 with specificity what we're spending these resources on.

15 The water category covers filters, it covers some
16 water testing, it covers provision of bottled water.

17 The food and nutrition covers some agricultural
18 expenditures, some resources that we're providing through the
19 school district of summer feeding, after-school feeding
20 programs, school nurses, just a variety of things.

21 So -- and so the base level detail, if we drilled
22 down, will give us with specificity what we're spending these
23 resources on.

24 Q. All right. Thank you.

25 Now, at the top of each page on Exhibit 28, it has

1 the word, unaudited. Does that mean that none of the figures
2 in Exhibit 28 have ever been audited?

3 A. No. As a matter of fact, they have. The Office of
4 Auditor General, the Legislative Office of Auditor General has
5 performed a performance audit of a sample of these expenditures
6 recently and that audit has been published. These, we are
7 required to carry this unaudited category until such time as
8 all expenditures have been posted and we have a comprehensive
9 audit of all items contained in this document. So until such
10 time this will remain an unaudited document, although a
11 performance audit has been performed.

12 MR. GAMBILL: And so Eric, could you please bring up
13 State Defendant's Exhibit 6?

14 And could you click through those pages real quick so
15 he can take a look, please?

16 BY MR. GAMBILL:

17 Q. Have you -- Mr. McNeely, is this the --

18 A. This is the --

19 Q. -- audit you were referring to?

20 A. Yes, this is the recent product of the Office of Auditor
21 General.

22 Q. So could you, could you explain what the Office of Auditor
23 General did?

24 A. Yes. Office of Auditor General is a third-party
25 independent office. They essentially went in to each

1 respective State agency that was impacted or is reflected in
2 this document and just grabbed a handful of Flint expenditures
3 and put them through the rigor of determining whether or not
4 they met the scope of the appropriations bill that provided
5 those resources, whether they were spent in accordance with the
6 law.

7 Q. And what did they find?

8 A. They found that they were. This is a very clean audit.
9 They -- there were no material findings. There were no
10 reportable conditions. There were a few commentary by the
11 Auditor General and we equate that to, if they were doing it,
12 this is what they would have done. So, it's very clean. We
13 don't -- this doesn't get any cleaner than this.

14 MR. GAMBILL: So Eric, could you please go to the top
15 of State Defendant Exhibit 6?

16 Your Honor, I would move for the admission of State
17 Defendant's Exhibit 6. The title is, Performance Audit, Flint
18 Emergency Expenditures, State of Michigan, dated July 2016.

19 THE COURT: Any objection?

20 MR. WALL: No objection, your Honor.

21 THE COURT: Exhibit 6 is received.

22 MR. GAMBILL: That's all I have, Mr. McNeely.

23 THE COURT: Whose witness is this?

24 MR. WALL: I will be examining this witness.

25 THE COURT: You may cross examine.

1 I should ask, Mr. Klein, you don't have any questions?

2 MR. KLEIN: I do not, your Honor.

3 THE COURT: Very well.

4 Mr. Wall, you may proceed.

5 CROSS EXAMINATION

6 BY MR. WALL:

7 Q. Mr. McNeely, you can look at State's Exhibit 28 which
8 lists the different categories of spending you have referred to
9 without finding any category that lists how much money needs to
10 be spent to meet the unmet needs of Flint residents to obtain
11 safe drinking water, correct?

12 A. Correct.

13 Q. Nothing in there that itemizes how much needs to be spent
14 to provide safe drinking water going forward to all the
15 resident of Flint?

16 A. That, that is actually unknown.

17 Q. And how much money the State has already spent doesn't
18 tell us whether the needs of Flint residents to obtain safe
19 drinking water today are being met, does it?

20 A. Just by expenditures? I, I don't know. I couldn't -- I
21 couldn't answer that.

22 Q. You identified well in excess of \$200 million in
23 appropriations by the State in response to the Flint water
24 situation?

25 A. Correct.

1 Q. How much of that has been spent to actually provide
2 filters or bottled water to the residents of Flint?

3 A. I would say roughly in the area of 29, maybe 30 million.
4 It would fall under that safe drinking water category.

5 Q. That safe drinking water category has four other items in
6 it, doesn't it?

7 A. It does.

8 Q. How did you reach the 29 or 30?

9 A. I'm just looking at the summary here, just doing quick
10 math without going into the detail and picking off the items
11 that are associated with water, the items that are associated
12 with filters, I wouldn't have a credible answer for you.

13 Q. Well, the State has spent quite a bit of money, some
14 millions of dollars, to pay for the purchase of water?

15 A. Absolutely.

16 Q. That would have been in that category?

17 A. That's all in the detail. It's all in the data.

18 Q. And the more than \$40 million that the State is providing
19 to offset water rates?

20 A. Yes.

21 Q. That's in that Flint safe water?

22 A. The water bill credit, absolutely. It's actually, yeah,
23 that's a category of its own.

24 Q. So most of that category is not, in fact, to provide
25 bottled water and filters to the residents of Flint, correct?

1 A. Most of it is to reconnect to the Detroit Water Authority,
2 moving the City of Flint residents back to filtered -- I'm
3 sorry -- treated water from the City of Detroit.

4 Q. And that treated water that's being paid for at this point
5 is still not safe to drink, correct?

6 A. I -- that's subject to someone else's interpretation. I
7 have been told that it is, with a filter.

8 Q. Can you tell me how much money has been spent to teach
9 Flint residents how to use and maintain water filters; is there
10 any line item for that in here?

11 A. There is not. We are still capturing that information.
12 We have got an effort underway to go door to door. I think the
13 DEQ is heading that campaign, along with some State Police
14 personnel. I don't have that information readily available.

15 Q. Now, I would like you to flip forward in State's Exhibit
16 28 to the table that shows individual expenses. I think it's
17 about four pages in, maybe six. Yeah, there.

18 You see there is a number, on the left-hand column is
19 a number, one, two, three, going down?

20 A. Uh-huh.

21 Q. Each of those numbers is a different line item of expense,
22 correct?

23 A. Correct.

24 Q. So if I refer to a particular number, I may ask you to
25 look at that particular expense category.

1 For example, if you look at the first page at expense
2 number four there is an expense of about 1.6 or .7 million to
3 the Flood Law Group, correct?

4 A. Correct.

5 Q. That was to pay for a special prosecutor?

6 A. That could be. I don't know the background.

7 Q. Well, it's legal services, not safe drinking water,
8 correct?

9 A. Correct. Correct.

10 Q. Now if you look at item 65, that's a statewide childhood
11 lead prevention program?

12 A. Uh-huh.

13 Q. Seems like a good thing, right?

14 A. Absolutely.

15 Q. Not directly targeted to the residents of Flint, right,
16 it's statewide?

17 A. According to this, yes.

18 Q. And if you look at line item 82, there we have half a
19 million dollars to DCDS time tracking?

20 A. Uh-huh.

21 Q. Can I assume that's not Detroit County Day School?

22 A. That is -- DCDS is a tracking tool within our accounting
23 system to track labor, track actual activities performed by
24 State employees.

25 Q. That's not water or filters?

1 A. It is not.

2 Q. Now there's some money that has been spent to attract new
3 businesses to the City of Flint, right, that's in here, too?

4 A. I am not sure.

5 Q. Well, let's look at item 112, for example.

6 A. There it is.

7 Q. That's a cool three million for a business development
8 grant?

9 A. Correct.

10 Q. Now, that's not providing safe drinking water to the
11 residents of Flint, is it?

12 A. It is not.

13 Q. And if we look at 123 -- I'm sorry, I must have the wrong
14 page here. Give me one second.

15 If you could look at item 110, that's five and-a-half
16 million dollars for the Capital Theater project?

17 A. Uh-huh.

18 THE COURT: Is that yes?

19 THE WITNESS: That is correct.

20 BY MR. WALL:

21 Q. And then on 116, on the next page or so, there is another
22 line item for attracting new businesses to Flint?

23 A. Correct.

24 Q. And then if you jump forward to 129, there is reimbursement
25 to the City for legal costs related to congressional testimony,

1 and that's not providing safe drinking water to the citizens of
2 Flint, is it?

3 A. It is not.

4 Q. It's fair to say a pretty high number of these line items
5 don't have anything to do with bottled water or filters,
6 correct?

7 A. I would say that some of these don't have anything to do
8 with it.

9 Q. Can you identify any of them sitting here today that do?

10 A. That we just went through, no.

11 Q. Do you know where any of the line items you're discussing
12 are?

13 A. That are pertaining to?

14 Q. Bottled waters and filters or filter training?

15 A. Well, yes. I would go back to the first pages of this
16 document, expenditures under the Department of Health and Human
17 Services, expenditures with the Department of State Police.
18 Both reflect water purchases.

19 Q. They are included in those numbers, correct?

20 A. Yes.

21 Q. But that's not what the whole number makes up. What I'm
22 trying to figure out is, what's the total amount that's been
23 spent, where is the line item that shows the total amount of
24 money that's been spent on water or filters?

25 A. Those two categories, I would have to sit here and add

1 them up for you. I don't -- I don't --

2 Q. If you could look at the first couple pages and see if you
3 see anything that relates to those.

4 THE COURT: What page do you want him to look at?

5 THE WITNESS: Actually, if you go to the Department
6 of Health and Human Services, I do know that we have expenses.

7 BY MR. WALL:

8 Q. Which page are you on? I'm sorry.

9 A. Right now --

10 THE COURT: Are you looking at the screen or looking
11 at a document?

12 THE WITNESS: I'm looking at the screen.

13 THE COURT: All right. So you have to direct him to
14 where you want him to look. You're controlling the screen.

15 BY MR. WALL:

16 Q. If you could look at page 1 of 26, I think it's -- this is
17 the first page of expenditures in your spreadsheet. Are any of
18 these for bottled water or filters?

19 A. These are not, but if you -- the second column shows the
20 department, the impacted department. If we could find the
21 department, the acronym DHHS, it's probably two or three pages
22 in, there are expenditures associated with the purchase of
23 bottled water.

24 THE COURT: Do you want him to scroll through that to
25 find DHHS in column two?

1 THE WITNESS: Please. Yes.

2 MR. WALL: Before we do that, could I just point out
3 one thing about the first page, your Honor?

4 BY MR. WALL:

5 Q. The first page, four of the five expenditures there are
6 listed as being for water, correct?

7 A. Correct.

8 Q. But none of them are for bottled water or filters,
9 correct?

10 A. No, these appear to be associated with the testing, water
11 testing.

12 THE COURT: Counsel, where do you want him to look?

13 BY MR. WALL:

14 Q. If you look at the next page, which is page 2 of 26, two
15 of those expenditure categories are listed as for water,
16 correct?

17 A. Correct.

18 Q. Neither of those is for bottled water or filters, correct?

19 A. Well, item number seven is associated with the State
20 Emergency Operations Center, I would argue, but I would argue
21 that that is a bottled water issue.

22 Q. I guess earlier you testified that there is 20-some
23 million dollars spent on bottled water and filters, and I
24 couldn't find that in this document. I'm wondering where the
25 line items are that indicate that, how you calculated that. Is

1 it based on anything other than the summary page on the front?

2 A. That was strictly working off the summary page. Again,
3 your specific question I would have to go in or we would have
4 to go in and pluck those specific areas and give you a total.

5 Q. And the summary figure you were looking at includes
6 purchasing water from the Great Lakes Water Authority, it
7 includes customer rate offsets for residents of the City of
8 Flint, and many other things that are not providing bottled
9 water or filters for the residents of Flint, correct?

10 A. It includes testing, it includes filters and water, yes,
11 yes, as well.

12 Q. State of Michigan had a budget surplus last year?

13 A. The State of Michigan has a balanced budget. We had some
14 additional resources available that were -- enabled us to
15 deposit to the budget stabilization fund.

16 Q. In excess of \$500 million, correct?

17 A. I'm not sure that's what we put in the budget stabilization
18 fund. We may have, working with the Legislature, found a way
19 to spend some of those resources.

20 Q. Right. Including \$5 million for the Capital Theater
21 project, correct?

22 A. Which is a good thing for the City of Flint.

23 Q. I have no doubt that it is. The State's projecting a
24 budget hole for 2016 and 2017?

25 A. We are required by law to have a balanced budget, so we

1 will, we will, with revenues, revenues are kind of flat, but we
2 will find a way to ensure that we have a balanced budget at
3 book closing, so.

4 Q. Right. That's what you're working towards.

5 John Roberts, he is the Budget Director?

6 A. Correct.

7 Q. He is over you?

8 A. Oh, yes.

9 Q. Do you report to him?

10 A. I do.

11 Q. And are you aware that he has been quoted in the press as
12 saying that the State Budget Office is looking for possible
13 cuts?

14 A. Yes.

15 Q. Are you aware that he has said publicly in that same
16 article, in that same context of budget cuts, that he is going
17 to take a serious look at the State's Flint commitments?

18 A. I wasn't aware of that.

19 Q. Have you calculated how much money the City or State saved
20 by switching from Detroit water to Flint River water?

21 A. We have not.

22 MR. WALL: Nothing further, your Honor.

23 THE COURT: Thank you.

24 Mr. Gambill, anything else with this witness?

25 MR. GAMBILL: Just a few questions, your Honor.

1 THE COURT: All right. You may proceed now.

2 MR. GAMBILL: Thank you.

3 Eric, could you bring up Exhibit 28, please? Could
4 you go to the very top, please?

5 REDIRECT EXAMINATION

6 BY MR. GAMBILL:

7 Q. So Mr. McNeely, if you look at the first column -- or
8 pardon me -- the first row underneath the header titled Safe
9 Drinking Water, do you see that?

10 A. Uh-huh.

11 Q. And then if you go four, five rows down, so that's safe
12 drinking water, and then go five rows down to water bill
13 credits, do you see that?

14 A. I do.

15 Q. Are water bill credits a reference to the money the State
16 gave the City to reimburse Flint water bills?

17 A. Yes.

18 Q. So are water bill credits included in the first row under
19 safe drinking water?

20 A. No. They are a separate and distinct category.

21 MR. GAMBILL: And Eric, if you could go to the
22 detailed expenditures and find expenditure 44, please.

23 Could you highlight that for us, Eric, please?

24 BY MR. GAMBILL:

25 Q. Mr. McNeely, could you describe what those expenditures

1 were for?

2 A. These are purchases from Home Depot for bottled water.

3 Q. And what's the agency?

4 A. This is the Department of Health and Human Services I
5 referenced earlier.

6 Q. The part of the spreadsheet you were trying to get to?

7 A. Yes, yes.

8 MR. GAMBILL: And Eric, may we go down to 46?

9 BY MR. GAMBILL:

10 Q. Could you describe that for us, Mr. McNeely, please?

11 A. Again, water purchases from the Home Depot, Department of
12 Health and Human Services.

13 MR. GAMBILL: And Eric, down to 104, please.

14 BY MR. GAMBILL:

15 Q. Could you describe that for us, please?

16 A. This is bottled water and filter cartridge purchases with
17 the Department of State Police.

18 MR. GAMBILL: Thank you, your Honor. That's all I
19 have.

20 THE COURT: Thank you.

21 MR. WALL: Very brief follow-up, your Honor?

22 THE COURT: Briefly.

23 RE CROSS EXAMINATION

24 BY MR. WALL:

25 Q. If you could go to line number 44, expenditure 44, this

1 same exhibit, State 28, does it show that approximately \$1.4
2 million has been spent on purchased water resources?

3 A. That's correct.

4 Q. That's for bottled water and filters?

5 A. That's correct.

6 Q. Let's keep that Figure 1.4 million in mind. If you go
7 down to 45, it shows a million dollars spent for providing and
8 distributing filters, cartridges, et cetera?

9 A. That's --

10 Q. That takes us to \$2.4 million, correct?

11 A. It does.

12 Q. And then if you go to 46, line 46 has an expended amount
13 of \$5.6 million for providing and distributing water filters,
14 faucets, mounts, et cetera.

15 And 5.6 million plus 2.4 million would be about --
16 not be that fast with my math, but it's about \$8 million, is
17 that right?

18 A. Correct.

19 Q. And then you skip all the way down to, 10 --

20 THE COURT: 104, are you looking at?

21 MR. WALL: 104, yeah, that he referred to.

22 BY MR. WALL:

23 Q. And there we have an expenditure listed of about, let's
24 round up and say \$1.3 million for water and filter cartridges?

25 A. Correct. Out of an appropriated amount of 6 million, yes.

1 Q. So that's about \$9.3 million expended for water filters
2 and cartridges out of the 200-some million you initially
3 referred to?

4 A. Correct.

5 MR. WALL: Thank you. Nothing further.

6 THE COURT: Mr. McNeely, thank you, you are excused.

7 THE WITNESS: Thank you.

8 THE COURT: You may call your next witness.

9 MR. MURPHY: Your Honor, can I get ten minutes? I'm
10 bleeding.

11 THE COURT: A likely excuse, Mr. Murphy.

12 MR. MURPHY: Does it seem like it's dry in here?

13 Because I haven't had a nose bleed in years.

14 THE COURT: Ten minutes.

15 THE CLERK: All rise. Court is now in recess.

16 (Recess taken from 4:18 p.m. to 4:25 p.m.)

17 * * *

18 THE COURT: Mr. Murphy, are you ready?

19 MR. MURPHY: We're ready, your Honor.

20 THE COURT: Court is back in session and you may call
21 your next witness.

22 Off the record.

23 (Discussion held off the record at 4:25 p.m.)

24 THE COURT: All right. Back on the record.

25 Are you Mr. Kelenske?

1 THE WITNESS: Yes, sir.

2 THE COURT: Would you raise your right hand and be
3 sworn?

4 * * *

5 CHRISTOPHER KELENSKE

6 was called as a witness, after having
7 been duly sworn to testify to the truth.

8 * * *

9 THE COURT: Would you have a seat in the witness box,
10 please, and adjust the microphone?

11 THE WITNESS: Yes, sir.

12 THE COURT: Would you state your full name and spell
13 your last name?

14 THE WITNESS: Chris Kelenske, K-e-l-e-n-s-k-e.

15 THE COURT: Is it Chris or Christopher?

16 THE WITNESS: It's Christopher.

17 THE COURT: Mr. Murphy?

18 DIRECT EXAMINATION

19 BY MR. MURPHY:

20 Q. Your position, Captain Kelenske, what is your position?

21 A. I'm a Captain with the Michigan State Police and I command
22 the Emergency Management Homeland Security Division within the
23 State Police. I'm also the Deputy State Director of Emergency
24 Management and Homeland Security for the State of Michigan and
25 a Deputy Homeland Security Advisor.

1 Q. And what were you assigned to do in Flint?

2 A. I was assigned once a declaration of an emergency was
3 declared by the Governor. It's my job to kind of coordinate
4 and manage disaster and emergencies and the --

5 Q. Go ahead.

6 A. And specifically with Flint, it was to work to stabilize
7 the incident, as far as providing resources that the City and
8 County were requesting or needed.

9 Q. Over what period of time have you been in that position?

10 A. I have been in this position three and-a-half years.

11 MR. MURPHY: Just to get this out of the way, since
12 some of it was done already, your Honor, we're going to be
13 withdrawing our Exhibit Number 1, since it was water filters,
14 and they have already been admitted as Plaintiffs' Exhibit --
15 let me get the right numbers -- 377 and Plaintiffs' 378.

16 THE COURT: And those are simply duplicates?

17 MR. MURPHY: And they would be duplicates, so I'm
18 withdrawing mine.

19 THE COURT: That's fine.

20 MR. MURPHY: We are going to submit only Exhibit 2C,
21 which is back there. We move the Court to accept this exhibit
22 in the traditional manner. That's the pitcher. And that
23 completes the set of equipment, rather than spend a lot of
24 time on it.

25 THE COURT: Any objection to 2C?

1 MR. WALL: No, your Honor.

2 THE COURT: That's received.

3 BY MR. MURPHY:

4 Q. Describe for the Court how the water gets to homebounds in
5 Flint.

6 A. How it, how it gets to homebounds or just the whole
7 program, sir?

8 Q. Homebounds in Flint.

9 A. For homebounds, the way it works is we started with an
10 access and functional needs list, and that was a list of
11 individuals that we pulled from different aging entities, and
12 there are several entities that we get that list from. Then we
13 added to that list as we moved forward.

14 So if somebody was to call 211 we then would get the
15 information from 211. So at this point in time, four times a
16 day we get e-mails from the 211 operators, they send an e-mail
17 to our 211 or AFN, access and functional needs desk that is
18 housed within the warehouse with all the commodities;
19 commodities being the water, the filters, et cetera.

20 And they let us know four times a day in that e-mail
21 if anyone has been added to that list to get maybe a one-time
22 filter, or it could be somebody has an issue and they need
23 longer-term assistance. Either way, we make trips out there.
24 Throughout the day we have drivers and teams that go out there
25 and do the 211.

1 THE COURT: I'm not following you.

2 I understand it's late in the day, but we don't have
3 to rush through this, this is important, so take the time you
4 need to explain it, okay?

5 THE WITNESS: Sorry about that, sir.

6 So on that, so we have the operators that do 211,
7 that's run by United Way, totally separate organization.

8 We have a warehouse with all of our commodities --

9 THE COURT: Now, when a call comes in to 211 does the
10 person receiving the call record contact information or does
11 that come in automatically over the phone line?

12 THE WITNESS: I don't know how they eventually get
13 that information, if they type it in or it's automatic, sir,
14 but the address is what is relayed back to us.

15 THE COURT: All right. And then you said something
16 about making a list from entities, but I didn't understand
17 that.

18 THE WITNESS: So early on when a disaster occurs we
19 engage with those entities like the Office of Aging, people
20 that deal with homebound and those with access and functional
21 needs on a day-to-day basis, not even during a disaster or
22 emergency, sir, the ones that deliver things to them, whether
23 it's food or even water in some cases, but that's outside of
24 the disaster.

25 THE COURT: So you gather lists from agencies that

1 could be NGOs or even governmental or county agencies that
2 deal with homebound people on a regular basis outside of the
3 disaster?

4 THE WITNESS: Yes, sir.

5 THE COURT: Is that what you meant?

6 THE WITNESS: Absolutely, yes, sir.

7 THE COURT: I get it. Thank you.

8 THE WITNESS: So that was the base list. So we have
9 been expanding with that list. The American Red Cross was
10 handling a lot of our home deliveries until about July 25th
11 and then we switched over to operate that out of our
12 warehouse.

13 So now we have a desk in our warehouse and that's
14 where four times a day we get an e-mail at 8:00, 10:00, 1:00
15 and 4:00 from the 211 operators, the manager, whoever it is
16 there, pushes that list to us to let us know that somebody
17 needs, you know, a filter delivered to them or some other
18 one-time service and/or somebody that might need a longer-term
19 service. Say somebody just had surgery on their leg, they are
20 going to be out for two weeks, if they call 211 we add them to
21 our access and functional needs list.

22 So I know it might be a little confusing, but we have
23 the 211 one-time-delivery type situation, and then we have the
24 211 that's more of a longer term that we put on what we call
25 our AFN list. So that would be a routine delivery.

1 THE COURT: So the one-time delivery calls don't go
2 on a list, is that correct?

3 THE WITNESS: They do.

4 THE COURT: Is it a separate list?

5 THE WITNESS: We have two lists and we call it the
6 211 or the AFN list, sir.

7 THE COURT: Okay.

8 THE WITNESS: So the access and functional needs of
9 the homebound personnel, we run routes every week, and those
10 are done by Flint residents that we have hired that go and do
11 those.

12 We also are getting now their cell phone numbers. So
13 if we're coming up there, a lot of them they know, the workers
14 know, and they know there are certain issues, like if they
15 have a dog out, they will call them on the cell phone.

16 We also have notes in there, I know one lady was
17 blind, and it takes a little while to get to the door, and
18 there's notes in there that says, honk the horn and make sure
19 you wait five minutes, because it just takes some time for
20 them to get there. So that's all in those lists that we have.

21 So I think that covers most of it, sir, unless you
22 have a follow-up.

23 BY MR. MURPHY:

24 Q. How do you maintain that list?

25 A. The list is maintained by our 211/AFN desk, if you will,

1 that is in the warehouse. We have a staff member that is
2 assigned and that's all she does.

3 Q. Let's go to the next panel, and the next panel.

4 How many water customers are you dealing with in
5 Flint now?

6 A. It ranges. The active water customers, it's been between
7 30,000 and 34,000, because people get on the water system, get
8 off the water system, or it gets turned off, so it ranges
9 between 30,000 and 34,000.

10 Q. And I presently -- and I believe we have put it up here
11 after discussion.

12 The next slide; the next slide; one more.

13 This is the AFN deliveries. Can you tell the Court
14 how many households we deliver to?

15 A. Currently on our list is about 1,250, but that does change
16 every day or it could actually change three or four times a day
17 because we get those calls four times -- or those e-mails four
18 times a day.

19 Q. But as of today we have 1,250?

20 A. Correct.

21 MR. WALL: Excuse me. Have you provided this exhibit
22 to us?

23 MR. MURPHY: This is not an exhibit. This is merely
24 demonstrating his testimony, his testimony.

25 THE COURT: Oh, is this like a Powerpoint?

1 MR. MURPHY: A Powerpoint for you to take a look, if
2 you need to, if you don't quite understand what he is talking
3 about.

4 BY MR. MURPHY:

5 Q. Does this set out the 211 call averages that you have
6 talked about with me?

7 A. Yeah, the 211 calls, it's a --

8 THE COURT: Those are one-times?

9 THE WITNESS: I'm sorry, sir?

10 THE COURT: Those are the one-time-need calls?

11 THE WITNESS: Yeah, those are the one-time. And when
12 I say one time, it could be one time during that week, but
13 maybe the following week or even a couple days later they may
14 call again because of some other issue. It's just not a set,
15 scheduled delivery. However, that 211 call, I don't think I
16 was clear, that is kind of an entry point to the access and
17 functional needs list, also.

18 In addition to, like just recently, we had -- it was
19 either through Department of Health and Human Services or the
20 Office of Aging provided us an additional list of a few people
21 that had been added by one of the organizations. But 211 is
22 also an entry point for that. With 211 we have run -- last
23 couple of weeks it's jumped up considerably by about 20, but
24 we range about between 31 and 40--some 211 deliveries, you
25 know, those that need that one time a day.

1 BY MR. MURPHY:

2 Q. Do you get contacted by community groups?

3 A. Yes, we do.

4 Q. Do they give you the name of people that need deliveries
5 of water?

6 A. Not necessarily names, sir. We're really only focused on
7 addresses. I don't need the names, just the addresses.

8 Q. Has Crossing Water provided you with addresses to deliver
9 water to?

10 A. No, they have not.

11 Q. Are they getting State-bought water on a regular basis?

12 A. They have gotten it. I don't know if I would say regular,
13 sir, but they have received commodities from us before.

14 Q. Have you or your staff asked Crossing Water to identify
15 for you people that can't get water?

16 A. Yes. When I became aware that they potentially knew of
17 people that needed routine service, we have requested that
18 list.

19 Q. If you knew someone needed routine service, would they get
20 it?

21 A. Yes, they would. As a matter of fact, the lady that was
22 up here earlier today, my staff has already made contact with
23 her son at that address, so.

24 Q. Do you also have filters delivered?

25 A. Yes, sir.

1 Q. Are they delivered to homebound people?

2 A. Yes, sir.

3 Q. Are they given assistance --

4 A. Yes, sir.

5 Q. -- to install it?

6 A. Yes, sir. They -- there's a couple ways that they can get
7 that.

8 Q. Tell the Court how that's done.

9 A. So some of the personnel that do the deliveries, their
10 focus is on the deliveries, but they have assisted in the
11 proper installation and talked to people about how to use those
12 filters and actually done the installs.

13 Some of my staff, especially in the evenings, if I
14 find out somebody needs assistance, sometimes I'll get calls
15 from the Governor's Office or even a City Council member will
16 text me, and I'll send one of my lieutenants out there after
17 hours, they will install filters for that person and have a
18 conversation with them.

19 And then in addition to that, a program that has been
20 in place since about July, they call it the CORE program,
21 Community, Community Outreach and Resident Education. From
22 July to August the Department of Environmental Quality, they
23 were the ones doing that, and those are teams that go out
24 and they do the filter installs. I think there were four
25 components", installation, maintenance of the filter, how to

1 use them, how the water system coats the pipes, where the
2 community points of distribution are. And there is a fourth
3 component of it, I just can't think of it.

4 But then around August that has transitioned and
5 right now, and I think Mr. McNeely may have mentioned it, we're
6 hiring Flint residents to train them up to take over this
7 CORE program. And right now there's two teams of these
8 individuals, they have already gone out. I think they have
9 hit, I could be a little bit off on this, 1,100 homes and they
10 have completed, I think, over 400, or close to 400, I should
11 say. I think it's just under 400, and where they have made
12 contact with them and done installs. And the intent is to
13 transition or move that program so there's two of those teams
14 in every city ward to do exactly that.

15 Q. How many wards in the city?

16 A. There is nine, sir.

17 Q. Can you describe for the Court fully the bottled water
18 program that we're running right now?

19 A. With the bottled water program, the bottled water is
20 delivered to homebound with the AFN/211 list, that's all a part
21 of it. It's all the commodities. But we also have community
22 points of distribution.

23 It originally started with the five fire stations,
24 however, those did not meet the FEMA requirements. That was
25 something that the City kind of moved towards early on in the

1 beginning. We had to move it towards a specific way to operate
2 those PODs to make them safe or more efficient and more
3 effective. Currently we have nine of those PODs, they are
4 meant to be drive-up or walk-up points of distribution, and
5 most of them, I think there is only one that's right on the
6 border of one of the wards. So it's -- all the wards are
7 serviced by a POD and residents can go to any one of the PODs
8 at any time.

9 Before we got the PODs established, just backing up a
10 little bit, right after the Governor's declaration, we started
11 doing a door-to-door mission with State agency personnel,
12 volunteers. So at the very beginning we went door to door and
13 delivered filters.

14 Because our mission was to get at least one filter --
15 and I told them I didn't care how many filters, because we
16 would all want more than one in our homes -- get them filters
17 in their homes, because we knew that was what we had to do, was
18 filter the water out; that was our primary mission -- or filter
19 the lead out.

20 And so we went door to door, hit all the residences.
21 We tracked all of them, tracked the commodities that went to
22 every, every resident. And then when they got done we
23 activated the National Guard to then do that again and go
24 through. And then we started confirming that people had
25 filters. And we were also asking questions --

1 THE COURT: Is it your testimony that you have hit
2 all of the 34,000 water customers in Flint with -- to ensure
3 that filters are installed?

4 THE WITNESS: We have -- I would have to go back and
5 look at our percentages, sir. We have, I think, hit every
6 home, and of the 100 percent -- I shouldn't say -- we have
7 went to every residence, sir, which could mean if they weren't
8 home we would leave cards to let them know to call 211 to get
9 assistance.

10 Of the 100 percent, we are -- it's right now about
11 96 percent that we have gone back to and found out that they,
12 in fact, do have a filter. We have made contact with them.

13 We have -- as of yesterday I have 3.9 percent, I
14 think it is, that we need to clean up. It's just over a
15 thousand. I say parcels, because what we're finding, some of
16 those are vacant homes or homes where people have moved, moved
17 out, or it could be somebody's grandparent that passed away
18 but they just maintain the home, keep the lawn kept up, are
19 still on the water system, but no one is living there. Just
20 having some troubles confirming whether or not they have or
21 need a filter at those locations, sir.

22 THE COURT: Okay.

23 MR. MURPHY: Can you bring up 15?

24 BY MR. MURPHY:

25 Q. Can you see 15?

1 A. Me, sir? Yes, sir.

2 Q. This is 15A?

3 MR. WALL: That's not what we have as 15.

4 MR. MURPHY: That's not what I have, either.

5 BY MR. MURPHY:

6 Q. I'm not going to go through these, but I want you to take
7 a look at 15 there.

8 A. Yes, sir.

9 Q. We have got this marked down and I think they are in the
10 Judge's book and on his front sheet as your daily reports.

11 A. Yes, sir.

12 Q. Are they?

13 A. Yes, sir.

14 MR. MURPHY: I want -- Eric, you can scroll through
15 them for him for a bit and see if they are his daily reports.

16 THE WITNESS: Yes, this is the Captain's daily
17 report.

18 BY MR. MURPHY:

19 Q. And you're the Captain?

20 A. Correct, sir.

21 MR. MURPHY: I'm offering 15 right now, your Honor,
22 rather than have him go through every single page.

23 THE COURT: How many pages are there?

24 MR. MURPHY: Eric? Oh, daily reports, oh --

25 THE COURT: Ballpark.

1 MR. MURPHY: Ballpark, 300.

2 THE COURT: Any objection to Exhibit 15?

3 MR. WALL: Could I just have a clarification of the
4 first date and the last date on those, so I know what's being
5 admitted?

6 BY MR. MURPHY:

7 Q. What days are covered, the first date of the first daily
8 report and the last date of the last daily report that's in
9 that exhibit?

10 A. In this exhibit?

11 Q. Yes.

12 A. Is this the last date that's up there?

13 Q. The last date.

14 A. The last date on this one is August 17, 2016, so it would
15 have been data from the 16th.

16 Q. And what would be the starting point, when was your first
17 report?

18 A. It looks like this was March 4th, data would have been --

19 Q. Of 2016?

20 A. All data before that time. This is when we converted to
21 this format for me.

22 MR. WALL: No objection, your Honor.

23 THE COURT: Fine. Exhibit 15 is received.

24 BY MR. MURPHY:

25 Q. And I'm going to show you Exhibit 16. I believe you have

1 this, as well. This is -- do you know what this is? What do
2 we call this?

3 A. Yes, sir. This is the Flint water timeline. This is a
4 document that typically is just my notes, my diary of the event
5 even before the disaster. I start keeping track of things just
6 to make sure I'm not missing anything, and that's what this is,
7 sir.

8 Q. So this is a chronology of things you have done or
9 observed or got informed about over a period of time?

10 A. They are more key things, sometimes, that I want to just
11 make sure I put in there. This is by no means all inclusive,
12 and it has shifted where I'm not doing it. It's more our
13 planners that are just making notes as far as how many
14 commodities we're pushing out. But early on, they were, it
15 was me putting the notes in, sir.

16 Q. So from this you could tell the Court how much we have
17 shipped out in filters and water up to the present time?

18 A. Yes. I would use probably the Captain's daily report.
19 That's a little bit easier to --

20 Q. So you would either use Exhibit 15 or this Exhibit 16?

21 A. Yes, sir.

22 MR. MURPHY: And I'm offering Exhibit 16.

23 THE COURT: How many pages?

24 MR. JAMISON: 62.

25 MR. WALL: No objection, your Honor.

1 THE COURT: Okay. Exhibit 16 is received.

2 MR. MURPHY: Back to the Powerpoint, Eric, I think
3 it's slide three.

4 No, that slide right there.

5 BY MR. MURPHY:

6 Q. Based upon your knowledge, can you tell the Court how many
7 cases of water we have used in Flint to date?

8 A. Yeah. This is a couple days, I think, old, but it's about
9 2.7 million cases, and which is about 32 -- or over 32 million
10 liters of water.

11 Q. And how many filters have we distributed?

12 A. 136,000 filters and over 297,000 cartridges; those are the
13 replacement medias.

14 Q. Have we given cartridges to people with filters, as many
15 as they want?

16 A. Yes. Yes. Especially early on so we didn't have them
17 coming back, we wanted to make sure they had two, three or four
18 of them early on.

19 Q. First tell the Judge what a test kit is and then how many
20 we have distributed.

21 A. The test kits are the kits that we would hand out so
22 people could actually do the sampling for the Department of
23 Environmental Quality. They are just empty bottles with
24 directions on there. So we would issue those, also, at the
25 community points of distribution, and we have put out there

1 54,492.

2 Q. I believe it's one slide up or back.

3 You have seen Exhibit 28 before, which Mr. McNeely
4 testified about, and I have asked you if you could determine
5 an amount that has been spent on water. And have you made a
6 determination of how much money we have spent on water?

7 A. Yes, sir. It was almost or just under 31 million.

8 Q. And that's the total amount?

9 A. That's the total amount extracting from multiple sources.
10 That's just not the State Police. It's -- and it goes back to
11 before I was even involved in this.

12 Q. So Federal money is included in this as well, right?

13 A. Yes. Yes.

14 Q. And water is \$15,802,496 just on water, bottled water?

15 A. Yes, sir.

16 Q. And the filters, is that figure also drawn from
17 Exhibits 28 and 29 and 16 and 5?

18 A. Yes. Was 29 Mr. McNeely, sir?

19 Q. Yes.

20 A. I don't know if his captures the Federal side of things;
21 that's what I don't know.

22 Q. Does your Exhibit 16 and 5, your daily reports -- not 5, I
23 meant -- I'm sorry, I mean, I believe it's 16 and 15, your
24 daily reports and your timeline.

25 A. Those typically cover just the quantities. We don't -- I

1 don't deal with cost necessarily in that.

2 Q. But they would deal with the commodities that we have
3 listed here?

4 A. Yes, the amounts of the commodities, yes, sir.

5 Q. And the test kits?

6 A. Yes, sir.

7 Q. And the cartridges at 9 million?

8 A. Yes, sir.

9 Q. Now, when it says water ordered, not yet paid, can you
10 tell the Judge what water ordered, not yet paid for, means?

11 A. So usually every week I'm signing a purchase order for
12 additional amounts of water ranging from 800,000 to \$1 million,
13 and that's what that is. I think I just signed off on two
14 purchase orders to get additional. It's just, we have to keep
15 the water flowing in, so those are just what we would call
16 incumbered.

17 Q. I would like you to telling the Judge what happens on a
18 daily basis at a point of distribution for water in Flint.

19 A. On a daily basis at the points of distribution, we have
20 Flint residents that work at the points of distribution. We
21 have Flint residents that work in our warehouse, which is full
22 of water and other commodities.

23 Every day truck loads go out, they get the PODs
24 established at the same locations, put everything up, get all
25 their commodities ready for people to come in, and then they

1 work that POD during the hours of operation.

2 And then while they are there, those trucks are
3 just -- they keep cycling between all the community points of
4 distribution. These are separate than the ones doing AFN/211
5 type calls. These are just dedicated to resupply those points
6 of distribution.

7 And then we also have -- well, not the community
8 points of distribution, one in each ward, we have 42 or 43
9 faith-based organizations that also get commodities from us.
10 So we deliver multiple truck loads to the Eastern Food Bank,
11 who then ships it to these 42 or 43 faith-based organizations.
12 I think some of the pastors may have talked about that today,
13 when we supply them.

14 And then we have another vehicle or vehicles that
15 would deliver things. So like Crossing Waters, if we get an
16 order or a request for another entity that they want 100
17 filters or two pallets of water, we do it. It's -- we call
18 them hot shots, and then we go and we deliver them, those
19 commodities, so they in turn can do this.

20 This is definitely a whole of community type of
21 event. It's not just the State. I mean, it's all these
22 organizations and we help supply them.

23 Q. Have we ever charged any of these groups for any of these
24 things or we just deliver them?

25 A. We just deliver them. As a matter of fact, I believe it's

1 a violation of Federal law to charge when we receive Federal
2 resources.

3 Q. Have we had people that we have restricted how much water
4 they can pick up, ever?

5 A. I have to be careful with that, because there are people
6 that take advantage. We have had actual U-Haul trucks show up
7 to the points of distribution and literally want to take all
8 of the water from the point of distribution and that's not
9 acceptable.

10 What we do is, what I have told everybody is they
11 need to use their judgment out there. If you have a family or
12 someone that says I have got four kids, I can't get back here,
13 and these are Flint residents running the points of
14 distribution, so they understand the circumstances probably
15 better than myself would, being in Lansing, so they in turn
16 would give them those commodities, but it's kind of a judgment
17 call.

18 Q. And does it happen that this is a very fast-paced
19 operation during the day when this is open?

20 A. It depends. Some PODs are a little bit busier than
21 others. But the cars just pull up, they tell them what they
22 need, and then the personnel load up the commodities in the
23 vehicle and they drive off. It's pretty quick. It's a pretty
24 good operation now.

25 When it was in the fire stations, it was a different

1 story, but now that we're utilizing the Federal system, the way
2 they are supposed to be operating, we're in pretty good shape.

3 THE COURT: Is there a record of who gets what?

4 THE WITNESS: Yes. Individual -- yes, sir. We
5 developed an application on an iPad, and then we have backup
6 hard copies. So when people come up, they give their address.
7 If they don't give us their address, we have a refusal
8 address, if you will, and we write down the commodities.

9 And that's -- number one, I have to account for all
10 of these to FEMA, but it's also a way for us to gauge, you
11 know, where the commodities are going and making sure that we
12 don't have any criminal elements taking advantage, which we
13 have done investigations on that.

14 THE COURT: So the record you keep is based on
15 addresses, is that correct?

16 THE WITNESS: Address only, sir.

17 BY MR. MURPHY:

18 Q. There has been some issue or contentions made early on
19 in this case that we restricted the hours of the points of
20 distribution from what they were, and therefore, we're
21 preventing certain residents from getting water.

22 Can you explain to the Court how we have arrived --
23 where we started with operating hours and how we got to where
24 we're at now and why we're at where we're at?

25 A. So originally with the points of distribution at the fire

1 station the hours were from 9:00 to 9:00. And then once we
2 transitioned to the community points of distribution in each
3 ward, we shifted the hours based on the activity that we were
4 seeing between 9:00 and 9:00. So it was really based on where
5 our highest activity was and that determined where our hours
6 were. So we shifted them to 12:00 to 6:00 during the week and
7 then 12:00 to 8:00, I think it is, on Saturday, in hopes that
8 we were hitting those populations. But again, if anybody ever
9 needed assistance, you know, they can contact 211. We will do
10 everything we can. We're definitely out there to serve the
11 community of Flint.

12 Q. As part of your job duties do you sit on committees in
13 Flint?

14 A. Yes, I do, sir.

15 Q. Tell the Court what committees you need to sit on for your
16 job.

17 A. I sit on Mission Flint, which is one that the Governor's
18 Office had put in place to look at what operational things are
19 needed out there, and everything from economic development to
20 what we do at the points of distribution.

21 And then I'm the co-chair of the Flint Water
22 Interagency Coordinating Council, which is Executive Order 1,
23 I believe, of 2016, which is working with the City and other
24 officials.

25 I should also say, Mission Flint has community

1 members come in occasionally and they tell us, you know, some
2 things that are working, what's not working, where we need to
3 do better.

4 Q. There has been -- and I understand why, I think everyone
5 understands why, but since you have been on the ground there,
6 talked to the people, been to community meetings -- there is a
7 trust issue in Flint with the people and what we're doing,
8 correct?

9 A. Yes, sir.

10 Q. Explain to the Judge, to the best of your ability, your
11 understanding of that.

12 A. Well, clearly they were looking at Government agencies to
13 ensure that they had water, fresh, clean water delivered to
14 them, and even when they were told it was okay, it wasn't.
15 That's a trust that's going to be very hard to earn back.

16 So we're doing everything I -- that we can. I have
17 my staff engaged with the community members, and when there is
18 a problem we try to get on it right away.

19 If something we're doing is not working quite as well
20 as it needs to and the community members tell us that, we will
21 make adjustments. It's not uncommon, not only with this
22 disaster, with any disaster emergency, you have to make
23 adjustments based on what the community needs are, and we are
24 and we continue to do that, in the hopes to build that trust
25 back.

1 Q. You're aware that the EPA has said that drinking filtered
2 water is safe to drink for any age group, including pregnant
3 women and children under six; you are aware of that finding by
4 the EPA?

5 A. I am, sir.

6 Q. And that that finding has been disseminated to the Flint
7 community, correct?

8 A. Yes, sir.

9 Q. Based on that, have we stopped the bottled water program
10 at all?

11 A. Nothing has changed, sir.

12 Q. Can you tell the Judge why we haven't stopped it?

13 A. This goes back to, again, we have the human element here.
14 There is no way we can just stop delivering the bottled water.
15 Until people are comfortable using their filters, until we get
16 to that point where they truly have -- you know, it's not going
17 to be 100 percent trust, but when they get to that point where
18 we're getting some trust back and they are starting to trust
19 the filters, we're going to have to continue with the same
20 operation that we have right now.

21 MR. MURPHY: Eric, can you move -- I think it's the
22 second from last one. I should have had my little cheat sheet
23 here. Yeah.

24 BY MR. MURPHY:

25 Q. I asked you specifically, because of a proposed order that

1 Plaintiffs had submitted, to talk to your finance people, to
2 talk to the people that you deal with, since you deal on a
3 regular basis with getting water to people that need it, if you
4 could do some -- they could do some kind of estimating as a
5 cost analysis of if we had to deliver water door to door. Do
6 you recall me asking you to do that?

7 A. Yes, sir.

8 Q. Could you tell the Court what your findings were and
9 describe what was done to come up with what we see here on the
10 slide?

11 A. So the finding is five cases a week would end up being
12 about 9.4 million a month, which is about 6 million more than
13 what we're doing now, or ten cases of water a week would be
14 11.4 million, or an \$8 million increase.

15 What my staff did is they looked at the operation
16 that we have in place and what we did before when we were going
17 door to door and they used those figures. This was for -- this
18 would be a seven-day-a-week operation with the assumption that
19 we were hitting, I think it was, 400 -- or 4,000 -- 4,988
20 homes, we just -- I guess 5,000 homes a day. We would need
21 70 teams to do that. And then all the logistical elements.

22 What this doesn't include is a one-time \$81,000
23 amount that we would need for some additional logistics.

24 The logistics piece behind this is a lot more than I
25 think what people understand. It's not just putting water in a

1 truck and going and delivering it. There is a lot of logistics
2 that goes behind this, and that's, that's a lot of what our
3 costs are when it comes to this. But those are the figures
4 that they came up with based on what we were doing in the past.

5 Q. Based on your knowledge of the available people in Flint
6 to first be licensed to drive those trucks, and two, to do the
7 delivery, you have told me that if you were to implement this
8 program, you would have to call out the National Guard to do
9 it, at least get it started?

10 A. From what I have seen, my recommendation to the Governor
11 would be to reengage the National Guard and activate the
12 National Guard, which is probably one of the most expensive
13 resources that are out there.

14 I'm struggling just to get -- we're trying to train
15 Flint residents to get their CDL to drive for us to do these
16 deliveries, as well as set them up for future jobs when we
17 transition them and we're struggling even with that. It would
18 be very difficult. And for us to do this quickly, my
19 recommendation would likely be, based on the information I
20 have, is to ask the Governor to activate the National Guard.

21 Q. And would this money that -- this increase, 6 million
22 increase on water with five cases, and let's just limit my
23 question to that, would it be necessary to draw that money
24 monthly from some other place it's going to out of the
25 appropriation that's already been made by the Legislature?

1 A. I don't know, honestly, where that money would come from,
2 sir.

3 Q. Is there anyone -- and I think you have done some
4 discussion already, but I want to make sure that it's clear.

5 In July you and I talked, DEQ has indicated to you,
6 and you have done some study into this, about these
7 door-to-door programs checking on filter installation?

8 A. Yes, sir.

9 Q. And I think I told the Court in my opening today that we
10 are just getting that ramped up?

11 A. Yes, sir.

12 Q. Do you know if that's already started?

13 A. Yes, sir. It started with the DEQ employees, I'll say mid
14 to end of July where some DEQ employees were doing it, but
15 since then they have transitioned that. They have already
16 trained two teams to do that and they are trying to get 36 to
17 38 teams of Flint residents to be the filter education teams,
18 if you will, but that's the community outreach and resident
19 education teams.

20 Q. Is it your understanding that's going to be in every ward?

21 A. It's my understanding two teams will be in every ward, and
22 that is funded, I believe, until March of 2018.

23 Q. And are the filters we're talking about the one that's
24 have already been admitted into evidence, the Brita and Pur
25 filter?

1 A. Yes, sir.

2 MR. MURPHY: All right. Thank you, Judge.

3 THE COURT: All right. Mr. Wall, are you taking this
4 witness?

5 MR. WALL: I am, your Honor.

6 THE COURT: All right. Let me ask a couple questions
7 first.

8 Mr. Kelenske, you mentioned that you are delivering
9 on a regular basis to 1,250 households right now, is that
10 correct?

11 THE WITNESS: That is correct, sir.

12 THE COURT: On a regular basis, is that weekly?

13 THE WITNESS: It's coming up to be a weekly rotation.
14 And it's done by ward, so they have it mapped out so the teams
15 go to different wards on different days.

16 THE COURT: And how much does that cost?

17 THE WITNESS: I know our operation, I think, was over
18 2 million a day. I would have to go back and look at that.
19 I'm sorry, sir. I don't have that number.

20 THE COURT: That's what you're already doing?

21 THE WITNESS: Yeah. Our operation a day -- I'm
22 sorry, I think it's a month. I believe our monthly operation,
23 but I think that's for everything, is over \$2 million a month,
24 if I have my figures correct. I don't have it broken down
25 just for those teams, though, sir.

1 THE COURT: Okay. But you are delivering to 1,250
2 households weekly and you keep track of the costs on a monthly
3 basis, is that correct?

4 THE WITNESS: Yes, sir.

5 THE COURT: And now, are the costs that you mentioned
6 total costs or incremental costs, if you were to increase that
7 to 5,000 homes?

8 THE WITNESS: If we were to increase the 12 -- or the
9 1,250 number to 5,000, sir?

10 THE COURT: Right.

11 THE WITNESS: There would, there would probably be
12 added costs to that. We would likely have to have more
13 drivers. That's really our sticking point right now, is the
14 drivers, sir, because they have to have a CDL.

15 THE COURT: And how many homes are there in Flint?

16 THE WITNESS: We range, we range between 33,000 or
17 32,000, 33,000 to 34,000. It just depends.

18 THE COURT: Well, you mentioned that there are 30,000
19 to 34,000 active water customers. Are those residential water
20 customers or do those include everybody?

21 THE WITNESS: Those are residential active water
22 customers. There are more residences, but these are the ones
23 that have active water accounts.

24 So what happens, just the other day we get a phone
25 call from the Water Department in Flint, they had a new

1 address that turned the water on and so we had to update our
2 system.

3 THE COURT: Oh, all right. Thank you.

4 Proceed, counsel.

5 CROSS EXAMINATION

6 BY MR. WALL:

7 Q. Good afternoon, sir. Just to follow up on one of the
8 Court's questions.

9 A. Yes, sir.

10 Q. If you're delivering to 1,250 homes weekly now for
11 \$2 million a month, what would be the cost of delivering to
12 5,000 homes instead?

13 A. This is a calculation I would want to bring back to my
14 logistics, my planners and finance people, because there is
15 a lot of -- a lot of things that would have to go into this
16 calculation.

17 Q. Let's look at Exhibit 15, which I'm afraid I left behind,
18 so give me one second.

19 We're just going to look at the last entry on here,
20 which is from mid August. This is the last figure you all have
21 produced.

22 THE COURT: This is a daily report?

23 MR. WALL: Yes, this is the Captain's daily report.

24 BY MR. WALL:

25 Q. And if you could look at the -- I guess it's the 8-17

1 table that says commodities total, do you see that?

2 A. Yes, sir.

3 Q. I guess --

4 A. I do now, sir. It just wasn't there yet.

5 Q. Now, I'm sorry, let's start one page earlier than that,
6 outreach through yesterday.

7 Now, you have here something that says breakdown of
8 visited customers on the upper right. Do you see that?

9 A. Yes, sir.

10 Q. And as of August 17, 2016, there were 5.7 percent of
11 visited customers that were visited, but unconfirmed filters,
12 correct?

13 A. Correct, sir.

14 Q. And so for those households you did not know whether they
15 had a filter or not, correct?

16 A. I'm sorry, I missed the first part of that.

17 Q. For those households, those 1,591 households, you had no
18 idea whether there was a filter there or not?

19 A. Correct.

20 Q. And then when it says confirmed filters, the 94.3 percent
21 of households with confirmed filters, that means a filter has
22 been dropped off or delivered to that location, correct?

23 A. Yes. It means we made contact with somebody at that
24 residence, somehow we were able to not -- to physically confirm
25 that, not just dropping it off and leaving it on their porch.

1 Q. It does not mean that the home presently has a working
2 filter, correct?

3 A. Correct, sir.

4 Q. So for example, if it's an apartment, a tenant obtained a
5 filter, they moved out and then a new tenant moved in, you
6 don't know if that tenant would actually have a filter,
7 correct?

8 A. Correct. But we have done some other things with the
9 apartments, but yes, you're correct, sir.

10 Q. And you don't know if a filter that's been delivered is
11 actually being used, correct?

12 A. Correct.

13 Q. Or installed, correct?

14 A. In some cases, correct.

15 Q. Or maintained, correct?

16 A. Correct.

17 Q. A home might have received a filter that doesn't fit its
18 faucet, but be listed as confirmed filter, correct?

19 A. Correct.

20 Q. Now, you have testified today about some efforts to reach
21 out to residents to make sure that their filters are working
22 properly. Is that what you called the Filter Ambassador
23 Program?

24 A. I don't believe I have used that term, sir.

25 Q. How would you describe that program?

1 A. Well, I would -- that's -- the program that I referred to,
2 making sure we're on the same page, the Community Outreach and
3 Resident Education, the CORE program the DEQ is running.

4 The program is to get to kind of exactly where you're
5 going with this, is to go and make sure these filters are being
6 properly used, that they know how to maintain them, et cetera.
7 There were four pieces to that program.

8 Q. And this program is starting up now in September?

9 A. It started in July with DEQ personnel, but I believe by
10 August they had transitioned that to some of the local hires
11 and that's the direction they are headed.

12 Q. As of the beginning of July there was no such program
13 whatsoever, correct?

14 A. That, I don't know. This was a DEQ program. I will say
15 when they were doing the sentinel testing that was spoke of
16 earlier, that's kind of a piece of it, but I don't want to
17 say -- tie the two programs together, but I don't know when
18 they officially started calling it the CORE program.

19 Q. So the sentinel program, they go out and test it in some
20 number of residents homes, right?

21 A. Yes.

22 Q. And they might make sure that those homes have properly
23 installed filters, correct?

24 A. I wouldn't say might. If DEQ and EPA went to these
25 residences to do testing, they absolutely would have educated

1 | them and put the right filters on, that's my understanding.

2 | Q. And there's a few hundred residences in that sentinel
3 | testing program?

4 | A. I'm not sure what their final numbers are, sir.

5 | Q. Now, you recall being deposed in this case?

6 | A. Yes, sir.

7 | Q. I took your deposition, correct?

8 | A. Correct.

9 | Q. And I asked you, do you recall, are you aware of any
10 | efforts by the State to confirm whether filters that have been
11 | installed in homes in Flint are properly installed, do you
12 | remember me asking you that?

13 | A. I remember briefly the conversation, yes.

14 | Q. And do you remember answering that question: I am not
15 | aware of any efforts that are underway going door to door.
16 | I know there has been recent discussions about filter
17 | installation just to confirm what's getting at -- what you're
18 | getting at, but there's no efforts that I'm aware of right now.

19 | A. Correct. Those discussions were the CORE program that I
20 | didn't have a lot of information on. That's correct.

21 | Q. So any efforts that you're discussing now to hire people,
22 | those are efforts that the State started after this preliminary
23 | injunction hearing was calendared, correct?

24 | A. No, because I just may not have been made aware of it.

25 | DEQ and EPA, there is a lot of different programs that are out

1 there. That's the discussions I was talking about. I don't
2 know how far along they were in that program at the time, sir.

3 THE COURT: When did you take that deposition?

4 MR. WALL: July 8, I believe.

5 THE COURT: July what?

6 MR. WALL: Early July. July 8, your Honor.

7 THE COURT: Thank you.

8 BY MR. WALL:

9 Q. Now, these filters, the faucet filters that were displayed
10 earlier, those should only be used with cold water, correct?

11 A. Correct, sir.

12 Q. Hot water can damage the filter?

13 A. Correct, sir.

14 Q. And they should be flushed before they are used, correct?

15 A. For five minutes, they should run water through them, cold
16 water, yes, sir.

17 Q. Now, confirmed filter, on your sheet, doesn't indicate
18 that the water is only being -- only cold water is being used
19 with that filter, does it?

20 A. No, sir.

21 Q. Doesn't indicate that the filter is being flushed, does it?

22 A. No, sir.

23 Q. Do you have kids?

24 A. Yes, I do, sir.

25 Q. I don't know how old they are, but do you remember when

1 they were maybe three or four and could reach the faucet?

2 A. Like it was yesterday, sir.

3 Q. Sometimes they could get themselves a little water out of
4 that faucet?

5 A. Yes, sir.

6 Q. Might have turned on the faucet without paying attention
7 to whether it was hot or cold water?

8 A. Could have, sir.

9 Q. Now, confirmed filter on your Captain's daily log doesn't
10 mean that the cartridge has been replaced, does it?

11 A. No, sir.

12 Q. And you have no information about whether cartridges are
13 regularly being replaced, do you?

14 A. Not at this time, sir.

15 Q. Now, it's important to replace cartridges, correct?

16 A. Yes, sir.

17 Q. And that's because if the cartridges aren't replaced after
18 a certain amount of use, the cartridge is ineffective at
19 removing lead, correct?

20 A. Potentially.

21 Q. And so if somebody kept on using the filter after the
22 cartridge was -- had lost its efficacy, they might drink water
23 they thought was safe that might actually have high lead
24 levels, correct?

25 A. Potentially.

1 Q. The cartridge filter pores could become clogged?

2 A. That's kind of beyond my scope, sir, but --

3 Q. Now, the Michigan State Police have developed certain
4 assumptions about how frequently filter cartridges will need to
5 be replaced, correct?

6 A. I don't know if we have made those assumptions. I know
7 that typically it's 100 gallons or three months, but it's
8 really dependent upon the use, as well as the water, you know,
9 what's in the water.

10 Q. Do you know a Nancy Downs?

11 A. Yes.

12 Q. Who is she?

13 A. She is one of my finance managers.

14 Q. And she works for the Michigan State Police?

15 A. Correct.

16 Q. She has been involved in the Flint response effort?

17 A. Somewhat.

18 Q. Do you recall her sending you an e-mail in January of this
19 year with an attachment that discussed water contamination
20 shortage, City of Flint assumptions, and then discussed how
21 frequently cartridges should be replaced?

22 A. I mean, vaguely. I have had her staff do some projections
23 for me.

24 MR. WALL: I have an exhibit that we're going to mark
25 as Plaintiffs' 391 and I'll just show it to counsel.

1 MR. MURPHY: It's not on your list, I take it?

2 MR. WALL: No.

3 MR. MURPHY: Okay.

4 THE WITNESS: Thank you.

5 MR. MURPHY: I'm returning that. I do have an
6 objection, your Honor. The only objection I have is that your
7 Honor has already ordered that there ought be no more exhibits
8 added to the list. Specifically, I received that yesterday,
9 so there should be no more exhibits listed, so based on that
10 order, this shouldn't be admitted, but --

11 MR. WALL: Your Honor, I would like to refresh the
12 witness's recollection, if the Court will permit me.

13 THE COURT: Yeah, it's not been offered yet,
14 Mr. Murphy. You anticipate my question about whether there is
15 an objection, but I usually don't ask that until somebody
16 offers the exhibit.

17 MR. MURPHY: I thought he was.

18 THE COURT: You may approach the witness.

19 MR. WALL: Your Honor, I am afraid I took the liberty
20 of approaching the witness and giving him the exhibit and I
21 forgot to ask permission. I apologize for that.

22 THE COURT: All right.

23 BY MR. WALL:

24 Q. Do you recall this e-mail, sir?

25 A. I don't, sir.

1 Q. It has your name on it, correct?

2 A. As a cc, yes.

3 Q. And if we could just turn to the second page of the
4 attachment, which says, City of Flint water contamination
5 shortage assumptions. Do you see that page?

6 A. Yes.

7 Q. It says replace cartridge --

8 THE COURT: Well, if it's not been admitted you
9 shouldn't be reading from it. You can ask him if it refreshes
10 his memory as to what that information was conveyed to him.

11 BY MR. WALL:

12 Q. Does it refresh your recollection of what assumptions you
13 worked on and how often?

14 A. I honestly don't even remember seeing this e-mail, sir.

15 Q. Okay. You said filters should be replaced every 100
16 gallons?

17 A. That's, I think, the manufacturer. They say they last,
18 typically, 100 gallons or three months, but again, it depends
19 on the water quality and how much you are pushing through
20 there, yes.

21 Q. So worse water quality, the filters last less long,
22 correct?

23 A. I would agree with that.

24 Q. And would you say that the average daily water needs for
25 drinking and cooking are maybe about two gallons per person?

1 A. It could be, yes.

2 Q. So maybe an average of three people per household in many
3 Flint households?

4 A. Potentially.

5 Q. So if you had two people -- I'm sorry -- three people
6 using two gallons per day, that would be about six gallons per
7 day, correct?

8 A. That's correct.

9 Q. And if the replacement life of the cartridge was 100
10 gallons, after 100 gallons it had to be replaced, that would
11 be -- you would need about two cartridges per month for that
12 household, correct?

13 A. I don't know if I would -- I don't know if I would go
14 along with that, because I think the amount of water people
15 use, it depends, because they don't have to use all filtered
16 water. They can use unfiltered water for certain things. So I
17 think, I think we have to be very careful when we start looking
18 at assumptions and making them fact in this case, sir.

19 Q. Now, the filters come with some written instructions,
20 correct?

21 A. Correct.

22 Q. Are you aware that there is a high illiteracy rate in
23 Genesee County?

24 A. Yes. But written, are you including pictures or just
25 text, because it's both, I believe.

1 Q. The instructions have both pictures and text, correct?

2 A. Yeah.

3 Q. And things like, do not use with hot water, they are in
4 text, correct?

5 A. I would assume so, yes, they are. I have seen that in
6 writing. I don't know how it's in picture, but I have seen
7 that, yes.

8 Q. And an instruction, replace your filter cartridge every
9 100 gallons, that's in text, correct?

10 A. I don't know how they put that part in there, sir.

11 Q. Can you imagine a pictorial description of that?

12 A. I, I have seen pictures try to explain things that I would
13 never think could be possible, sir, so I don't know.

14 THE COURT: You must have been shopping at Ikea.

15 BY MR. WALL:

16 Q. I'm going to show you what's been, I believe, admitted as
17 Exhibit State's 26, it's a box that says Zero water.

18 MR. MURPHY: 2C.

19 MR. WALL: Sorry, I misspoke.

20 THE COURT: 2C is the exhibit, yes.

21 MR. WALL: 2C.

22 BY MR. WALL:

23 Q. Is that one of the filters that's being distributed by the
24 State in Flint?

25 A. It -- yes, it is one of them, yes.

1 MR. WALL: And if I could approach the witness, I
2 would like to show him the instruction manual for the Brita
3 water filter.

4 THE COURT: For what purpose?

5 MR. WALL: To get him to look at the instructions.
6 If the Court wants me to move on, I will.

7 THE COURT: I think you have made your point.

8 MR. WALL: Okay.

9 BY MR. WALL:

10 Q. You have also, in your deposition, said that people can
11 learn how to use filters from the internet, correct?

12 A. I said that there is videos on the internet. I don't know
13 how I said it, but I think same thing, yes. Yes, sir.

14 Q. Are you aware that a large proportion of the Flint
15 population doesn't have internet access?

16 A. I think today was the first time I actually heard any
17 figures with that, with internet. I'm not sure on the iPhone.

18 Q. Are you aware that a number of Flint residents have a
19 special phone called -- that's called an Obama phone?

20 A. Yes, sir.

21 Q. Can you just briefly describe for the Court what an Obama
22 phone is?

23 A. From what I know, it's for low income people so they have
24 a cell phone that can at least make certain phone calls. I
25 think they are actually flip phones.

1 Q. And those don't have internet access on them, do they?

2 A. That, I am not certain. I don't believe so.

3 Q. And those phones aren't permitted to call 211 either, are
4 they?

5 A. That's incorrect. That, there was early on an issue with
6 that. We weren't aware. But that's because of the providers.
7 And we had gotten with those providers, I can't remember which
8 ones it was, and got them to allow 211, which is why we
9 provided a different number, an 800 number, until we got that
10 resolved. But the phones actually can do it. It's a provider
11 issue that we were not aware of, and as soon as we became aware
12 of it, we got with those providers. So I believe that has been
13 addressed.

14 Q. That was addressed after your deposition in July?

15 A. No, I don't believe so.

16 Q. Do you recall your deposition, I asked you about an
17 exhibit that showed both the number 211 and an 866 number on
18 it?

19 A. Correct.

20 Q. And I asked you about that 866 number?

21 A. Yes.

22 Q. And do you recall saying, well, I became aware that the
23 Obama phones, which is what they are called, that they do not
24 allow 211 to be called from them.

25 A. Correct.

1 Q. So at the time of your deposition you testified that the
2 Obama phone does not allow 211 to be called from them, correct?

3 A. I believe I testified that that was an issue, which is why
4 we gave them the other number that also goes to 211, but I --
5 the whole issue with the provider and getting that fixed, I
6 believe would have been discussed. If not, that was done early
7 on when we had those discussions.

8 Q. Okay. But because the 211 number wasn't working for Obama
9 phones, you also created an 866 Hotline?

10 A. We didn't create -- I don't know if we created that. I
11 think that was -- that might be a United Way one that they gave
12 us, but you are correct, sir, we had to create something else
13 until we resolved the situation.

14 Q. That's an 866 area code number?

15 A. Yeah. I don't recall, sir.

16 Q. Now, as of July you testified that it was a rarity for
17 State rapid response teams to deliver water to a person's home,
18 is that --

19 A. It was a rarity?

20 Q. -- an accurate description?

21 A. I don't believe I said it was a rarity for the rapid
22 response teams to deliver water.

23 MR. WALL: Could we pull up Plaintiffs' Exhibit 262,
24 Captain Kelenske's deposition?

25 If we could turn to page 180 of that deposition.

1 I'm sorry.

2 THE COURT: Do you have a question on that?

3 MR. WALL: Yes.

4 BY MR. WALL:

5 Q. If you could look at line three, other than those two
6 categories, is the State making any deliveries of water or
7 water filters or water filter cartridges to people in Flint at
8 this point in time?

9 And you answered: Only if needed. It's a rarity?

10 A. Sir, I'm not tracking you. Where are you, what page?

11 THE COURT: 180, I think he is saying.

12 MR. WALL: 181, I'm sorry.

13 THE COURT: All right.

14 THE WITNESS: Oh, okay. I'm with you now. So repeat
15 your question. I guess I'm not tracking you again.

16 THE COURT: He is asking you about lines three
17 through eight. Just read that to yourself.

18 Go ahead and ask your question.

19 BY MR. MURPHY:

20 Q. So other than through the access and functional needs
21 list, was it a rarity for the State to make deliveries of
22 water?

23 A. It was -- the two that I'm talking about here is accessing
24 functional needs or the rapid response teams, which is the 211.
25 That's rapid response teams. Our rapid response teams would go

1 out, too.

2 Q. You were sitting here all day long, you heard the
3 testimony earlier today. You heard the testimony that people
4 have called 211 repeatedly and not gotten a water delivery?

5 A. And not gotten -- yes, I have heard that, yes.

6 Q. Do you have any reason to believe those people are
7 fabricating that?

8 A. Um, no, I have no reason to believe that they are
9 fabricating it.

10 Q. Now, do you know how many -- you have spoken of these
11 points of distribution. You don't know how many Flint
12 residents live more than a mile from a POD, do you?

13 A. I do not, sir.

14 Q. You don't know how many Flint residents lack a car,
15 correct?

16 A. I do not.

17 Q. You don't know how many Flint residents are blind, right?

18 A. That is correct.

19 Q. You talked a little bit about the POD hours. You said you
20 started out with hours of 9:00 to 9:00 when the PODs were in
21 fire stations and then compressed the hours. What are the new
22 hours, 12:00 to 6:00?

23 A. I believe that's what they are through the week, and the
24 weekend is 12:00 to 8:00, I believe.

25 Q. And you said those were the hot -- the peak hours when --

1 the peak hours for business at the fire stations, correct?

2 A. It was, it was based on when we saw the most activity, yes.

3 Q. But you didn't make any effort to figure out if the people
4 coming on either side of those peak hours could make it during
5 the new hours, correct?

6 A. Well, we figured if we were open all throughout the week
7 and then on Saturday, we figured we had it covered, sir.

8 And then, also, with 211 being a potential, as well
9 as the church groups that are out there, we figured we had, we
10 had it covered.

11 Q. You didn't make any effort, to just repeat my question,
12 you didn't make any effort to determine whether the people had
13 been -- who had been visiting the fire station PODs outside
14 the hours of 12:00 to 6:00 on the week or 12:00 to 8:00 on
15 Saturday would be able to make it during those hours when the
16 PODs left the fire stations and the hours narrowed, correct?

17 A. Not individually, sir, no.

18 Q. 211 is a national hotline, correct?

19 A. That is correct.

20 Q. Run by the United Way?

21 A. Yes, sir.

22 Q. You don't make -- you don't answer those 211 calls?

23 A. Not yet, sir.

24 Q. You have never called 211, have you?

25 A. Um, I do. I think earlier in my deposition I said I did

1 not, but then I did recall one time I did, because I think --
2 that's when I had mentioned entering your zip code to get to
3 the right location, but that would be, I think, the only time.

4 Q. You don't know if there are staff at the 211 call center
5 who are dedicated to answering calls from Flint, correct?

6 A. I'm sorry, I don't know how they are staffed.

7 Q. You don't know if the staff, they are staff dedicated at
8 this national hotline to answering calls just from Flint,
9 correct?

10 A. I don't know how they have. I know the person that
11 e-mails us is the same person, or same office, I should say.

12 Q. You don't know if the 211, the people on the other end of
13 the line are volunteers?

14 A. I would imagine some of them are. I can't answer that,
15 though, sir.

16 Q. You don't know what kind of training they have, correct?

17 A. I do not, sir.

18 Q. Now, you mentioned an 866 area code number that was an
19 alternative to 211. You don't know when that was first
20 publicized, correct?

21 A. I do not.

22 Q. You're basically in charge of the State's emergency
23 response in the City of Flint?

24 A. This is a unique event, so if it was a typical emergency,
25 I would say yes, but you have heard mention of that Unified

1 Coordination Group, we have had both Stafford Act and
2 non-Stafford Act agencies in. So in theory, yes, but there is
3 a lot of work being done by other State agencies that I'm not
4 directly overseeing, sir; hence, Mission Flint.

5 Q. You report directly to a Lieutenant Colonel, correct?

6 A. Correct.

7 Q. But I think you said at your deposition that you had sort
8 of a dotted line of authority to the Governor, is that right?

9 A. A dotted line to our Colonel and the Governor, sir.

10 Q. Now, your main point of contact in the Governor's Office
11 is a gentleman named Paul Smith, is that right?

12 A. Typically. I have had a few different people, though, for
13 this event, sir.

14 Q. Mr. Smith, Paul Smith, he is counsel to the Governor?

15 A. Yes, sir.

16 Q. And let's see, between October 2015 and January of 2016,
17 your role with respect to the Flint water crisis was to monitor
18 the situation, is that right?

19 A. Well, to make sure that any unmet needs were being
20 addressed. Well, I take my cue from the local emergency
21 management coordinator, which Flint delegated to Genesee
22 County.

23 Q. And when I asked you at your deposition, you said it was
24 to monitor it, is that right?

25 A. That's part of it, yeah. There is more to it than that,

1 but yes, sir.

2 Q. Now, the Governor declared a state of emergency in early
3 January, isn't that right?

4 A. That is correct, sir.

5 Q. And in November of 2015, Paul Smith, the Governor's
6 counsel, made an inquiry of you about declaration of an
7 emergency in Flint, right?

8 A. Yes, sir.

9 Q. And you told the Governor's counsel, Mr. Smith, in an
10 e-mail that the Governor could declare an emergency at any
11 time, right?

12 A. I was providing him discussion bullets, yes, sir, things
13 that needed to be discussed.

14 Q. You weren't providing political advice to the Governor's
15 Office on how to respond to this emergency, were you?

16 A. I'm definitely not a politician, sir.

17 Q. You wrote to Mr. Smith that if the Governor declared a
18 state of emergency, then, in November, the State will, quote,
19 "formally own the event," correct?

20 A. Correct.

21 Q. You advised the Governor's counsel that if the Governor
22 declared a state of emergency, quote, "this could be viewed as
23 the State having owned up to how the water issue was created,"
24 correct?

25 A. Uh-huh.

1 THE COURT: I'm sorry, what's the answer?

2 THE WITNESS: Oh, I'm sorry, sir, yes, sir.

3 BY MR. WALL:

4 Q. And you wrote to the Governor's counsel back then in
5 November 2015, that a declaration of an emergency in Flint
6 could be interpreted as showing that, quote, "the triggering
7 event was caused by the State, that is why the State is now
8 declaring," correct?

9 A. Correct.

10 Q. So the Governor didn't declare a state of emergency for
11 almost another two months, correct?

12 A. I don't believe we were asked for a state of emergency and
13 no unmet needs were brought to our attention, sir, through the
14 Emergency Management Act.

15 Q. Now, you have mentioned that there are a lot of volunteer
16 groups that have been providing resources in Flint, correct?

17 A. Yes, sir.

18 Q. The State of Michigan doesn't have any control over their
19 staffing, correct?

20 A. I wouldn't say control, but they are partners of ours.
21 The Red Cross and some of the other organizations, we partner
22 with them during emergencies and disasters.

23 Q. Well, if they decide -- the Red Cross has decided they are
24 needed somewhere else, there is nothing to keep them in Flint,
25 they don't have to do that, you can't order them, correct?

1 A. Can't order them, but I can have some good discussion with
2 their bosses, yes, sir.

3 Q. All right. How much money is this filter outreach effort
4 that you discussed going to cost?

5 A. I don't have a cost for that. I just know it's part of
6 the Department of Labor grant which is supposed to be funded
7 until March of 2018.

8 Q. Now, in your cost estimate for a door-to-door delivery
9 program of bottled water, were you including the costs of the
10 water itself?

11 A. Yes.

12 Q. Okay. So water is presently being distributed at PODs,
13 correct?

14 A. At -- it's at -- one of the locations is at the points of
15 distribution, but as I mentioned earlier, we deliver to the
16 food bank, who in turn distributes to other faith-based and
17 other NGOs that are out there.

18 Q. So the State is already paying for the cost of bottled
19 water, correct?

20 A. We're paying for the cost of our current operation. You
21 start going door to door, not everybody is drinking bottled
22 water. People are using the filters.

23 Q. Did you assume that your delivery program would occur to
24 every one of the 30-odd-thousand homes in Flint?

25 A. I am not -- I'm missing that.

1 Q. I guess you didn't actually develop the cost figures that
2 you recited earlier, correct?

3 A. No. Typically I have the financial people as well as
4 Mr. McNeely's staff work on that.

5 Q. Do you know what assumptions those finance people made?

6 A. Are we talking about the going to door to door?

7 Q. Yeah.

8 A. Yeah. So, yeah, some of the assumptions that I asked them
9 to look at is giving everybody five cases of water, giving
10 everybody ten cases of water, and then I also had them look
11 at what we did in the past to see how we could, in fact,
12 accomplish, accomplish this mission. So some of the
13 assumptions were hitting 5,000 homes a day, having -- doing
14 it seven days a week, so those were some of the assumptions.

15 Q. So that would be 35,000 homes a week?

16 A. It was just under 5,000, yes, sir.

17 Q. And so if it were -- I'm sorry, just under 5,000?

18 A. It was 4,900 and some, is what we ended up looking at.

19 Q. Homes per day?

20 A. Yes.

21 Q. And so 30-some-thousand homes per week, correct?

22 A. Um, yeah.

23 Q. So they did not do an analysis of how much it would cost
24 to deliver to a smaller number of homes, correct?

25 A. We, we based it on the number of homes that we currently

1 are trying to service right now. I don't know why we would do
2 a smaller number of homes.

3 Q. Well, the assumption that was made for that cost
4 calculation was the bottled water would be delivered to every
5 home in Flint every week, correct?

6 A. Correct.

7 Q. Your team didn't calculate the cost of delivering bottled
8 water on a weekly basis to a smaller number of homes, correct?

9 A. Correct.

10 Q. So you don't know what those costs would be?

11 A. No, no.

12 Q. Did you consider the possibility that some people might be
13 perfectly satisfied with their filtered water and not want
14 bottled water delivery?

15 A. That's a possibility, but when I'm working on a mission, I
16 have to look at potentially worst-case scenario, because the
17 last thing I want to do is run out of commodities, because that
18 doesn't serve the public.

19 Q. The worst-case scenario you looked at also included
20 calling out the National Guard, correct?

21 A. That's a piece of it, yes, sir.

22 Q. One doesn't actually need Military training to deliver
23 bottled water to people's homes, does it?

24 A. Based on my operations that I have already conducted, it
25 is very difficult. Even at the height of this operation, we

1 | didn't have enough volunteers, sir. And it's a lot easier
2 | taking people, whether it's the Military or State Police, I can
3 | give them direct orders and they will follow those orders.
4 | When you start working with volunteers, it -- it's a very
5 | tricky situation, especially when you're looking at that number
6 | of volunteers. They are a great resource and asset, don't take
7 | that wrong, but it is easier when you have a paramilitary
8 | structure to do an operation like this.

9 | Q. The State has recently paid for the hiring of some people
10 | to do filter outreach?

11 | A. Yes, sir.

12 | Q. Those individuals are going to be trained, actually, not
13 | only to drop off water, but to instruct people how to replace
14 | filters?

15 | A. They are more on the filter education/maintenance track,
16 | yes, sir.

17 | Q. Uh-huh. Those people aren't State Police, are they?

18 | A. No, sir.

19 | Q. And they are not National Guard, are they?

20 | A. No, sir.

21 | Q. So you didn't need either the National Guard or the State
22 | Police to do filter education, correct?

23 | A. No, sir.

24 | Q. And you wouldn't need the National Guard to actually take
25 | people -- water to people's homes, either, would you?

1 A. I disagree with that. I don't agree with that. I think
2 if you're talking about the bigger operation, going door to
3 door, I do believe that's going to be a recommendation I'm
4 going to make. That's very different than 36 or 38 individuals
5 that you're going to train in installing a filter and
6 maintaining it. It's a very different operation.

7 MR. WALL: Give me a moment.

8 (Pause in the proceedings at 5:40 p.m.)

9 BY MR. WALL:

10 Q. You were shown something like a Powerpoint during your
11 testimony?

12 A. Yes, sir.

13 Q. Would you have been able to provide the information you
14 testified that was on those slides if the slides weren't in
15 front of you?

16 A. I would think I would be able to. I don't know. I --
17 there is a lot of numbers that I have to keep track of, sir.

18 Q. Did you review that Powerpoint presentation in preparing
19 for this testimony?

20 A. I had seen it.

21 Q. Did it help refresh your recollection of what some of the
22 numbers should be?

23 A. Anytime I see something, it helps refresh my memory, sir.

24 Q. Including that, correct?

25 A. Yes, sir.

1 Q. How many --

2 THE COURT: Mr. Wall, can you wrap it up?

3 MR. WALL: Yeah. I'll just take the Court's
4 admonition and I'll sit down.

5 THE COURT: It was a question. Can you wrap it up?

6 MR. WALL: Yes. I think I'll just call it quits.

7 Thank you.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Mr. Murphy, quickly, please. Well, not
10 quickly, but efficiently.

11 MR. MURPHY: It will be efficient.

12 REDIRECT EXAMINATION

13 BY MR. MURPHY:

14 Q. The last series of questions that counsel was asking you
15 regarding the amount of homes and the cost of delivery of
16 water, do you recall that?

17 A. Yes, sir.

18 Q. Do you remember when you were asked to come up with those
19 figures, you were asked to look at Plaintiffs' proposed order,
20 that they wanted delivery to every single customer?

21 A. Yes, sir.

22 Q. And is that what you went with as far as how much it would
23 cost and how you would need to go out and get this water to all
24 those customers?

25 A. Yes. We were trying --

1 Q. Because they wanted that, correct?

2 A. Yes, sir, that was based on that direction.

3 Q. You got cut off, not by the Judge but by counsel, when you
4 said there was something different, a little bit different
5 about the apartments and filters. Tell the Judge what that was
6 about.

7 A. So with the apartment buildings, it was a little bit
8 difficult making sure just trying to catch people at home. So
9 what we did was we engaged the apartment or multi-home dwelling
10 owners, the landlords. And I recognize some are, some are
11 better than others, but that's how we distributed a lot. What
12 we did is we dropped off large amounts of the commodities to
13 the actual owner of those complexes, and then they in turn
14 would have their maintenance people go in and install, because
15 we can't go into the apartments, but their maintenance people
16 can. So we found it much more efficient and effective working
17 with the actual owners of the facilities.

18 THE COURT: When you say commodities, you're talking
19 about filters and cartridges?

20 THE WITNESS: Yes, sir. And we left them extras so
21 we have them there, and at any point in time if they need more
22 cartridges, we would just send a truck. That would be
23 considered one of our hot shots where they call and we just
24 bring them a pallet or whatever they need, sir.

25

1 BY MR. MURPHY:

2 Q. There has been an issue, too, and slap me for not bringing
3 it up sooner, but they have raised it, the information that we
4 give out, do we give it out in more than one language?

5 A. Yes, sir.

6 Q. How many languages?

7 A. We put the messaging out, English, Spanish, Hmong,
8 Mandarin Chinese, Arabic. We have American sign language
9 videos on line. I think that's it.

10 MR. MURPHY: Okay. That's all the questions I have
11 for this witness, your Honor.

12 THE COURT: All right. Thank you.

13 MR. MURPHY: I do have another matter to address as
14 soon as you're ready and the witness is excused.

15 MR. WALL: Your Honor, I would just ask if we could
16 have a copy of the Powerpoint presentation. We haven't been
17 given a copy. The witness used it to refresh his
18 recollection, apparently.

19 MR. MURPHY: I would be more than happy to provide
20 that for you.

21 THE COURT: Thank you, Mr. Murphy.

22 Mr. Kelenske, you are excused. Thank you. You may
23 stand down.

24 THE WITNESS: Thank you, your Honor.

25 THE COURT: What do you have, Mr. Murphy?

1 MR. MURPHY: Your Honor, oh, here it is. At this
2 time I would offer stand-alone exhibits, our Exhibit Number 4,
3 7, Number 8.

4 You will see in your books, I have your list that I
5 have used to list the exhibits, and when they were offered and
6 whether they were received or not.

7 8, which was not discussed by a witness; 9, which was
8 not discussed by a witness; 10, 11, 12, 13, 14, 17, 18, 19,
9 23, 24, 25, 26, and Number 27. Those are all on my list, I
10 just didn't discuss them with a witness, and I want to offer
11 them before we conclude our presentation.

12 THE COURT: Mr. Wall.

13 MR. MURPHY: I'll take any objections to --

14 THE COURT: Do you have any objections to any of
15 those exhibits?

16 MR. WALL: I would have to go through them one at a
17 time, your Honor, and I was busy, we were jotting down the
18 numbers, but I haven't been able to look at them.

19 THE COURT: All right. Do you have the list?

20 MR. WALL: I believe I do.

21 THE COURT: Take a look at it. Do you have objection
22 to 4?

23 MR. WALL: No.

24 THE COURT: 7?

25 MR. WALL: No.

1 THE COURT: Any of 8 through 14?

2 MR. WALL: 12, your Honor, it was -- we asked the
3 witness about this at deposition and he couldn't really
4 identify what it was or when it was used.

5 THE COURT: What is 12?

6 MR. WALL: A team leader script that apparently has
7 been used by canvassers in Flint.

8 MR. MURPHY: I'll withdraw 12, your Honor.

9 THE COURT: All right. 17, 18 or 19?

10 MR. WALL: 18 and 19, your Honor, they are -- I don't
11 think that counsel think they are necessary, but if they had
12 presented them we would have done some cross examination that
13 would have elicited -- I have some objection to both of those.

14 MR. MURPHY: I'll withdraw 17, 18 and 19, your Honor.

15 THE COURT: All three of them?

16 MR. MURPHY: All three.

17 THE COURT: 23 through 27.

18 MR. WALL: We would object on 27.

19 THE COURT: What is 27?

20 MR. WALL: A press conference by some researchers at
21 Virginia Tech, and again, we would have cross examined on this
22 if --

23 MR. MURPHY: Your Honor, there was no one to cross
24 examine. Mr. Edwards wasn't here. They have -- Mr. Edwards
25 is the independent who did the initial review out in Flint and

1 | blew the whistle, so to speak, and he supplemented all that,
2 | and Exhibit 27 is that supplement of his. And this Number 27
3 | is on their list, as well.

4 | MR. WALL: I'm not sure how I can argue with that,
5 | your Honor.

6 | THE COURT: The following exhibits are received: 4,
7 | 7, 8, 9, 10, 11, 13, 14, 24, 25, 26, 27.

8 | Anything further from the State Defendants?

9 | MR. MURPHY: No, your Honor we're done.

10 | THE COURT: Mr. Klein, anything further?

11 | MR. KLEIN: Your Honor, may I make a parallel motion
12 | with respect to certain of the State's exhibits?

13 | THE COURT: You mean Flint's exhibits?

14 | MR. KLEIN: The City's exhibits, excuse me.

15 | THE COURT: All right.

16 | MR. KLEIN: B through L.

17 | THE COURT: B as in boy?

18 | MR. KLEIN: B as in boy and L as in lion.

19 | THE COURT: Okay.

20 | MR. KLEIN: N, U, Z and KK.

21 | THE COURT: Do you have that list, Mr. Wall?

22 | MR. WALL: Could you just repeat it?

23 | THE COURT: Bravo --

24 | MR. KLEIN: B through L.

25 | MR. WALL: So B, your Honor -- I'm sorry, I should be

1 standing.

2 B through L were submitted with the briefing. Could
3 we have clarification, our assumption, if the Court will
4 consider received anything that was filed with the briefing?

5 THE COURT: I'm content to live with that, if you all
6 are; that is, consider received any exhibits that were filed
7 with the briefing.

8 MR. WALL: There were many witnesses we obviously
9 couldn't put in to present exhibits.

10 MR. KLEIN: So if that's going to be the rule, then
11 B through L and N fall into that, into that category, so that
12 leaves U, Z and KK.

13 THE COURT: Okay. U is the Mlive article from -- I
14 think it has a quote from Edwards in there, Mr. Edwards, or is
15 it Dr. Edwards?

16 MR. MURPHY: Doctor, I think.

17 MR. KLEIN: Your Honor, I misread my own writing. I
18 meant to say U through Z, rather than U and Z.

19 THE COURT: No, I'm taking them one at a time.
20 Exhibit U, any objection to U?

21 MR. WALL: No, your Honor.

22 THE COURT: V?

23 MR. WALL: No, your Honor.

24 THE COURT: W?

25 MR. WALL: No, your Honor.

1 THE COURT: X?

2 MR. WALL: No.

3 THE COURT: Y or Z?

4 Isn't Y a --

5 MR. KLEIN: I believe Y has been --

6 THE COURT: Wasn't Y admitted?

7 MR. KLEIN: I believe Y has been, yeah. Y has been
8 already admitted.

9 MR. WALL: No, your Honor.

10 THE COURT: And then KK, which is something from the
11 plumbers local.

12 MR. WALL: Yes, your Honor. We think there is
13 another web page that indicates that the plumbers' local's
14 effort is now stopped, defunct, so we don't think that KK is
15 an accurate illustration of what's going on now, so we would
16 object to that.

17 MR. KLEIN: I'll only say that I pulled it off the
18 website yesterday.

19 THE COURT: Well, that being the case, I think there
20 might be some serious foundation questions about that.

21 So I'll receive exhibits -- Flint Exhibits B as in
22 Bravo through L as in Lima, N as in Nancy, and U through Z,
23 and any of the other exhibits by the parties that have been
24 attached to the briefing, I think are fair game for
25 consideration unless there is an objection.

1 MR. MURPHY: Only to those submitted with the
2 briefing that are declarations, your Honor. And the reason I
3 say that is because your Honor's order specifically said that
4 any declarations that were going to be used for this hearing
5 should have been submitted when we submitted our declarations
6 and Dr. Caravallah submitted hers. They were never submitted
7 at that time. So I had no knowledge in preparing for this
8 that those old declarations that weren't submitted per that
9 order for this hearing would be used now.

10 MR. WALL: Your Honor, this is a hearing on the
11 preliminary injunction motion. We filed with supporting
12 declarations.

13 THE COURT: Right. No, I think those declarations
14 are things that are subject to consideration by the Court.

15 MR. MURPHY: Thank you, your Honor.

16 MS. CHAUDHARY: Your Honor, we would also like to
17 move a couple of additional exhibits into evidence.

18 THE COURT: Which are?

19 MS. CHAUDHARY: 183, 361, 382, and 383.

20 MR. MURPHY: What are they?

21 THE COURT: Do you have the list, Mr. Murphy?

22 MR. MURPHY: Yes. You have already admitted 361, so
23 I don't know why we have to go through that.

24 THE COURT: 183?

25 MR. MURPHY: I'm looking at that right now.

1 MR. GAMBILL: 183, are you referring to the Flint
2 2015 annual water quality report?

3 MS. CHAUDHARY: Yes.

4 MR. MURPHY: 2015? Not relevant, your Honor. Under
5 401, it's not relevant, and it's cumulative under 403. You
6 wanted to know what's happening in Flint today, not what was
7 happening, well, a year and-a-half ago. That water quality
8 report then doesn't tell you what's happening today. I think
9 the evidence that they have already submitted plus the
10 evidence we have submitted tells you where we're at today.

11 THE COURT: Well, that's perhaps true. There is a
12 question of likelihood of success on the merits, and if you
13 want to concede that point, then --

14 MR. MURPHY: I will not concede that point, your
15 Honor.

16 THE COURT: Well then, that objection is overruled.
17 361, you said was received.

18 MR. MURPHY: You have already accepted it.

19 THE COURT: Yeah, I think that's correct.
20 And 382 and 383, any objections to those?

21 MR. MURPHY: You said 182 and 183?

22 MS. CHAUDHARY: 382 and 383.

23 MR. MURPHY: There's too many pages.

24 MR. KLEIN: Those are DWSD water quality reports. I
25 think that may have been covered by your rulings.

1 MR. MURPHY: That's clearly not relevant, DWSD water
2 quality reports.

3 THE COURT: Is that Detroit Water and Sewer
4 Department?

5 MR. MURPHY: That's Detroit Water and Sewage. There
6 isn't even a Detroit Water and Sewage anymore.

7 MS. CHAUDHARY: Your Honor, the Flint water system
8 was a consecutive system with Detroit for many years. This
9 also goes to likelihood of success on the merits. Today we
10 had a discussion about whether or not lead levels have been
11 minimized in Flint. It's also relevant to the system's
12 ability to minimize lead levels in its drinking water. There
13 is relevance to those Detroit numbers because the water system
14 in Flint had been previously drawing Detroit water and
15 achieved different lead levels, different lead concentrations
16 than it is seeing right now when it was on that Detroit water,
17 and so to the extent that that -- that also goes to likelihood
18 of success on the merits.

19 THE COURT: If it's a relevance objection, I'll
20 receive the exhibits and give it the weight it deserves.

21 MR. KUHL: Your Honor, Detroit water, city water, is
22 not supplied from the same source, the water that is sent to
23 Flint. The Flint water is drawn from Port Huron and --

24 THE COURT: Counsel, I think I have ruled on this
25 objection.

1 MR. KUHL: I'm sorry, I didn't hear that, your Honor.

2 THE COURT: You can address that point in your
3 briefing, if you wish, which I'm about to address now.

4 If you care to file post-hearing briefs, which I
5 understand you may want to do from our off-the-record bench
6 discussion, you may submit briefs not to exceed 15 pages per
7 party.

8 MR. MURPHY: 15 pages, right?

9 THE COURT: That's 15 pages per party. That's
10 cumulative. That means the Flint party, the State party, and
11 the Plaintiffs.

12 And the deadline for that will be the 22nd of
13 September and that's a simultaneous deadline.

14 MR. MURPHY: When is that?

15 THE COURT: That's next Thursday.

16 MR. MURPHY: A week from tomorrow, right?

17 THE COURT: That's correct.

18 MR. GAMBILL: So your Honor, just to clarify, did you
19 mean the City has 15 and the State also has 15?

20 THE COURT: I did.

21 MR. GAMBILL: Okay. Thank you.

22 THE COURT: And then I believe I have all of the
23 other items that have been submitted.

24 Is there anything else for the record today, counsel?

25 MS. CHAUDHARY: No, your Honor.

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MR. MURPHY: Only, your Honor, we left your Honor three books with your forms on them for -- with hard copies of those exhibits, so you know they are there.

THE COURT: Yeah. Thank you. Anything else?

MR. KLEIN: No, your Honor.

THE COURT: Thank you, counsel. I appreciate your presentations.

You may recess court.

THE CLERK: All rise. Court is now in recess.

(Proceedings concluded at 5:57 p.m.)

* * *

CERTIFICATE OF COURT REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

s/ Rene L. Twedt
RENE L. TWEDT, CSR-2907, CRR, RMR, RDR
Federal Official Court Reporter

September 15, 2016
Date

**EXHIBIT
B**

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30754
LANSING, MICHIGAN 48909

August 29, 2016

U.S. mail and email to:
Susan_Pinkowski@mied.uscourts.gov

Honorable David M. Lawson
Theodore Levin U.S. Courthouse
231 W. Lafayette Blvd., Room 718
Detroit, MI 48226

Re: *Concerned Pastors for Social Action et al v. Khouri et al*
MIED Case No. 2:16-cv-10277

Dear Judge Lawson:

As requested, the Michigan Treasurer and the members of the Flint Receivership Transition Advisory Board (RTAB) submitted their initial witness list to the Court and opposing counsel on August 11, 2016. Based on the Court's order entered the next week on August 18, 2016, the Court has indicated it will limit the evidence to be considered at the hearing to the government response to the water situation in Flint. Because of the limitations on time and issues, we have submitted evidence in the form of an affidavit sworn to by Fred Headen, Chairperson of the Flint RTAB, and a declaration sworn to by Larry Steckelberg, Acting Deputy Treasurer for Local Government. Mr. Headen and Mr. Steckelberg were initially identified on our original witness list, but we no longer plan to call on them to testify at the hearing. Mr. Steckelberg's declaration is accompanied with by his signature. He is out of the office, but we will file a clean copy of his declaration when he returns.

It appears that the Court wishes to hear live testimony only about what is being done to address the needs of Flint's citizens in response to the water situation. For that reason, we submit the attached amended witness list that removes Mr. Headen and Mr. Steckelberg from the list, and adds Jacques McNeely, Director of the Office of Public Protection and Resources in the Michigan State Budget Office. Mr. McNeely will be able to testify as to the appropriations and expenditures made by the State of Michigan. We are submitting this amended witness list in an attempt to assist the Court to the greatest extent possible, and to notify all parties regarding the witnesses we plan to call at the hearing. The amended witness list also decreases the number of our witnesses from four to three in response to the Court's desire to expedite the hearing.

Honorable David M. Lawson
Page 2
August 29, 2016

Should the Court need us to provide anything more regarding this case,
please feel free to contact me.

Sincerely,

Mike Murphy w/permission state of michigan
Michael F. Murphy
Assistant Attorney General
State Operations Division
(517) 373-1162
murphym2@michigan.gov

MFM:skf

Enc.

cc: To all by email:

Frederick A. Berg, bergf@butzel.com

Joshua O. Booth, boothj2@michigan.gov

Dimple Chaudhary, dchaudhary@nrdc.org

Nathan A. Gambill, GambillN@michigan.gov

William Young Kim, wkim@cityofflint.com

Sheldon H. Klein, klein@butzel.com

Jared E. Knicley, jknicley@nrdc.org

Brooke A. Merriweather-Tucker, btucker@aclumich.org

Glenn M. Simmington, gsimmington@gmail.com

Michael J. Steinberg, msteinberg@aclumich.org

Sarah C. Tallman, stallman@nrdc.org

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONCERNED PASTORS FOR SOCIAL
ACTION, et al,

Plaintiffs,

No. 16-cv-10277

v

HON. DAVID M. LAWSON

NICK A. KHOURI, in his official
capacity as Secretary of Treasury of the
State of Michigan, et al,

MAG. STEPHANIE
DAWKINS DAVIS

Defendants.

**WITNESS LIST OF DEFENDANTS RTAB MEMBERS AND
STATE TREASURER FOLLOWING COURT'S AUGUST 18, 2016
ORDER**

1. Bryce Feighner, Chief, Office of Drinking Water, Michigan
Department of Environmental Quality.

Mr. Feighner will testify regarding Flint's water sample test results up to the day of hearing. These include all sentinel sampling results and any direct sampling examination results. He may also testify regarding the MDEQ's compliance with the U.S. Environmental Protection Agency's administrative order.

2. Jacques McNeely, Director, Office of Public Protection and
Resources, Michigan State Budget Office.

Mr. McNeely will testify regarding the appropriations and expenditures made by the State of Michigan in response to the water situation in Flint, such as Exhibit 28 from the August 23, 2016 exhibit list.

3. Captain Chris Kelenske, Director of Homeland Security and Emergency Management, Michigan State Police.

Captain Kelenske will testify regarding the State's emergency response role in the Flint water situation, provision of water and filters to Flint residents, availability of water and filters to Flint residents, and which groups play what role in providing water and information to Flint residents.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONCERNED PASTORS FOR SOCIAL
ACTION; MELISSA MAYS;
AMERICAN CIVIL LIBERTIES
UNION OF MICHIGAN; and
NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

No. 16-cv-10277

HON. DAVID M. LAWSON

Plaintiffs,

MAG. STEPHANIE
DAWKINS DAVIS

v

NICK A. KHOURI, in his official
capacity as Secretary of Treasury of the
State of Michigan; FREDERICK
HEADEN, in his official capacity as
Chairperson of the Flint Receivership
Transition Advisory Board; MICHAEL
A. TOWNSEND, in his official capacity
as Member of the Flint Receivership
Transition Advisory Board; DAVID
MCGHEE, in his official capacity as
Member of the Flint Receivership
Transition Advisory Board; MICHAEL
A. FINNEY, in his official capacity as
Member of the Flint Receivership
Transition Advisory Board; BEVERLY
WALKER-GRIFFEA, in her official
capacity as Member of the Flint
Receivership Transition Advisory Board;
NATASHA HENDERSON, in her
official capacity as City Administrator;
and CITY OF FLINT;

**DECLARATION OF
LARRY STECKELBERG
UNDER 28 U.S.C. § 1746**

Defendants.

DECLARATION OF LARRY STECKELBERG UNDER 28 U.S.C. § 1746

1. I have personal knowledge of these facts and can testify completely to them if called upon to do so.
2. I have worked for the Michigan Department of Treasury for 9 years. While at the Michigan Department of Treasury, I have served as a legislative liaison, the taxpayer advocate, administrator of the Customer Contact Division, and administrator of the Property Services Division. Currently, I am the Acting Deputy Treasurer for Local Government. I have been Acting Deputy Treasurer for Local Government since February 1, 2016.
3. As Acting Deputy Treasurer for Local Government, I oversee the services affecting local governments. This includes Treasury's role in the General Property Tax Act and Treasury's responsibilities for oversight of local finances including audits and the staff that work with distressed communities.
4. I am the Treasurer's designee on the Flint Water Interagency Coordinating Committee (FWICC) established by Governor Snyder. State and local government leaders, and outside experts such as Marc Edwards and Dr. Mona Hanna-Attisha, also sit on the FWICC.
5. In general, the FWICC's purpose is to ensure that State resources are effectively and efficiently administered to create short and long-term solutions to address Flint's needs that have arisen because of the water

situation and also to explore other activities and investments that can improve Flint to counteract the effects of the crisis.

6. Specifically, my role on the FWICC on behalf of the Treasurer is to act as a resource on city finance issues, funding water infrastructure, and assisting the city on other finance issues such as rate analysis and grants.
7. In regards to the City of Flint, I also oversee the state reimbursement for credits provided to Flint water customers. Treasury is the lead agency in working with the city on administering the water credits. This has included assisting the city by reimbursing for the cost of software changes to apply credits, the cost of city staff to administer the program, and cost for the necessary audit review to provide documentation to interested parties on the correct application of the credit.
8. Treasury has also funded certain legal fees for court cases concerning water rates and has provided occasional funding for administrative costs concerning various lawsuits. I, and the staff I direct, ensure proper documentation before authorizing expenditures of state funds.
9. I am also currently working with Flint on planning for infrastructure investment to build a connector line to serve as the duplicate delivery line of water into the city. This project will involve the City, County, and State in financing the planning and construction. The staff in local government also assist in the administration of RTAB duties such as scheduling, producing meeting materials and record keeping. While I have oversight regarding

Treasury funds provided to the City, I do not have, and do not purport to have, the authority to direct how the City of Flint uses its own funds.

10. The Michigan Department of Treasury does not operate Flint's water system.

I do not know how to ensure compliance with the Safe Drinking Water Act and neither I nor the Treasurer direct the City of Flint to take action to ensure compliance with the Safe Drinking Water Act. Treasury does not play a role in how the City monitors or tests its water system, or how the City reports issues regarding violations of the Safe Drinking Water Act to either its citizens or state or federal environmental regulators.

11. The Michigan Department of Treasury does not have the resources or ability to direct or implement a plan to either provide door-to-door delivery of bottled water to all Flint residents, or provide water filter installation and maintenance for all Flint residents.

12. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 29, 2016.

Larry Steckelberg

America that the foregoing is true and correct. Executed on August 29, 2016.

A handwritten signature in black ink, appearing to read "Larry", is written over a horizontal line. The signature is stylized and cursive.

Larry Steckelberg

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONCERNED PASTORS FOR SOCIAL
ACTION; MELISSA MAYS; AMERICAN
CIVIL LIBERTIES UNION OF MICHIGAN;
and NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

No. 16-cv-10277

Plaintiffs,

HON. DAVID M. LAWSON

v

MAG. STEPHANIE DAWKINS
DAVIS

NICK A. KHOURI, in his official capacity as Secretary of Treasury of the State of Michigan; FREDERICK HEADEN, in his official capacity as Chairperson of the Flint Receivership Transition Advisory Board; MICHAEL A. TOWNSEND, in his official capacity as Member of the Flint Receivership Transition Advisory Board; DAVID MCGHEE, in his official capacity as Member of the Flint Receivership Transition Advisory Board; MICHAEL A. FINNEY, in his official capacity as Member of the Flint Receivership Transition Advisory Board; BEVERLY WALKER-GRIFFEA, in her official capacity as Member of the Flint Receivership Transition Advisory Board; NATASHA HENDERSON, in her official capacity as City Administrator; and CITY OF FLINT;

AFFIDAVIT OF FREDERICK HEADEN

Defendants.

STATE OF MICHIGAN)

INGHAM COUNTY)

Affidavit of Frederick Headen

Frederick Headen being duly sworn states as follows:

1. I have personal knowledge of these facts, and if called as a witness, can testify competently to them.
2. I am employed by the Michigan Department of Treasury and serve as Legal Advisor to the State Treasurer.
3. I have been an appointed member, and chairperson, of the Flint Receivership Transition Advisory Board (RTAB) since it was created by Governor Snyder on April 29, 2015.
4. The RTAB is a public body that derives its authority from Section 23(5) of the Local Financial Stability and Choice Act, Mich. Comp. Laws § 141.1563, and the April 29, 2015 appointment letter of the Governor to the Secretary of State.
5. The Local Financial Stability and Choice Act grants the RTAB the authority to: (a) require the city to annually convene a revenue estimating conference; (b) require the city to provide monthly cash flow projections and a comparison of budgeted revenues and expenditures to actual revenues and expenditures; (c) review proposed and amended city budgets; (d) review city requests to issue debt; (e) review and approve proposed collective bargaining agreements; (f) review the city's compliance with a deficit elimination plan; (g) review proposed judgment levies; and (h) perform any other duties assigned by the Governor at the time the RTAB was appointed.
6. The Governor's April 29, 2015 letter requires the RTAB to: (a) fulfill responsibilities as outlined in all Emergency Manager Orders including Order No. 20; (b) recommend modifications or termination of emergency manager orders to the State Treasurer; and (c) conduct or cause to be conducted a formal annual evaluation of the City's operational and financial progress.
7. In regard to the City of Flint, city council resolutions cannot take effect without RTAB approval, and the RTAB's general financial oversight over the City includes reviewing City council resolutions and approving those that are reasonable and fiscally responsible. The RTAB does not propose alternatives to resolutions that are not deemed reasonable and fiscally responsible.

8. The RTAB's general financial oversight over the City does not include taking an active role in managing or operating the Flint Water System, or directing actions to be taken to ensure compliance with the Safe Drinking Water Act.
9. Although Emergency Manager Order 20, as amended, requires the RTAB to approve the minimum professional qualifications and the minimum and maximum salaries for the heads of City departments, the RTAB does not search for, interview, hire, supervise, or fire department heads; this includes the Director of Public Works for the City of Flint.
10. The RTAB does not have the ability to raise funds, and does not have the resources - financial, human, or otherwise - to actively direct or implement a plan for door-to-door delivery of bottled water or water filter installation, monitoring, and maintenance for all Flint residents.
11. In addition, based on my own knowledge and information gathered from other staff in the Department of Treasury, I can attest to the fact that contact with local officials in not just Flint, but other municipalities facing fiscal challenges occurs on a routine basis. The contact is informational in nature, and the discussions focus on current events and potential financial issues within the municipality. In regard to the City of Flint, such regular meetings stopped approximately two months before the RTAB was appointed on April 29, 2015.

FURTHER AFFIANT SAITH NOT.


Frederick Headen

Subscribed and sworn to before me
this 29th day of August, 2016

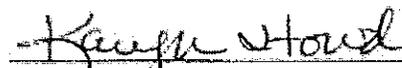

Notary Public, Ingham County.
Acting In Ingham County.
My commission expires: 2-14-19

EXHIBIT
C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONCERNED PASTORS FOR SOCIAL
ACTION; MELISSA MAYS;
AMERICAN CIVIL LIBERTIES
UNION OF MICHIGAN; and
NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

No. 16-cv-10277

HON. DAVID M. LAWSON

Plaintiffs,

MAG. STEPHANIE
DAWKINS DAVIS

v

NICK A. KHOURI, in his official
capacity as Secretary of Treasury of the
State of Michigan; FREDERICK
HEADEN, in his official capacity as
Chairperson of the Flint Receivership
Transition Advisory Board; MICHAEL
A. TOWNSEND, in his official capacity
as Member of the Flint Receivership
Transition Advisory Board; DAVID
MCGHEE, in his official capacity as
Member of the Flint Receivership
Transition Advisory Board; MICHAEL
A. FINNEY, in his official capacity as
Member of the Flint Receivership
Transition Advisory Board; BEVERLY
WALKER-GRIFFEA, in her official
capacity as Member of the Flint
Receivership Transition Advisory Board;
NATASHA HENDERSON, in her
official capacity as City Administrator;
and CITY OF FLINT;

**DECLARATION OF
JACQUES MCNEELY
UNDER 28 U.S.C. § 1746**

Defendants.

DECLARATION OF JACQUES MCNEELY UNDER 28 U.S.C. § 1746

1. I have personal knowledge of these facts and can testify completely to them if called upon to do so.
2. I have worked for the State of Michigan's State Budget Office for approximately 23 years. I am currently the Director of the Office of Public Protection and Resources, a position I have held for approximately 15 years.
3. The State Budget Office prepares the Governor's budget recommendations annually, submits them to the Legislature for consideration for appropriation, and then tracks them accordingly.
4. I am familiar with the appropriations the Legislature has made in regards to the water issues in Flint. The office within the State Budget Office that I direct closely tracks which appropriations are made and how they are used. I testified to this effect at the September 14, 2016 hearing on the motion for a preliminary injunction.
5. I have reviewed the court's November 10, 2016 order granting the preliminary injunction.
6. The Legislature has made five specific appropriations in regards to the water issues in Flint. Resources have been provided as follows:
 - **PA 143 of 2015**; a Fiscal Year 2016 appropriation, provides \$9,350,000 in total support to the Departments of Environmental Quality, Health and

- Human Services, and Licensing and Regulatory Affairs. Corresponding section 1251 places limitations on how these resources are spent;
- **PA 3 of 2016**; a Fiscal Year 2016 appropriation, provides \$28,028,500 in total support to the Departments of Education, Environmental Quality, Health and Human Services, Licensing and Regulatory Affairs, Military and Veterans Affairs, and State Police. Corresponding sections 301, 401, 501, 601, 701, and 801 place limitations on how these resources are spent;
 - **PA 24 of 2016**; a Fiscal Year 2016 appropriation, provides \$30,000,000 in total support to the Department of Treasury. Corresponding sections 301 and 302 place limitations on how these resources are spent;
 - **PA 268 of 2016**; Fiscal Year 2016 and Fiscal Year 2017 appropriations, provides \$142,908,400 in total support to the Departments of Attorney General, Education, Environmental Quality, Health and Human Services, Natural Resources, State Police, Technology Management and Budget, and Treasury. Corresponding provisions placing limitations on how these resources are spent include; Article VI section 1101, Article VII section 801, Article VIII sections 314 and 317, Article X sections 654 and 1910, Article XXI sections 301, 401, 402, 501, 502, 503, 601, 602, 603, 701, 801, 901, 902, 1001, 1002, and 1003; and
 - **PA 249 of 2016**; Fiscal Year 2016 and Fiscal Year 2017 appropriations, provides \$19,342,600 in total support to the School Aid budget.

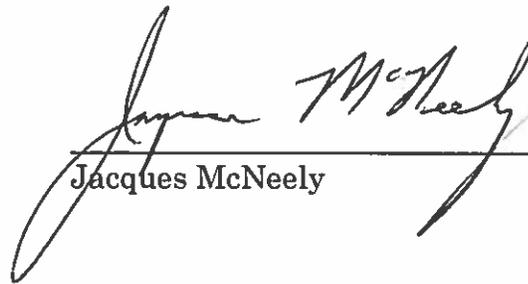
Corresponding sections 11o and 11s place limitations on how these resources are spent.

- The total of the aforementioned five appropriations amounts to \$229,629,500. Another \$4,470,000 in Department of Health and Human Services appropriated resources were transferred internally in an effort to leverage some \$16 million in new federal Medicaid support to enable the provision of the Expanded Medicaid Waiver program to Flint residents. Bringing total specific support to \$234,099,500.

7. Of these resources, roughly \$111,034,100 has been authorized by the Legislature for carryforward into the current Fiscal Year 2017 for the continued purpose of addressing Flint water matters, with the exact same conditions as the original appropriations cited above. In Fiscal Year 2016, these resources that have been authorized to be carried forward into 2017 were contained in designated work projects for the Departments of Education, Environmental Quality, Health and Human Services, Licensing and Regulatory Affairs, State Police, and Treasury. The work projects included, but are not limited to: continued purchase from the Detroit water system until such time as the Karegnondi Water Authority is operational, and the City's water treatment plant has the capacity to treat un-treated water; continued provision of fruits and vegetables, Food Bank support, and other nutrition assistance to Flint children; provision of mental health services; provision of school nurses; and lead abatement programming. If

these funds are instead redirected only to provide bottled water, filters, and print notices, rather than again dedicated to similar work projects in 2017, then other Flint relief efforts will be left without funding.

8. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 16, 2016.



Jacques McNeely

EXHIBIT
D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONCERNED PASTORS FOR SOCIAL
ACTION; MELISSA MAYS;
AMERICAN CIVIL LIBERTIES
UNION OF MICHIGAN; and
NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

No. 16-cv-10277

HON. DAVID M. LAWSON

Plaintiffs,

MAG. STEPHANIE
DAWKINS DAVIS

v

NICK A. KHOURI, in his official
capacity as Secretary of Treasury of the
State of Michigan; FREDERICK
HEADEN, in his official capacity as
Chairperson of the Flint Receivership
Transition Advisory Board; MICHAEL
A. TOWNSEND, in his official capacity
as Member of the Flint Receivership
Transition Advisory Board; DAVID
MCGHEE, in his official capacity as
Member of the Flint Receivership
Transition Advisory Board; MICHAEL
A. FINNEY, in his official capacity as
Member of the Flint Receivership
Transition Advisory Board; BEVERLY
WALKER-GRIFFEA, in her official
capacity as Member of the Flint
Receivership Transition Advisory Board;
NATASHA HENDERSON, in her
official capacity as City Administrator;
and CITY OF FLINT;

**DECLARATION OF
CHRIS KELENSKE
UNDER 28 U.S.C. § 1746**

Defendants.

/

DECLARATION OF CHRIS KELENSKE UNDER 28 U.S.C. § 1746

1. The facts set forth in this declaration are true to the best of my knowledge, information, and belief and have been compiled from personal knowledge or the files and records of the State of Michigan.
2. If called to testify, I could do so competently.
3. I am a Captain with the Michigan State Police, and command the Emergency Management Homeland Security Division with the State Police. I'm also the Deputy State Director of Emergency Management, and the Deputy Homeland Security Advisor for Michigan. I have been employed by the Michigan State Police since 1995 and a Captain since February 2013.
4. On or about January 2016, I was directed by the Michigan State Police to assume control of emergency responses in Flint, Michigan.
5. I testified at the September 14, 2016 hearing on the motion for a preliminary injunction about the emergency response in Flint, and specifically how drinking water and filters are supplied to Flint residents.
6. I have reviewed the court's November 10, 2016 order granting the preliminary injunction.
7. Delivering four cases of water per week to each person in Flint requires the following:
 - a. Based on population data obtained from the US Census, 2010 – 2014, the City of Flint population as of July 1, 2015 was estimated to be

98,310. The number of franchise Flint Water customers is approximately 134 households, which are households outside the City of Flint that are on the Flint water system. Using the US Census estimate of 2.42 residents per household provides a total franchise customer population of 325. Adding these 325 people to the Census population estimate totals 98,635, which is the basis for this analysis. Based on these population numbers, each resident receiving 4 cases of water per week or 24, .5 liter bottles totals 394,540 cases delivered each week in addition to current three week average of 77,996 cases of water provided through current distribution methods of Community Points of Distribution, local Food Bank, Access and Functional Needs/211 deliveries, and other special requests for bottled water. This also does not include the water we currently receive and store at the state warehouse and deliver to Flint schools when requested.

- b. A water delivery company has advised we would need 137 delivery trucks to meet the weekly requirement of water deliveries to Flint households as identified above. Therefore, 137 drivers will be needed and there may be other drivers or delivery personnel required to be on each truck to create greater efficiencies. Additional warehouse staff would be required for offloading shipments of water, maintaining inventory, loading delivery trucks, and all other aspects of maintaining such a massive operation. These details have yet to be finalized.

8. The cost of running this kind of door-to-door water delivery operation, as well as maintaining the current warehousing and CPOD distribution, will cost a minimum of \$10,450,055 each month. This is an estimate because the magnitude of this operation will require a significant amount of logistical planning, contracting and likely multiple vendors in order to efficiently meet this need. Delivery costs are estimated based on the overhead rate charged to the state by FEMA because a vendor could not provide an accurate estimate in a short time frame. Such an operation would require a current state vendor to hire additional staff, procure a warehouse and procure additional trucks to meet this need.
9. Currently, we do not have the warehouse capacity, supply, or distribution mechanisms in place to support distribution of water to every resident on the Flint Water System. In order to meet the water delivery needs as outlined, we would have to solicit water delivery bids from private entities. Our current warehouse capacity is approximately 2.2 million liters of water (183,333 cases). We also maintain a 1-2 week reserve supply in the warehouse. The combined storage of water between current distribution operations and any possible door-to-door delivery would be approximately 11,340,874 liters (945,073 cases), far exceeding the capacity of the current warehouse. Finding a warehouse that can store this amount of water will be difficult if even possible.

10. It is unknown how long it would take to put this operation in place as water delivery companies would likely have to purchase more vehicles and hire additional staff prior to implementing the deliveries.
11. The three week average CPOD bottled water distribution is 935,957 liters of water weekly plus the additional 16,500 liters per week to Flint schools. Currently we are receiving, storing and delivering water to CPODS, the local Foodbank, help centers, schools, homes on the Access and Functional Needs (AFN)/211 list, and others as requested. Conducting a water mission as outlined will have to be accomplished by one or more private companies while our current CPOD and other operations as identified above continue.
12. I am not aware of weekly water distribution to every resident in a city with an approximate population of 100,000 having ever been attempted in the U.S. It is difficult to imagine these operations being completed without problems and we should expect significant logistical issues to occur. Use of state personnel to perform these operations will be more costly, more prone to failure due to it not being an operation typically conducted on a routine basis, and will redirect public service resources from providing critical services to the rest of the state of Michigan.
13. The environmental impact of adding 4.7 million plastic bottles each week to the City of Flint is highly unfavorable. While the City of Flint has a recycling program in place, it is unknown if the current program can handle this

increase of plastic bottles. It is not clear how additional recycling would be funded.

14. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 16, 2016.



Captain Chris Kelenske

EXHIBIT
E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CONCERNED PASTORS FOR SOCIAL
ACTION; MELISSA MAYS;
AMERICAN CIVIL LIBERTIES
UNION OF MICHIGAN; and
NATURAL RESOURCES DEFENSE
COUNCIL, INC.,

No. 16-cv-10277

HON. DAVID M. LAWSON

Plaintiffs,

MAG. STEPHANIE
DAWKINS DAVIS

v

NICK A. KHOURI, in his official
capacity as Secretary of Treasury of the
State of Michigan; FREDERICK
HEADEN, in his official capacity as
Chairperson of the Flint Receivership
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Member of the Flint Receivership
Transition Advisory Board; BEVERLY
WALKER-GRIFFEA, in her official
capacity as Member of the Flint
Receivership Transition Advisory Board;
NATASHA HENDERSON, in her
official capacity as City Administrator;
and CITY OF FLINT;

**DECLARATION OF
GEORGE KRISZTIAN
UNDER 28 U.S.C. § 1746**

Defendants.

DECLARATION OF GEORGE KRISZTIAN UNDER 28 U.S.C. § 1746

1. The facts set forth in this declaration are true to the best of my knowledge, information, and belief and have been compiled from personal knowledge or the files and records of the State of Michigan.
2. If called to testify, I could do so competently.
3. I am the Assistant Chief of the Office of Drinking Water and Municipal Assistance with the Michigan Department of Environmental Quality. I have been employed by the Michigan Department of Environmental Quality for approximately 18 years. My current assignment is Flint Action Plan Coordinator. I have had this assignment since October 2, 2015.
4. I have reviewed the court's November 10, 2016 order granting a preliminary injunction.
5. To make personal contact with each of the approximately 33,562 households on the Flint water system to verify whether they are an exempt household under the terms of the court's November 10, 2016 order, and then inspect those households that have a filter once a month for the next three months and then every two months thereafter, will require the following:
 - a. The Michigan Department of Environmental Quality has implemented the Community Outreach and Resident Education (CORE) Program. The program sends trained employees systematically throughout the City to provide filter training and support. The program is partially funded by a grant through Michigan Works!. To be effective, each team needs to include at least one Flint resident. It is difficult to find

available residents with a car, driver's license, and car insurance.

Currently there are approximately 26 individuals working in the CORE program, but not all of these individuals have cars, licenses, and car insurance.

- b. To comply with the order within the timeframe ordered by the judge, the CORE program would need at least 54 teams of two operating 7 days per week, 8 hours per day. In order for that to happen, we would need to be staffed with at least 160 people, or 80 teams of two, that can rotate shifts in order to operate 7 days per week. Therefore we would need to hire at least 134 additional people.
- c. To quickly mobilize enough teams, which means quickly hiring additional people, the teams would need to include one ordinary State employee not funded through the Michigan Works! grant. For just those State employees, the estimated cost would be **\$775,915 per month** in order to operate 54 teams, 7 days per week.
- d. MDEQ would also need to staff a minimum of 16 coordinators who are State employees to allow for a rotation such that on a daily basis (7 days per week, 8 hours per day), 11 coordinators are working to provide teams with their daily work lists and ensure that data is being correctly tracked. The cost of these coordinators would be approximately **\$158,056 per month**.

- e. To provide each team with a State vehicle would cost approximately **\$22,000.00 per month.**
 - f. The total estimated monthly cost would be approximately **\$955,971.00 per month.**
6. Based on previous experience, to print and mail the types of notices described in the Court's November 10, 2016 order would cost approximately **\$20,000.00 per mailing.**
7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on November 16, 2016.


George Krisztian

EXHIBIT
F

WSG 196

Date Signed: November 3, 2015



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

NOV 03 2015

MEMORANDUM

SUBJECT: Lead and Copper Rule Requirements for Optimal Corrosion Control Treatment for Large Drinking Water Systems

FROM: Peter C. Grevatt, Director
Office of Ground Water and Drinking Water 

TO: EPA Regional Water Division Directors, Regions I-X

This memorandum addresses certain concerns raised about the application of the 1991 Lead and Copper Rule, specifically the requirements pertaining to maintenance of optimal corrosion control treatment, in situations in which a large water system ceases to purchase treated water and switches to a new drinking water source. These concerns have been raised most recently in regard to the drinking water system in Flint, Michigan, where the water system was disconnected from the Detroit Water and Sewerage Department, which provided corrosion control treatment for Lake Huron source waters, and instead began distributing water from the Flint River. This type of situation rarely arises and the language of the LCR does not specifically discuss such circumstances. After reviewing the rule with our Office of General Counsel, it appears that there are differing possible interpretations of the LCR with respect to how the rule’s optimal corrosion control treatment procedures apply to this situation, which may have led to some uncertainty with respect to the Flint water system. This memorandum clarifies how the LCR applies to this situation and eliminates the uncertainty for water systems and primacy agencies that may face these circumstances in the future.

It is important for large systems and primacy agencies¹ to take the steps necessary to ensure that appropriate corrosion control treatment is maintained at all times, thus ensuring that public health is protected. This memorandum focuses on those steps and clarifies, on a prospective basis, how EPA interprets the LCR corrosion control requirements and how primacy agencies should apply these requirements to large public water systems before, during and after making a significant change in source water, including switching from purchased water to a new source.

Under the LCR, all large systems (those serving more than 50,000 persons), whether purchasing water or not, must have completed a series of steps to either optimize the corrosion control treatment or be deemed to have optimal corrosion control treatment (OCCT) by 1998. 40 CFR 141.81. Key steps for

¹ The term “primacy agency” refers to the State, tribe or U.S. Environmental Protection Agency regional office having jurisdiction over, and primary enforcement responsibility for, a given public water system.

optimizing corrosion control include monitoring, corrosion control studies, installation of treatment, follow-up sampling and specification by the primacy agency of water quality parameters (WQPs) for monitoring corrosion control. The LCR requires any large system that has met the OCCT requirements through the installation of corrosion control treatment to continue operating and maintaining the treatment and to continue meeting the WQPs established by the primacy agency. 40 CFR 141.81(b) and 141.82(g). Systems deemed to have OCCT without the installation of corrosion control treatment are not subject to this requirement. However, they are required to notify the primacy agency in writing of any upcoming changes in treatment or source and request that the primacy agency modify its determination of the OCCT and WQPs applicable to the system. The primacy agency must then review and approve the change and designate OCCT and WQPs prior to its implementation by the system. 141.81(b)(3). Similarly, systems subject to reduced monitoring or monitoring waivers must notify the primacy agency of any upcoming changes in treatment or source and the primacy agency must subsequently review and approve it. EPA recommends that systems that are not subject to a notification requirement also notify the primacy agency prior to the addition of a new source or treatment and request the primacy agency to modify its determination of the optimal corrosion control and WQPs applicable to the system.

Due to the unique characteristics of each PWS (e.g., source water, existing treatment processes, distribution system materials) it is critical that public water systems, in conjunction with their primacy agencies and, if necessary, outside technical consultants, evaluate and address potential impacts resulting from treatment and/or source water changes. It is also critical for public water systems to conduct ongoing monitoring to ensure compliance with OCCT prior to, during and after a source or treatment change. The rearrangement of a system's existing configuration may trigger the need for OCCT adjustments and establishment of appropriate WQPs. Primacy agencies should work with systems that plan to disconnect from a supplier that had installed corrosion control treatment to determine the OCCT for the new source and establish WQPs for that treatment instead of using the OCCT and WQPs established for the previous source. This will allow a system that ceases to purchase treated water to stay in compliance with any applicable requirements pertaining to OCCT and ensure protection of public health during and after the change in source. EPA has developed a guidance manual² specifically focusing on evaluation of corrosion control treatment options and optimization of full-scale treatment to assist water systems and primacy agencies with these efforts. EPA is currently preparing an updated version of the manual, which we anticipate will be released in February 2016.

The key to identifying and mitigating potential problems is to ensure effective collaboration between the public water system and the primacy agency. Corrosion control treatment can come in many forms. For this reason, it is important to conduct a system-wide assessment prior to any source water and/or treatment modifications and to identify existing or anticipated water quality, treatment or operational issues that may interfere with or limit the effectiveness of corrosion control treatment optimization or re-optimization.

If you have additional questions or concerns, please contact me or have your staff contact Maria Lopez Carbo, Chief of the Protection Branch, in the Office of Ground Water and Drinking Water, at lopez-carbo.maria@epa.gov.

² U.S. Environmental Protection Agency. *Lead and Copper Rule Guidance Manual, Volume II: Corrosion Control Treatment*. Office of Water. EPA 811-B-92-002. 1992. Available at: <http://nepis.epa.gov/Exec/ZyPDF.cgi?Dockkey=91019DM4.txt>.