

# Detroit bankruptcy judge holds hearing on water shutoffs

Thomas Gaist  
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US Bankruptcy Judge Steven Rhodes heard arguments at the federal courthouse in downtown Detroit Monday from attorneys representing the city and a coalition of groups seeking a restraining order against the city's water shutoff policy.

The coalition is made up of several organizations with connections to the Democratic Party, the trade unions and the civil rights establishment. These include the Workers World Party's Moratorium Now (MN), the People's Water Board (PWB), National Action Network (NAN) and Michigan Welfare Rights Organization (MWRO). The NAACP Legal Defense Fund and the American Civil Liberties Union of Michigan were retained by the coalition as consultants.

The hearing follows mediations ordered by Judge Rhodes between the Detroit Water and Sewerage Department (DWSD) and these organizations. In July, the DWSD implemented a temporary shutoff "pause" after Rhodes warned that anger over the city's policy threatened to coalesce with opposition to pension cuts and other unpopular measures, endangering the entire bankruptcy process.

The present proceedings are in the main political theatre aimed at boosting the credibility of the judge as a supposedly "neutral arbiter" and facilitate the implementation of the city's financial restructuring plan, which includes steps to privatize the water department and discontinue service to entire swathes of the city inhabited by low-income families. This charade has the support of the various liberal and supposedly "left" groups.

In her testimony, Maureen Taylor, chairperson of the Michigan Welfare Rights Organization and leading figure of the People's Water Board, was effusive in her praise for the federal judge who has stripped retired city workers of their constitutional rights to pensions and

provided a pseudo-legal justification for the entire bankruptcy conspiracy. "We engaged 21 attorneys to come to this wonderful Judge Rhodes to help us," Taylor said.

These groups are seeking a six-month temporary restraining order (TRO) blocking further water shutoffs. Alice Jennings, the lead attorney for the coalition, acknowledged, however, that this amounts to a two-month pause, given that shutoffs are generally suspended during winter when the frozen ground makes them difficult to carry out.

Without a flicker of shame, the director of the Detroit Water and Sewerage Department (DWSD), Sue McCormick, stated during her testimony that as soon as temperatures rise above 32 degrees Fahrenheit the department regularly resumes shutoffs.

McCormick acknowledged under cross-examination that DWSD orders shutoffs without warning residents in advance and without checking first to determine whether children, the elderly, or disabled persons were present in homes slated for shutoff, even though such warnings and checks are mandated by the department's own rules.

The DWSD has ignored this rule for so long it is no longer binding, McCormick argued. "The practice of the department to modify its operations has been so longstanding that I do believe it is legal [despite the rule remaining on the books]," she said.

Sonal Mithani, a Miller Canfield attorney representing DWSD, argued that the demand for a temporary restraining order against shutoffs amounts to a demand for "free water," which, she said, is prohibited by state law. Attorneys for the city cited state laws stemming from the Michigan Revenue Bond Act of 1933, which declares, "free service shall not be furnished" by a public entity, except in the case of

medical care.

On this point, the lawyers for the coalition were in full agreement. Questioning their own witnesses, who had suffered shutoffs, they took every opportunity to reassure the court they were not in favor of free water, asking, in a derisive tone (which clearly suggested that the correct answer was “no”), “Are you looking for free water?”

The water department’s attorney callously argued in her opening statement that the shutoffs do not necessarily cause “irreparable harm,” calling such a claim “speculative and theoretical.” Mithani further argued that provision of free water to nonpayers places an additional burden on paying customers and will hamper efforts to upgrade infrastructure.

Detroit Mayor Mike Duggan similarly blamed the victims of water shutoff for the crisis, displaying his contempt for low-income workers in the city by tweeting “Average Detroiter this year is paying \$80 to pay for Detroiters who didn’t pay their @DetroitWaterDep bill last year.”

In fact, the intolerably high rates charged for water are the result of years of cuts in federal and state funding for the repair of the city’s antiquated water system. Faced with reduced funding and falling demand from a city with a smaller population and shrunken industrial base, the DWSD increasingly relied on multibillion-dollar bonds to maintain the system. The result has been that 50 cents out of every dollar of the department’s revenue goes for debt servicing.

While ostensibly a public utility, the DWSD is essentially a cash cow for powerful financial interests. This situation will only worsen under Mayor Duggan’s plan to establish a regional authority over the water system and put it even more in debt.

In a line of argument surely intended to strike a nerve with Rhodes, Mithani argued that any move to halt the DWSD shutoffs would threaten the bankruptcy plan by reducing DWSD income.

The court also heard testimony from economist Roger Colton, who was hired by the DWSD to design the so-called Water Affordability Plan (WAP) being advocated by the parties seeking the restraining order. Colton’s plan, which calls for fees to be pegged at two percent of a resident’s income, was presented to the DWSD in 2005 and has been ignored.

Referring to Mayor Duggan’s 10-point plan, which

includes financing to enroll some families into payment plans, Colton said, “In other words, low-income households may be able to come up with down payments, but what about the rest of the money? If they can’t afford basic water bills, how can they be expected to make up overdue bills on top of unaffordable regular payments?” Colton asked.

Opposed to any challenge to the financial stranglehold the banks exercise over the provision of water, Colton argued that the shutoffs were counterproductive as a revenue collection method, insisting that affordability programs increase “net back” to utilities. “You collect more money, you spend less in the process of collection,” Colton said.

In other words, the affordability plan, which is being heavily promoted by the coalition, is aimed at creating the best conditions for the water department—and by extension, the Wall Street banks—to extract the maximum possible from a population ravaged by these same economic and political forces.

All of these organizations accept the “right” of the financial elite to loot the city. They are only proposing certain tweaks and adjustments so that this can be done without provoking a social explosion because, in the end, the privileged social layers they speak for share the same fear of the working class that Rhodes does.

All of these forces reject that water, electricity and other essential services—including health care and education—are *social rights*, which must be provided free of charge to all. If the capitalist system cannot provide these rights—and clearly it cannot—then the working class will be compelled to reorganize society so the necessities for a modern, civilized life can be guaranteed to all.

Rhodes has relied on pseudo-left organizations like the Workers World Party, just as he has relied on the trade unions, to block the development of such a movement, which threatens not only the bankruptcy process, but the profit system as a whole.



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