

**U.S. House of Representatives
Committee on Oversight and Government Reform
Examining Federal Administration of the Safe Drinking Water Act in Flint, MI,
Part II
Tuesday, March 15, 2016 at 10:00 a.m.
2154 Rayburn House Office Building**

**TESTIMONY OF DAYNE WALLING, FORMER MAYOR OF THE CITY OF
FLINT, MICHIGAN**

Submitted March 11, 2016

Dear Mr. Chairman Chaffetz, Mr. Ranking Minority Member Cummings and the U.S. House of Representatives Committee on Oversight and Government Reform:

Thank you for the opportunity to present testimony and to be invited to the hearing titled, “Examining Federal Administration of the Safe Drinking Water Act in Flint, MI, Part II.” The drinking water crisis in Flint is a catastrophe that has had, and continues to have, a devastating effect on our families, our most vulnerable children and seniors, our schools, neighborhoods, businesses and the entire community. Flint is a strong city and I know it will survive and with the right support it will thrive, but it never should have suffered in this situation. As a father raising my own family in Flint, I am deeply concerned for the children and all people who have been affected. It is important that support and opportunities are provided to Flint’s residents, the damaged public infrastructure systems, and the community as a whole. I appreciate the Committee’s efforts to identify what went wrong and why.

Tragically for our community there were opportunities missed and dismissed that would have averted the water crisis. The recommendations I made, along with the Flint City Council and many other elected officials, community and faith leaders and activists were discounted by the emergency managers and Governor Snyder going back more than a year. The State’s focus on balancing the City’s books and choosing low cost over human consequences created more expensive public problems, as state and federal regulators did not fully address the issues along the way. While the decision to use Flint River water was reversed and Flint reconnected to the Detroit system in October 2015, there is a great deal of work left to be done to respond to the health needs of the community’s residents, to repair the infrastructure, and to rebuild the trust of the people. The following are facts, observations, and actions taken relevant in understanding the Flint water crisis and the role of the city, state, and federal governments as well as the community at large.

Background on Flint

Flint is a strong city with a proud heritage of economic innovation and educational excellence, of historic successes in community and labor organizing, and of amazing athletics, arts and culture. Growing up in Flint and attending Flint’s public schools, I saw

the promises and the problems in my hometown going back to the 1980s. When I came into office at the bottom of the recession in August 2009 through a special election, the unemployment rate in the City of Flint was 29.9%. Crime was rising. Foreclosures were rising. Property values were falling. The conditions in the community put severe strain on city services even as public resources were declining. I pledged to transform Flint into a sustainable 21st Century city with new jobs, safe neighborhoods, great schools and opportunity for all.

As a community in hundreds of meetings structured through the neighborhood action and comprehensive planning process, we talked about how this would require a long-term approach because meeting our goals required a fundamental shift in economic development, education, land use, transportation and infrastructure systems as well as organizational change and smarter management. At the same time, Flint was faced with ongoing fiscal stress. When I came into office, the City had a twenty million dollar structural deficit and forty million in lawsuits from the prior administration, while also receiving higher bills for health care and pensions for workers and retired city employees. Regardless of the budget challenges, I worked to increase opportunities for youth and seniors, to make city services more efficient, to enhance economic and community development, and to move towards a balanced budget in a responsible manner. I was re-elected to a full four-year term in November 2011 and on that same day Tuesday November 8th at 5pm, Governor Rick Snyder announced that an emergency manager was to be appointed, which moved decision-making authority away from the local elected officials. I served as mayor through November 2015 after losing a second re-election bid to now Mayor Karen Weaver.

Emergency Financial Managers in Michigan

One of the major flaws that has become apparent with the Flint water crisis is that putting control of local and state governments at the Governor's desk, effectively melding the local and state governments into one unit, takes away the natural checks and balances of our federal-type democratic design and regulatory system and also minimizes the voices of the citizens by placing control so far away from the community. The emergency financial managers were appointed by Governor Snyder, and of course all of the State department heads, such as the State Treasurer and the director of the Michigan Department of Environmental Quality (MDEQ), all reported to the Governor as well.

Governor Snyder came into office in January 2011 when hundreds of Michigan municipalities and school districts were dealing with the fiscal stress described by Michigan State University Professor Dr. Eric Scorsone's report on "Long-Term Crisis and Systemic Failure: Taking the Fiscal Stress of America's Older Cities Seriously, Case Study: City of Flint, Michigan" released in September 2011. The report highlights that: "The causes leading to chronic fiscal stress are both internal and external. While the City can do some things to manage its fiscal stress, the revenue structure does not provide a means to solve the fiscal stress. Long-term problems will require long-term solutions at both the state and local level."

Governor Snyder and the State Legislature chose to address the financial stress in local governments and school districts with a State takeover system. This was a policy choice of austerity and other alternatives existed. For example, the Michigan Municipal League commissioned a review by Plante Moran that showed how reversing disproportionate cuts to state-shared revenue payments and providing local governments and school districts with greater financial tools would have more than offset the deficits facing Michigan's cities.

In Flint, it is important to understand that since November 2011, the City has been controlled in an unusual way due to the appointment of emergency financial managers and a Receivership Board by Governor Rick Snyder. The current law, known as Public Act 436, is specific on the point:

Sec. 9. (1) (2) "Upon appointment, an emergency manager shall act for and in the place and stead of the governing body and the office of the chief administrative officer of the local government. The emergency manager shall have broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the local government..."

After many further sections of special authorities granted to emergency managers that are not available to elected officials, the law reiterates:

Sec. 12. (2) "...the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the emergency manager."

According to the takeover system for Flint, for nearly 4 years, I didn't sign purchasing resolutions, adopt budgets, or take personnel actions for the City of Flint. The emergency managers made the decisions in coordination with the Michigan Department of Treasury, State Agencies, the Governor's Office, and Governor Rick Snyder.

Switch to the Flint River

For more than 40 years, Flint had received its treated water from Detroit. The switch to the Flint River was started by Emergency Manager Ed Kurtz in June of 2013 when a contract was signed with an engineering firm (EM resolution 2013EM140 dated 6/26/2013) to design the upgrades necessary at the Flint Water Treatment Plant to treat and distribute water from the Flint River. The directors of the city's departments of public works and finance recommended this change to the emergency manager after the Michigan Department of Environmental Quality's determined it was feasible for an interim supply. I was not involved in any of these discussions about switching to the river. A biennial budget was also adopted by the emergency manager in June of 2013 that reflected the costs of the switch (EM Order No. 13 dated 6/26/2013). We learned later that the lowest cost options in treatment design, which were allowed by MDEQ such as not installing an activated carbon filter or including phosphate corrosion control, subjected Flint residents to health threats including lead and trihalomethanes.

These same decisions would not have been made by City Council. When the manager's decisions became known, I expressed my concerns internally about the switch including the community's perception of the river as polluted, the short timeline to accomplish such a critical change in a vital public service, and the limited staff capacity and inexperience that Department of Public Works leadership had with running a full-time water treatment plant.

The decision in June of 2013 to switch to the Flint River was contrary to the water plans and financial forecasts provided to me and the Flint City Council in March of 2013 when we were requested by the emergency financial manager to guide his decision on the long-term options for Flint's water supply. The two options for bringing water from Lake Huron to Flint were: a new contract with the Detroit Water and Sewer District (DWSD) or a contract with the new Karegnondi Water Authority (KWA). In the case of utilizing KWA, the financial projections provided to us as local elected officials showed the City of Flint staying on the Detroit system until 2017 by which time the new KWA pipeline was expected to be operational. Myself and the Flint City Council expressed support for a water supply contract with KWA. I provided a resolution to the emergency manager. City Council voted 7-1. This was the right decision for the City of Flint. Unlike the Detroit system that charges for distance and elevation from their system and also has annual rate increases, the KWA is a cooperative model with a fixed and flat rate for all of the participating communities based on usage only—and both sources are Lake Huron.

Contrary to the facts, Governor Snyder's office and former Emergency Manager Darnell Earley have stated and repeated blatantly false claims that I and the Flint City Council made the switch to the Flint River. Darnell Earley was the City Manager in Saginaw in 2013 until later in October—he was not working in Flint when the initial switch, treatment design and budget were decided upon. In the emails that have been released, the Governor's Urban Initiatives director knew the truth and sent an email that stated City Council did not vote on the use of the Flint River. Nevertheless, the Chief of Staff signed off on former EM Earley's controversial op-ed column in October 2105 which insinuated political motives for stating what actually the truth of the matter was: the emergency managers and the State decided to switch Flint to the river. This follows a pattern of deflection by the State in regards to responsibility for Flint's water problems that has become apparent in seeing the exchanges taking place among State employees through the release of the Governor's office and State agency emails.

In fact, the Flint City Council voted to go back to Detroit Water in March 2015. The vote was symbolic as only the emergency manager could make that decision, but it shows the intention of the Flint City Council at the time. The City Council's action was responded to by the emergency manager who called it incomprehensible and State officials later approved the emergency manager signing a loan contract with the State of Michigan Treasurer in April 2015 that took away the local option of the City switching back to Detroit water as a condition of receiving the funds to eliminate the remaining deficit and come out of full state control.

Initial Water Problems and Assurances

The switch to the Flint River took place in April 2014. Following assurances by the City's public works director about MDEQ permitting the distribution of Flint water and stating that it would be comparable to Detroit water, I chose to participate in the ceremonial closing of the valve to the Detroit System. However, there were issues with Flint water early on and there were complaints by citizens. There were repeated assurances from the MDEQ and City public works leadership about the Flint water meeting the standards. I trusted the assurances at the time but they proved to be false as the Michigan Department of Environmental Quality admitted in October 2015.

Throughout the process, the questions being raised by EPA officials about Flint's water were not accurately addressed by the Michigan Department of Environmental Quality and they were not investigated as they should have been. The actions that I took and statements that I made as mayor were based on my understanding of Flint's water system at each point in time. Now I know that information was withheld from us as local elected officials and in the community and the true risks were not acknowledged until later. At each time, however, for every issue that I was aware of, I was diligent in working to get solutions in place—even when appointed emergency financial managers were in control and later when their orders remained in effect and altered the normal operations and accountability in city government which continues until the present.

Before the lead poisoning was recognized, the focus of the water crisis was the high level of trihalomethanes (TTHMs) which was a violation of the Safe Drinking Water Act, and problems with boil water advisories, discoloration, odors, and hardness. Throughout the summer and fall of 2014, Flint had a high number of water main breaks and infrastructure breakdowns. At the same time, the water tested extremely high for TTHM. I learned about the TTHM problem in late October 2014 at a meeting with City and MDEQ officials and was assured that the levels were already down but the averaging of quarterly test results would require a public notification, which was being prepared.

The TTHM problems raised more concerns about the overall water system's health and the lack of transparency to residents and customers. A review of the treatment system by Veolia was put in place by the emergency manager and I expressed my support for this action, as well as for the establishment of technical and community advisory groups. I also advocated for full transparency in test results being made public for Flint and all communities in Michigan.

Throughout this time, my office was being contacted by concerned citizens and I was talking with residents and trying to find answers and solutions to their problems. As a mayor, I was at the intersection of hearing from the people and hearing from the regulatory officials and City public works leadership. Many active Flint citizens were persistent and we owe a debt of gratitude to them for continuing to advocate. At the time, I considered all of the information I was receiving and I pushed for action to address what I knew. For example, with Leanne Walters' residence, I was aware of her concerns from

meeting and understood it was because of a very long lead service line put in before the area was developed as a residential neighborhood. I requested the line to be replaced at the City's expense.

While Flint was still under appointed emergency managers, I developed a comprehensive water plan to address safety, quality, access, affordability, investment, and education. On January 18th, I sent a letter to Gov. Rick Snyder outlining the following plan with the unanimous endorsement of the Flint City Council:

Safety & Quality

- 100% Safety is the standard
- City of Flint releases testing data to assure safety and expands testing to households with support from the Michigan Department of Environmental Quality
- Provide filters to all Flint households through community partnerships
- Bring on experienced river water treatment operational management in the City of Flint
- Require water testing data to be released quarterly by law in all Michigan communities

Access

- Announce an amnesty program for turn-ons and reduce the turn-on cost in Flint
- Develop a revised payment plan policy to allow customers to come back on to the Flint system
- New Federal and State partnership to establish new Drinking Water Emergency Assistance Fund for customers (modeled on Federal and State energy utility programs: Low Income Home Energy Assistance Program; Michigan Energy Assistance Program; State Emergency Relief)

Investment

- Accelerate water system improvements outlined in the City of Flint Capital Improvement Plan through Federal and State Investments
- State approves City of Flint's Distressed Cities Fund applications
- Federal and State forgiveness of payment to Drinking Water Revolving Loan Fund
- Federal and State financing for future improvements
- City Water Department implements budgeted FY15 projects including leak detection, valve repairs, new pipes and meter replacements

Education

- Develop a community partnership to provide household and business customers with information on testing and conservation
- Ongoing partnership with Michigan Department of Human Services, United Way, Salvation Army and community organizations to provide information on water assistance

- Expand youth energy initiative to assist households with conservation and efficiency (piloted in summer 2014 with Northwestern High School students, EcoWorks and Consumers Energy)

At this time in January 2015, the Emergency Manager Jerry Ambrose was well aware of numerous citizen complaints about water safety and quality. It was another missed opportunity that more was not done at this stage to seriously address Flint's water problems in a comprehensive manner. One email from the Governor's policy director characterized my letter to the Governor and request for him to personally visit Flint as politically-motivated. Given the structure of decision-making in Flint under Public Act 436 and the Governor's appointment of an emergency manager, asking the Governor for assistance was truly the only option available to me at the time to try to remedy the situation in an environment where:

- The emergency managers had control for addressing complaints and how the City would respond.
- The emergency managers had exclusive control over hiring additional help to evaluate the water problems, such as experts or consultants.
- The public works director hired by the emergency manger continually emphasized that the water was safe.
- And the State of Michigan told us it was safe.

The January 2015 request to Governor Snyder for \$20 million in financial assistance to improve Flint water and reduce the cost burden on customers, along with recommended policy reforms to ensure transparency in all drinking water systems in Michigan resulted in Flint receiving only \$2 million in grants and was authorized to shift one loan payment.

Flint also received expertise from the U.S. Environmental Protection Agency that was provided after my letter in February 2015 to White House Department of Intergovernmental Affairs Director Jerry Abramson to request technical support from the White House to address the ongoing water issues in Flint. The EPA Region 5 Administrator Dr. Susan Hedman became the point of contact. My intention was to have a double-check on the information coming from the MDEQ, the emergency managers and the City personnel who reported to them. EPA experts joined the advisory groups. I am disappointed now that the EPA did not do more to assist us in Flint and that reassurances about the review process were made when there were warning signs noticed by EPA staff back to the beginning of 2015. For instance, I asked Dr. Hedman about the internal memo from Del Toral when it was shared with the Michigan ACLU in June 2015. She explained that the review process was proceeding and the City would be notified through the MDEQ of any new requirements. This was another missed opportunity to correct the problems sooner. In retrospect, it is clear that information was being parceled out before it reached those of us elected officials and community members in Flint even after the emergency managers were not in place.

Lead Crisis

In September of 2015, more alarms were going off with Dr. Edwards' research and I was horrified when I learned about the spike in childhood lead poisoning. After a year of attempting to address the known problems of an aging infrastructure and main breaks, adjusting the water treatment process, installing a carbon filter, and making staffing changes, the water crisis became even more serious. As you know, Dr. Mona Hannah Attisha and other members of Flint's medical community conducted an independent review of blood lead level test results at Flint's public hospital, Hurley Medical Center in September 2015 as a follow up to Dr. Marc Edward's water research--which had already prompted me to add a \$10 million request to the Governor and the State in order to replace lead service lines for the most affected and most vulnerable households. Unfortunately, there is a pattern of Flint being discounted time and again. Not only did the State initially dispute the data on childhood blood lead levels, the community's demand for replacing lead service lines is not being met still today, six months later.

Despite the resistance from the State, I took further action by issuing the Lead Advisory from the City of Flint in coordination with the Genesee County Chief Public Health Officer to ensure the public knew about the risks of lead in the water and how to minimize exposure with filters and testing. A few days later the County issued a declaration of a Public Health Emergency. This was all done locally despite misinformation continuing to be released from State agencies in coordination with the Governor's office.

Once the lead poisoning was acknowledged by the State, Michigan Department of Environmental Quality Director Dan Wyant and I agreed that the fastest way to get optimized corrosion control into Flint's system was to reconnect to Detroit. The first concrete proposal the State would agree to was for the \$12 million/9 month service cost to be shared 50% by the State and 50% by the City of Flint with a possible partial off-set by the C.S. Mott Foundation. This put too much burden on us in Flint and I demanded more. In the final agreement, the State contributed \$9 million, 75% of the cost. This continued to add to the extreme hardships faced by Flint's families and the City--but the Governor required Flint to pay part of the cost in order for him to seek State Legislative support for an appropriation and this change could not be delayed. The agreement was put into place following Flint's Water Technical Advisory Committee determining that indeed the most important next steps to minimize further lead exposure was to switch back to Detroit's water supply.

A few weeks later, I was stunned when the Michigan Department of Environmental Quality announced in October 2015 that the standards in the Safe Drinking Water Act and Lead and Cooper Rule were not properly applied in Flint from the beginning of the use of the Flint River for our city's drinking water because there were repeated assurances that the same standards were followed in Flint, as in all Michigan communities. From before the switch was made until that time, all of the assurances were that Flint's water met the same standards as every other water system in the state and myself and other local officials had echoed those same claims—without knowledge of

how information and risks were being concealed by those who were in federal and state regulatory positions and knew the problems were greater than had been acknowledged to us.

We know now that Flint's water was not meeting the same standard as it relates to corrosion control and lead and this resulted in the poisoning of so many people, especially young children. The aging infrastructure and the lead service lines played a role in the crisis, yet it was the underlying problem of not requiring optimized phosphate corrosion control from the beginning that caused significant risks to health and human development and likely substantial damage to the water pipes.

Further Assistance for Flint

Lead and other legacy infrastructure problems are a challenge for many older communities across Michigan. Addressing the severe health and infrastructure challenges in Flint will require far-reaching state and federal partnerships. The new costs cannot be shifted back to Flint's taxpayers and the community. This is a large and complicated issue, but Flint must have a safe, secure and affordable water system. I am pleased to see a modicum of progress, although more needs to be done to provide health services, to fix the pipes and to compensate customers. It is my hope that federal, state, community and private partners will all work together to address the needs being identified by community leaders and elected officials who are continuing to work diligently on behalf of Flint. I am also grateful for the outpouring of support for Flint from people and organizations across the country.