

To the Honorable Members of the Pennsylvania Senate and House of Representatives who represent ratepayers in the Chester Water Authority service area

**RE: Chester Water Authority (“CWA”) Update No. 16
November 22, 2021**

TITLE: Chester Water Authority’s November 16, 2021 letter to the participants in the Annual Joint Meeting of Pennsylvania Department of Environmental Protection’s (“DEP”) Citizens Advisory Council and Environmental Justice Advisory Board (copy attached).

Question of the day: Because the DCED is working against them, must Pennsylvanians go to the Federal Government and/or the United Nations to get their Constitutional rights protected?

CWA’s letter points out that the Governor’s Department of Community and Economic Development (“DCED”) is working vigorously in opposition to the “so-called goals” of Governor Wolf’s recently-issued Executive Order for Environmental Justice, which claims to be designed to support low-income communities and communities of color that are adversely impacted by environmental issues. The DCED is ignoring the Order.

Governor Wolf’s Order (copy attached) defines “environmental justice” as “[t]he fair treatment and meaningful involvement of all people **regardless of race, color, national origin, or income**, with respect to the Commonwealth’s development, implementation, and enforcement of environmental laws, regulations, and policies.”

But, as it relates to our drinking water the Governor’s DCED is doing just the opposite. DCED’s hostile takeover plan of CWA would force all CWA customers but especially its low-income customers in Chester City, Delaware County and Chester County to pay two to three times more for

their drinking water. These CWA customers are the affected Pennsylvanians that would be victimized by the DCED's plans.

So, what exactly does "environmental justice" mean?

Earlier this month, the national, non-profit advocacy group, Food & Water Watch, filed an amicus brief in support of the CWA's appeal to the Pennsylvania Supreme Court to stop Aqua Pennsylvania's attempt to take over the Authority's water system. "In its brief, Food & Water Watch points out that the most immediate effect of the takeover is likely to be a dramatic increase in water rates — the most predictable consequence of corporate water privatization in Pennsylvania and across the country. **The water bill burden in Chester would go from about 1.2 percent of median household income to 3.3 percent of median household income, a level generally deemed unaffordable by the Environmental Protection Agency and the United Nations.**"

As Governor Wolf's Executive Order recognizes, inequities in access to safe drinking water offend the core constitutional rights of the people who reside in these affected communities.

Given all that we know about Aqua and the financial plight of many of Chester's residents, it is alarming that DCED officials—who have sworn to "support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth" are advocating for the seizure and sale of the CWA to a for-profit corporation.

The statements of the Wolf administration are in contradiction to their actions.

When the Receiver for the City of Chester, Michael Doweary, makes statements like "[t]he Receiver hereby directs the City to continue litigating for its ability to repossess and sell the assets of the Chester Water Authority," as asserted in the Receiver's August 2020 Recovery Plan, is he aware of the punitive financial consequences that a sale would impose

upon these affected Pennsylvanians? Does he care? Or is he more concerned with benefiting the government of the City than its affected residents?

It is simply not enough for our elected and appointed state officials to pay lip service to “environmental justice.” They must acknowledge the real hardships that low-income communities and communities of color face in affording their water, and the real harm that will befall these communities if the CWA is sold to a for-profit corporation.

Who will help the affected Pennsylvanians?

Any questions or comments should be directed to Chester Water Authority. It is best to communicate with CWA via email, info@chesterwater.com

EXECUTIVE ORDER

Commonwealth of Pennsylvania
Governor's Office

Title:

Executive Order 2021-07, Environmental Justice

Date:

October 28, 2021

By Direction of:



Tom Wolf, Governor

- WHEREAS, Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania, the Environmental Rights Amendment (ERA), provides that the "people have a right to clean air, pure water, and the preservation of the natural, scenic historic and esthetic values of the environment"; and
- WHEREAS, the people's rights under the Pennsylvania Constitution are guaranteed regardless of race, ethnicity, color, natural origin, or income; and
- WHEREAS, the Commonwealth must ensure the rights and duties of Article I, Section 27 protect all the people of Pennsylvania, including generations yet to come; and
- WHEREAS, all Pennsylvanians should be able to live in and enjoy a clean and healthy environment, that includes outdoor spaces, access to clean energy resources, accessible public lands, and public natural resources; and
- WHEREAS, historically and currently, low-income communities and communities of color bear a disproportionate share of adverse climate and environmental impacts with accompanying adverse health impacts; and
- WHEREAS, all Pennsylvanians are entitled to fair and equitable treatment and meaningful involvement in decision-making that affects their environment, communities, homes, livelihoods, and health; and
- WHEREAS, meaningful public participation in the Commonwealth's environmental decision-making is necessary to reduce adverse impacts on low-income residents, communities of color, and vulnerable residents; and
- WHEREAS, the Commonwealth has acknowledged the importance of Environmental Justice and, in 1999, developed a statewide Environmental Justice Work Group that produced the Environmental Justice Work Group Report, with recommendations carried out through the development of an Environmental Justice Advisory Board and an Office of Environmental Justice within the Department of Environmental Protection (DEP) to address Environmental Justice issues; and

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WHEREAS, the Federal government has underscored the significance of Environmental Justice in Executive Order 14008 of January 27, 2021, *Tackling the Climate Crisis at Home and Abroad*, and prioritized Environmental Justice through actions such as development of a White House Environmental Justice Interagency Council, creation of a geospatial Climate and Economic Justice Screening Tool and maps and direction that 40 percent of Federal investments benefit disadvantaged communities.

NOW, THEREFORE, I, Tom Wolf, Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me by the Constitution of the Commonwealth of Pennsylvania and other laws, do order and direct:

1. Definitions.

- a. DEP.** The Commonwealth of Pennsylvania Department of Environmental Protection.
- b. Environmental Justice.** The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the Commonwealth's development, implementation, and enforcement of environmental laws, regulations, and policies.
- c. Secretary.** The Secretary of DEP.

2. Office of Environmental Justice. The Office of Environmental Justice (OEJ) is established within the Department of Environmental Protection.

- a.** OEJ is headed by the Director of Environmental Justice, who shall be appointed by and serve at the pleasure of the Secretary.
- b. Responsibilities:**
 - (1)** OEJ shall make recommendations to the Secretary on the integration of Environmental Justice considerations throughout DEP's programs, regulations, policies, and procedures, strengthening partnerships on Environmental Justice among Federal, state, and local government agencies and enhancing research and assessment approaches to Environmental Justice; coordinate the Environmental Justice Interagency Council; and staff the Environmental Justice Advisory Board.
 - (2)** OEJ may establish an online repository of Environmental Justice information and data.
 - (3)** OEJ may establish an Environmental Justice mapping tool to examine environmental and health impacts on vulnerable Pennsylvania communities with additional data provided by other agencies at the request of the OEJ.

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- (4) OEJ shall work with other DEP program offices to identify economic development opportunities, environmental benefits, and funding opportunities that do, or should, consider Environmental Justice in the grant awarding process.
 - (5) OEJ shall develop and publish an Environmental Justice strategic plan (EJ Plan) every five (5) years. The EJ Plan should include recommendations for advancing Environmental Justice, focusing attention on the environmental and public health issues and challenges confronting the Commonwealth's minority and low-income populations. The plan should also make recommendations on the integration of Environmental Justice considerations into existing DEP programs.
 - (6) OEJ, in consultation with the Environmental Justice Advisory Board, Environmental Justice Interagency Council, and other stakeholders, shall develop, subject to public participation requirements, a revised comprehensive Environmental Justice Policy consistent with existing legal authority, that may include, but is not limited to the following:

 - (a) Develop a comprehensive statewide definition of "Environmental Justice Area," "cumulative environmental impacts," and "disproportionate environmental impacts."
 - (b) Establish criteria for Environmental Justice Areas.
 - (c) Develop an enhanced public participation plan for Environmental Justice areas potentially affected by development projects, brownfield remediation, industrial operations, and commercial facilities resources, that includes outreach activities that enhance public participation opportunities in Environmental Justice areas, includes a plan for communicating in multiple languages, includes guidelines for scheduling public meetings at locations and times convenient for neighborhood stakeholders, and which may also include resources for expert consultation.
 - (d) Identify economic development opportunities, environmental benefits, and other discretionary funding programs that do, or appropriately should, consider the needs of an Environmental Justice Population in the grant process.
 - (e) Develop standardized mitigation and/or restoration practices for consideration by applicants and permit application reviewers in the permitting or cleanup context.
- 3. Environmental Justice Advisory Board.** The Environmental Justice Advisory Board (EJAB) is established within the Department.
- a. Composition of the EJAB.

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- (1) The EJAB shall consist of no fewer than nine (9) and no more than fifteen (15) members of the public who are appointed by the Secretary.
 - (2) A chairperson shall be selected by the members of the EJAB for a term of two (2) years.
- b.** Terms of Membership.
- (1) Members shall be appointed for terms of two years and shall continue to serve thereafter until their successors have been appointed. A member may be reappointed for one or more additional terms. All members serve at the pleasure of the Secretary.
 - (2) Should a vacancy occur on the EJAB, the Secretary will appoint a successor; and the successor shall serve the remainder of the unexpired term.
- c.** Expenses. Members of the EJAB shall not be compensated for their services to the EJAB, but shall be entitled to reimbursement for expenses necessarily incurred in accordance with procedures established by the Commonwealth.
- d.** Responsibilities.
- (1) The EJAB shall make written recommendations to the Secretary concerning policies, practices, and actions that DEP may implement to advance the goals of Environmental Justice.
 - (2) EJAB shall meet at least semi-annually. The EJAB may hold public meetings at its discretion for the purposes of receiving public comments and conducting inquiries concerning Environmental Justice.
- 4. Environmental Justice Interagency Council.** The Environmental Justice Interagency Council (EJIC) is hereby established.
- a.** Membership. The EJIC shall consist of the following members:
- (1) Secretary or designee;
 - (2) Secretary of the Department of Conservation and Natural Resources or designee;
 - (3) Secretary of the Department of Education or designee;
 - (4) Secretary of the Department of Agriculture or designee;
 - (5) Secretary of the Department of Health or designee;
 - (6) Secretary of the Department of Transportation or designee;

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- (7) Secretary of the Department of Community and Economic Development or designee;
 - (8) Such other Cabinet members or agency heads or their designees as determined by the Governor.
 - b. The Secretary or designee shall convene meetings of the EJIC and serve as its Chair. The first meeting of the EJIC shall be held no later than 90 days after the effective date of this Executive Order. The EJIC shall meet at least semi-annually.
 - c. The EJIC shall act in an advisory capacity and will:
 - (1) Review and provide input and information to DEP related to the agency's development, implementation, and update of the EJ Plan, including specific mechanisms for monitoring and measuring the effects of implementing the Plan.
 - (2) Identify and make recommendations to the Governor's Office to address potential disproportionate environmental impacts that state laws, regulations, policies, and activities may have on Pennsylvania residents in Environmental Justice Areas.
 - (3) Recommend to executive agencies processes to incorporate Environmental Justice considerations into decision-making.
 - (4) Make recommendations to the Governor's Office to ensure consistency with federal Environmental Justice programs.
 - (5) Recommend a comprehensive Environmental Justice training plan for executive branch Commonwealth agencies.
 - d. Each EJIC member agency shall develop and post online every five years its own strategic plan to promote Environmental Justice in ways tailored to the specific agency and its authority, mission, and programs.
- 5. **Effective date.** This Executive Order shall take effect immediately and shall remain in effect until amended or rescinded by the Governor.



Chester Water Authority

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November 16, 2021

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**Re: Public Comment of Chester Water Authority for Annual Joint Meeting of
DEP's Citizens Advisory Council and Environmental Justice Advisory Board
on November 16, 2021**

Dear Messrs. Salador and Brakeall:

On behalf of the Chester Water Authority ("CWA"), I am submitting the following as public comment to be included in the record for the joint meeting of the DEP's Citizens Advisory Council and the Environmental Justice Advisory Board taking place today, November 16, 2021. I ask that you kindly distribute these comments to the members of the Council and the Board, and enter the same into the official minutes of the joint meeting.

As you know, Aqua Pennsylvania, a for-profit corporation, is pursuing a hostile takeover attempt of the CWA, a non-profit municipal authority. The issue of whether our elected officials should allow this to happen goes to the heart of Governor Wolf's recently-issued Executive Order for Environmental Justice, which is designed to support low-income communities and communities of color that are adversely impacted by environmental issues.

Governor Wolf’s Order defines “environmental justice” as “[t]he fair treatment and meaningful involvement of all people **regardless of race, color, national origin, or income**, with respect to the Commonwealth’s development, implementation, and enforcement of environmental laws, regulations, and policies.”¹ But, as it relates to our drinking water, what exactly does “environmental justice” mean?

A compelling answer to this question can be found in a 2019 report by the NAACP Legal Defense and Educational Fund, Inc. and its Thurgood Marshall Institute. The report, titled “WATER/COLOR - A Study of Race and the Water Affordability Crisis in America’s Cities,” explains: “The price of water has greatly increased in recent decades, and scores of communities across the nation that cannot afford to pay drastically higher rates have been plagued by service shutoffs and lien sales, leading to home foreclosures and evictions. These practices have been shown to disproportionately impact people of color.”² As the report makes clear, the environmental injustice resulting from unaffordable water rates is devastating: “Without access to running water, families are unable to cook, bathe, clean, or flush their toilets. Additionally, families may forego medical expenses or food in order to pay their water bills.”³ People can lose their homes, lose custody of their children, and even lose their freedom, as the “inability to pay for water and sanitation services can lead to criminal charges or other legal action.”⁴ If “environmental justice” means anything, it surely must mean that human beings should not endure this kind of suffering merely because they cannot afford to pay their water bills.

Which begs the question: what does it mean to have affordable water? The NAACP’s report notes that a “two percent median household income measure first emerged in 1997 guidance from the EPA”—meaning that “affordable” water should not, according to the EPA, exceed two percent of household income.⁵ However, as discussed in the report, the EPA’s percentage threshold “may not capture the full extent to which water is unaffordable.”⁶ Thus, for a community of color like the City of Chester, keeping the cost of water below the two-percent threshold is absolutely critical for its low-income residents. For many of Chester’s residents, it will be the difference between, on one hand, keeping their homes, their health, their children, their freedom, their dignity—and on the other, losing everything. **Keeping the cost of water below the two-percent threshold is environmental justice.**

That is why the fight to save the CWA is so important, and why organizations that care about environmental justice support the CWA’s preservation. Earlier this month, the national, non-profit advocacy group, Food & Water Watch, filed an amicus brief in support of the CWA’s appeal to

¹ Executive Order 2021-07 (Oct. 28, 2021) (emphasis added).

² See Report at pg. 1, available at https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf.

³ *Id.* at pg. 28.

⁴ *Id.* at pgs. 28-29.

⁵ *Id.* at pg. 26.

⁶ *Id.* at pg. 4.

the state Supreme Court to stop Aqua Pennsylvania’s attempt to take over the authority’s water system.⁷ “In its brief, Food & Water Watch points out that the most immediate effect of the takeover is likely to be a dramatic increase in water rates — the most predictable consequence of corporate water privatization in Pennsylvania and across the country. **The water bill burden in Chester would go from about 1.2 percent of median household income to 3.3 percent of median household income, a level generally deemed unaffordable by the Environmental Protection Agency and the United Nations.**”⁸

Such rate hikes by for-profit water companies are nothing new. The NAACP, echoing the findings of Food & Water Watch, explains that “privately-owned water utilities charge customers, on average, 59 percent more for water service” and “[o]f particular concern, the privatization of water services can have a particular and disproportionate impact on communities of color, including higher rates and increased risk of service interruptions.”⁹

As Governor Wolf’s Executive Order recognizes, inequities in access to safe drinking water offend the core constitutional rights of the people who reside in these affected communities.¹⁰ These violations of constitutional rights may entail serious legal consequences— and rightfully so. By way of one highly-publicized example, just last week, a federal judge approved a \$626.25 million settlement of civil claims against the City of Flint, Michigan and its officials, among others, arising from the City’s water crisis that began in 2014.¹¹ The settlement was reached after the United States Court of Appeals for the Sixth Circuit refused to dismiss the plaintiffs’ claims for constitutional violations, specifically, violations of substantive due process rights. Among the allegations that the Sixth Circuit Court of Appeals found to be viable was plaintiffs’ assertion that a City of Flint official “refused to reconnect to Detroit water despite knowing the substantial risk to Flint residents’ health.”¹² This failure to reconnect Flint residents

⁷ See “National Organization Backs Appeal of Chester Water Authority ‘Hostile Takeover,’” available at <https://www.foodandwaterwatch.org/2021/11/02/national-organization-backs-appeal-of-chester-water-authority-hostile-takeover/>.

⁸ *Id.* (emphasis added).

⁹ See Report at pg. 22, available at https://www.naacpldf.org/wp-content/uploads/Water_Report_FULL_5_31_19_FINAL_OPT.pdf.

¹⁰ Executive Order 2021-07 (Oct. 28, 2021) (“WHEREAS, Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania, the Environmental Rights Amendment (ERA), provides that the ‘people have a right to clean air, pure water, and the preservation of the natural, scenic historic and esthetic values of the environment’; and WHEREAS, the people’s rights under the Pennsylvania Constitution are guaranteed regardless of race, ethnicity, color, natural origin, or income; and WHEREAS, the Commonwealth must ensure the rights and duties of Article I, Section 27 protect all the people of Pennsylvania, including generations yet to come[. . .]”).

¹¹ Paul Egan, “Federal judge gives final approval to \$626.25M settlement in Flint water crisis,” *Detroit Free Press* (Nov. 10, 2021), available at <https://www.freep.com/story/news/local/michigan/flint-water-crisis/2021/11/10/federal-judge-approves-settlement-flint-lead-poisoning-case/5556131001/>.

¹² *Guertin v. Michigan*, 912 F.3d 907, 927 (6th Cir. 2019).

to a safe water source provided plaintiffs grounds to seek recovery for violations of substantive due process rights.

As one legal scholar notes, due process violations can occur not only where the government fails to connect its citizens to a safe water source, but also where the government fails to “implement a plan to make water service affordable for its residential customers” whom it “knows cannot afford to pay their water bills”:

The harm caused by a lack of access to water in the home is well-known: lack of water access increases the risk of skin, soft tissue, and gastrointestinal infection, such as *E. coli* and hepatitis. Similarly, the inability of many residential customers to pay their water bills is also well-known[. . .]. By terminating water service or **failing to implement a plan to make water service affordable for its residential customers** who [Detroit Water and Sewerage Department (“DWSD”)] knows cannot afford to pay their water bills, DWSD is arguably taking an affirmative action with knowledge and disregard of the significant risk that the action poses to its customers.¹³

Given all that we know about Aqua and the financial plight of many of Chester’s residents, it is alarming that Commonwealth officials—who have sworn to “support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth”—would advocate for the seizure and sale of the CWA to a for-profit corporation.¹⁴ When the Receiver for the City of Chester, Michael Doweary,¹⁵ makes statements like “[t]he Receiver hereby directs the City to continue litigating for its ability to repossess and sell the assets of the Chester Water Authority,” as asserted in the Receiver’s August 2020 Recovery Plan, is he aware of the civil liability the Commonwealth could face if this objective were to become reality?¹⁶

¹³ Erin Mente, “A Constitutional Right to Safe, Affordable, Accessible Drinking Water,” TULANE ENVIRONMENTAL LAW JOURNAL, 32 Tul. Envtl. L.J. 189, 200-01 (2019) (footnotes omitted) (emphasis added) (explaining such actions “could very well establish a claim of substantive due process”).

¹⁴ PA. CONST. ART. VI, § 3.

¹⁵ As set forth in the Receiver’s Recovery Plan, Mr. Doweary was nominated for the position of Receiver by the Secretary of the Department of Community and Economic Development (DCED), Dennis M. Davin. See Receiver’s Recovery Plan at pg. 1, available at https://static1.squarespace.com/static/5f721f5325ced83982f1d194/t/5f7b580145b2d750b4c1debc/1601918983266/Chester-Receiver-Recovery-Plan_FINAL_20200820.pdf.

¹⁶ *Id.* at pg. 56. This is but one of many statements made by the Receiver in support of selling the CWA to a for-profit company. For additional statements in this regard and further background concerning Aqua’s efforts to take over the CWA, please see the ChesterWaterFacts.com report enclosed herewith.

It is simply not enough for our elected officials to pay lip service to “environmental justice.” They must acknowledge the real hardships that low-income communities and communities of color face in affording their water, and the real harm that will befall these communities if the CWA is sold to a for-profit corporation.

Very truly yours,

Francis J. Catania

FRANCIS J. CATANIA

Enclosure

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I. Introduction

This is a story about a corporation doing everything in its power to seize control over something no person can live without—drinking water. It is a precious natural resource and a basic human need. But some see water as something else—a marketable commodity which can be legally monopolized and for which there will never be a lack of demand. It is through this lens that Aqua Pennsylvania, Inc. views the drinking water of Pennsylvania’s residents. And that is precisely why Aqua will stop at nothing to expand their monopoly over water regardless of what public places are lost or who gets driven into poverty.

Make no mistake—once the public gives up their right to control their water, they will never get it back.

That is why this is also a story about a community fighting back. Part of that fight involves shedding light on Aqua’s scheme and holding our government officials accountable. That is the goal of ChesterWaterFacts.com.

In the pages that follow, you will read about a well-run, non-profit, public entity—the Chester Water Authority (CWA). It is an award-winning entity with an excellent reputation. It has been providing clean, affordable drinking water for its ratepayers for the better part of a century, free from the interference of a private corporation seeking to maximize profits for its executives and shareholders.

You will also hear about the City of Chester and its long-standing financial troubles resulting from years of failings in the oversight and management of the City’s finances by the Commonwealth of Pennsylvania. Those who failed in their duties have attempted to use the COVID-19 pandemic as a pretext to cover up their own gross mismanagement of the City and justify Aqua’s quest to own the CWA. And now, their purported basis for seizing and selling the CWA—the City’s cash crisis—

is even more absurd given that (1) the City’s approved budget for 2021 plans to meet all obligations to fund essential city services, pay taxpayer-funded pensions, and make full payments for debt service on the City’s outstanding bonds, and (2) the American Rescue Plan has unlocked \$31 million in federal funding for the City—money not even taken into account in the City’s 2021 budget.

In addition, you will learn about the CWA’s efforts to put its assets into a trust for the benefit of the public and to help bail out the City of Chester with tens of millions in financial assistance—efforts which Aqua has opposed through lawsuits. You will read about a host of shadowy dealings and tactics employed by those who wish to dissolve the CWA, including brazen attempts to illegally circumvent Court Orders, misrepresentations to the public and the legislature, and apparent conflicts of interest and improper payments.

And, finally, you will get a clear sense of what will happen if Aqua succeeds in taking over the CWA. If Aqua is allowed to take over the CWA, it will be to the detriment of the residents of the City of Chester as well as the 79% of CWA ratepayers who reside throughout Chester County and Delaware County in dozens of other townships and boroughs. All CWA ratepayers, regardless of where they live, will pay significantly higher water rates if the CWA is sold.¹ And, in all likelihood, the two-billion-gallon Octoraro Reservoir and its 2000 acres of surrounding land—pristine open space currently available for public enjoyment—will be closed off to the public forever.

The end of this story has not yet been written. Each of us is responsible for that part. We hope you will join us in our fight.

II. The Chester Water Authority

The CWA was established in 1939 as a public, non-profit organization for the purpose of providing potable water, and now serves customers in Western Delaware County, Southern Chester County and the City of Chester. The CWA’s board is comprised of nine members appointed by the

City of Chester Council, Delaware County Council, and the Chester County Commissioners.

The CWA's water rates are very low—among the lowest in the region. It consistently meets or exceeds all governmental standards for water quality and regularly wins water quality awards. The CWA is fiscally sound, well-capitalized and has an excellent bond rating. Its pension is fully funded and its infrastructure is properly and comprehensively maintained. The CWA also has an excellent customer satisfaction rating from the Better Business Bureau (far better than Pennsylvania American Water or Aqua Pennsylvania).

In addition, the CWA owns the two-billion-gallon Octoraro Reservoir. It maintains over 2000 acres of land that protects our water source and watershed. The Octoraro Reservoir and its untouched surrounding land is home to wildlife including bald eagles, herons, wild turkeys, and more. The reservoir and the surrounding watershed are widely used for non-polluting public recreation, such as fishing, boating, kayaking, hiking, bird watching, and hunting. It is all free and open to the community for enjoyment and recreation.

Thus, the CWA not only safeguards the public's right to affordable drinking water, but also ensures that the public has continued access to and enjoyment of a massive, pristine open space.

III. The City of Chester and its Long-Standing Financial Troubles

The City of Chester has experienced economic difficulties ever since manufacturing and other industries moved out of the City in the mid-1950s.² In 1995, the City first entered the Municipalities Financial Recovery Act, or Act 47, process, according to Pennsylvania's Department of Community and Economic Development (DCED).³ As such, the DCED's Act 47 Recovery Team has been involved in the City's day-to-day strategic financial planning since the mid-1990s. Just over a decade ago, Chester achieved significant improvement in its operating

results and was able to operate within budget for several years, including establishing a revenue fund with excess revenues, due in large part to new income associated with gaming activity at Harrah's Racetrack and Casino.⁴ That positive momentum dissipated approximately nine years ago when John Linder became Mayor.

A. Financial Troubles Commencing with John Linder's Term as Mayor

From 2013 through 2017, the City ran operating deficits, began delaying payments to vendors, and failed to fund required pension and other obligations.⁵ It has been disclosed that "[t]he City has not made its full minimal municipal obligation (MMO) to the three pension plans since 2013, leading to a severely underfunded pension situation, particularly with the Police and Officers & Employees (non-uniform) plans."⁶ In 2014, the credit rating agency, S&P, suspended the "A" rating it previously provided in August 2011 regarding Chester's general obligation debt because in 2014 "the city failed to supply needed documentation."⁷ At the end of 2016, the City defaulted on its 2016 Tax and Revenue Anticipation Note,⁸ and underpaid for its healthcare costs, accumulating an outstanding balance to its health insurance provider of almost \$8 million.⁹ The Receiver for the City (who, as explained in the following section, was selected by the DCED when the City was placed into a receivership in 2020 to avoid bankruptcy) has stated that due to the lack of fiscal oversight, "[t]he City faced a severe situation in 2017 with \$28 million in unpaid obligations, including past due pension minimum municipal obligations (MMOs), health insurance premium payments, vendor payments, and workers compensation premiums."¹⁰ The only way the City made it through 2017 was because the DCED issued an emergency \$2 million loan in January 2017 to meet the City's immediate cash flow needs, and in August 2017, the City issued \$12 million in Series 2017A Bonds to pay certain unfunded General Fund liabilities and to fund required reserve funds.¹¹

For at least the last eight years, Pennsylvania’s Auditor General has noted deficiencies related to the Chester’s funding and handling of its pensions. In a 2019 letter concerning the audit report of the Police Pension Fund, the Auditor General noted four major violations, all of which related to the City’s failure to fully comply with past audit recommendations.¹² The four repeated violations were:

- Failure to fully pay the MMO of the Plan;¹³
- Providing excess benefits inconsistent with the Third Class City Code and Commonwealth Court case law,¹⁴ thereby increasing pension costs and reducing the amount of funds available for investment purposes or the payment of authorized benefits or administrative expenses.¹⁵ This condition was raised in the Auditor General’s “prior eight audit reports”;¹⁶
- Inconsistent pension benefits between the Plan’s governing documents and the collective bargaining agreements.¹⁷ This condition was included in the “prior five audit reports”;¹⁸ and
- Untimely deposit of state aid into the Police Pension Fund.¹⁹

The Auditor General stated that “we are extremely concerned about the funded status of the plan” which received a designation as “Level III severe distress status.”²⁰ The Report also stated that “[t]he deterioration of the plan’s funded status has been exacerbated over time by conditions noted in the Comments section of this audit report as well as the city’s continued inability to meet its minimum funding requirements under Act 205”²¹

The Auditor General’s compliance audits of the Fire and Officer and Employees Pensions also note that those pensions have for years, like the Police Pension, provided excess benefits inconsistent with the Third Class City Code and applicable law, which has increased pension costs and reduced the funds available for authorized benefits.

The DCED—whose job it was to oversee Chester’s financial recovery—simply sat by and watched each year for over eight years as the City failed to make the required pension

contributions.

Moreover, back in January 2012, Mayor Linder and the DCED were forewarned of the looming pension issues as a result of an adverse arbitration award and had the opportunity to appeal that decision based on a powerful dissent that laid out the legal and factual basis to do so. Mayor Linder and the DCED's Act 47 Oversight team chose not to appeal that decision, and then ignored the impact it had on the City by simply letting the unpaid benefits pile up year after year for the present day residents of Chester to now deal with.²²

In 2018, the DCED Recovery Team recognized that “[a]t the beginning of 2017, the City had accumulated approximately **\$28 million of unpaid obligations** including over \$14 million in past due pension MMOs, \$6.9 million of health insurance premium payments, \$1.1 million of workers compensation premiums, and \$2.3 million of other vendor payments.”²³

While it has been long thought that the City was shoving bills in drawers without paying them, it has now been confirmed by the Chester's Receiver that millions of dollars of unpaid bills were carried over from year to year, such that the “[t]he pattern of pushing a portion of each fiscal year's obligations into the next one has made it difficult to accurately analyze the [City's] financial performance on an annual basis.”²⁴

In addition, the City has admitted publicly that its failure to issue and produce audited financial statements is a violation of mandated Securities and Exchange Commission continuing disclosure obligations.²⁵ Further, the City's auditors have for several years identified issues with, among other things, the City's manipulation of accounts payables and lack of financial management, which the auditors deemed so material they modified their audit opinions, including stating in 2014, 2015, 2016 and 2017 that the auditors had substantial doubts about the City's ability to continue as a going concern.²⁶ The issues identified by the City's auditors included:

- In 2013, the auditors “were unable to obtain sufficient appropriate audit evidence about various classifications of certain revenues and expenditures contained in the financial statements of the opinion units” and “we were unable to sufficiently audit the Reconciliation of the Statement of Revenues, Expenditures and Changes in Fund Balances of Governmental Funds to the Statement of Activities.”²⁷
- In 2014, the auditors “were unable to obtain sufficient appropriate audit evidence about various classifications of certain revenues and expenditures contained in the financial statements of the opinion units . . .” and “were also unable to obtain sufficient audit evidence to assess the reasonableness of the estimated allowances for uncollectible receivables and escrow account and for certain interfund balances.”²⁸
- In 2015, the auditors “were unable to obtain sufficient appropriate audit evidence about classifications of certain revenues and expenditures and sufficient detail for an escrow account contained in the financial statements of the opinion units”²⁹
- In 2016, the auditors “were unable to obtain sufficient appropriate audit evidence about classifications of certain revenues and expenditures and sufficient detail for an escrow account included in cash and cash equivalents and a payroll tax liability included in accrued payroll and related cost, contained in the financial statements of the opinion units listed above.”³⁰
- In 2017, the auditors “were unable to obtain sufficient appropriate evidence for an escrow account included in cash and cash equivalents, unused sick leave, and for revenue related to gaming.”³¹

Moreover, the 2016 and 2018 Amended Recovery and Exit Plans issued by the Act 47 Recovery Coordinator noted serious financial management infrastructure deficiencies, including that the City had fallen years behind on its annual independent financial audits.³² The Recovery Coordinator also warned of significant breakdowns in basic accounting functions at the City, stating that “[t]he Finance Department has had significant delays in completing its trial balances and struggled to deliver clean, accurate internal financial information to its auditor.”³³

The City’s financial statements from 2013 through 2017 reveal alarming trends, as well as complete disregard for accounting rules and proper fiscal management. The City consistently produced unrealistic budgets that it could not meet and used improper data and assumptions to

overstate expected revenues. When the budgets are compared to actual results for each year, the financial mismanagement of the City and lack of oversight by the DCED are shocking. Indeed, even the DCED-picked Receiver concedes that there has been “a pattern” of “either failing to adopt a realistic budget, failing to follow that budget or both which results in consistent, large deficits.”³⁴

This poor budgeting meant that the City took in significantly less revenue each year than it was projecting, and the DCED should have known these projections were unrealistic. The budget to actual variances to Total Revenue for the General Fund were as high as 19% during the period 2013-2017.³⁵ At the same time, the City spent more and more money with its expenses far outpacing revenue. Total Actual Expenditures for the General Fund increased from \$40 million to over \$47 million from 2011-2017 and Total Liabilities for the City’s basic services went from \$4 million to almost \$25 million during the same timeframe.³⁶ This mismatch between revenue and expenditures, largely occurring during Mayor Linder’s administration, resulted in the positive year-end fund balances for the General & Reserve Funds going from a beginning fund balance surplus of \$10.4 million to start 2011, to negative fund balance deficit of -\$15.3 million at the end of 2017—a swing in the wrong direction of more than \$25 million dollars.³⁷

B. The COVID-19 Pandemic and Appointment of a Receiver

On April 13, 2020, Governor Wolf issued a “Declaration of Fiscal Emergency” for the City of Chester. The City and DCED claimed that the City’s current financial distress is related to the COVID-19 pandemic, which “is now threatening all of the progress that the City has made.”³⁸ As is clear from the City’s financial history detailed above, this is simply not true; it is a story concocted by the DCED to cover up the DCED’s long-standing lack of transparency and fiscal mismanagement of Chester going back at least eight years.

In June 2020, a Commonwealth Court judge issued a ruling that started the process of receivership, just the second time such proceedings have been instituted by the Commonwealth. Receivership is the process in which the state appoints a manager with a degree of direct control over local finances to avoid bankruptcy. As a result, the DCED selected a Receiver, Michael T. Doweary, who was tasked with working with the City to avoid bankruptcy and harm to residents.

The DCED's handpicked Receiver for Chester has admitted this COVID-19-centric version of events is not accurate and that Chester's cash struggles have been building for the last several years. Indeed, in a receivership filing, the Receiver admits:

The impact of COVID-19 is new and unexpected, but the City's struggle to finish the year without running out of cash is not. In recent years the City has dealt with this problem by defaulting on its Tax Revenue Anticipation Note (TRAN) repayment (2016); falling behind on its payments for employee health insurance (2016); issuing new debt to cover current year obligations (2017); or pushing a portion of its current year obligations into the next year (2018 and 2019).³⁹

The reason the DCED is playing up the inaccurate COVID-19 cover story is because, behind the scenes of the 2020 Declaration of Fiscal Emergency, the DCED has been working with the City of Chester and for-profit water companies to attempt to circumvent pending litigation, and to attempt to improperly seize and sell—to the DCED's private utility company friends⁴⁰—assets that neither the DCED nor the City own. It is all being done in an effort to cover up the DCED's lack of oversight that has resulted in the City's cash crisis and economic collapse.

The City's finances have fallen apart since 2013 under the watch of the DCED and Act 47 Recovery Team because the DCED refused to adhere to the recommendations it made in the Recovery or Exit Plans, and because the City had no financial controls or financial management, failed to capture revenue to which it was entitled, failed to match expenses to its actual revenues,

and failed to pay bills as they were due, instead opting to simply put them off for another day.

This is hardly progress to be touted by the City or the DCED. And yet, we do not now know the full extent of Chester's cash problems because the DCED-led City has not released audited financial statements since the release of statements for the year ending December 31, 2018.⁴¹ What we do know is that the current fiscal problems are not new. **These problems are long-term structural problems that will not be fixed by a one-time infusion of cash resulting from the improper seizure and sale of CWA assets.** The Receiver has admitted as such, stating in several places in his proposed Recovery Plan that a one-time infusion of cash will not solve the City's financial issues.⁴²

IV. The Improper Attempts to Seize the Water System

A. Aqua's Opening Salvo

Sometime in 2016 or early 2017, Aqua and the DCED began discussing the sale of the CWA to Aqua. Incredibly, it appears that those plans were discussed by the DCED and Aqua in secret and did not involve anyone from the City of Chester or the CWA.⁴³ DCED documents reveal that on May 31, 2016, attorneys hired by the Recovery Coordinator for the City ordered the CWA's articles of incorporation from the Pennsylvania Corporations Bureau.⁴⁴ There is only one plausible reason for such diligence on the CWA: the DCED was exploring whether the CWA could be sold to bail out the failures of the DCED and its appointees to fix the City's finances throughout the City's protracted tenure in financial distress.

On May 8, 2017, Aqua sent an unsolicited offer to the CWA seeking to purchase it for \$320 million. The CWA's board unanimously rejected the offer, a decision made, in part, because analysis showed that ratepayers would have seen significant rate increases over time—ultimately over 100%—by Aqua.⁴⁵ Unhappy with the CWA's rejection of Aqua's offer, attempts to simply

seize the CWA and force the deal began, with more secret meetings taking place with Aqua and the City of Chester, lawsuits, and political pressure. It is worth noting that once these plans to seize and sell the CWA became known, more than 30 townships and boroughs, 10 state senators and state representatives, and at least 10 local interested organizations have written letters opposing any sale of the CWA.⁴⁶ To date, it does not appear that the DCED has provided a response to any of these letters of support.

B. Aqua’s Bid Sparks City of Chester’s Desire to Sell What it Does Not Own

In October 2017, the City’s Mayor, Thaddeus Kirkland, sent a letter to the CWA expressing interest in exploring ways to monetize the CWA for the City’s sole benefit. The CWA responded the following month that the City does not have the legal authority to unilaterally terminate and sell-off the CWA.

The CWA’s steadfast position, supported by the law, is that the CWA does not belong to the City, as it is an Act 73 Authority with a board appointed by the jurisdictions within its large service area (Chester County, Delaware County, and Chester City) and funded solely by its ratepayers.

The City itself recognized, as it had to, in every one of its audited financial statements that the CWA is not a City asset. For example, the City’s audits state that the CWA is not a “component unit” of the City and is therefore “excluded from the reporting entity [the City].”⁴⁷ This audit was issued on July 10, 2019 under the supervision, and with the approval, of the state-appointed Act 47 Team.⁴⁸ **An identical disclaimer—confirming that the CWA is not a City asset—is in every one of the City’s audits undertaken while the DCED and its Act 47 Team were involved.**⁴⁹ These statements in the audits are the City’s own position, arrived at

with the input of “the Act 47 Team” (to use the DCED’s own words). They are not merely the auditors’ position. The City itself does not, has not, and cannot carry the CWA as an asset on the City’s books. The City, under the supervision of the Act 47 Team, provided that underlying financial information to the auditors through the City’s own financial statements. Then, the City explicitly endorsed and approved the audited financial statements, each containing such a disclaimer. Those same audited financial statements were similarly endorsed by the Act 47 Team acting at the DCED’s behest.

The Secretary of the DCED has also written privately that the CWA owns the water system.⁵⁰

Moreover, other than as a ratepayer, the City of Chester has never contributed money to the CWA.⁵¹ Rather, generations of the CWA’s ratepayers throughout Chester and Delaware Counties (including the ratepayers in the City of Chester) are the sole source of the CWA’s funding. The City cannot lay unilateral and total claim to several hundred million dollars of water infrastructure for which the City **never paid anything**.

Also, 78% percent of the CWA’s service area, and well over 160,000 of its customers, are **outside of the City’s limits**. This includes the most significant of the CWA’s assets, its treatment plant and reservoir, which are 35 miles outside the City, in Lancaster and Chester Counties. The City cannot lay claim to property that does not serve the City’s customers, is outside of its jurisdiction, and operates well-beyond the City’s limits.

Finally, by law known as Act 73, **the City only appoints three of the nine members to the CWA’s board**. Chester County and Delaware County, where most of the CWA’s water infrastructure and customers exist, each appoint three seats as well. In 2012, the General Assembly passed Act 73 unanimously, including the vote of the City’s current Mayor,

Thaddeus Kirkland. This was the General Assembly’s recognition that the CWA serves large areas of Southeastern Pennsylvania far beyond the City’s borders, and so these other areas must have a say in the CWA’s governance.

C. The CWA Seeks a Compromise to Avoid the Cost of Litigation

Despite the clear reality that the City does not own the CWA, in an effort to avoid protracted litigation over the issue, the CWA began discussions with the City after receiving the Mayor’s October 2017 letter. To aid those discussions, on March 15, 2018, the City and the CWA entered into a “standstill agreement.”⁵² The standstill agreement had the goal of “provid[ing] the framework to continue . . . discussions with the mutual goal of entering into a definitive agreement between the City of Chester and the Chester Water Authority concerning future Authority operations.” The City and the CWA continued their discussions past the expiration date of the standstill agreement, on December 31, 2018. The CWA believed those discussions were productive and that a final resolution was imminent.

In consideration of ongoing discussions with the City, on January 24, 2019, the CWA’s board unanimously approved a proposed settlement agreement that would end this dispute.⁵³ The proposed settlement agreement provided that the CWA would make a one-time payment to the City of \$60,285,000. In exchange, the City would agree, for a 40-year period, to release any purported claim that it could unilaterally terminate the CWA and sell its operations for the City’s sole benefit. The CWA would take out bonds to cover the payment to the City. The CWA would pay for the bonds through a proposed rate increase on customers of up to 10%. It was determined that a small water rate increase was ultimately better for customers than any risk that the City would try to sell the system outright to a for-profit company that would double rates, and the protracted litigation that

would be triggered by the City's attempt to do so.

From January through June 2019, the CWA and the City continued to negotiate the finer points of the proposed settlement agreement. Even though the CWA had been negotiating in good faith with the City for a mutually beneficial and amicable settlement, the CWA was unaware that the DCED was attempting to force dissolution and sale of the CWA in the shadows through pressure on the City.

D. The DCED Sabotages the Proposed Settlement

On June 11, 2019, the City's Mayor sent a letter to the Chairperson of the Board of the CWA, Cynthia Leitzell, stating that the City was displeased with the state of negotiations and that it would "issue a request for proposals" to attempt to unilaterally sell the CWA. The City's new position was directed by the DCED and forced the CWA to go to the courts to preserve its very existence.

During the course of this now multi-year dispute, the CWA and its representatives issued public records requests under Pennsylvania's Right to Know law to understand what was going on behind the scenes. The CWA directed several of those requests to the City's overseers at the DCED. One of the CWA's goals in issuing these requests was to explore exactly why the City blew up settlement negotiations that were nearly concluded and would have provided a significant influx of immediate money to the City.

In response, the DCED was forced to turn over public documents, which the DCED heavily redacted. The redactions are so extensive that in one instance, the DCED redacted more than 80 consecutive pages in their entirety.

Despite the redactions, a picture begins to emerge about why the City backed out of settlement discussions at the last moment. It appears that the DCED and the Recovery Coordinator derailed the proposed settlement between the City and the CWA. For example, a month before the

City and the CWA finalized the standstill agreement, the DCED wrote to the City to discuss the CWA.⁵⁴ Although the DCED produced this letter with heavy redactions, in a summary, the DCED said the redacted portion “discusses a proposed agreement between the City and the CWA and makes recommendations to the City regarding the proposed agreement.”

Two days before the City and the CWA finalized the standstill agreement, the DCED wrote another letter to the City. Again, the DCED heavily redacted the actual letter. But, in another summary, the DCED said the letter “discusses improving the relationship between the Recovery Team, DCED, and the City of Chester and proposes that the Recovery Team be able to review any agreements regarding Chester’s water system.”⁵⁵ In a March 2018 meeting, the DCED criticized the standstill agreement, calling it a bad deal for the City. At that point, the City’s Mayor disagreed and stormed out of the meeting.⁵⁶

In January 2019, around the time the CWA’s board unanimously approved the settlement offer, a director at the DCED, Kim Bracey, said the DCED “put our concerns in writing to Chester regarding the proposed deal.”⁵⁷ Throughout January and February 2019, DCED representatives wrote to the City’s representatives many times about the proposed settlement agreement.⁵⁸ There was discussion within the DCED that a sale would cause a water rate increase.⁵⁹ But, through redactions, the DCED is blocking release of the specifics.

Not long after this barrage of communications from the DCED to the City, the City backed out of seemingly productive settlement negotiations with the CWA.

As outlined above, the DCED’s own documents suggest that when the City and the CWA were close to reaching a mutually beneficial settlement to avoid a sale, **the DCED derailed the deal.**

Subsequently, throughout November and December 2019, Ms. Bracey at the DCED frequently wrote about the pros and cons of “ownership of the CWA.”⁶⁰ As late as February 2020,

there may have been even more discussions about the DCED's distaste for settlement with the CWA, though the DCED continues to hide the details through its redactions.⁶¹

What we know for certain, however, is that the DCED has continued to insist on a sale even after recognizing that **a sale would dramatically increase water rates**. On April 3, 2020, the Recovery Coordinator wrote a letter to Ms. Bracey analyzing the City's options for monetizing the CWA. The Recovery Coordinator made clear that: **"A higher bid [to buy the CWA] does not necessarily indicate a more generous offer. In general a higher bid is conditional on a steeper rate increase for water customers."**⁶² Despite this acknowledgement, the Receiver whom the DCED now employs for the City and his financial analysts continue to analyze bids for the sale of the CWA without any regard for the punishing rate increase that would follow a sale.

V. The CWA is Forced to Turn to the Courts to Block Repeated Attempts to Illegally Sell It

A. Initial Legal Actions

On March 1, 2019, the CWA filed a Petition for Approval of Declaration of Trust Under Pennsylvania Law and the Transfer of Legal Title to Certain Assets to the Trust (the "Trust Petition") in the Orphans' Division of the Delaware County Court of Common Pleas.⁶³ The CWA believes that having the assets held in trust will ensure that the CWA will continue unabated in its mission of providing safe, high-quality and affordable water to the people of the Commonwealth, in accordance with the existing fiduciary duties imposed by law with respect to water as a natural resource expressly protected by the Pennsylvania Constitution (specifically, Section 27, known as the Environmental Rights Amendment). The CWA seeks, through the Trust, to protect, conserve, and maintain the CWA's assets for the benefit of citizens of the Commonwealth.

Aqua and the City of Chester, through costly litigation, have opposed the CWA's efforts to

place the CWA’s assets in trust for the benefit of the public.

In addition, on April 4, 2019, Aqua sued both the CWA and the City of Chester to block the CWA’s proposed \$60 million settlement with the City, designed to free the City of debt and preserve the existence of the CWA. Not long after the filing of Aqua’s lawsuit, the City bowed to pressure from Aqua and the DCED, and began a “request for proposals” (RFP) process, a process which the City never intended to actually allow for public bidding, but rather—in the City’s own words—a “transaction that Chester and Aqua intend to consummate.”⁶⁴

B. Buckling Under from Aqua and the DCED, the City Engages in a Sham RFP Process

About two months after Aqua filed suit to block the settlement, the City’s Mayor sent CWA Board Chairperson Leitzell the aforementioned June 11, 2019 letter stating that the City had decided to “issue a request for proposals” to attempt to unilaterally sell the CWA. The following day, on June 12, 2019, the CWA held a regularly scheduled board meeting. An Aqua representative arrived late and asked a departing CWA individual if the CWA was sending someone to the “meeting tonight,” which was an apparent reference to the City Council meeting scheduled for later that evening.⁶⁵ Upon hearing this, Chairperson Leitzell called Mayor Kirkland to inquire whether the City Council planned to discuss the CWA that evening.⁶⁶ Mayor Kirkland responded that there was no item on the City Council agenda that night concerning the CWA.⁶⁷ He said the City Council would merely be discussing the “RFP.”⁶⁸

The CWA sent a City resident to attend and record the City Council meeting that night, as authorized by Pennsylvania statute.⁶⁹ The publicly released agenda for the July 12, 2019 City Council meeting made no reference to the CWA.⁷⁰ Item fifteen of the agenda was a cryptically worded pending resolution to “[a]uthorize to approve Request for Proposals for Valuation of Assets.”⁷¹ As

it turned out, item fifteen on the agenda was a resolution directly targeting the CWA and authorizing the City to issue the RFP for interested entities to submit bids to acquire the CWA.⁷² The resolution was read aloud and then immediately approved by a vote of the City Council.⁷³ There was no prior opportunity for public discussion or debate regarding the resolution, nor was there public deliberation before the City Council members unanimously voted.⁷⁴ Immediately following the City Council meeting, Mayor Kirkland issued a press release and distributed an RFP for the sale of the CWA.⁷⁵

In the Orphans' Court case regarding the CWA's Trust Petition, the City filed a brief on June 19, 2019 that contains a remarkable admission: the City specifically stated that state law "was designed to promote the very transaction that Chester and Aqua intend to consummate"⁷⁶ This was the City admitting that the RFP is not public or competitive, and the City and Aqua have already agreed to a deal. This admission fits right in line with the fact that the RFP, worth hundreds of millions of dollars, was only open for a preposterously short **13 business days**. The reason: the City and Aqua already had a deal in place, and so there was no need for an RFP that would allow other bidders the time to meaningfully respond.⁷⁷

C. Judge After Judge Blocks the City's RFPs to Illegally Sell the CWA

This scheme by the City and Aqua forced the CWA to file a Complaint and Petition for a Preliminary Injunction against the City and Aqua on June 26, 2019. The central allegation in the CWA's Complaint was that the City was attempting to illegally sell the CWA to Aqua in a pre-arranged, backroom, non-public transaction, thereby violating state laws including Pennsylvania's Sunshine Act (Open Meetings Law) and the Third Class City Code.

On July 1, 2019, a full-day hearing was conducted and, upon its conclusion, Judge Bradley announced his decision against the City: "In this particular case I think Chester City fell far short of satisfying the requirements for the . . . Sunshine Act."⁷⁸ Judge Bradley also stated that the City's

Mayor and Clerk did not testify credibly in the hearing.⁷⁹

In agreeing with the CWA, Judge Bradley then issued a written Order enjoining the City “from alienating any assets owned by or allegedly owned by the Chester Water Authority” and “from taking any legal action dissolving, or attempting to dissolve, the [CWA] or in any way attempting to interfere with the day to day operations of the [CWA].”⁸⁰

This was the first time Court intervention was necessary to block the City from attacking the CWA’s existence in the midst of litigation. It would not be the last.

On July 17, 2019, the City initiated another litigation, captioned as *City of Chester v. Chester Water Authority*, No. 2019-5976, to seek a declaration that it may dissolve the CWA. On August 6, 2019, after a hearing, Judge Angelos rejected the City’s arguments and issued a pair of Orders designed to maintain the status quo in the CWA’s Sunshine Act and Trust Petition cases. One order extended Judge Bradley’s Order of July 1, 2019. The other Order prohibited the City from taking action against the CWA pursuant to the Municipalities Authorities Act.

The City’s July 17, 2019 lawsuit, which Judge Angelos found to be meritless, was filed two days before the CWA was set to close on a prior-noticed round of \$35 million in bond financing. That money was intended for the CWA to complete necessary, routine system maintenance that was long planned and scheduled. This maintenance, and the bond financing to support it, is routine and unremarkable in the water industry. Unfortunately, the City’s action caused the banks to put a hold on closing the bonds. Thus, in effect, the City got the relief it wanted by simply filing its frivolous lawsuit—without actually getting a preliminary injunction.

The Orders of Judge Bradley and Judge Angelos, designed to protect the CWA, did not stop Aqua and the City of Chester from continuing to attempt to force a deal to sell the CWA. Just eight days after Judge Angelos entered his Order, on August 14, 2019, the Chester City Council convened

another meeting and passed two resolutions directly attacking the CWA: (1) Resolution No. 4: “Authorize to approve the City Exploring the Project and Assets of the CWA”; and (2) Resolution No. 5: “Authorize to approve Specifying Projects(s) [sic] to be Undertaken by the CWA.”⁸¹ This resulted in the Court having to step in again to block the City from illegally interfering with the CWA. The CWA pointed out that the resolutions expressly purported to prevent the CWA from obtaining long-planned and routine funding for critical infrastructure maintenance. On August 16, 2019, **the Court entered yet another Order** enjoining the City from attempting to “force a conveyance or cause a conveyance” of the CWA, and further enjoining the City’s resolutions to the extent they restricted the CWA’s ability to comply with federal laws and permits.

Still undeterred by the Court’s Orders, the City fired another salvo the last week of August 2019. On August 26, 2019, the City announced that at the upcoming City Council meeting on August 28, the City would approve the final language for a second RFP, **blatantly disregarding the Court’s prior Orders which prohibited a second RFP in the midst of litigation.** In a hearing on August 28, 2019, **the Court unequivocally blocked the City’s illegal attack:** “It’s my decision that the terms of the July 2 order and the subsequent orders of August 6 and August 16 prevent the city from issuing an RFP.”⁸² This was the **fourth time in less than two months** that the Court had to issue an Order blocking the City from interfering with the CWA.

D. Judge Angelos Orders the City of Chester Cannot Unilaterally Sell the CWA, But the Commonwealth Court Reverses the Decision

On April 24, 2020, Judge Angelos ruled that the City of Chester does not have the right to unilaterally sell the CWA. The Court ordered that any transfer of CWA assets must be conducted “in unison” by the three municipalities represented on the CWA board, which are the City of Chester, Delaware County and Chester County.⁸³

Nevertheless, the Receiver selected by the DCED, Mr. Doweary, ignored the Order and, as seen in emails obtained through the Right to Know Law, Mr. Doweary and the City had secret discussions with Chris Franklin (CEO of Aqua’s parent company, Essential Utilities Inc.) and Aqua’s counsel about the sale of the CWA throughout the summer and fall of 2020.⁸⁴ Essential even sent the Receiver and Mayor a draft Asset Purchase Agreement.⁸⁵ Essential and the Receiver excluded Delaware County and Chester County from these secret discussions, which only were discovered through Right to Know Law requests.

In response to these emails being produced, the CWA’s Solicitor posed in a letter several questions to the Receiver about the emails, which the Receiver has yet to answer.⁸⁶ The Receiver has publicly stated that “no decision has been made regarding the sale of the Chester Water Authority”; the emails, however, show this to be false.

While the Receiver and the DCED were conducting their secret negotiations, Aqua and the City of Chester were busy appealing Judge Angelos’ April 2020 Order to Pennsylvania’s Commonwealth Court. Nearly a year and a half after the April 2020 Order was entered, on September 16, 2021, the Commonwealth Court reversed that Order, issuing a narrow ruling on the question of who can dissolve the CWA and finding that CWA ratepayers in Chester and Delaware Counties—who outnumber the City of Chester’s ratepayers by at least five times—have **no say** in the decision of whether to sell the CWA.

The September 2021 decision was not unanimous. Rather, two Commonwealth Court judges dissented. The dissenting opinion, issued by Judge Wojcik and joined by Judge Cohn Jubelirer, described the Commonwealth Court’s majority ruling as follows:

The Majority opines that “[i]n enacting [S]ection 5610(a.1), our General Assembly simply provided the [Counties] with ‘seats at the table’ of the governing body or board of the Authority.” . . . Yet, the Majority ascribes little to no significance to the

Counties' representation. . . . In my view, **the General Assembly did not amend the MAA to simply give counties meeting the specific criteria *token* "seats at the table"** Rather, the General Assembly recognized Chester and Delaware Counties as critical stakeholders in this water project and as representatives for their constituent ratepayers who, in this unique situation, outnumber the City's ratepayers by "at least five times." 53 Pa. C.S. §5610(a.1). **The growth and success of the water project has been built on the backs of the Counties' ratepayers.** Therefore, the General Assembly gave the Counties "seats at the table" of the governing board to give them **some meaningful control over the Authority**, its assets, and "the project" that provides them with vital water service in their areas.

The Majority's upside-down logic has the tail wagging the dog. Under the Majority's statutory interpretation, **the City would constitute a super-minority of the Authority's board**, with the ability to unilaterally "acquire the project" and sell the Authority's assets to pay the City's debt, **leaving the 79% majority of the Authority's ratepayers living in the Counties and elsewhere, where the majority of the assets are actually located, holding the bag.** **The General Assembly could not have intended such an intolerable and absurd result.**

* * * *

It is patently unconscionable to permit the City to pay off its own municipal debt by selling the Authority's assets that were paid for by its ratepayers, the vast majority of whom reside in the Counties and elsewhere. In fact, the General Assembly granted the Counties "seats at the table" to prevent the City from looting the Authority, and using the sale of the Authority's assets as its own municipal piggy bank, by enacting Section 5610(a.1).⁸⁷

Many questions surrounding the attempt to sell the CWA will be returned to the Delaware County Court of Common Pleas and will be litigated further. As members of the public and ratepayers, we must increase pressure on all of our state lawmakers. Our elected officials' inaction by "waiting for the courts to decide" is no longer an excuse. Our lawmakers must take back the power for their people—now.

E. Litigation is Simply Not Enough

The Commonwealth Court's majority decision in September 2021 makes clear that CWA ratepayers should not rely on the courts to protect their interests. All the courts can do is apply and interpret the laws that legislators pass. If there is a lack of clarity in a law, it is up to the lawmakers

to clarify with additional legislation.

Because of activism of CWA ratepayers, legislation was introduced to the Pennsylvania House. HB 2597 was introduced by State Representative John Lawrence (PA-13) in July 2020. HB 2746 was introduced by State Representative Christina Sappey (PA-158) in August 2020. Both of these bills were referred to the Consumer Affairs Committee. **However, both bills died in committee without ever being brought up for a vote at the end of the 2020 legislative session.**

Representative Sappey reintroduced her bill in the new legislative session (now named HB 144) and Representative Lawrence reintroduced his bill (now HB 97). HB 144 proposes a water ratepayer bill of rights allowing ratepayers to have the ability to voice issues they may have with a possible water utility acquisition.⁸⁸ The bill would also require water and wastewater utilities to publish an annual report with information regarding average residential billing amounts in order to prevent utilities from inflating their costs to the residential consumer.⁸⁹ HB 97 would require ratepayer approval prior to the sale a publicly managed utility in the Commonwealth.⁹⁰ Other states, including neighboring New Jersey, require voter input prior to the sale of a publicly managed utility.⁹¹ Both bills have again been referred to the Consumer Affairs Committee. State Senator John Kane (SD-9) has introduced a companion bill to Representative Sappey's bill in the Pennsylvania Senate, SB 452.⁹²

In May 2021, a bi-partisan hearing co-chaired by Representative Lawrence, a Republican, and Representative Leanne Krueger (PA-161), a Democrat, drew attention to Section 1329 of Title 66 (better known as Act 12). It was proposed that the law should be amended to pertain only to distressed water systems—not healthy systems like the CWA.

The importance of saving the CWA is recognized by Democrats and Republicans alike. Let your elected officials know where you stand by contacting them through our simple tool available at

<https://chesterwater.com/savecwa/contact-your-representatives/>.

VI. More Shadowy Dealings in the Scheme to Sell the CWA

A. Misrepresentations to Lawmakers

The DCED has repeatedly advanced inconsistent positions regarding the attempt to seize the CWA, often saying one thing in public and the opposite in private.

As stated, in April 2020, Governor Wolf declared a Fiscal Emergency for the City of Chester. Pursuant to that declaration, the Secretary of the DCED, Dennis Davin, filed a Petition for a Receiver for the City of Chester in the Commonwealth Court captioned, *Davin v. City of Chester*, No. 336 MD 2020. Secretary Davin is the only Petitioner in the case, in which several filings have been made advocating for the sale of the CWA. Despite clear statements advocating for the sale of the CWA, the DCED has been telling the legislature a different story, claiming that it has not taken any position on the sale of the CWA.

The DCED produced documents in response to public records requests, including a draft report dated March 28, 2018⁹³ and a final report dated May 4, 2018⁹⁴ by the City of Chester's Act 47 Coordinator (which the DCED oversees) concluding that "Chester must explore the monetization of municipal assets including a potential transaction involving Chester Water Authority." In addition, the Receiver for Chester (overseen by Secretary Davin) has filed several documents in Secretary Davin's case in Commonwealth Court advocating for the sale of the CWA, specifically stating, for example:

(a) that "the City has little choice other than to explore the potential sale or lease of" its water system and parking system;⁹⁵

(b) "I fully support the City's ongoing litigation to establish its sole ability to repossess the assets of the Chester Water Authority";⁹⁶

(c) "Section 706(a)(5) of Act 47 specifically empowers the Receiver 'to require the

distressed municipality or authority to cause the sale, lease, conveyance, assignment or other use or disposition of the distressed municipality's or authority's assets";⁹⁷

(d) "The Receiver hereby directs the City to continue litigating for its ability to repossess and sell the assets of the Chester Water Authority";⁹⁸ and

(e) that "[m]onetizing the Chester Water Authority . . . is a key component of Chester's path forward and permanent recovery because it would bring a significant amount of money into the City."⁹⁹

These statements by the DCED between 2018 and the present make clear that the DCED has been advocating for the sale of the CWA to its private water friends for several years.

Despite the foregoing statements by the DCED, Secretary Davin has been telling Pennsylvania's lawmakers that the DCED takes **no position** on a sale of the CWA. On April 22, 2020, State Representative John Lawrence, co-authored a letter to Secretary Davin, which, among other things, expressed concern that the "DCED may attempt, under the guise of [Governor Wolf's April 13, 2020 declaration of] Fiscal Emergency, to step in and order a sale of" the CWA.¹⁰⁰ The letter also asked Secretary Davin whether such a sale had been contemplated by the DCED or its agents, and what conversations had taken place between the DCED and potential buyers.

On February 22, 2021, Representative Lawrence questioned Secretary Davin about Davin's reply letter,¹⁰¹ in which Davin was quoted as stating: "Neither DCED nor the Act 47 Coordinator for the City of Chester has ever promoted a sale of Chester Water Authority."¹⁰² Representative Lawrence pressed Davin to explain the obvious contradiction between the Act 47 Coordinator's 2018 reports promoting a sale of the CWA's assets and Davin's denial of any such promotion. All Davin would say, over and over, was that he had no response and would "have to get back to you."

By letter dated March 8, 2021 to the Pennsylvania Majority and Minority Appropriations Chairmen, Secretary Davin doubled down on his contradictions with a written follow-up to his exchange with Representative Lawrence.¹⁰³ Davin wrote:

During DCED's House Appropriations Committee Budget Hearing, Committee members presented questions concerning the Department's programs. Listed below you will find our response to each question.

* * * *

Rep. John Lawrence (R-Chester):

Question: The Representative asked DCED's position on the sale of the Chester Water Authority and stated that DCED contradicted a letter saying DCED did not advocate for its sale.

Response: DCED has not taken any position on a potential sale of the Water Authority. DCED is aware of several proposals which have been initiated by other parties including one between the Water Authority itself and the City. However, DCED has consistently stated that the Chester Water Authority owns the water system. Therefore, any sale of the system will ultimately be a decision made by the Authority. Moreover, the Commonwealth Court is currently considering a case which will likely determine the City's legal interest in the Water Authority. DCED has advised the City over time to rely on their own counsel and professionals, which they have done.

Secretary Davin wants to have it both ways by taking one position regarding a sale of the CWA with the courts, and then pretending he never took that position when answering the legislature's questions.¹⁰⁴

B. Evidence of Conflicts of Interest

There seems to be a pattern of the City of Chester retaining, as its counsel, attorneys who also represent either Aqua or the DCED Receiver. The question is: Who is representing the interests of the residents of Chester?

1. City of Chester Retains Aqua's Attorneys

As stated, Aqua previously sued the City of Chester and the CWA, trying to force the sale of the CWA to Aqua. Aqua has routinely used the law firm Ballard Spahr to represent Aqua in corporate matters including as attorneys: (1) in the issuance of \$900,000,000 in Senior Notes due 2029 and

2049;¹⁰⁵ (2) in the issuance of 6,000,000 shares of common stock;¹⁰⁶ (3) in the issuance of up to \$500,000,000 aggregate of common stock¹⁰⁷ and preferred stock; and (4) advising on environmental, social and governance disclosures made in Aqua's ESG report, proxy statement, and Form 10-K.¹⁰⁸

Now Ballard Spahr represents the City of Chester, having entered its appearance for the City in litigation against the CWA.¹⁰⁹ In addition, the City is now with Aqua conducting litigation against the CWA.¹¹⁰

Trying to get information about these relationships, Right to Know Requests were sent to the City of Chester requesting documents showing invoices received and amounts paid to law firms, which would include Ballard Spahr. Incredibly, the City of Chester has stated that no invoices exist, despite records showing that Ballard Spahr has received over \$200,000 from the City since July 2020.¹¹¹

Right to Know Requests also revealed emails dated August 13, 2020 and August 15, 2020 between Ballard Spahr, the DCED, Act 47 Team, the Receiver and the City, talking about the sale of the CWA to Aqua. With the encouragement and blessing of the DCED, on August 13, 2020, the City hired Ballard Spahr to sell the CWA (ignoring Judge Angelos' Order that the City alone could not sell the CWA). The fee agreement sets an October 15, 2020 deadline for signing the agreement to sell the CWA to Aqua.¹¹² Note page 2 of the fee agreement where the City waives conflicts of interests.¹¹³ This agreement between the City and Ballard Spahr was negotiated and executed under the DCED's supervision while both the DCED and Receiver were saying publicly that no decisions had been made about selling the Chester Water Authority. Additionally, as stated, DCED Secretary Dennis Davin told lawmakers in February 2021 that he did not know what was going on regarding the sale of the CWA to Aqua—all the while, his employee, the Receiver was orchestrating the City's hiring of Aqua's lawyers to help with a forced sale of the CWA.

Who is representing the interests of the residents of Chester if the attorneys for the City government and Aqua are the same? How can the City pay a law firm over \$200,000 without having any invoices for what they are paying for? There are a lot of questions to be answered about how Aqua's corporate attorneys came to now represent the City of Chester in CWA-related litigation, after Aqua itself sued the City over the CWA. How much control does Aqua have over the City?

2. City of Chester Retains the Receiver's Attorneys

In 2012, the City of Chester retained John P. McLaughlin and his then law firm to represent it in matters related to, among others, the arbitrations and appeals of the arbitration awards in favor of the police and firefighter pensions.¹¹⁴ The City, with Mr. McLaughlin as counsel, did not appeal those awards. The Receiver now claims that those awards, and the failure to meet the payments under them, is what has caused much of the City of Chester's fiscal crisis.¹¹⁵

Yet, it appears that after the Receiver was appointed on June 22, 2020, he hired to represent him the very same lawyers that represented the City in 2012 — Mr. McLaughlin, and his law firm, Campbell Durant.¹¹⁶

Making matters even more complicated is that Campbell Durant was representing the City in matters that pre-date the Receiver, and appears to have continued to represent the City and be paid by the City since that time.¹¹⁷

How can the same law firm represent both the City of Chester and the Receiver? Who is representing the interests of the residents of Chester if the attorneys for the City government and the DCED Receiver are the same?

C. Evidence of Improper Offer of Multi-Million Dollar Payment

The Receiver’s December 2, 2020 Status Report revealed that City of Chester officials proposed a **budget that relied on a \$12 million payment from Aqua** to the City for the sale of the CWA’s assets, even though no such sale has happened, or even been voted on by the City. The Status Report also revealed that this \$12 million payment from Aqua would be non-refundable to Aqua “unless the City sold the CWA to another entity.”¹¹⁸

This \$12 million payment is being offered at the same time that Aqua has asked the City to vote to sell the CWA, and at the same time that Aqua has pending litigation against the City to try to block any deal the City might reach with the CWA that would not involve a sale to Aqua.¹¹⁹

Is it legal for Aqua to propose this payment? Doesn’t Aqua’s offer of money appear to be in exchange for Chester voting to sell the CWA to Aqua?

Right to Know Requests also revealed a collection of emails between the DCED, the Act 47 Team, the Receiver and the City and Aqua dated October 7, 2020, which discuss the Delaware County Regional Water Quality Control Authority, DELCORA.¹²⁰ While Aqua has sought to purchase DELCORA, it still does not own DELCORA,¹²¹ and DELCORA is not part of the email exchange—so why are Aqua’s lawyers talking about DELCORA with the City? Note the **massive redaction** by DCED about Aqua’s offer to amend the City’s agreement with an entity that Aqua does not own—DELCORA.¹²²

What is going on here? Did the City already get money from Aqua?

D. The Public Deserves Answers

Most Pennsylvania businesses are in the marketplace every day struggling to sell their product or service, keeping a watchful eye on their expenses and competing against other

Pennsylvania businesses who try to compete for the same customers. This is the harsh competitive reality faced most Pennsylvania businesses.

Aqua faces no such challenges. Aqua is protected by the state government. Aqua has been awarded a monopoly from state government. Here is what that means: Aqua's customers are required to purchase from only Aqua. The state sets—really, it protects—Aqua's revenues. The state even requires Aqua's customers to pay higher rates so that Aqua earns a guaranteed rate of return on capital expenditures.¹²³ It is a state-guaranteed privilege to be awarded monopoly status and Aqua has this privilege.

What should state government require from Aqua in exchange for this special status? All Pennsylvanians need to learn a whole lot more about Aqua businesses and business practices. And they deserve the truth from not only from Aqua, but from the government officials who have been entrusted with representing the public's interests—not the interests of themselves and their private utility company friends.¹²⁴

VII. If Aqua Takes Over the CWA, Water Will Be Significantly More Expensive for Ratepayers

If this seizure is successful, any ill-gotten cash raised through the wrongful seizure and sale of an authority and assets not owned by the City of Chester will have been funded not only on the backs of the residents of the City of Chester (thus putting in jeopardy their ability to have the most affordable safe drinking water), but also on the backs of the 79% of Chester Water Authority customers who are residents of Aston Township, Bethel Township, Birmingham Township, Brookhaven Borough, Chadds Ford Township, Chester Heights Township, Concord Township, E. Marlborough Township, E. Nottingham Township, Franklin Township, Kennett Square Borough, Kennett Township, Little Britain Township, Londonderry Township, London Grove

Township, Lower Chichester Township, Lower Oxford Township, Marcus Hook Borough, Middletown Township, Nether Providence Township, New Garden Township, New London Township, Oxford Borough, Parkside Borough, Penn Township, Thornbury Township (Chester County), Thornbury Township (Delaware County), Trainer Borough, Upland Borough, Upper Chichester Township, and Upper Oxford Township.¹²⁵

It is indisputable that if Aqua takes over the CWA, water will be significantly more expensive for ratepayers. This is supported by the publicly available data about Aqua's rates and the CWA's rates.

First, Aqua's Main Division rates as a percentage of median household income in the City of Chester exceed what is considered affordable water under the United States Environmental Protection Agency (EPA) guidelines.¹²⁶ The EPA uses a guideline of 2% of household income to judge what is or is not affordable. Aqua Main Division rates, excluding any additional surcharges the company charges, represent 2.87% of the median household income in the City of Chester.¹²⁷ By comparison, the CWA's rates and the annual cost of water service represents 1.35% of the median household income in the City of Chester.

Second, Aqua's promise of a rate freeze is temporary and will be followed by massive hikes forever. An average residential customer in the CWA's service area will end up paying more than \$500 extra per year under Aqua's rates.¹²⁸ This impact will be especially devastating on City of Chester residents, many of whom are already below the poverty line. Also, large commercial and industrial customers in the City will end up paying millions of dollars more under Aqua's rates. This could drive existing businesses to leave the City if faced with such large cost increases. These much higher rates will also make the City less competitive for attracting new businesses, which is key to the City's long-term health. All of these rate increases will come with no added benefit to customers.

If the DCED's handpicked Receiver seizes the CWA and sells it to Aqua, the DCED and the Receiver will be using CWA customers to extract a short-term bailout for long-running financial problems that occurred because of the DCED's failures, and in the end will only enrich Aqua shareholders. An attempted sale of the CWA is not a "win" for the City's residents or businesses.

Third, compare the purpose and track record of the CWA and Aqua. The CWA is a non-profit municipal authority whose focus is on customers and the communities in which they live. The CWA's rates are carefully calibrated to cover the cost to responsibly run the system, and nothing more. The rates cover (1) the cost to make and deliver clean and affordable water to customers, and (2) the amount the CWA must put in reserve for future capital improvements to infrastructure. Through these two channels, monies that customers pay go back into the system. The CWA is not profiting off of ratepayers, does not charge more than the cost of service, and has no incentive to charge more than needed to provide services. The CWA goes through a great deal of effort to ensure that the rates customers pay accurately reflect the cost of service, and maintains a policy of matching rates to the cost of service so that one portion of a service area is not subsidizing another. By way of example, due to the City of Chester's location in the Village Green East rate zone, ratepayers in the City of Chester pay slightly lower rates than other ratepayers located in the Village Green West zone (which, due to its elevation, entails slightly higher costs for the pumping pressure required for delivery of the water).

As a non-profit, the CWA has no shareholders to which it must send profits; it does not pay exorbitant salaries or bonuses to executives, especially those tied to growing share value, dividends or earnings; it is not sitting on a growing pile of retained earnings; and it has no corporate jet or extravagant offices. The CWA does, however, have an excellent credit rating, and its Better Business rating is outstanding. It recently won the highest water quality award from the Partnership for Safe

Water. Its infrastructure is well-maintained. It is financially sound. Its rates are far lower than the rates of investor-owned utilities like Aqua.

Aqua's focus is on delivering profits to remote corporate shareholders and institutional investors, and maximizing earnings for its executives. For example, in 2020 alone, Essential/Aqua reportedly paid its CEO, Chris Franklin, **\$7.2 million** in total annual compensation.¹²⁹ The April 2021 Simply Wall St. article reporting Franklin's salary says it all: "We think that the total shareholder return of 42%, over three years, would leave most Essential Utilities, Inc. shareholders smiling. So they may not be at all concerned if the CEO were to be paid more than is normal for companies around the same size."¹³⁰

Aqua also has a long record of imposing enormous rate increases following municipal system acquisitions. For example, after Aqua acquired systems in Bensalem, Bristol and West Chester, Aqua more than doubled the rates. Aqua is buying a sewer system in New Garden Township, Chester County, and is poised to implement a rate increase at closing and will raise rates again in 2021 when it files its next base rate case. The New Garden Township Board of Supervisors were compelled by the Pennsylvania Public Utility Commission (PUC) to issue a public notice to their constituents and that notice shows that the purchase price alone will cause rates in New Garden to increase by 52%.

Howard J. Woods, Jr., P.E. of Howard J. Woods, Jr. & Associates, L.L.C., an expert in water utility management and rate setting, has analyzed available data on water rates and has concluded that CWA rates are significantly lower than current Aqua Main Division Rates, which are what current CWA customers would ultimately pay if the CWA system were seized and sold to Aqua. The expert concludes, among other things, that a residential customer in the City of Chester would pay annually \$510 more for water provided by Aqua than that customer would pay to the CWA for the same water.¹³¹

Pennsylvania residents outside of the CWA’s coverage area know all too well the financial pain of being an Aqua customer. On August 23, 2021, the Philadelphia Inquirer reported that Aqua is seeking to increase water bills for 445,000 customers by 17% and sewer bills by almost double that.¹³² Aqua filed a request on August 20, 2021 with the Pennsylvania PUC that would boost a typical residential water bill for a customer using 4,000 gallons a month from \$69.35 to \$81.32, an increase of more than 17%.¹³³ Residential bills for Aqua’s 45,000 wastewater customers would be increased from \$55.51 to \$73.95, an increase of \$18.44, or approximately 33%.¹³⁴ As the article points out: “The combined rate increase would raise Aqua Pennsylvania’s annual revenue by \$98 million, about 18%, according to an Aqua spokeswoman. **In an annual report filed with the PUC, Aqua reported making net income of \$188 million last year on \$509 million of operating revenue.**”¹³⁵ The article further notes: “Aqua last raised bills in 2019, when the PUC approved a boost of 9.8% in the bills for water customers and 34.6% for wastewater customers. The final rate increase was about two-thirds of what Aqua first sought.”¹³⁶

VIII. Aqua Cannot Be Trusted to Preserve the Public’s Access to the Octoraro Reservoir

The CWA owns the two-billion-gallon Octoraro Reservoir. It maintains over 2000 acres of land that protects our water source and watershed. The Octoraro Reservoir and its untouched surrounding land is home to wildlife including bald eagles, herons, wild turkeys and more. From fishing and hiking to boating and kayaking, the reservoir is free and open to the community for enjoyment and recreation. The CWA even works with the Pennsylvania Game Commission to offer turkey hunting.

One of Aqua’s latest tactics to steal the CWA from our community is reaching out to conservation groups that have openly supported the CWA. Aqua is weaving a tale that they will

allow our community continued access to Octoraro Reservoir.

Proof, however, is in action, not in words.

This is a sampling of what was done to the reservoirs in other communities:

- Springton Reservoir, Delaware County—fenced off, no public access, fishing banned.
- Pickering Creek Reservoir, Chester County—fenced off, no public access, fishing banned.
- Churchville Reservoir, Bucks County—gated road, fishing banned.

Take the Springton Reservoir, for example. In the early 2000s, Aqua, the owner of Springton Reservoir, made the reservoir inaccessible to the general public—turning the public reservoir into a private reserve.¹³⁷ After 9/11, Aqua claimed that terrorism is the reason why people who previously enjoyed fishing, hiking, and wildlife for decades cannot use the reservoir. But people actually live there—right on the Springton Reservoir, right now.¹³⁸

Seeking a “useful way to develop the 23 acres of forest on the reservoir,” Aqua sold the lakefront of the Springton Reservoir to land developers.¹³⁹ They created Springton Lake Village—an exclusive retirement community for seniors. It boasts 40 luxury homes that range up to over \$600,000 in a private, lakefront location with spectacular seasonal views (and walking paths) of Springton Reservoir.¹⁴⁰ There really wasn’t a terrorist threat to the water after all. Instead, by closing the fishing area and fencing off all public access, Aqua preserved the beautiful view exclusively for Springton Lake Village residents. Did assuring private access for Springton Lake Village increase the land value when they sold it for over \$3.5 million?

In 2011, Marple Township Commissioners attempted to rezone 25 acres along the Springton Reservoir as Open Space.¹⁴¹ Aqua refused to change it from being zoned Residential. Did they want to leave it available for additional future land development?

Aqua has been approaching conservation groups saying that they won't develop the land around the Octoraro Reservoir and will leave it open to the public. If that's true, why is Aqua trying to block the CWA from putting their own public assets into an environmental trust?

The RFP which Aqua submitted to the City of Chester is telling. Nowhere in their RFP do they mention preservation or keeping recreational activities on the Octoraro Reservoir.¹⁴² If that was an important part of their plan, why do they not even mention it in their RFP submission? What they do mention is their security measures, including fences, walls, high security gates, and high visibility surveillance equipment.¹⁴³

If Aqua wants to prove that they have our community's best interest at heart, why have they not opened up all of the reservoirs that they own to their local communities—take down the fences, allow fishing, and allow public access. Place all of the reservoirs and those land holdings into environmental trusts in perpetuity?

As with its other acquisitions such as the Springton Reservoir in Delaware County, it can be expected that Aqua will fence off the Octoraro Reservoir from the community and prohibit recreational activities. Also based on its well-documented history, it can be expected that Aqua will parcel and sell these land holdings for development.

Pennsylvanians have rights to their natural resources. The Pennsylvania Constitution, at Article I, Section 27 (the Environmental Rights Amendment) states: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."¹⁴⁴

Our public natural resources are the common property of all of us as Pennsylvania residents.

That is why the CWA wants to place its public assets in an environmental trust, and that is exactly why Aqua is trying to stop the CWA from doing so.

IX. There Are Other Sources of Funding Available to the City of Chester Which Do Not Involve Relinquishing Control of Our Drinking Water to a For-Profit Corporation

The American Rescue Plan passed by Congress and signed into law by President Biden has unlocked \$31 million in federal funding for the City of Chester. The City's approved budget plans to meet all obligations to fund essential city services and taxpayer-funded pensions. This should put an end to both the Receivership, as well as the Receiver's and City's efforts to seize and sell the CWA.

On April 15, 2021, the CWA wrote to Mayor Kirkland and pointed out that the Receiver's 2021 budget for the City was compiled before the American Rescue Plan was enacted. Thus, the 2021 budget does not include any portion of this \$31 million. Yet, even without including the \$31 million in federal aid, the 2021 City budget: (1) makes the full 2021 MMO payments for each of the City's three pension funds; (2) makes full payments for debt service on the City's outstanding bonds; and (3) "fund[s] all obligations to sustain vital and necessary services during 2021."¹⁴⁵

These statements from the Receiver are important because they mean that the City no longer qualifies for a receivership. Specifically, the receivership must terminate once the City is projected to be solvent for 180 days and "is able to ensure the continued provision of vital and necessary services."¹⁴⁶ By the Receiver's own admission, both conditions are now satisfied even **without** considering the additional \$31 million in federal aid to the City. Once the \$31 million is also considered, it is clear beyond any doubt that the City meets the legal criteria for ending the Receivership.

The American Rescue Plan is not the only source of additional funding for the City of Chester.

In 2017, when Aqua agreed to purchase DELCORA, it appears no one paid attention to a clause in a 50-year-old contract between the City of Chester and DELCORA that was triggered. That clause provides that if DELCORA goes out of business, the City, not Delaware County, gets back the sewer assets. In the transaction as currently structured, Aqua would be paying DELCORA for assets that belong **to the City**, which are estimated to be worth as much as \$70 million.

It is incredible that the City's claim to these assets has not been pursued as a solution to the budget crisis the City faces, even though the City's contractual right to these assets has been known for some time by the DCED and the Receiver, and has been discussed internally by the DCED for years.

Yet another source of additional funding for the City of Chester is \$15 million that was reportedly promised to the City by the Commonwealth at the time the City agreed to the appointment of the Receiver. According to Mayor Kirkland, the City agreed to accept the Commonwealth's help and appointment of a Receiver in April 2020 because of promises made by Governor Wolf, and members of his administration from the DCED, that the Commonwealth would provide \$15 million in assistance to Chester.

Representative Lawrence questioned DCED Secretary Davin about a December 23, 2020 Chester City Council meeting,¹⁴⁷ in which Mayor Kirkland stated:

You know, I got a call back in May, maybe early June, this is when the pandemic hit. . . . I received a call – factual information – I received a call from the Governor of Pennsylvania . . . Governor Wolf, and on that call was Secretary Davin, Secretary of DCED. Also on that call was Director Kim Bracey . . . They called and they said, “We want to help. We want to partner. We want to come in and roll up our sleeves and help Chester get back on its financial feet” . . . That's what they told me . . . And I was excited. And so I welcomed them, we welcomed them, with open arms. They said, “Not only are we coming with experience, not only are we coming with technical assistance,” but they mentioned . . . \$15 million of financial help. These are not things

you make up or a number that you pull out of the sky. This was a conversation with the Governor of Pennsylvania and the Secretary of DCED and Director Bracey.¹⁴⁸

When Representative Lawrence confronted Secretary Davin about Mayor Kirkland’s specific recollection and details, and asked whether the promised \$15 million payment had been made to the City of Chester, Davin denied that any such payment had been made or promised.

In sum, the City of Chester has funding currently available to it as well as options it can pursue to help alleviate its financial struggles. Permanently relinquishing control of our drinking water to a for-profit corporation is simply not the solution.

X. Conclusion

We hope you will join us in our fight to oppose Aqua’s plot to acquire the CWA. Please make your voice heard by visiting <https://chesterwater.com/savecwa/contact-your-representatives/> and using our simple tool to contact your elected officials.

You may also email us at info@chesterwater.com.

XI. Endnotes and Factual Support

¹ See ticker showing what CWA ratepayers have saved by not paying Aqua rates since May 2017: <https://chesterwater.com/>.

² <https://www.chestercity.com/about/>

³ <https://why.org/articles/facing-fiscal-peril-city-of-chester-is-put-into-receivership/>

⁴ City of Chester, Act 47 Exit Plan, Adopted (2018-10-10) at pg. 7, Sec 2.2 (“For several years, Chester achieved significant improvement in its operating results and fund balance position due in large part to new income associated with gaming activity at Harrah’s Racetrack and Casino. However, from 2013 through 2016, Chester ran operating deficits. In 2014, the City began delaying health insurance premium payments and substantial portions of its minimum municipal obligation (MMO) in order to meet payroll. To accurately portray the General Fund condition, all health care and MMO obligations are included in the expenditures, regardless of whether these expenses were actually funded in the year the expense was incurred. By the end of 2013, as the City’s fund

balance had dropped to \$1.9 million and accelerated to over -\$23.0 million by 2016, primarily as a result of outstanding pension MMO and health insurance expenses. At the end of 2016, the City defaulted on its 2016 Tax and Revenue Anticipation Note.”). <https://dced.pa.gov/download/chester-city-act-47-exit-plan-adopted-2018-10-10/?wpdmdl=88894>

⁵ Receiver’s Recovery Plan for City of Chester, at pg. 11: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>.

⁶ Receiver’s Recovery Plan for City of Chester, at pg. 11: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>.

⁷ Receiver’s Recovery Plan for City of Chester, at pg. 11: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>.

⁸ City of Chester’s 2016 Audited Financial Statements at pg. 40, <https://emma.msrb.org/ES1152642-ES901384-ES1302598.pdf>; 2017 Audited Financial Statements at pg. 40, <https://emma.msrb.org/RE1363055-RE1059360-RE1468872.pdf>.

⁹ Receiver’s Recovery Plan for City of Chester, at pg. 11: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>

¹⁰ Receiver’s Recovery Plan for City of Chester, at pg. 17: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>

¹¹ Receiver’s Recovery Plan for City of Chester, at pg. 17: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>

¹² See Auditor General Jan. 4, 2019 Letter Enclosing Compliance Audit Report for the Police Pension Fund for the Two Years Ending December 31, 2017 at pg. 4 (“The findings contained in this audit report repeat conditions that were cited in our previous audit report that have not been corrected by city officials.”).

¹³ Audit Report for Two Years Ending December 31, 2017 (“Audit Report”) at pgs. 4, 10-13 (noting that the City last paid the MMO in full in 2014).

¹⁴ *Municipality of Monroeville v. Monroeville Police Dept.*, 767 A.2d 596 (Pa. Commw. Ct. 2001).

¹⁵ Audit Report at pgs. 4, 5-8.

¹⁶ *Id.* at pg. 5.

¹⁷ *Id.* at pgs. 4, 9-10.

¹⁸ *Id.* at pg. 9.

¹⁹ *Id.* at pgs. 4, 14-15.

²⁰ See Letter at pg. 5.

²¹ *Id.* at pg. 6.

²² January 19, 2012 Dissenting Opinion of Arbitrator for City of Chester in American Arbitration Association Case No. 14-360-L-01-351-11-02-ALVA-C.

²³ City of Chester, Act 47 Exit Plan, Adopted (2018-10-10) at pg. 13, Sec. 3.1,

<https://dced.pa.gov/download/chester-city-act-47-exit-plan-adopted-2018-10-10/?wpdmdl=88894> (emphasis added).

²⁴ Receiver’s Recovery Plan for City of Chester, at pg. 15: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>; *see also id.* at pg. 37, n.11 to Figure 4.6: General Fund Expenses by Category, 2019-2024 (“Though categorized as ‘debt reduction,’ the obligations here are not debt in the traditional sense. These are obligations carried over from prior years, like unpaid vendor bills or past due federal tax withholdings.”), and pg. 40 (“Figure 4.6 shows \$1.95 million in “debt reduction” expenditures in 2019 and another \$4.0 million in 2020. That is not repaying debt in the traditional sense – that is paying obligations carried over from prior years, like unpaid vendor bills or past due federal tax withholdings.”).

²⁵ Rule 15c2-12 Disclosure, dated 7/24/2017, Failure to Provide Notice That Financial Statements Would Be Delayed, <https://emma.msrb.org/EP1027431-EP789684-EP1191336.pdf>.

²⁶ City of Chester’s 2014 Audited Financial Statements at pg. 4, <https://emma.msrb.org/ES1036214-ES810036-ES1211441.pdf>; 2015 Audited Financial Statements at pg. 4, <https://emma.msrb.org/ES1152642-ES901384-ES1302598.pdf>; 2016 Audited Financial Statements at pg. 4, <https://emma.msrb.org/ES1152642-ES901384-ES1302598.pdf>; 2017 Audited Financial Statements at pg. 4, <https://emma.msrb.org/RE1363055-RE1059360-RE1468872.pdf>.

²⁷ City of Chester’s 2013 Audited Financial Statements at pg. 2 (Summary of Opinion Units): <https://emma.msrb.org/ES1036164-ES810049-ES1211458.pdf>.

²⁸ City of Chester’s 2014 Audited Financial Statements at pg. 2 (Basis for Modified Opinion) and (Emphasis of Matter Regarding Going Concern – Component Units): <https://emma.msrb.org/ES1036214-ES810036-ES1211441.pdf>.

²⁹ City of Chester’s 2015 Audited Financial Statements at pg. 2 (Basis for Modified Opinion) and (Emphasis of Matter Regarding Going Concern): <https://emma.msrb.org/ES1152642-ES901384-ES1302598.pdf>.

³⁰ City of Chester’s 2016 Audited Financial Statements at pg. 2 (Basis for Modified Opinion) and (Emphasis of Matters - Regarding Going Concern), and, at pg. 3 (Emphasis of Matters - Prior Period Restatement): <https://emma.msrb.org/ES1152642-ES901384-ES1302598.pdf>.

³¹ City of Chester’s 2017 Audited Financial Statements at pg. 2 (Basis for Qualified Opinions) and (Emphasis of Matters – Regarding Going Concern), and, at pg. 3 (Emphasis of Matters – Restatement): <https://emma.msrb.org/RE1363055-RE1059360-RE1468872.pdf>.

³² City of Chester, Act 47 Exit Plan, Adopted (2018-10-10) at pg. 48, Sec. 7.0, <https://dced.pa.gov/download/chester-city-act-47-exit-plan-adopted-2018-10-10/?wpdmdl=88894>.

³³ City of Chester, Act 47 Exit Plan, Adopted (2018-10-10) at pg. 48, Sec. 7.0, <https://dced.pa.gov/download/chester-city-act-47-exit-plan-adopted-2018-10-10/?wpdmdl=88894>.

³⁴ Receiver’s Recovery Plan for City of Chester, at pgs. 9, 80: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>.

³⁵ City of Chester’s 2013 Audited Financial Statements at pg. 60 (-7.38%), [https://emma.msrb.org/ES1036164-](https://emma.msrb.org/ES1036164-ES810049-ES1211458.pdf)

[ES810049-ES1211458.pdf](https://emma.msrb.org/ES1036214-ES810036-ES1211441.pdf); 2014 Audited Financial Statements at pg. 61 (-18.84%), <https://emma.msrb.org/ES1036214-ES810036-ES1211441.pdf>; 2015 Audited Financial Statements at pg. 64 (-9.35%), <https://emma.msrb.org/ES1152642-ES901384-ES1302598.pdf>; 2016 Audited Financial Statements at pg. 61 (-12.05%), <https://emma.msrb.org/ES1152642-ES901384-ES1302598.pdf>; 2017 Audited Financial Statements at pg. 62 (-7.2%), <https://emma.msrb.org/RE1363055-RE1059360-RE1468872.pdf>.

³⁶ City of Chester’s 2011 Financial Statements at pg. 15 (Total Liabilities Government Funds \$4,010,105) and pg. 62 (Total Expenditures of \$40,379,0006), <https://emma.msrb.org/EP1027421-ES810387-ES1211793.pdf>, compared to 2017 Audited Financial Statements at pg. 13 (Total Liabilities Government Funds \$25,045,803) and pg. 62 (Total Expenditures of \$47,690,111), <https://emma.msrb.org/RE1363055-RE1059360-RE1468872.pdf>.

³⁷ Compare City of Chester 2011 Financial Statements at pg. 62 (Schedule of Revenues, Expenditures and Changes in Fund Balances Budget and Actual – General Fund for the Year Ending December 31, 2011) (Fund Balance Beginning listed as \$10,418,538): <https://emma.msrb.org/EP1027421-ES810387-ES1211793.pdf>, with, City of Chester 2017 Audited Financial Statements at pg. 62 (Schedule of Revenues, Expenditures and Changes in Fund Balances Budget and Actual – General Fund for the Year Ending December 31, 2017) (Fund Balance Ending listed as \$(15,344,588)): <https://emma.msrb.org/RE1363055-RE1059360-RE1468872.pdf>.

³⁸ Chester Mayor, Thaddeus Kirkland Statement on Fiscal Emergency Declaration: https://www.chestercity.com/mayor-thaddeus-kirkland-issues-statement-on-gov-tom-wolfs-fiscal-emergency-declaration-for-chester-2/?fbclid=IwAR2CvZJcS3gVXDBw243o9t87bXXvzceo6vK5sWzPaQnlG_B9ImW5c0004wU and DCED Newsroom website posting, Wolf Administration Issues Declaration of Fiscal Emergency for the City of Chester: <https://dced.pa.gov/newsroom/wolf-administration-issues-declaration-of-fiscal-emergency-for-the-city-of-chester/>.

³⁹ Receiver’s Recovery Plan for City of Chester, at pg. 40: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>.

⁴⁰ Essential Utilities, Inc.—the parent company of Aqua Pennsylvania—knows the importance of friends in high places. By way of just one example, in June 2020, Pennsylvania House Speaker Mike Turzai (R-Allegheny County) left the House seat he held for nearly two decades to join Essential one day later as General Counsel for Essential’s subsidiary, Peoples Natural Gas. See <https://patch.com/pennsylvania/northallegheny/former-pa-house-speaker-mike-turzai-takes-gas-company-job>. **“It was a pitch from his longtime friend Chris Franklin, CEO of Essential, that prompted Mr. Turzai to leave before his term expired.”** See <https://www.post-gazette.com/business/powersource/2020/06/16/Mike-Turzai-works-for-Peoples-Natural-Gas-house-speaker-pennsylvania/stories/202006160086>.

⁴¹ Electronic Municipal Market Access, Chester PA, <https://emma.msrb.org/P31519602.pdf>, with last posted audited financial statements as of December 31, 2018, which were posted 2 ½ years later on June 4, 2021.

⁴² Receiver’s Recovery Plan for City of Chester: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>, at pg. 9 (“As noted earlier, the potential use of asset sale proceeds to address the pension problem depends on contemporaneous changes to the benefit levels and actions taken to stop abuse of provisions like the disability pensions. Otherwise we will just bail water on a sinking ship without fixing the hole in the bottom of it.”), and pg. 24 (“Other cities in Pennsylvania have sold assets without addressing the underlying structural issues, which only provided temporary relief and are now facing the same fiscal shortfalls that existed before the sale of the asset. This does not serve the taxpayers or other stakeholders. The underlying structural issues must be addressed, and it is the Receiver’s intent to do so by working with all stakeholders and taking all necessary and difficult actions to make the City fiscally viable once again.”).

⁴³ The secret meetings between the DCED and Aqua were discovered through right-to-know requests served on the DCED. See https://www.delcotimes.com/business/chester-water-authority-sale-discussed-for-months-emails-show/article_de6b8034-027f-525c-82af-6d28963d7508.html, <http://chesterspirit.com/2017/11/collusion-catania-docs-show-state-aqua-plotted-a-cwa-takeover/>, and <https://chesterwater.com/wp-content/uploads/2020/08/Email-Update-No-8.pdf> (pg. 21 of PDF is an April 24, 2017 Email from Dan Schuller from Aqua to Dan Connelly, Act 47 Coordinator, regarding a meeting held with Aqua, for which other documents show Schuller billed two hours).

⁴⁴ See <https://chesterwaterfacts.com/new-documents-reveal-dceds-involvement-in-attempted-hostile-takeover-of-cwa/>; DCED document number 1372016_Redacted, pg. 59-60.

⁴⁵ Information about Aqua’s offer and other information about the fight for the CWA can be found at: <https://chesterwater.com/about-cwa/cwa-sale/> and <http://chesterwater.com/savecwa/>.

⁴⁶ Collections of links to Resolutions and Letters of Support at <http://chesterwater.com/savecwa/>.

⁴⁷ City Audit for 2016, pg. 24.

⁴⁸ It is a blistering indictment of the City and the Act 47 Team that it took three years to prepare the City’s 2016 audit.

⁴⁹ Here are some examples going back decades: 2015 City Audit, at pg. 25; 2014 City Audit, at pg. 26; 2013 City Audit, at pg. 26; 2012 City Audit, at pg. 27; 2011 City Audit, at pg. 27; . . . 2003 City Audit, at pg. 21.

⁵⁰ 2020 Letter of Dennis M. Davin responding to questions raised by Chester County Commissioners. https://drive.google.com/file/d/1SMgxNkXwuvPKEJ_dTrITd6NnXJteE7xK/view.

⁵¹ While the City of Chester has purchased water from the CWA, it has done so as a customer, and not as a source of capital contributions. As a customer, the City of Chester owes the CWA significant amounts of money going back several years for water and fire hydrant service.

⁵² http://chesterwater.com/pdf/Mutual_LetterofIntent_City_Chester_Resolution.pdf.

⁵³ <http://www.chesterwater.com/pdf/ProposedSettlementAgreement.pdf>.

⁵⁴ See <https://chesterwaterfacts.com/new-documents-reveal-dceds-involvement-in-attempted-hostile-takeover-of-cwa/>; DCED document number 000030K-31K, dated 2/16/18.

⁵⁵ *Id.* at DCED document number 001084I-1085I, dated 3/13/18.

⁵⁶ *Id.* at DCED document number V 31.

⁵⁷ *Id.* at DCED document number V 140.

⁵⁸ *Id.* at DCED document numbers: 000012A-13A, dated 1/7/19; 000142B-143B, dated 1/18/19; 000030H, dated 2/21/19.

⁵⁹ *Id.* at DCED document numbers 000027K; 000028K; and 000028K-29K.

⁶⁰ *Id.* at DCED document numbers 001569A-001572A; 000400B-403B; 000421B-423B; and 001106I-001109I.

⁶¹ *Id.* at DCED document number 1287A, dated 2/18/20. Kim Bracey is identifying the City's sources of financial hardship but the DCED is hiding that discussion through these redactions.

⁶² *Id.* at DCED document number IV 119-122.

⁶³ *In Re: Chester Water Authority Trust*, No. 19-217 (O.C. Del. Co.).

⁶⁴ Amended Complaint of CWA in *Chester Water Authority v. Aqua Pennsylvania, Inc. and City of Chester*; No. 2019-5400 (Del. Co. C.C.P. Dec. 30, 2019), at Exhibit G, City's Brief, June 19, 2019, at 12.

⁶⁵ *Id.* at Exhibit C, Letter from C. Leitzell to Mayor Kirland, June 12, 2019; Exhibit A, July 1 Hearing Transcript, 40:22-42:14.

⁶⁶ *Id.* at Exhibit A, July 1 Hearing Transcript, 40:22-42:14.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ 65 Pa.C.S.A. § 711.

⁷⁰ *Id.* at Exhibit D, Agenda for Chester City Council Meeting of July 12, 2019.

⁷¹ *Id.*

⁷² *Id.* at Exhibit E, Chester City Council Resolution Authorizing RFP, June 12, 2019.

⁷³ *Id.* at Exhibit A, July 1 Hearing Transcript, 56:19-58:18.

⁷⁴ *Id.*

⁷⁵ *Id.* at Exhibit F, City's June 12 RFP.

⁷⁶ *Id.* at Exhibit G, City's Brief, June 19, 2019, at 12.

⁷⁷ Weeks after losing at the preliminary injunction hearing, the City filed a self-serving request to correct this statement in its June 19 brief. In reality, the only mistake the City made in its brief was that the City let slip its true plan.

⁷⁸ *Id.* at Exhibit A, July 1 Hearing Transcript, 204:17-205:14.

⁷⁹ *Id.* at 204:17-205:5 (Judge Bradley explaining that the City's two witnesses attempted to pass off the June 12 RFP as a routine type of City business, when in fact it "was essentially a nuclear bomb as far as finance is concerned").

⁸⁰ *Id.* at Exhibit H, July 2, 2019 Order, as amended.

⁸¹ *Id.* at Exhibit M.

⁸² *Id.* at Exhibit R, August 28 Hearing Transcript.

⁸³ See <https://chesterwaterfacts.com/wp-content/uploads/2021/08/Exh.-A-ORDER-CWA-Trust.pdf>.

⁸⁴ These emails can be found at: <https://chesterwaterfacts.com/receiver-ignored-court-order-and-had-secret-negotiations-with-aqua-over-attempted-cwa-takeover/>.

⁸⁵ See <https://chesterwaterfacts.com/wp-content/uploads/2021/08/Exh.-B-2020.7.21-Franklin-to-Dowery-et-al.pdf>.

⁸⁶ This letter can be found at: <https://chesterwaterfacts.com/wp-content/uploads/2021/08/2021.7.29-CWA-to-Dowery-re-Aqua-contract.pdf>

⁸⁷ *In re Chester Water Auth. Tr.*, Nos. 489 C.D. 2020, 504 C.D. 2020, 514 C.D. 2020, 685 C.D. 2020, 2021 Pa. Commw. LEXIS 544, at *46-47, *52 (Commw. Ct. Sep. 16, 2021) (Wojcik, J., dissenting) (some emphasis added) (footnote omitted).

⁸⁸ See

<https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20210&cosponId=33595>.

⁸⁹ *Id.*

⁹⁰ See

<https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20210&cosponId=32827>.

⁹¹ *Id.*

⁹² See

<https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=S&SPick=20210&cosponId=34787>.

⁹³ See <https://chesterwaterfacts.com/wp-content/uploads/2021/02/2020-117-Redacted-000001I-001600I.pdf> at 001545I – 001558I (especially 001557I therein).

⁹⁴ See <https://chesterwaterfacts.com/wp-content/uploads/2021/02/2020-117-Redacted-000001I-001600I.pdf> at 000841I – 000854I (especially 000852I therein).

⁹⁵ See https://www.chesterreceivership.com/s/Chester-Receiver-Recovery-Plan_FINAL_20200820.pdf (section 1.3 at pg. 8)

⁹⁶ See https://www.chesterreceivership.com/s/Chester-Receiver-Recovery-Plan_FINAL_20200820.pdf (section 1.3 at pg. 8).

⁹⁷ See https://www.chesterreceivership.com/s/Chester-Receiver-Recovery-Plan_FINAL_20200820.pdf (section 1.3 at pg. 8, n.4).

⁹⁸ See https://www.chesterreceivership.com/s/Chester-Receiver-Recovery-Plan_FINAL_20200820.pdf (section 6.3 at pg. 56).

⁹⁹ See https://www.chesterreceivership.com/s/Receiver-Status-Report_20201103.PDF at pg. 6.

¹⁰⁰ See Representative Lawrence's letter is posted on his website at:
<http://www.replawrence.com/Display/SiteFiles/420/OtherDocuments/IssueCorrespondence/Lawrence%20Cutler%20CWA%20DCED%20Letter.pdf>.

¹⁰¹ Secretary Davin's response to Representative Lawrence's letter is posted at:
<http://www.replawrence.com/Display/SiteFiles/420/OtherDocuments/2021/Letter%20from%20DCED%20re.%20Chester%20Water%20Authority%204.27.20.pdf>.

¹⁰² See a video of that exchange at: <http://www.replawrence.com/video/latestvideo> (first video dated February 22, 2021).

¹⁰³ See
<http://www.replawrence.com/Display/SiteFiles/420/OtherDocuments/2021/DCED%20Response.pdf>.

¹⁰⁴ In addition, as previously noted, the City's financial statements have always stated that the CWA is not an asset of the City, and it is not included in the City's financial reporting. As also previously noted, in a private letter, Secretary Davin confirmed this, stating "the water system is owned by the Chester Water Authority." See 2020 Letter of Dennis M. Davin responding to questions raised by Chester County Commissioners:
https://drive.google.com/file/d/1SMgxNkXwuvPKEJ_dTrITd6NnXJteE7xK/view. **Despite this, the DCED's handpicked Receiver has stated that given "the City's dire financial Condition," the City should nonetheless treat the CWA as a "business-type asset," seize it, and sell it to a for-profit water company to raise money.** See Receiver's Recovery Plan for City of Chester, pg. 8: <https://dced.pa.gov/download/chester-city-receiver-recovery-plan-2020-08-20/?wpdmdl=103816&ind=1597957980469>.

¹⁰⁵ See https://www.sec.gov/Archives/edgar/data/78128/000155278119000214/e19253_ex5-2.htm.

¹⁰⁶ See <https://www.essential.co/static-files/d2c944b1-f558-4ae0-9859-24800385b38e>.

¹⁰⁷ See <https://fintel.io/doc/sec-wtrg-essential-utilities-ex51-2015-february-27-18513-85>.

¹⁰⁸ <https://www.ballardspahr.com/practiceareas/initiatives/esg/experience>.

¹⁰⁹ *City of Chester, Appellant v. Chester Water Authority*, pending in the Commonwealth Court of Pennsylvania, case number 514 CD 2020 (consolidated with 489 CD 2020, 504 CD 2020, 685 CD 2020. See Docket Sheet at:
<https://ujportal.pacourts.us/Report/PacDocketSheet?docketNumber=514%20CD%202020&dnh=yplQOYyJgwNJ7GqxNYc4AQ%3D%3D>.

¹¹⁰ See e.g., *In Re: Petition for Approval of Declaration of Trust*, Commonwealth Court of Pennsylvania, 504 CD 2020,
<https://ujportal.pacourts.us/Report/PacDocketSheet?docketNumber=504%20CD%202020&dnh=wkgbtqXTCIgvllnZrTIHw%3D%3D>.

¹¹¹ See City of Chester Check Register: <https://chesterwaterfacts.com/wp-content/uploads/2021/02/City-Check-Register.pdf>.

¹¹² See August 13, 2020 letter:

<https://chesterwaterfacts.com/wp-content/uploads/2021/09/Smoking-Gun-3.pdf>.

¹¹³ *Id.* at pg. 2.

¹¹⁴ See Mayor Linder’s February 8, 2012 Letter, at: <https://chesterwaterfacts.com/wp-content/uploads/2021/02/Linder-ltr-2-8-2012.pdf>.

¹¹⁵ See Chester Recovery Plan, at: https://static1.squarespace.com/static/5f721f5325ced83982f1d194/t/5f7b580145b2d750b4c1debc/1601918983266/Chester-Receiver-Recovery-Plan_FINAL_20200820.pdf.

¹¹⁶ See Receiver’s Preliminary Status Report filed and signed by John P. McLaughlin and Campbell Durant PC at: https://static1.squarespace.com/static/5f721f5325ced83982f1d194/t/5fa32fcd6d80950fe31aba35/1604530154263/Receiver+Status+Report_20201103.PDF.

¹¹⁷ See City of Chester Check Register (obtained through right to know requests), showing payments from the City to Campbell Durant for matters that pre-date the Receiver (pgs. 1, 10, 27), and payments since the Receiver’s appointment through the end of 2020 (pgs. 34, 40, 43, 47, 51, 54, 57, 59, 63, 66, 70), at: <https://chesterwaterfacts.com/wp-content/uploads/2021/02/City-Check-Register-1-1.pdf>.

¹¹⁸ See Receiver’s December 2, 2020 Status Report at pg. 2, n.2: <https://chesterwaterfacts.com/wp-content/uploads/2020/12/CWA-report-12-22-20.pdf>.

¹¹⁹ More information regarding this payment offer can be found at: <https://chesterwaterfacts.com/is-aquas-12-million-payment-offer-to-chester-legal/>.

¹²⁰ <https://chesterwaterfacts.com/wp-content/uploads/2021/09/Smoking-Gun-4.pdf>.

¹²¹ See <https://delawarevalleyjournal.com/vote-on-embattled-aqua-delcora-deal-pulled-at-puc/>.

¹²² *Id.* at pgs. 3-4.

¹²³ See <https://chesterwaterfacts.com/expert-report-shows-that-aqua-rates-are-significantly-higher-than-cwas/>.

¹²⁴ See, e.g., <https://www.post-gazette.com/business/powersource/2020/06/16/Mike-Turzai-works-for-Peoples-Natural-Gas-house-speaker-pennsylvania/stories/202006160086> (describing Pennsylvania House Speaker Mike Turzai’s decision to leave the House seat he held for nearly two decades in order to work as General Counsel for an Essential subsidiary following a “pitch” from his “longtime friend,” Essential/Aqua CEO, Chris Franklin).

¹²⁵ Townships and Municipalities Served by the CWA: <http://www.chesterwater.com/resources.html>.

¹²⁶ See <https://www.census.gov/quickfacts/fact/table/chestercitypennsylvania,PA/PST045217> (US Census Bureau data showing the Median Household Income in the City (2010-2016) is \$27,217).

¹²⁷ The Pennsylvania Public Utility Commission has a long-standing policy of moving regulated entities like Aqua, to uniform rates, therefore, it should be expected that if a rate increase is requested in 2025 at time of the next anticipated Aqua rate case, it should be expected that the rate increase would increase CWA rates close to the Aqua Zone 1 rates. Even if the rate increases were

subsidized, that would end between 2028 and 2030 and the higher rates would then kick in.

¹²⁸ See expert report on water utility rate setting at: <https://chesterwaterfacts.com/expert-report-shows-that-aqua-rates-are-significantly-higher-than-cwas/>

¹²⁹ See “Essential Utilities, Inc.’s (NYSE:WTRG) CEO Compensation Is Looking A Bit Stretched At The Moment” (April 29, 2021), <https://simplywall.st/stocks/us/utilities/nyse-wtrg/essential-utilities/news/essential-utilities-incs-nysewtrg-ceo-compensation-is-lookin>.

¹³⁰ *Id.*

¹³¹ Mr. Woods’ report is available at: <https://chesterwaterfacts.com/expert-report-shows-that-aqua-rates-are-significantly-higher-than-cwas/>.

¹³² See “Aqua Pa., big buyer of town utilities, seeks to boost suburban water bills 17% — and sewer charges far more,” by Andrew Maykuth (August 23, 2021): <https://www.inquirer.com/business/aqua-pennsylvania-seeks-water-wastewater-rate-increase-20210823.html>

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* (emphasis added).

¹³⁶ *Id.*

¹³⁷ For supporting documents and links, as well as additional information regarding Aqua’s effect on the Springton Reservoir, see <https://chesterwaterfacts.com/case-study-of-springton-reservoir/>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Pa. Const. art. I, § 27.

¹⁴⁵ See Status Updates the Receiver filed on 12/2/2021 and 3/5/2021.

¹⁴⁶ 53 P.S. §§ 11701.608 and 710.

¹⁴⁷ See <http://www.replawrence.com/video/latestvideo> (second video dated February 22, 2021).

¹⁴⁸ See <https://www.facebook.com/cityofchester/videos/2775265249414502/> (beginning at approximately 59:28); see also <https://chesterwaterfacts.com/another-harrisburg-broken-promise-to-chester/>.