



**Needless Drought:  
The Water Deficit for Low Income  
Philadelphians**

**A Report to the Inter-American  
Commission on Human Rights**

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## **Needless Drought: The Water Deficit for Low Income Philadelphians<sup>1</sup>**

Clients seeking help from Drexel University’s Community Lawyering Clinic (CLC), a legal clinic staffed by third year law students under the supervision of Professor Rachel López that provides free legal services to West Philadelphians on a variety of legal issues, have astounded us with a unifying trend: the lack of access to water. The CLC has encountered some clients who have gone for years purchasing jugs of water in order to satisfy their basic human need for water. Although many of them have tried to negotiate with the Philadelphia Water Department (PWD)<sup>2</sup> for access to water, they have been turned away.

This manmade drought is not unique to our clients. Community Legal Services, a legal aid organization which was designated as the Public Advocate to represent all residential customers in PWD’s most recent rate increase proceeding, has identified systematic barriers that impede citizens’ access to water, including the absence of a transparent and consistent appeal process, an underutilized affordable billing plan,<sup>3</sup> and poor customer service all around.<sup>3</sup>

In addition to being a violation of Philadelphians’ rights under Pennsylvania’s Constitution, this is also a violation of their basic human rights.<sup>4</sup> As the United Nations Committee on Economic, Social, and Cultural Rights recognizes, “[t]he human right to water is indispensable for leading a life in human dignity [and] a prerequisite for the realization of other human rights.”<sup>5</sup> Philadelphia Water Commissioner Howard Neukrug and City Councilwoman Maria Quiñones-Sánchez have both publicly recognized access to water as a human right.<sup>6</sup>

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<sup>1</sup> This report was authored by CLC student attorneys, Cassandra Fitzgerald-Black and Sam Scavuzzo, and edited by Professor Rachel Lopez, Director of the CLC.

<sup>2</sup> Billing, collections, and certain customer service functions, including payment agreements, low income bill assistance, and the administration of informal dispute processes, are handled by the Water Revenue Bureau, a division of the Philadelphia Revenue Department. As used here, PWD refers to both the Water Department and the Water Revenue Bureau.

<sup>3</sup> Interviews with Community Legal Services attorneys, Robert Ballenger and Thu Tran. *See also*, Roger Colton, Water Bill Affordability for the City of Philadelphia, Testimony at Philadelphia City Council (April 9, 2015).

<sup>4</sup> Art. 1, Section 27 of the Pennsylvania Constitution guarantees the “right to clean air, pure water.”

<sup>5</sup> Committee on Econ., Soc., & Cultural Rights, Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment No. 15 (2002): The Right to

The United Nations Committee on Economic, Social, and Cultural Rights has identified five factors—(1) quality, (2) accessibility, (3) acceptability, (4) affordability, and (5) availability—that affect the enjoyment of the human right to water.<sup>7</sup> This report documents the major hurdles that Philadelphians have faced in two of these areas: affordability and accessibility. It also outlines the recent strides that the City of Philadelphia has made to address the systematic deprivation of the right to water.

## I. Water Affordability

PWD has an affordability plan that grants of up to \$200 in assistance on water bills to low-income customers for a period of 12 months (approximately \$18 per month), but the program is grossly underutilized.<sup>8</sup> Although forty percent of PWD customers are delinquent in their water bills, only 7,200 payers currently are enrolled in the department's current Water Revenue Assistance Program (WRAP).<sup>9</sup> That figure is in sharp contrast to the 61,000 people currently benefiting from Philadelphia Gas Works affordable billing program.<sup>10</sup>

Part of the reason for this remarkable disparity in these affordability programs is the high denial rate for WRAP applicants. PWD rejects between 40% and 45% of WRAP applications each year.<sup>11</sup> Roger Colton, an expert on utility affordability plans who testified on behalf of the Public Advocate at proceedings before the Philadelphia Water Commissioner in 2012, attributed the large number of denials to administrative barriers to enrollment, rather than ineligibility for

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Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), 29th Sess., 2002, U.N. Doc. E/C.12/2002/11 (Jan. 20, 20013) [hereinafter General Comment No. 15].

<sup>6</sup> Tricia L. Nadolny, *City testing the water on income-based utility bills*, THE PHILADELPHIA INQUIRER, Sept. 8, 2015, [http://articles.philly.com/2015-09-08/news/66300883\\_1\\_water-bills-water-rates-debt-forgiveness](http://articles.philly.com/2015-09-08/news/66300883_1_water-bills-water-rates-debt-forgiveness).

<sup>7</sup> General Comment No. 15, *supra* note 5, at ¶1.

<sup>8</sup> Information about Customer Assistance Program on City of Philadelphia website, available at <http://www.phila.gov/water/educationoutreach/customerassistance/Pages/default.aspx>

<sup>9</sup> Nadolny, *supra* note 6.

<sup>10</sup> *Id.*

<sup>11</sup> Direct Testimony of Roger Colton on behalf of the Public Advocate before the Philadelphia Water Commissioner, July 20, 2012, at 25.

the program.<sup>12</sup> Indeed, his review of WRAP denials revealed that the onerous documentation requirements of the program, particularly the requirement that new applicants document all household expenses, presented the biggest hurdle to enrollment.<sup>13</sup> He also found that applicants were often not provided a specific reason for their denial, making appeals very challenging.<sup>14</sup>

PWD also offers deferred payment agreements (DPAs) for low income residential customers who are behind on their bills; however, the process for obtaining DPAs is fundamentally broken.<sup>15</sup> PWD does not inform customers of the range of options available to them, nor are customers regularly informed of their right to appeal decisions regarding DPAs.<sup>16</sup> The following story of a recent client of the CLC illustrates the dire effect that a denial of a DPA can have on individuals seeking access to their basic human need of water.

Mrs. W, a 61 year old African-American woman, was denied access to a DPA and consequently has been living without running water since 2011. Mrs. W currently lives in a property that her father deeded to her when he went to a retirement home. When she moved into the property in 2011 after losing her job, she discovered that someone had removed the water meter from the property and that there was an outstanding water bill of nearly \$4,000. She tried to enter into a DPA so that she could get back on her feet while she looked for a job, but PWD refused, saying that without a meter it could only estimate the amount she owed. She could not afford the meter installation fee so has been without water for the past five years. PWD never provided her with a written decision or notified her of her right to appeal. To meet her basic water needs, she regularly hauls jugs of water to her home. PWD has continued to charge her storm water fees. She has now paid over half of her delinquent bills and continues to pay approximately \$100 to PWD each month, despite not having any access to water in her home.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 26-28.

<sup>14</sup> *Id.* at 36.

<sup>15</sup> *Id.* at 40.

<sup>16</sup> *Id.* at 48-49.

## II. Water Accessibility

The CLC has also encountered clients who lack running water as a collateral consequence of property issues. PWD has a policy of only providing water service to residents whose names were on the property's deed or have a lease. In the communities the CLC serves, many residents live in properties that have been passed from generation to generation without proper transfer of title. The following case studies (in which our clients are represented by pseudonyms) detail how instability in homeownership translates into long term water insecurity, compounding an already difficult situation.

Jay, a 62 year old African American man with disabilities who has lived in West Philadelphia his entire life, has been without running water for six years. Nearly every week, he goes to the grocery store and buys as many two and half gallon bottles of water as he can carry back to his home. He worries that one day he will not be physically able to haul the water home.

Jay has lived in his home since 1999 when an elderly neighbor and close family friend who used to give him cookies as a kid, was put into a nursing home. After she left, people began ransacking the house and stealing all that remained. Her only living brother told Jay that he could move into the property. Jay has lived there ever since, but never acquired title to the property.

Jay's hard times started when he fell behind on his bills in 2009. He was able to get on payment plans with the electricity and gas companies, but PWD refused, telling him that he could not pay the bill because he was not the owner. He never received a written notice of PWD's decision, nor options for appealing it. Although Jay has not had running water since this time, PWD has continued to charge him storm water fees. Jay's story may have a happy ending. The CLC has been able to track down the family of the elderly woman who used to live in the house and is in the process of deeding the property to Jay. After obtaining record ownership, Jay can begin the process of restoring water service at his home.

Mr. G is also an African-American man from West Philadelphia. During the 1990s, Mr. G worked as a contractor and fell on hard times. Mr. G, although employed, became homeless and began to live at his job worksites. The owners of a home that Mr. G was working on noticed that he had been living at the jobsite and advised him that the previous owners of the home across the street had abandoned it. Mr. G moved into the property and has lived in that home for the past 20 years. Mr. G has completely remodeled the home. He regularly volunteers and helps his block captain to clean the neighborhood. Since Mr. G is just shy of the 21 years required for adverse possession, he has not been able to formally acquire title to the property. Although the electric company and the revenue department, responsible for collecting delinquent real estate taxes, have entered into repayment agreements with him, PWD will not turn on the water at Mr. G's home as he does not have title to the property. Mr. G has lived without water for 20 years.

### III. The Water Deficit Disproportionally Affects Poor African-Americans

In addition to all lacking running water in their homes, these individuals share two other characteristics. They are all poor and they are all African-American. The CLC is concerned by this trend and plans to undertake a study to determine whether the deprivation of this right disproportionately affects low income Philadelphians of color.

The Special Rapporteur on the human right to safe drinking water and sanitation has already identified discrimination based on race and class as a serious concern regarding water safety and affordability, noting after a 2011 mission to the United States that those “who are facing obstacles in the enjoyment of the rights to water and sanitation are disproportionately Black, Latino, American Indian, homeless or otherwise disadvantaged.”<sup>17</sup>

### IV. Efforts to Ensure Affordability of Water in Philadelphia

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<sup>17</sup> Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, *Mission to the United States of America*, ¶ 79, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011), available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add4_en.pdf) (by Catarina de Albuquerque)

In December, the City of Philadelphia took an important step to address water affordability, adopting an ordinance, which requires PWD to create an Income-Based Water Rate Affordability Program (IWRAP) that restructures residential water billing in way that better accounts for income inequality. Much about this ordinance is very encouraging. If properly implemented, we believe that it will result in greater realization of Philadelphians' right to water. The new ordinance establishes a tiered approach to water affordability, with those in the lower income tiers being eligible for greater discounts on their water bills.<sup>18</sup> Additionally, customers who are enrolled in IWRAP will not be required to pay pre-IWRAP arrears to maintain service.<sup>19</sup> Some customers may be eligible for forgiveness of arrears, but the terms and conditions of such forgiveness are to be set by future regulation. Not only will this reform improve access to water for citizens, but it will also create a more reliable and predictable source of revenue for the city.<sup>20</sup>

While the new affordability bill is a giant step toward ensuring Philadelphians' right to water, the implementation of the new bill rests with PWD and the Water, Sewer, Storm Water Rate Board who will determine what discounts apply to each income tier and when arrears will be forgiven. The CLC is also concerned that the new ordinance only addresses affordability, but not the problems with access to water, poor customer service, and the fundamentally broken appeals process that many of our clients have encountered.

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<sup>18</sup> City of Philadelphia, Bill No. 140607-AA, *Amending Title 19 of The Philadelphia Code (Finance, Taxes, and Collections), Chapter 1600 (Water and Sewer Rents), by providing for installment payment agreements, all under certain terms and conditions*, passed by City Council on Nov. 19, 2015 and signed by Mayor Nutter on Dec. 2, 2015. ("Monthly IWRAP bills shall be affordable for low-income households, based on a percentage of the household's income and a schedule of different percentage rates for (i) households with income up to fifty percent (50%) of FPL, (ii) households with income from fifty percent (50%) to (100%) of FPL, and (iii) households with income from one hundred percent (100%) to one hundred fifty percent (150%) of FPL, and shall be charged in lieu of the Department's service, usage, and stormwater charges.")

<sup>19</sup> *Id.*

<sup>20</sup> Colton, *supra* note 2, at 3.