

### 3 Poisoned by Policy: The Political Narrative of the Crisis

Democracy is what makes Flint work. The dismantling of Democracy in Flint is poisonous.

—Flint Democracy Defense League, “The State of Flint under Emergency Management”

On the afternoon of Election Day, November 8, 2011, with voters still filing in to the polls, Flint Mayor Dayne Walling received a phone call from State Treasurer Andy Dillon. Walling was already well on his way to winning a decisive victory in his reelection bid against challenger Darryl Buchanan, and he was gearing up to deliver a victory speech later that evening at the White Horse Tavern, a popular local haunt. But Dillon bore unwelcome news: a state review panel had decided that Flint was in the midst of a financial emergency. Under the provisions of Michigan’s Public Act (PA) 4, signed into law by Governor Snyder in March of that year, Flint would receive a state-appointed emergency manager (EM) who would assume both the executive and legislative functions of city government. At 5 p.m., still three hours before the polls closed, the story broke, and Flint voters learned that the person they were in the process of electing would be, institutionally speaking, powerless.

With the announcement, Flint became the first Michigan city to enter state receivership under the new law. It joined the Detroit Public Schools and the cities of Pontiac and Benton Harbor, which had already been taken over by the state under PA 4’s predecessor, PA 72. PA 72, passed in 1990 during the administration of Democratic Governor James Blanchard, had provided for the appointment of emergency financial managers (EFMs) to units of local government like cities, counties, and school districts the State

of Michigan deemed to be in financial distress and nearing bankruptcy.<sup>1</sup> The law empowered EFMs to make fiscal reforms aimed at eliminating deficits and returning local governments to solvency. When the state turned control of Flint's finances over to EFM Ed Kurtz in 2002, for example, the city was facing a \$30 million deficit. Kurtz slashed the pay and eliminated the medical benefits of city officials and employees and pressured unions to negotiate cuts or face layoffs. He temporarily closed the city's recreation centers and the ombudsman's office. He forced the city Retirement Board, under the threat of layoffs and removal of board members, to reduce what the city paid into its retirement system. He raised water rates. By 2004, Flint was back in the black, and Kurtz stepped down.<sup>2</sup>

As significant as Kurtz's actions were, his powers as an EFM were relatively limited compared to those enumerated by PA 4. Under PA 4, whose official title was the "Local Government and School District Fiscal Accountability Act," emergency *financial* managers came to be called, simply, "emergency managers." The dropping of the adjective hinted at the fact that EMs had control over far more than just finances. PA 4 enabled EMs to strip locally elected officials of all their powers, alter or abolish union contracts unilaterally, and even disincorporate units of local government altogether.

PA 4's advocates insisted that the state would appoint EMs only as a last resort. The early warning system embedded in the law, they said, was designed to detect burgeoning fiscal crises so they could be remedied before an emergency situation arose.<sup>3</sup> PA 4 increased the number of "triggers" that would prompt a preliminary state review of local finances and included provisions for "consent agreements" enhancing the powers of local officials, potentially enabling them to take more decisive remedial action in the event of financial difficulty and avoid further state intervention.<sup>4</sup> If local efforts to avert emergency were unsuccessful, however, the law allowed the state to take more sweeping action than had been possible under PA 72. The alternative to the law, warned its advocates, was to put the fates of insolvent cities in the hands of federal bankruptcy judges—an outcome that was not only disempowering, but that would also imperil the pensions of retirees and ruin local credit ratings.

Arguments for PA 4 often invoked the concept of "fiscal responsibility."<sup>5</sup> Proponents liked to point out that occasional financial challenges were not uncommon at the local level but that most local governments were able to pull through them with a little belt tightening. More often than not,

then, when financial trouble grew intractable it was because of careless mismanagement of taxpayer dollars by local officials too incompetent, spineless, or corrupt to change their behavior even when disaster loomed. State Representative Al Pscholka, one of PA 4's sponsors, touted the ability of EMs to put such officials in the "timeout chair."<sup>6</sup> Although EMs could not remove elected officials from office outright (at least not without approval from the Governor), they could cut or eliminate their salaries, prevent them from holding meetings, and require them to take courses in municipal government. Pscholka assumed that state-appointed EMs would be more able<sup>7</sup> and willing than local elected officials to make the tough choices necessary to end a financial emergency. Because they were not beholden to special interests at the local level and could operate without fear of electoral reprisal, EMs enjoyed the freedom to make decisions that would destroy the political careers of duly-elected officials. They could also act expeditiously, without the inconvenience of citizen oversight or consensus building.

The pro-emergency management position depicted EMs as swooping in to salvage basic services rendered unsustainable by the ineptitude of local officials, thereby preempting much unnecessary suffering on the part of residents. This characterization made emergency management out to be in the best interests of ordinary people living under failed local regimes, people who deserved better than what they were getting from their paid public servants. However, critics of PA 4 disputed the claim that the law was designed to put the interests of residents first. Flint activist Claire McClinton noted that one of the few restrictions the law placed on EMs was to forbid them from missing debt service payments to the holders of city bonds.<sup>8</sup> Her gloss on this proscription was that "bondholders are sacred. They cannot be touched. People are not sacred."<sup>9</sup> McClinton and other activists argued that the prioritization of private over public interests under emergency management was visible in other ways, too. Rather than trying to salvage struggling cities, they maintained, the state's real intention was to pick them clean of their remaining assets, handing city services, facilities, and infrastructure over to private entities under the pretense of taking them off the city's books. By shrinking the public sphere and purging cities of potential sources of revenue just because they had become unprofitable or difficult to keep up in the short term, EMs were not preparing cities like Flint to stand on their own two feet but rather reducing them to unsustainable shells of their former selves.

When the bill that would become PA 4 was making its way through the Michigan State Legislature, there was much speculation about which cities might receive EMs under the law. Having slipped back into insolvency since exiting emergency financial management in 2004, Flint was recognized to be a potential “test case.”<sup>10</sup> Aside from underlying structural issues like population loss and economic disinvestment that were already making it difficult for the city to function, the housing crisis and recession of 2007 to 2009 dealt a heavy blow to Flint’s revenue stream. The total taxable value of property in the city fell by \$500 million, with the median sales price of Flint homes plummeting from \$57,000 in 2005 to \$15,000 in 2010. Per capita personal income plunged, too, costing the city 39 percent of its income tax revenue between 2006 and 2012. At the nadir of the recession, unemployment got as high as 25 percent. And although Flint’s mayors desperately tried to cut back on spending, eliminating over four hundred city jobs between 2008 and 2010, overall expenditures remained stubbornly steady due largely to the fixed legacy costs of retiree pensions and health care.<sup>11</sup>

To make matters worse, cuts by the State of Michigan to statutory revenue sharing—a mechanism for redistributing state sales tax revenue to cities in need—deprived Flint of around \$55 million from 2002 to 2014.<sup>12</sup> The cuts were part of a larger effort by the state to balance its budget as it compensated for the economic downturn and reductions in business taxes. Through its Economic Vitality Incentive Program, announced in 2011, the Snyder administration made what revenue sharing remained conditional on the implementation of austerity policies at the local level, incentivizing local governments to operate more “efficiently” by consolidating departments and reducing labor costs.<sup>13</sup> The overall effect of the cuts, however, was to further erode the foundations of municipal financial health and, in University of Michigan-Flint sociologist Jacob Lederman’s words, “[open] the door to claims that cities like Flint and Detroit were living beyond their means.”<sup>14</sup> When activists characterized Flint’s financial crisis as “manufactured,”<sup>15</sup> they meant that the state, not city administration, was really to blame for taking the city from a surplus into a deficit. By abjuring its traditional role of propping up structurally disadvantaged cities through financial assistance, they argued, the state was helping to create the very “crisis” it then purported to solve through emergency management.<sup>16</sup>

Not long after PA 4 took effect, the state started to take a closer look at what was going on in Flint. A state-appointed financial review team conducted

a preliminary assessment of Flint's finances in late August to early September 2011 and found the city to be in dire fiscal straits. It was running an estimated deficit of around \$25 million. Its pension system was "less than 60 percent funded," with the unfunded portion amounting to \$39 million annually and increasing each year—over \$860 million in aggregate.<sup>17</sup> Simply to stay afloat, the city was poaching \$5.3 million from its water and sewer fund annually to pay for general fund operations. It was borrowing from other specialized funds as well, despite rules prohibiting the practice. This interfund borrowing, the review team found, "was not booked as such in the City's records."<sup>18</sup> If Flint stayed the course, its deficit would not be eliminated until the year 2030, and even that outcome was dependent on incurring another \$12 million of debt.

The review team's report portrayed Flint as a city in denial. Local leaders were in the habit of adopting "budgets that knowingly overestimated revenues, knowingly underestimated expenditures, or both," and they were slow to modify these budgets even in the face of obvious shortfalls.<sup>19</sup> Furthermore, the city had repeatedly failed to live up to the deficit elimination plans it submitted to the state treasurer. Attempts to reduce labor costs had led to locked horns with unions, and local officials were understandably wary of making even deeper cuts to police and fire services after layoffs of public safety personnel coincided with a dramatic surge in homicides and arsons. The review team concluded that "no satisfactory plan" existed to resolve the emergency, citing "a lack of political will among a succession of City officials to confront reality and render difficult, but necessary, financial decisions." For this reason, it rejected the option of enhancing the powers of local officials, who could not be trusted to act with the requisite "urgency and vigor."<sup>20</sup> The only plausible way of turning Flint's fortunes around, the team concluded, was through the appointment of an EM.

The decision had its supporters at the local level. The *Flint Journal* opined at one point that Flint needed "the emergency manager's sweeping powers and political immunity to make the drastic changes and tough decisions to secure the future of the community."<sup>21</sup> Unlike in 2002, when the City Council spent three months and over \$200,000 fighting the state's appointment of EFM Kurtz, the council voted 7 to 2 against an appeal. Councilmen Josh Freeman, Scott Kincaid, and Dale Weighill, frustrated by the lack of progress on the deficit, had actually lobbied for the review by the state, knowing it might culminate in emergency management.<sup>22</sup> Others, like

Councilwoman Jackie Poplar, concurred that the city needed “help” and promised to look at the EM as a “partner.”<sup>23</sup> Newly reelected Mayor Walling went along somewhat more begrudgingly (the determination that he was not a good candidate for expanded powers was something of a slight), but similarly declined to fight the decision or even request a hearing on the review team’s findings, calling the appointment of an EM “the Governor’s decision to make.”<sup>24</sup> Believing that the fastest way to extricate Flint from receivership was to cooperate with the state rather than fight it, Walling adopted a conciliatory disposition toward the city’s EMs. Many activists came to view him as a collaborator who was sympathetic to key aspects of the state’s agenda in Flint or at the very least was “going along to get along,” a perception that would heavily damage his political reputation during the water crisis.<sup>25</sup>

Not everyone was prepared to concede. As described in the next chapter, the imposition of EMs on Flint and several other communities in Michigan under PA 4 inspired staunch resistance from activists and unions, leading to the repeal of the law through referendum in November 2012. A month later, however, state legislators passed a new EM law, PA 436. Unlike its predecessor, PA 436 gave local officials the opportunity to choose from four options in the event of a state-declared financial emergency: a consent agreement, bankruptcy, mediation, or the appointment of an EM.<sup>26</sup> Because the law also stipulated that EMs appointed under older laws were retained under the new law, however, Flint officials were given no such choice. Consequently, when PA 436 took effect in March 2013, it allowed emergency management to continue more or less as before in the city. Bracketing a six-month period between the suspension of PA 4 and PA 436’s taking effect (during which

**Table 3.1**

Flint’s EFMs and EMs.

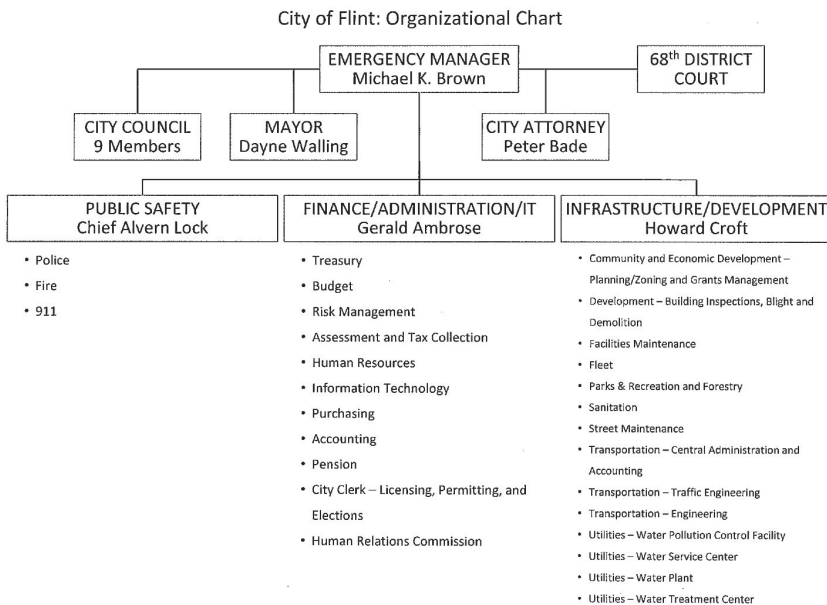
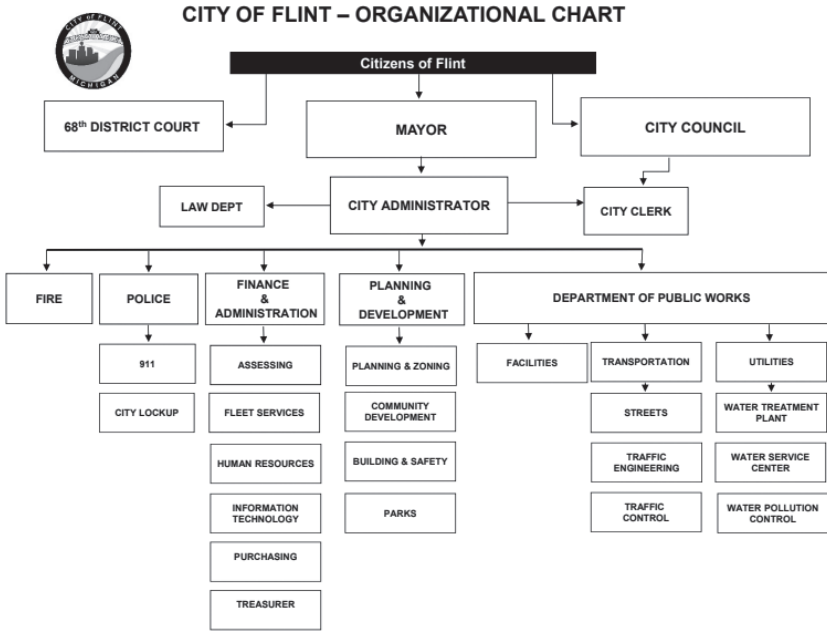
	Emergency (financial) manager	EM law in effect
July 2002–June 2004	Ed Kurtz (EFM)	PA 72
Dec. 2011–Aug. 2012	Michael Brown	PA 4
Aug. 2012–Mar. 2013	Ed Kurtz (EFM)	PA 72
Mar. 2013–July 2013	Ed Kurtz	PA 436
July 2013–Sept. 2013	Michael Brown	PA 436
Sept. 2013–Jan. 2015	Darnell Earley	PA 436
Jan. 2015–Apr. 2015	Jerry Ambrose	PA 436

time PA 72 was revived and Ed Kurtz served, once again, as the city's EFM), Flint remained under emergency management from December 2011 to April 2015. A total of four EMs governed the city during this period (see table 3.1).

The effects of emergency management on Flint were multifaceted, and in the next chapter, I consider a range of actions taken by Flint's EMs and the resistance they inspired on the part of activists.<sup>27</sup> The focus of this chapter is narrower. Here, I wish to trace the logic of the argument that the suspension of representative government at the local level in Flint was principally to blame for the water crisis (i.e., that the city was “poisoned by policy”<sup>28</sup>). This political narrative of the crisis implicated the state in ways that went beyond the missteps of bureaucrats and administrators responsible for water treatment and public health. It found fault in the EM law itself and the politicians who crafted, sponsored, and defended it, all the way up to Governor Snyder. It also raised bigger questions about democracy: questions about the merging of political power and private interests, the implications of austerity for the integrity of the public sphere, the competence of the *demos* to oversee its own affairs at the local level, and the viability of democratic principles during times of “emergency.”

Flint activists were not the only ones who espoused the political narrative of the crisis, but they were its primary authors and leading champions. In their signs and slogans, they fused the themes of poisoned democracy and poisoned water and called for the prosecution of Flint's EMs and their overseers in Lansing. Although they were critical of the full range of officials—city, county, state, and federal—who they felt had let the people of Flint down, they rejected Governor Snyder's characterization of the water crisis as a “failure of government at all levels,”<sup>29</sup> pointing out that during the period in question there *was* no meaningful distinction between “levels” of government in Flint. Organizationally, all lines of responsibility led back to the state-appointed EM (see figure 3.1).

Elected officials who enjoyed any authority under emergency management—like Mayor Walling, who was given responsibility for public works shortly after the switch to the Flint River—did so because it was voluntarily delegated by EMs. Administrators technically on the city's payroll were often brought in by EMs, like Director of Public Works Howard Croft, who was responsible for the day-to-day operation of the water system.<sup>30</sup> And lower-level decision makers operated, naturally, within an environment shaped by the higher-order decisions made by EMs. As the Flint Water



**Figure 3.1**

Structure of Flint city government as specified in city charter (top) and under emergency management (bottom).

Source: City of Flint.



Advisory Task Force put it, emergency management created the “framework” within which decisions about Flint’s water—and all other city affairs, for that matter—were made.<sup>31</sup>

In his analysis of the key decisions that precipitated and prolonged the water crisis, Wayne State University law professor and water activist ally Peter Hammer argues that Flint “serves as a morality play illustrating all that is wrong with Emergency Management.”<sup>32</sup> In what follows, I borrow Hammer’s metaphor in dividing the series of official decisions about Flint’s water into three “acts.” The first act deals with the decision to end Flint’s decades-long water partnership with Detroit and commit to joining a regional pipeline project overseen by the Karegnondi Water Authority (KWA). This decision created the need for an interim water source, and the second act looks at why the Flint River was chosen as that interim source in preference to a short-term contract with the Detroit Water and Sewerage Department (DWSD). The third act examines why it took officials eighteen months to agree to switch the city back to Detroit water despite significant public outcry. In each act of the drama, state actors within the EM system in Flint and Lansing are central players, putting the city on an ever-more settled trajectory toward using the river, overseeing the source change, and insisting upon staying the course once the switch is made. The political narrative casts these actors as its principal villains, depicting the crisis as a story of state abuse and local victimhood.<sup>33</sup>

One might expect the governance structure imposed by emergency management to lend itself to precisely this kind of dichotomous perpetrator-victim narrative: if all roads lead back to the EM organizationally, it should be straightforward to assign responsibility to the state for the decisions that poisoned Flint’s water and kept residents drinking it for longer than necessary. Careful consideration of the political narrative’s main plot points, however, reveals some surprising murkiness around who was responsible for what, including the all-important switch to the Flint River. Counterintuitively, some of this murkiness stems from the structure of emergency management itself. Although EMs are imposed by the state, for example, there is at least some ambiguity around whether they are properly considered state or local actors.<sup>34</sup> Furthermore, even if one accepts that EMs act on the state’s behalf, it does not necessarily mean that the “state”—complex and multifaceted entity that it is—acts with one unified will. Spreading state power across multiple scales creates new potential for conflict among actors within the

state system, as when EMs in Flint disagreed at key moments, seemingly, with officials in Lansing about water-related decisions. Finally, state power is not deployed into a vacuum: although EMs sometimes try to wipe the slate clean before they set to work—eliminating salaries, offices, public meetings, and so on—they are nevertheless forced to coexist with an array of local actors, institutions, and interests that retain some influence. Even under emergency management, there were times when it appeared that locals were influencing or even driving decision making. In some instances, Flint’s EMs intentionally comingled their own powers with elements of the local power structure through the selective delegation of authority (e.g., over public works) and offered local elected officials opportunities to express their will. The gray area created by these structural ambiguities was further exacerbated, of course, by the complex tangle of finger-pointing that accompanied attempts by both state and local actors to deflect responsibility during the water crisis.

Activists dealt with these complexities in various ways. They rejected categorically the claim that EMs were in any sense local rather than state actors. They boiled away the apparent differences of opinion among state officials, portraying the full array of state actors from Flint’s EMs on up as being in cahoots, working together to advance a consistent agenda shaped by bondholders and other private interests with ties to the Snyder administration. Most important, they argued that the appearance of local complicity in decision making was being deliberately, and duplicitously, cultivated by the state. Whenever it seemed that locals had played a meaningful part in a key decision about water, activists cautioned that the “real story” was “between the lines.”<sup>35</sup> Complementing the repressive and direct power exercised by EMs and other state actors within the EM system, they believed, was a kind of creative and surreptitious power, operating through discreet manipulation rather than open command.<sup>36</sup> The idea that the state was, in many ways, deliberately masking its influence in Flint, and that activists had a special responsibility to root out and expose that influence, colored activist strategy and tactics throughout the crisis and crisis recovery effort.

The counterpoint Flint activists posited to the power of the state was what we might call, following legal scholar Richard Schragger, “city power,” or what activists themselves sometimes called “local control.” Within the context created by emergency management, when activists demanded “democracy” it was understood to mean *local* democracy—defined, at the very least, by the full functioning of representative government at the municipal level

and all the benefits of home rule. Although activists knew that local politics, like state politics, was susceptible to domination by private interests, for the most part they strongly associated local control with public things and public purposes. And although they had many complaints about local officials, they nevertheless felt a sense of ownership of city government that was completely lacking in their sentiments about government at higher levels. Consequently, they experienced the state takeover as a personal violation that struck at the heart of their municipal identity as Flintstones, aside from stripping them of a fundamental human right to self-determination.<sup>37</sup>

The focal point of the political narrative, however, was not the intrinsic injustice of denying Flint residents democracy, but the ways in which this denial spawned the injustice of the water crisis. Its moral was that democratic procedures and local control of resources cannot be sacrificed—“emergency” or no emergency—without also sacrificing public health. Lurking in each act of the story, then, is the same counterfactual question: what if Flint’s democracy had been in place all along?

### Act I: The Karegnondi Water Pipeline

In his 2016 State of the State address, delivered while activists outside Michigan’s capitol building called for his resignation and arrest, Governor Snyder dated the origins of the water crisis to an act of the Flint City Council.<sup>38</sup> The crisis began, he asserted, when the council voted 7 to 1 in March 2013 to commit Flint to participating in the KWA pipeline project. This vote, he implied, was the catalyst for the string of events that resulted in the short-term use of the Flint River and all the terrible consequences that followed. Snyder may not have said it outright, but the subtext of his comments was clear: Flint was complicit in its own water crisis, and its complicity began with the KWA decision. None other than PA 4 champion Al Pscholka—who also happened to be Michigan House Appropriations Chairperson—invoked this notion as an excuse to hold up state aid to the city.<sup>39</sup> Activists’ first task in combating the “false” narrative of the crisis promulgated by the state, then, was to show that the KWA project had never had genuine local support and that EMs had been instrumental in pushing it forward.

The backstory to Snyder’s claim that the KWA decision was locally driven was Flint’s decades-old desire for water independence. Since it had first begun receiving water from Detroit in 1967, Flint had been at the

mercy of the administrators of the Detroit water utility (known from 1975 on as DWSD).<sup>40</sup> DWSD oversaw a water system that stretched far beyond the boundaries of the city of Detroit into the surrounding counties and ultimately to Flint, but being a division of city government, it had a strong incentive—and indeed was designed institutionally—to run it in a manner that put Detroit’s interests first. It favored Detroit-based companies when doling out contracts and only hired workers who lived within city limits (at least until residency requirements were outlawed in 1999). The mayor of Detroit appointed all the members of its Board of Water Commissioners, with four out of seven mandated to be Detroit residents. To demonstrate a commitment to regional cooperation, Detroit’s mayors settled on the practice of appointing representatives of Wayne, Oakland, and Macomb Counties to the three remaining positions. But despite being DWSD’s largest customer (accounting for about 5 percent of overall water purchases), Flint was not accorded a seat on the board.

Where Flint’s lack of influence within DWSD mattered most, arguably, was with respect to the setting of water rates. Given that DWSD charged more depending on the distance and elevation over which its water was transported, Flint’s location at the system’s northwestern extremity put it at an inherent disadvantage within the department’s pricing scheme. And while the counties with representatives on the DWSD board could exert some influence over their rates, there was little Flint could do to resist increases. By paying higher rates than it might have been able to negotiate with more institutional pull, Flint—and by extension Genesee County, which purchased Detroit water through Flint—was effectively subsidizing the cheaper rates paid in other areas serviced by the Detroit system. As long as DWSD’s rates stayed relatively low overall, Flint and Genesee County tolerated this structural inequity. But in the 2000s, rates began to climb steeply, with annual increases averaging about 11 percent. Genesee County Drain Commissioner Jeff Wright, who as CEO of the KWA became the leading proponent of the city and county breaking free from Detroit, contended that by setting “unsustainable” rates DWSD was pricing Flint and Genesee County “out of its system.”<sup>41</sup>

The deeper problem with DWSD, Wright argued, was that it operated in an “authoritarian manner,” with little concern for Flint’s and Genesee County’s well-being.<sup>42</sup> Aside from the persistent rate issue, it had long resisted building a backup pipeline to service the area in case of emergency, the consequences of which were driven home when a massive power outage in 2003

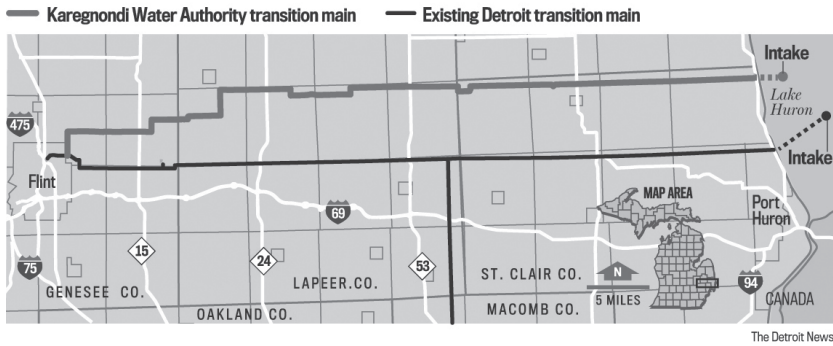
left residents without water for several days. It was also, Wright claimed, rife with corruption—most glaringly, in the form of contract-rigging, which over the years had led to the criminal convictions of two DWSD directors and Detroit mayor Kwame Kilpatrick. Although the water DWSD provided was of good quality, its mismanagement of the system, Wright maintained, made water provision “very unreliable.” The “only reasonable solution,” he argued, was for Flint and Genesee County to break up with Detroit and tap into Lake Huron via their own pipeline.<sup>43</sup>

The idea had been around since at least the 1940s, when Flint was still drawing its drinking water from the Flint River and its needs as a growing city were beginning to exceed the river's capacity. After a plan to build a pipeline northward to Saginaw Bay was abandoned as too costly, an alternate plan for a pipeline extending eastward to Port Huron began to take shape, and in the early 1960s, the city began buying up land along the proposed route in preparation. But so did a prominent Flint businessman—in collusion with the city manager—whose intention was to sell the land to the city at a profit. The resulting scandal led to public corruption charges which, although eventually dismissed, destroyed a good deal of support for the project.<sup>44</sup> While this was going on, Detroit was preparing to build a Lake Huron pipeline of its own to reduce the dependence of its water system on the Detroit River. In April 1964, Flint's commissioners voted to abandon the idea of a Flint-owned-and-operated pipeline and enter into a long-term agreement with Detroit.

The contract signed by the two cities in December 1965 committed Flint to the partnership for at least thirty-five years. Beginning in the early 2000s, Flint began to renew the agreement annually. But its newfound freedom from a long-term contractual obligation, combined with growing tensions with Detroit, revived the impetus to build an independent pipeline. Exploratory work by Jeff Wright and other Genesee County officials over the next decade ultimately led to the formation of the KWA in 2010. The vision developed by its board was of a regionally owned and operated water system, a partnership between Flint, the City of Lapeer, and Genesee, Sanilac, and Lapeer Counties. According to Wright, the KWA, unlike the DWSD, was designed to give all members “a fair representative voice.”<sup>45</sup> Each stakeholder had one position on the original board, with Flint's seat occupied by Mayor Dayne Walling, a vocal supporter of the project. When the board expanded to fifteen members in 2013, Flint's share comprised four seats, with Walling serving as chairman.

## New water for Flint and neighbors

The Karegnondi Water Authority is set to come on-line in June or July, and locals hope it will bring a long-term solution to the region's long-term water issues.



**Figure 3.2**

The Karegnondi water pipeline. The Detroit News.

Hooking up to the KWA pipeline would also offer Flint the opportunity to make fuller use of one of its most significant assets: its water treatment plant.<sup>46</sup> Detroit water was treated shortly after being withdrawn from Lake Huron, and required little attention upon arriving in Flint. KWA water, by contrast, would arrive raw, and Flint would be solely responsible for treating its portion of it. Between 1998 and 2006 the city had invested \$50 million into its plant so that it could treat Flint River water as a backup supply. Although it would need further upgrades to prepare for long-term treatment of raw lake water, Operations Supervisor Brent Wright described it as already “pretty much state of the art.”<sup>47</sup>

The prospect of giving Flint more control over the governance and operation of its water system was attractive from the standpoint of the city's self-determination, but supporters also pitched the KWA project as a financial boon. Wright promised that the KWA would establish cost parity throughout the region served by the pipeline, with each community paying “the same rate for its water.”<sup>48</sup> He also claimed that this rate would be lower than what Flint paid to DWSD, saving the city \$600 million over thirty years, even with a \$7-million-per-year bond payment.<sup>49</sup> Wright's thirty-year rate projection made the KWA option to be a major savings over another long-term contract with Detroit, which DWSD began to solicit from Flint as plans for the KWA pipeline gathered steam in late 2012 to early 2013.<sup>50</sup> Wright accused DWSD of trying to torpedo the project by luring Flint

away from it, thereby preserving Detroit's water monopoly in the region. He insisted, however, that the department's machinations were futile: the pipeline would move forward with or without Flint's participation.

This is not to say that Wright was disinterested in Flint's participation—on the contrary, he repeatedly stressed that the KWA was eager to have the city on board as a long-term partner. But he insisted that the choice between DWSD and the KWA was “Flint's decision, and Flint's decision alone to make.”<sup>51</sup> The problem was that when the time came to make a firm commitment to financing the new pipeline in early 2013, determining where “Flint” ended and the state began was more complicated than ever. The situation, in brief, was this: in August 2012, PA 4 was suspended, pending a November referendum on the law, and EM Mike Brown was forced to step down. Claiming that PA 72 had gone back into effect, Governor Snyder tapped Ed Kurtz to reprise his role from the early 2000s as EFM, while Brown took the position of city administrator. The City Council sensed an opportunity to reassert its authority, resuming regular meetings, filing a lawsuit to oust Kurtz, and threatening to launch an investigation into the torrent of resolutions (sixty in total) that Brown discharged before leaving office.<sup>52</sup>

Even under the revived PA 72, however, the state still had considerable say over any major decision pertaining to Flint's water. The city's choice of source water clearly had financial implications, bringing it under the jurisdiction of EFM Kurtz, and because it entailed a transaction exceeding \$50,000, it also required the approval of State Treasurer Dillon. Dillon only became aware of the KWA project in late 2012, but he quickly came under pressure from the project's backers to make a speedy decision about whether he would support Flint's participation, which would help to determine aspects of the engineering like the number of pumping stations and the diameter of the pipe. To assess the project's cost, he commissioned a study from the private engineering firm Tucker, Young, Jackson, Tull, Inc. (hereafter “Tucker Young”), which determined that the KWA would be at least \$100 million more expensive than predicted and recommended that the city stick with DWSD water, perhaps blending in some water from the Flint River.<sup>53</sup> Seizing on Tucker Young's estimates, DWSD began to float long-term contract offers it claimed were substantially cheaper than the KWA.

Jeff Wright excoriated the Tucker Young study, accusing it of wildly over-inflating the cost of the KWA pipeline and pointing out that the firm had a clear conflict of interest as one of DWSD's contractors. Dayne Walling

dismissed the study's findings as "propaganda" and a "scare tactic" aimed at making a new DWSD contract look more attractive than it really was.<sup>54</sup> Concurring with this position was EFM Kurtz, who since taking office had conducted a thorough study of Flint's water options. Kurtz provided the pro-KWA forces with ammunition when he commissioned a competing study by KWA contractor Rowe Engineering, which purported to rebut Tucker Young and DWSD's assertions.<sup>55</sup> According to Wright, Kurtz had concluded by early 2013 that the KWA was "the best permanent source of potable water for the City of Flint" and "was entirely comfortable" making this recommendation to Treasurer Dillon.<sup>56</sup>

Despite the fact that Kurtz, the state's man in Flint, was leaning toward the KWA, it was widely believed that Tucker Young's critique of the project was what the higher-ups in Lansing wanted to hear. In early 2013 the Snyder administration was, after all, preparing to place Detroit under emergency management using PA 436, a near reincarnation of the repealed PA 4 scheduled to take effect on March 27. Allowing Flint to run off with the KWA, taking a substantial piece of DWSD's revenue with it, would hardly be conducive to improving Detroit's fiscal standing. Wright warned that if Lansing were to have the final say about Flint's water, it would force the city into the thirty-year contract being offered by DWSD. He urged city officials to make their position on KWA known before the state regained full control of Flint under the impending PA 436.<sup>57</sup>

What ensued was one of the most unusual events of the EM years. Although he was under no obligation to do so, EFM Kurtz invited the City Council to vote on whether Flint should commit to the KWA. Technically, of course, the decision was not the council's to make. However, Wright insisted that it was "not an idle exercise," assuring the council that "if it voted 'no,' KWA would not sell water to Flint" (though the pipeline would be built anyway).<sup>58</sup> Under the assumption that Wright was a man of his word, this gave the council genuine power in the event it decided against joining the pipeline, for no one—not Kurtz, not Snyder—could force the KWA to accept Flint as a customer. Wright would later claim that the council vote "was one of the few moments of true democracy Flint had during the EM reign."<sup>59</sup> Happily for him, it produced the outcome that he, Kurtz, and Mayor Walling wanted: the council came down in favor of the KWA, 7 to 1.

In his critique of Wright's account of the KWA decision, Peter Hammer disputes the authenticity of the council's vote that day, calling it a "sham."<sup>60</sup>



In Hammer's telling, what Wright depicted as an exercise of "true democracy" was little more than a symbolic rubber stamp on what was already a "done deal,"<sup>61</sup> with "the city and its residents ... manipulated as means to the predetermined ends of others."<sup>62</sup> Documents released during the water crisis revealed that Flint's first EM, EM Mike Brown, had been working with Wright since at least February 2012 to build the assumption that Flint would be buying KWA water into the authority's planning process, suggesting that there was considerable, perhaps irresistible, momentum behind the KWA partnership by the time the council vote was taken. Hammer alleges that during the council's deliberations, Wright encouraged it to adopt a "myopic focus" on the relatively lower wholesale rates that Flint would pay under the KWA, without full consideration of "the costs of operating Flint's water treatment plant and maintaining the city's water infrastructure system."<sup>63</sup> He also maintains that council members were not given all of the relevant information (including, notably, the Tucker Young report) before casting their votes; Third Ward Councilman Bryant Nolden, who lodged the lone dissenting vote, complained that "we get the information at the last minute and are asked to make decisions."<sup>64</sup> Hammer's theory is that Kurtz offered the council a vote not to genuinely solicit its input but to give the KWA decision a firmer legal standing in the event the EM law was ever successfully challenged in the courts, which some believed could retrospectively invalidate EM resolutions.<sup>65</sup> Public proclamations that the vote was an expression of "democracy," then, masked this private intent to use the council's apparent endorsement of the project as an "insurance policy" against legal challenge.<sup>66</sup>

One final detail of the ostensibly democratic vote made the limits of the council's power apparent. Wright asked the council to agree to purchase eighteen million gallons of water per day (mgd) from the KWA, despite the fact that Flint's average daily water use was several million gallons less than that, with its population continuing to shrink by the year. The council settled on sixteen mgd as a compromise, with the potential for blending in water from the Flint River if needed.<sup>67</sup> Following the vote, however, Kurtz unilaterally signed off on the excess capacity rejected by the council, at an estimated cost of an extra \$1 million a year.<sup>68</sup> While the surplus water was arguably unnecessary from Flint's perspective, it would justify a larger-diameter pipeline that would increase the amount of water the KWA could carry to the region—allowing for, in Wright's words, "future expansion."<sup>69</sup> For Hammer, as well as for Flint activists, Kurtz's flagrant disregard for the

council's will illustrated the "meaninglessness of the council vote."<sup>70</sup> The Flint Democracy Defense League lamented that the water purchase agreement drafted by the council itself "was utterly ignored by the emergency manager," who proceeded to pass on to the Governor "his own version," created "without any democratic input."<sup>71</sup>

Even with Kurtz advocating for the KWA, however, it was still necessary to get backing from Treasurer Dillon. Faced with competing assessments of the KWA's cost by Tucker Young and Rowe, Dillon turned to an agency he believed could be a neutral arbiter: the Michigan Department of Environmental Quality (MDEQ). Officials at the MDEQ, he said later, were "firm" that the KWA was better<sup>72</sup> and did not seem to have "any agenda" in saying so.<sup>73</sup> With the MDEQ's endorsement of the KWA, Dillon was sold. Negotiations, however, were not quite over yet: at the eleventh hour, Governor Snyder personally intervened, calling a meeting of all the major players in the hopes that Flint and DWSD could strike a deal—an apparent sign that the state actors involved were still not entirely aligned.<sup>74</sup> By the time DWSD extended its *final* final offer in late April, however, Kurtz—knowing he had the backing of Dillon—felt empowered to reject it summarily. Jeff Wright publicly declared that the decision was a "done deal," saying there would be "no looking back."<sup>75</sup>

Now that Dillon's initial hesitation had turned into approval, the treasury began to work with the other state actors involved to make Flint's participation financially possible. Flint's commitment to the project obligated it to cover about one-third of the project's bond debt, amounting to \$85 million total. The logistical problem to be confronted was how a city struggling just to break even, and prohibited by state law from issuing bonds except in cases of "fire, flood, or calamity," could take on such an obligation.<sup>76</sup> The matter became pressing toward the end of 2013 and into early 2014, during the tenure of EM Darnell Earley, when the KWA was preparing for a \$220 million bond issue that would allow it to begin the next phase of pipeline construction.

At first, Earley had trouble obtaining the treasury's authorization to borrow the money needed to finance Flint's share. KWA's bond attorneys, however, came up with a creative solution that ultimately won the treasury's approval.<sup>77</sup> The idea was to ask the MDEQ for an administrative consent order (ACO), a device typically used by the department to force a local government to fix an environmental violation. An ACO allowed a municipality to issue bonds related to environmental remediation that did not count

toward its debt limit. What made this ACO different was that it was, in the bureaucratic lingo of the MDEQ, a “sweetheart” bond, a rare instance in which an ACO was being sought voluntarily.<sup>78</sup>

The official reason given for the ACO was to enable the cleanup of lime sludge, a byproduct of the water treatment process, that was actively leaking into the Flint River from a dumping site upstream of the treatment plant’s intake pipe. Jeff Wright claimed that the lime sludge issue was preventing the plant from operating legally, as was necessary under the KWA plan, and that this was the real reason the city needed the ACO.<sup>79</sup> As Hammer points out, however, the language of the ACO was broad enough to facilitate financing of much more than just the lime sludge remediation. It was “drafted with the express intent of being broad enough to permit financing of Flint’s participation in KWA pipeline construction,” making Flint’s use of the treatment plant contingent upon an “improvement project” vague enough to encompass the building of the pipeline.<sup>80</sup>

The dubious ACO proved to be the piece of the water crisis puzzle that opened Flint’s EMs up to legal accountability. Arguing that the real motivations for the ACO were strategically hidden, the attorney general’s office described it as “a sham transaction designed under false pretenses to obtain money for the KWA” and hit EM Earley and then–Finance Director (later EM) Jerry Ambrose with false pretenses charges.<sup>81</sup> Hammer, however, stresses that the treasury was equally to blame: within the “draconian regime” created by emergency management, it was “the ultimate decision maker.”<sup>82</sup>

The EM-requested and treasurer-approved ACO helped put Flint in a position to issue KWA bonds but it did not, of course, guarantee they would be repaid. For obvious reasons, purchasing bonds from a financially shaky city like Flint was a risky prospect from an investment perspective. To ensure that the KWA’s \$220 million bond issue got a high rating—and thereby a favorable interest rate—Genesee County pledged to secure Flint’s portion of the debt,<sup>83</sup> an assurance strong enough to help win the bond issue *The Bond Buyer* magazine’s Midwest Region Deal of the Year award. The catch was that, in the event Flint defaulted, the county could siphon off 25 percent of its constitutional revenue-sharing money, force Flint to levy a tax to reimburse the KWA, and seize Flint’s water assets. Genesee County Board of Commissioners Chairman Jamie Curtis warned that Flint would “lose everything” if it withdrew from the KWA because of how heavily its debt was secured.<sup>84</sup>

As momentous as the KWA decision was, popular awareness of its implications, and even of the project's very existence, was minimal among Flint residents even after the water crisis revived the debate over Flint's long-term water supply. As late as June 2016, state water crisis liaison Harvey Hollins estimated, based on focus group data, that 80 percent of residents had "no idea what KWA is."<sup>85</sup> But within Flint's activist community, the KWA project had raised red flags as early as 2013, when activists led a campaign (discussed in the next chapter) to put Flint's participation to a public vote. In the context of the water crisis, deep suspicions grew up around the project even among activists who had not contributed to—or even been aware of—that earlier effort. They depicted Drain Commissioner Wright as a shady and untrustworthy character (one nicknamed him, simply, "The Scum Bag") and occasionally speculated that Mayor Walling stood to profit personally from the deal in a manner that mirrored the public corruption scandal of the 1960s. But they also believed that the state had conspired to impose the KWA on the city, even suggesting, in some instances, that Flint was placed under emergency management in order to accomplish that objective.<sup>86</sup>

Activists posited a variety of ways the pipeline would advance the state's agenda. It was no secret that the project was not only about drinking water, but also economic development, an effort to open up the region to the "blue economy" by offering large quantities of fresh raw water well suited for agriculture and industry.<sup>87</sup> Aside from this officially acknowledged economic rationale, however, activists speculated that the water requirements of fracking interests with ties to Governor Snyder were being factored into inflated water quantity requests like the one signed off on by Ed Kurtz. Some even suggested that by (indirectly) contaminating private wells with fracking waste and forcing out-county residents onto its grid, the KWA would expand its customer base.<sup>88</sup>

Activists also suspected the project of being part of the Snyder administration's agenda of privatization. Sometimes they described the KWA pipeline itself as "privatized" despite its not being privately owned or managed; at other times, they said the project "open[ed] the door to privatization," in the belief that the international water giant Veolia (or some other such private interest) was waiting in the wings to buy up the infrastructure.<sup>89</sup> Activists also argued that the KWA was designed to ruin DWSD and lay the foundation for the regionalization of Detroit's water infrastructure, tearing control

of southeast Michigan's water away from the majority–African American city and placing it in the hands of the neighboring, predominantly white, counties, which had always resented being subject to Detroit politics and administration.<sup>90</sup> Finally, activists saw the possibility of Flint's forfeiting its assets to the county as a sign that the KWA could be used as a roundabout way of regionalizing the city out of existence, popularly believed to be the state's ultimate vision for Flint.

Convinced the KWA was a “scam,” or at the very least a bad deal for the city, activists started turning up at KWA board meetings and speaking out against the project. But the intensity of the emotions on display at these meetings—the denunciations, for example, of Jeff Wright and other members of the board as “murderers” at a particularly contentious meeting I attended in May 2016—is hard to explain without reference to another belief: the belief that it was the KWA plan that triggered the switch to the Flint River.

## Act II: The Break with Detroit and Switch to the River

State officials made the same claim about the decision to use the Flint River as an interim source as they did about the KWA: that it was locally driven, with state officials merely following the lead of local officials in executing the switch. Once again, the implication was that the city had brought the crisis upon itself—in this case, even more directly.

In fact, the city *had* at one point seriously considered returning to the river for its drinking water—not just temporarily, but permanently. In the late 2000s, as patience wore thin with DWSD's rate hikes, city officials began to explore “all available options for Flint's long-term water,”<sup>91</sup> including whether using the Flint River would be cheaper than staying with Detroit.<sup>92</sup> Some made an effort to change public perceptions of the river, stressing that it was “quality water” and suggesting that its low credibility with residents was “more of a psychological issue.”<sup>93</sup> Engineering reports by Wade Trim in 2009 and Lockwood, Andrews, and Newnam (LAN) in 2011 lent some credence to this position, finding that although the river would be trickier to treat than lake water, it could be brought up to regulatory standards.<sup>94</sup> Long-term, full-time treatment of river water would require more extensive upgrades to the water treatment plant than what the KWA proposal called for, but given local interest in putting the plant to good use, some saw this as a worthy investment.<sup>95</sup>

According to Dayne Walling, the extra “costs and complications” of using the river effectively dropped that possibility to the bottom of the list of Flint’s long-term water options by mid-2011.<sup>96</sup> This did not end all consideration of using the river in some capacity, however.<sup>97</sup> As already mentioned, the council voted to blend Flint River water with KWA water as a cost savings in March 2013. The possibility of similar blending with DWSD water had also been widely discussed, although it required convincing DWSD to allow the practice.<sup>98</sup>

But demonstrating the willingness of some local officials to consider using the river is one thing, and demonstrating that they actually decided to do so another. As part of his effort to exonerate himself, ex-EM Darnell Earley portrayed the City Council’s vote for the KWA as having included a vote to use the river while the pipeline was built. However, Earley’s suggestion that the KWA decision and the Flint River decision were one and the same was, as Dayne Walling put it, “blatantly false.” In fact, the council opted to purchase water from the KWA upon completion of the pipeline on the assumption that Flint would remain with DWSD in the meantime. No council vote on the river ever took place.<sup>99</sup>

It was still possible to argue, however, that the KWA vote spawned the switch to the river indirectly. After EM Kurtz finalized the KWA decision in April 2013, DWSD promptly announced that it would be dropping Flint as a customer in a year’s time. In a press release, it accused the supporters of the KWA of launching “the greatest water war in Michigan’s history” and of having “a ‘political’ objective that has nothing to do with the delivery—or the price—of water.”<sup>100</sup> Losing out to the KWA, Kurtz said later, made DWSD “mad, angry, vindictive.”<sup>101</sup> Some believed the department would actually follow through on its threat to cease water delivery even in the event that Flint failed to arrange an alternative interim supply.<sup>102</sup> With the KWA pipeline still an estimated three years from completion and relations with Detroit worse than ever, Flint was supposedly forced into the temporary fix of full-time use of the Flint River.

But the activists were firmly of the opinion that, in Peter Hammer’s words, the DWSD termination notice “plays no legitimate role in the story” of the switch to the river.<sup>103</sup> In March 2014, as the threatened shutoff date approached, DWSD Director Sue McCormick wrote to EM Darnell Earley of her willingness to negotiate a new contract. Earley informed her tersely that Flint no longer had need of Detroit water, even in the short term, because it

had “actively pursued using the Flint River as a temporary water source.”<sup>104</sup> As Earley was turning DWSD down one last time, Genesee County was actively making preparations to remain with the department as a customer until the KWA was ready, ultimately purchasing a nine-mile section of pipeline from Flint for \$3.9 million to make this possible. The county’s interim arrangement with DWSD provides a glimpse of what might have been had Flint pursued a similar path: for the next few years, it resentfully paid a higher rate for Detroit water (20 percent higher, in fact<sup>105</sup>), but it also enjoyed clean, safe water.

Just *who*, in Earley’s words, “actively pursued” interim use of the river between the KWA vote in March 2013 and the source switch in April 2014 is perhaps the most perplexingly opaque question in the entire water crisis saga. The crisis timeline released by the state stated that in June 2013, the “*City of Flint* decide[d] to use the Flint River as a water source” (emphasis added).<sup>106</sup> What, exactly, was meant by the “City of Flint” was not explained. By June, Flint’s elected officials wielded even less power than they had a few months earlier, for EFM Kurtz had become EM Kurtz under the now-active PA 436. The documentary record shows Kurtz preparing the city to use the river. On June 26, he signed a resolution authorizing LAN to begin evaluating what upgrades the water treatment plant would need to process river water full time. Retrospectively, the issuing of this resolution was widely depicted—by everyone from Wright,<sup>107</sup> to Walling, to the Flint Water Advisory Task Force<sup>108</sup>—as the moment when the die was cast, when the decision to use the river was made definitively. Bewilderingly, however, Kurtz later denied that he was responsible for the switch. Preparing the water treatment plant to operate was not the same, he insisted, as finalizing the source switch. In summer 2013, he maintained, the city was still in an exploratory stage, with a variety of officials discussing the feasibility of using the river. Asked who made the final decision about the river, Kurtz said he didn’t know.<sup>109</sup>

Exploratory or not, Kurtz’s actions with respect to the water treatment plant set the tone for a string of cost-conscious decisions later cited as evidence that the use of the river was driven by “economics.”<sup>110</sup> The need to prepare the plant to treat KWA water in the long term and Flint River water in the short term put Kurtz in a bind: treating the river water properly would require more of an investment in the plant than would be needed later on to treat lake water. Convinced that the city could ride out any complications arising from using the river given that the arrangement was only temporary, Kurtz gambled on Flint being able to get away with the

bare minimum required by the MDEQ. Representatives of LAN later said that when company employees raised concerns about this attitude, recommending a test period to evaluate the corrosivity of the river water, Kurtz declined because the MDEQ did not deem it necessary.<sup>111</sup> While the MDEQ was of course responsible for its own bad advice, Kurtz's bare-minimum mentality made him seemingly quick to accept any recommendation that entailed less cost and hassle with the treatment plant.

Kurtz hoped that the money the city would save while on the river (about \$5 million over two years relative to what a temporary deal with DWSD would have cost) would cover whatever new equipment was needed.<sup>112</sup> As Finance Director Ambrose explained, the switch "was made because it ... offered an immediate cost-savings opportunity which translated into the ability to upgrade the Water Treatment Plant without having to seek financing."<sup>113</sup> The MDEQ's position on corrosion control (i.e., that it could be withheld until proven necessary over an extended trial period) was welcome news—not, as some news outlets breathlessly reported in their coverage of the water crisis, because it would save the city a measly \$100 per day for the chemicals, but because it would obviate the installation of costly equipment that would be useless after the KWA pipeline came online. Still, estimates of the size of investment the plant needed were disconcertingly high. Recommendations made by Rowe in December 2013 called for around \$25 million worth of work.<sup>114</sup> It appears that considerably less was spent prior to the switch—enough to squeak past the MDEQ's regulatory goalpost, but no more (see chapter 2).

The cost-averse logic on display in EM decisions about Flint's water gave rise to the accusation that public health had been sacrificed on the altar of austerity, recklessly entrusted to glorified accountants whose powers were broad but whose expertise was thin or nonexistent on subjects central to residents' well-being.<sup>115</sup> Of course, EMs could always claim that they shouldn't have *had* to be public health experts, that they should have been able to rely on the direction of those who were. A defensive Ed Kurtz argued in November 2016 that his job as EM was "strictly finance" and "did not include ensuring safe drinking water."<sup>116</sup> It was the duty, not of EMs, he said, but of the MDEQ and the Environmental Protection Agency to oversee water quality and prevent lead poisoning—he had simply accepted their advice. Darnell Earley, for his part, protested that during his time as EM he had never received "any information that would even remotely indicate



that the use of the Flint River was unsafe in any way.”<sup>117</sup> However, the Flint Water Advisory Task Force found that MDEQ employees had “deferred to state emergency manager decisions to proceed” even when they knew that “use of Flint River water would be problematic.”<sup>118</sup> It also concluded that the breadth of the powers bestowed by the EM law made EMs responsible even for the nominally “technical” decisions made on their watch.

Given that the EM system was undemocratic by design, it is hardly surprising that deeply unpopular decisions emerged from it, but within the political narrative of the water crisis, the *pièce de résistance* was the switch to the Flint River. The choice of the almost universally maligned river for Flint’s water supply was the ultimate example of the ability of EMs to disregard public opinion and act in ways unthinkable to elected officials.<sup>119</sup> One could debate whether letting popular inclinations prevail would have kept Flint off the river for the right reasons—the capabilities of modern water treatment methods, for example, may have weighed less heavily in the balance than ingrained prejudices about the river being a who-knows-what toxic stew. However, it is harder to argue with the activists’ central contention: if the people of Flint—or at least their representatives—had been the ones deciding on the city’s water future, there would never have been an opportunity to bungle the treatment of the river water, for the river, in all likelihood, would never have been a character in the story at all.

### Act III: Prolonging the Crisis

When activists began to pool their energies and demand a return to Detroit water in early 2015, they sometimes implied that reconnecting would be as easy as flipping a switch or, more accurately, pressing a button. The defining image of the original source change, after all, was of Dayne Walling doing just that to shut off the feed from Detroit. Sensing an opportunity to reinsert itself into the conversation about Flint’s water source, DWSD began to encourage the impression that getting Detroit water flowing again was straightforward and could be done more or less immediately, a notion that began to spread through the activist community via Councilman Eric Mays, a key ally of the water activists.<sup>120</sup> On January 12, DWSD Director Sue McCormick wrote a letter to Flint officials indicating that Detroit was “ready, willing, and able” to resume selling water to Flint. On January 26, she testified to the Flint City Council that DWSD was willing to reopen the

pipeline for “emergency services” and that doing so was “not contingent” on conversations about a long-term contract.<sup>121</sup>

But EMs Darnell Earley (in office September 2013 to January 2015) and Jerry Ambrose (January to April 2015) both insisted that switching back to Detroit water would not be so easy.<sup>122</sup> For one thing, Earley had, as said earlier, sold to the county the nine miles of pipe Flint once used to connect to the Detroit system under the assumption that the city would never again need it (a decision activists “begged” him not to make<sup>123</sup>). For another, the ACO that Earley and Ambrose helped to finagle for KWA financing purposes in early 2014 required that Flint use the river as its interim drinking water source.<sup>124</sup>

These constraints stemmed from decisions made before the possibility of an urgent return to Detroit water was seriously considered. But Ambrose erected three additional barriers to such a return in the spring of 2015, several months after systemic problems with water quality appeared. Firstly, as he prepared to return Flint to partial local control, he obtained a loan from the state’s Local Emergency Financial Assistance Loan Board to cover the nearly \$8 million deficit still on the books. The loan included the stipulation that the city could not return to Detroit water without the approval of the state treasurer.<sup>125</sup> Secondly, before stepping down he signed an order that prohibited city officials from overturning any EM decisions for a year. Even though no single EM was willing to take responsibility for the switch to the river, that decision was presumably covered by the order. Finally, Ambrose broadened the powers of City Administrator and Earley-appointee Natasha Henderson to give her substantial influence over city affairs.<sup>126</sup> As support for a return to Detroit began to build among Flint’s elected officials, Henderson actively resisted the proposition because tying the city’s pipes back into the Detroit system would complicate the eventual transition to the KWA.<sup>127</sup>

Aside from the matter of structural impediments to switching back to Detroit, Flint’s EMs argued that it would be cost prohibitive. Ambrose warned that Flint would pay \$12 million more per year on an interim DWSD deal and that rates would have to rise by 30 percent or more to compensate.<sup>128</sup> Earley and Ambrose clung staunchly to this logic even as members of the administration in Lansing began to voice doubts. After GM got special permission to leave Flint’s water system in October 2014 in an effort to stop corrosion of its engine parts, Valerie Brader, deputy legal counsel and senior policy advisor to Governor Snyder, questioned whether using the river still made financial sense and advised a return to DWSD, calling

the water situation in Flint “an urgent matter to fix.”<sup>129</sup> In February 2015, after the state provided its employees working in Flint with bottled water to enable them to avoid the tap, Chief of Staff Dennis Muchmore wrote in an internal email that it would “look pretty stupid hiding behind some financial statement” if the water posed a true threat to public health.<sup>130</sup> Earley and Ambrose, however, were “unequivocal” in their insistence that switching off the river would be “difficult and expensive” and that the quality problems were not serious enough to merit it.<sup>131</sup>

In the same email that found him questioning the optics of pleading finances to residents while arranging for state employees to get safe water, Muchmore argued that since the state was “in charge” in Flint, it could “hardly ignore the people of Flint.”<sup>132</sup> The structure of emergency management, however, allowed Flint’s EMs to steer a deeply unpopular course through the city’s water troubles. In March 2015, the City Council joined a growing chorus of activists in calling on Ambrose to discontinue use of the river. On March 23, it voted 7 to 1 to do “all things necessary” to return to Detroit water. Ambrose called the vote “incomprehensible” and disregarded it.<sup>133</sup> It was yet another sign that while EMs occasionally solicited the council’s endorsement of decisions, and while the council could lodge symbolic protests of various kinds, under emergency management it was unable to generate any institutional friction when opposed to EM dictates.

Emergency management also dampened the impression that popular discontent about the water might otherwise have made on decision makers. Because the EM system was designed precisely to force through unpopular policies, it took for granted a moderate amount of grumbling on the part of residents. Its combination of unchecked power and single-minded focus on finances fostered a governing style that was both arrogant and willfully disinterested in the range of considerations (beyond technical and financial ones) that enter into popular preferences and demands. And because it intentionally insulated EMs from popular accountability, it deprived residents of institutional mechanisms of redress.<sup>134</sup>

Some officials later protested that every time problems had been confirmed with the water, they had been addressed: discoloration with a concerted flushing campaign, bacterial contamination with increased chlorination, total trihalomethanes with the installation of new carbon filters at the treatment plant, lead contamination with reconnection to the Detroit system, orthophosphates, and pipe removal. From a popular perspective,

however, every one of these responses was either inadequate or too slow in coming. The state's initial strategy, hypothesized Peter Hammer, was to "run out the clock" on environmental enforcement until the KWA pipeline was ready, hopeful that some minor tweaks would prevent the problems with the water from reaching a critical mass.<sup>135</sup> But for residents and activists, the switch back to Detroit could not come soon enough. And when it did come, it came only after months of butting up against a political edifice expressly designed to shut them out.

### Epilogue

Political theorists have long fretted about the fate of democracy during periods of so-called emergency. They have singled out the ability to declare an emergency and use it to justify suspensions of laws and rights as one of the most important powers wielded by the state—even as the quintessential expression of state sovereignty.<sup>136</sup> They have noted that under the exceptional circumstances defined and delineated (however vaguely) by the state itself, state power tends to grow stronger and more centralized, and democratic deliberation tends to take a backseat to unitary expressions of will by political leaders. Citizens are told that it is necessary to cease temporarily the mechanisms of democratic decision making and eliminate inconvenient checks and balances.

PAs 4 and 436 went further in that direction than most state takeover laws, enabling the State of Michigan to impose EMs without local consent, push local charters and officials completely aside, and exercise near-absolute control over every aspect of local government. Legal scholar Michelle Wilde Anderson has described the effects of these laws, aptly, as "democratic dissolution."<sup>137</sup> As we have seen, however, Flint's EMs did not operate within political conditions entirely of their own making or completely smother all local initiative. The entanglement of their will with local actors and institutions sometimes served to blur—at least on the surface—the distinction between state and local responsibility for political outcomes like the KWA decision and the switch to the Flint River. Nevertheless, Flint activists argued that regardless of whatever complicity EMs were able to elicit from local elites, it was the state—not the people of Flint or their elected representatives—that supplied the main political motive force during the period when the critical decisions were made about the city's water. Telling the tale of the origins

of the crisis was not just a matter of holding up transparent state abuses for the world to see, but of rooting out and exposing subtler ones—part of the activists' larger project of unveiling the undemocratic exercise of state power when it cloaked itself in the appearance of popular consent.

Distilling the essence of all that led to the water source switch and the subsequent reluctance to reverse it, the political narrative can be summarized succinctly: disregard for democracy in Flint led to disregard for public health. Shortsighted and narrow-minded efforts to end one “emergency” created another—an example of what Anderson calls the “severe collateral damage” of democratic dissolution.<sup>138</sup> Suspending democracy at the local level, even if only temporarily, can have lasting effects on the health of the body politic, too, undermining political legitimacy and participation by alienating citizens from their most intimate political environment. Certainly, in Flint, the feeling that traditional forms of political engagement were pointless as long as the city was in state receivership was strong, and it eroded trust in the political system in ways that were every bit as poisonous as the water.

But as political theorist Bonnie Honig has argued, there are “opportunities, invitations, and solicitations to democratic orientation, action, and renewal even in the context of emergency.”<sup>139</sup> The abolition of democracy at the institutional level need not preclude the preservation, or even the stimulation, of democratic energies elsewhere. In Flint, this phenomenon was evident in a variety of ways: in the fight against the EM law and EM decrees, the formation of new groups within civil society, the development of new forms of political agency, and the use of the water crisis/emergency/disaster as an opportunity to advance more radical democratic visions. That is the story of the rest of this book.



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# Flint Fights Back

## Environmental Justice and Democracy in the Flint Water Crisis

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