

**MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES
REQUEST FOR DECLARATORY RULING**

<p>Applicants' full name:</p> <ul style="list-style-type: none"> • Great Lakes Environmental Law Center • We the People of Detroit • Freshwater Future • National Wildlife Federation • Natural Resources Defense Council • Sierra Club • Detroit People's Platform • We the People – Michigan 	<p>Applicant's degree or title (if applicable):</p>
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<p>Statement of facts: (Please provide a complete accurate and concise statement of the facts or situation upon which the request is based. The statement shall include all facts known to you which are or may be relevant to a determination of the applicability of statute, rule, final order or decision.)</p> <p>See the attachment for the Statement of Facts.</p>	
<p>Laws/Rules/Orders: (Please provide references to all statutes, rules, final decisions, or orders which are to be considered.)</p>	

MCL 333.2251; MCL 333.2253

Issues: (Please provide a concise statement of the issues presented)

See the attachment for the Issues

Analysis and Conclusions: (Please provide an analysis, legal brief or memorandum of the issues presented, including reference to any legal authority relied upon, and the applicant's conclusions.)

See the Attachment for the Analysis and Conclusions

Certification: I hereby certify the existence of the actual state of facts set forth and the submission of all relevant facts known to me:

Date: March 17, 2020

Signature: /s/ Nick Leonard

Attachment to
REQUEST FOR DECLARATORY RULING

Pursuant to MCL 24.263 and Mich. Admin. Code, R 325.1211, the Applicants request a Declaratory Ruling from the Michigan Department of Health and Human Services (“MDHHS”) regarding MCL 333.2251 and MCL 333.2253. Due to the global outbreak COVID-19 (“COVID-19” or “Virus”), which has been classified as a global pandemic by the World Health Organization (“WHO”),¹ the United States Center for Disease Control (“CDC”), the Michigan Department of Health and Human Services, and Governor Gretchen Whitmer have recommended that people frequently wash their hands and avoid close interactions with others (i.e., social distancing) in order to prevent the spread of COVID-19.² The Applicants believe that the ongoing occurrence of the global COVID-19 pandemic in conjunction with the past and current practice of many public water systems to shutoff water service as a result of nonpayment of water bills presents serious public health risks. This public health risk impacts not only those individuals and families that have already or are at risk of having their drinking water shutoff by their public water supply, but all residents of Michigan. As such, the Applicants are requesting that the MDHHS issue an order pursuant to MCL 333.2251 and/or MCL 333.2253 requiring:

- All public water systems in Michigan to immediately begin supplying water to any and all households that have previously had their water service terminated for any reason;
- For any customer that has been disconnected from water service at any time or is currently delinquent regarding any water or sewerage bill, require any and all public

¹ WHO Director-General’s opening remarks at the media briefing on COVID-19, Mar. 11, 2020, available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

² U.S. Center for Disease Control, Coronavirus Disease 2019 (COVID-19) – Protect Yourself, available at <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>

water systems to provide water service at a flat rate no greater than \$25 per month for as long as COVID-19 is classified as a pandemic by the World Health Organization. Public water systems shall not assess or collect any deferred payments for water service provided to residents during the COVID-19 pandemic that are eligible for a reduced pandemic rate;

- Prohibit all public water systems from terminating water service to any households for as long as COVID-19 is classified as a pandemic by the World Health Organization;
- Upon the reconnection of water to a household that was previously shutoff, require the public water system to ensure that the water being provided is compliant with state drinking water standards.

A. Statement of Facts

Since first being detected in Wuhan City in the Hubei Province of China in late 2019, COVID-19 has spread rapidly throughout the world. The Virus presents serious health risks for all exposed. Among Chinese patients, the mortality rate for individuals that contracted the Virus has been 2.3%.³ Likewise, the CDC has estimated the mortality rate to be anywhere from 0.25% to 3.0%.⁴ However, it is highly possible that this mortality rate is not reflective of the actual number of deaths attributable to COVID-19 due to the likelihood that many cases are never properly diagnosed. A recent report estimated that the mortality rate from the Virus could be as

³ Zunyou Wu; Jennifer M. McGoogan, Characteristics of and Important Lessons From the Coronavirus Disease 2019 (COVID-19) Outbreak in China (Feb. 24, 2020), available at [https://jamanetwork.com/journals/jama/fullarticle/2762130?guestAccessKey=bdcca6fa-a48c-4028-8406-7f3d04a3e932&utm_source=For The Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tf1&utm_term=022420](https://jamanetwork.com/journals/jama/fullarticle/2762130?guestAccessKey=bdcca6fa-a48c-4028-8406-7f3d04a3e932&utm_source=For%20The%20Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tf1&utm_term=022420)

⁴ Nick Wilson, et al., Case-fatality estimates for COVID-19 calculated by using a lag time for fatality, *Emerg. Infect. Dis.* (Jun. 2020), available at https://wwwnc.cdc.gov/eid/article/26/6/20-0320_article

high as 15%.⁵ One thing that is certain is that COVID-19 has more serious consequences for the elderly. In China, 8% of patients that were between the age of 70 to 79 years old that contracted the Virus died.⁶ Nearly 15% of patients that were 80 or older died.⁷

As of the World Health Organization's COVID-19 Situation Report on March 15, 2020, there have been 153,517 confirmed COVID-19 cases.⁸ In less than a week since Michigan's first confirmed case of COVID-19 on March 10th, the total number has increased to 65 cases.⁹ The United States Center for Disease Control has cautioned that the Virus seems to be spreading easily and sustainably. The ease of transmission has been backed up by a study, which found that the Virus can remain viable up to three hours after aerosolization, up to 24 hours on cardboard, and up to 2 to 3 days on plastic and stainless steel.¹⁰ To make matters more difficult, recent studies from COVID-19 patients in China found that individuals that have contracted COVID-19 may remain asymptomatic for long periods of time, and that the Virus persists for a median of 20 days in survivors.¹¹ In short, the ease of transmission, and the fact that the Virus can be transmitted long before or after the most severe symptoms means that there are likely

⁵ David Baud et al., Real estimates of mortality following COVID-19 infection, (Mar. 12, 2020), available at [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30195-X/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30195-X/fulltext)

⁶ Zunyou Wu; Jennifer M. McGoogan, Characteristics of and Important Lessons From the Coronavirus Disease 2019 (COVID-19) Outbreak in China (Feb. 24, 2020), available at https://jamanetwork.com/journals/jama/fullarticle/2762130?guestAccessKey=bdcca6fa-a48c-4028-8406-7f3d04a3e932&utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tf1&utm_term=022420

⁷ Id.

⁸ World Health Organization, Coronavirus disease 2019 (COVID-19) Situation Report -55, (Mar. 15, 2020), available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200315-sitrep-55-covid-19.pdf?sfvrsn=33daa5cb_8

⁹ 11 new cases of coronavirus reported, bringing state's total to 65, (Mar. 17, 2020), available at <https://www.fox2detroit.com/news/one-new-case-of-coronavirus-confirmed-in-macomb-county-michigan-total-up-to-54>

¹⁰ Neeltje van Doremalen et al., Aerosol and surface stability of HCoV-19 (SARS-CoV-2) compared to SARS-CoV-1, available at <https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf>

¹¹ Fei Zhou et al., Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study, (Mar. 11, 2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext)

more COVID-19 cases in Michigan than those that have been official confirmed, that the number of cases is likely to substantially increase in the coming months, and that these cases will have very serious public health consequences, particularly for the elderly.

In response to the first positive COVID-19 test, on March 10th Governor Whitmer Issued Executive Order No. 2020-4, which declared a state of emergency.¹² The Governor declared that a state of emergency was necessary “to harness all of our resources across state government to slow the spread of the virus and protect families.”¹³ Additionally, Dr. Joneigh Khaldun, the chief medical executive and chief deputy of health, has urged “Michiganders to take precautions to prevent the spread of this virus in our state.”¹⁴ To this end, the Michigan Department of Health and Human Services (MDHHS) has issued a list of Interim Recommendations for COVID-19 Community Mitigation Strategies. These strategies “are crucial to slowing the transmission of coronavirus disease 2019 (COVID-19) in Michigan...” and they “apply at the individual, organizational, and community levels.”¹⁵ MDHHS specifically recommends that all individuals should wash their hands often with soap and water, and stay home when sick in order to prevent the spread of the Virus.¹⁶ The Governor has reinforced these recommendations, tweeting the following on March 16th:

¹² Executive Order 2020-04, Declaration of State of Emergency, available at https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521576--,00.html

¹³ Michigan announces first presumptive positive cases of COVID-19 *Governor Whitmer declares a state of emergency to maximize efforts to slow the spread*, available at <https://www.michigan.gov/coronavirus/0,9753,7-406-98163-521341--,00.html>

¹⁴ Id.

¹⁵ Michigan Department of Health and Human Services (MDHHS) Interim Recommendations for COVID-19 Community Mitigation Strategies, (Mar. 11 2020), available at https://content.govdelivery.com/attachments/MIEOG/2020/03/11/file_attachments/1398648/MDHHS,%20Interim%20Recommendations%20for%20COVID-19%20%28final%29.pdf

¹⁶ Id.



Beyond reinforcing the Interim Recommendations of the MDHHS, the Governor has also issued seven additional executive orders (although two have since been rescinded). The majority of these orders seeks to limit the spread of COVID-19 in the state of Michigan:

- Until April 5th, all assemblages of more than 50 people in a single shared space are prohibited with limited exceptions;¹⁷
- Until April 5th, all elementary schools and secondary schools must close to students for educational purposes;¹⁸
- Until April 5th, all health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities must restrict visitors and perform a health evaluation for all visitors;¹⁹
- Until March 30th, several places of public accommodation, including restaurants, food courts, coffeehouses, bars, and movie theaters must be closed to the public.²⁰

¹⁷ Executive Order 2020-11, Temporary prohibition on large assemblages and events, temporary school closures, https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521595--,00.html

¹⁸ Id.

¹⁹ Executive Order 2020-07, Temporary restrictions on entry into health care facilities, residential care facilities, congregate care facilities, and juvenile justice facilities, available at https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521697--,00.html

²⁰ Executive Order, 2020-09, Temporary restrictions on the use of places of public accommodation, available at https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521789--,00.html

Following the Governor's lead, many other local governments and private companies providing essential services to residents have taken steps to ensure that all residents shall continue to receive such services regardless of their ability to pay. Both DTE and Consumers Energy have announced that they are suspending any shutoff of electric or natural gas service due to nonpayment until at least April 5th.²¹ The City of Detroit, with assistance from the Governor, established the Coronavirus Water Restart Plan, which allows residents that have had or are at risk of having their water shutoff to pay \$25 a month for water service until the end of the COVID-19 pandemic.

Other states have taken steps to ensure all residents have access to essential utilities such as water and have prohibited public water systems from shutting off water service during to the COVID-19 pandemic. These states include the following:

- On March 12th, the Connecticut Public Utilities Authority issued an order banning all electric, natural gas, and water utilities from shutting off services to any customers.²²
- On March 13th, the Pennsylvania Public Utility Commission issued an order prohibiting electric, natural gas, water, wastewater, telecommunications, and steam utilities from terminating service for nonpayment.²³

²¹ Paul Egan, DTE, Consumers Energy suspend electricity shutoffs for Michigan low-income customers, Detroit Free Press, (Mar. 16, 2020), available at <https://www.freep.com/story/news/local/michigan/detroit/2020/03/16/dte-energy-consumers-suspend-shut-offs-coronavirus/5057318002/>

²² State of Connecticut, Public Utilities Regulatory Authority, Docket No. 20-03-15 – Order Re. Emergency Petition of William Tong, Attorney General for the State of Connecticut for a Proceeding to Establish a State of Emergency Utility Shut-off Moratorium, (Mar. 12, 2020)

²³ Press Release, Pennsylvania Public Utility Commission, PUC Prohibits Utility Terminations, Consistent with Governor's Proclamation of Disaster Emergency, (Mar. 13, 2020), available at http://www.puc.pa.gov/about_puc/press_releases.aspx?ShowPR=4326

- On March 13th, the Wisconsin Public Service Commission ordered water, electric, and natural gas utilities to cease disconnecting residential service for nonpayment of bills.²⁴
- On March 15th, the Mississippi Public Service Commission issued an order directing all water, electric, and natural gas utilities to suspend shutoffs.²⁵
- On March 16th, the Louisiana Public Service Commission issued an order directing all electric, natural gas, telephone, and water utilities to immediately stop disconnecting customers for the non-payment of bills.²⁶
- On March 16th, the State Corporation Commission of Kansas issued an order directing all electric, natural gas, water, and telecommunications utilities to suspend disconnection of service for non-payment of bills in order to prevent or avoid the immediate danger to the public health, safety or welfare presented by the COVID-19 pandemic.²⁷
- On March 16th, the Maine Public Utilities Commission directed all electric, natural gas, and water utilities to suspend disconnection of service for the non-payment of bills.²⁸

²⁴ Press Release, PSC Tells Wisconsin Utilities to Suspend Disconnections for Nonpayment During Public Health Emergency, (Mar. 13, 2020), available at <http://apps.psc.wi.gov/vs2017/NewsReleases/default.aspx>

²⁵ Public Service Commission temporarily suspends utility disconnections in response to COVID-19, WLOX, (Mar. 15, 2020), available at <https://www.wlox.com/2020/03/15/public-service-commission-temporarily-suspends-utility-disconnections-response-covid/>

²⁶ In re: Executive Order Creating Emergency Suspension of Disconnection of Utility Services in Areas Under a State of Emergency/Public Health Emergency related to COVID-19 (Mar. 13, 2020), available at http://www.lpsc.louisiana.gov/_docs/_General/COVID-19%20executive%20order.pdf

²⁷ In the Matter of Addressing the COVID-19 Pandemic in the State of Kansas, Docket No. 20-GIMX-393-MIS, Emergency Order Suspending Disconnects (Mar. 16, 2020), available at <https://estar.kcc.ks.gov/estar/ViewFile.aspx/20200316105259.pdf?Id=88d5541d-695f-4b27-ae43-2ce44d20a94f>

²⁸ Order, Investigation of an Emergency Moratorium on Disconnection Activities, Docket No. 2020-00081 (Mar. 16, 2020).

- On March 16th, the Governor Lawrence Hogan, Jr. of Maryland issued an executive order requiring all electric, gas, sewage disposal, telegraph, telephone, water, cable television, or internet utilities from terminating service in a dwelling unit or residence.²⁹
- On March 16th, the Virginia State Corporation Commission issued an order requiring all electric, gas, water, or sewer utilities to suspend disconnection of service to any customer.³⁰
- Public service commissions in Wisconsin and Pennsylvania have issued similar orders to prohibit public water systems from shutting off service during the pandemic.³¹

While the city of Detroit has agreed to reconnect water service for residents previously shutoff, and to suspend shutoffs until the end of the pandemic, to the knowledge of the Applicants no other public water systems has taken similar steps to ensure its residents have access to drinking water during this pandemic. However, water affordability is an issue that impacts all Michiganders. A recent study by the University of Michigan found that “[water] unaffordability is a regional issue” and low-income residents in Wayne, Oakland, and Macomb counties reported paying on average 10% of their household income for water services.³² This is

²⁹ Order of the Governor of the State of Maryland Prohibiting Termination of Residential Service and Late Fees, (Mar. 16, 2020), available at <https://governor.maryland.gov/wp-content/uploads/2020/03/Executive-Order-Prohibit-Termination-of-Residential.pdf>

³⁰ Order Suspending Disconnection of Service and Suspending Tariff Provisions Regarding Utility Disconnections of Service, Case No. PUR-2020-00048, (Mar. 16, 2020), available at http://www.scc.virginia.gov/newsrel/r_noshutoff_20.pdf

³¹ Chris Hubbuch, Wisconsin utilities ordered to maintain residential service during health emergency, Wisconsin State Journal, (Mar. 14, 2020), available at https://madison.com/wsj/news/local/govt-and-politics/wisconsin-utilities-ordered-to-maintain-residential-service-during-health-emergency/article_fb6a4d5d-22cb-5a1c-a4cb-1da81a5fdad3.html

³² Dahlia Rockowitz, Chris Askew-Merwin, Malavika Sahai, Kely Markley, Cria Kay, Tony Reames, Water Insecurity in Southeast Michigan: The Impacts of Unaffordability and Shutoffs on Resident Well-Being, (Apr. 2018), available at https://deepblue.lib.umich.edu/bitstream/handle/2027.42/143169/Roadmap%20to%20Water%20Security_320%20%281%29.pdf?sequence=1&isAllowed=y

more than triple the United Nations' affordability threshold, which is 3% of household income.³³

The issue of water affordability is also present outside of metro-Detroit. In 2016, a report found that Flint paid some of the highest water rates in the nation, making drinking water unaffordable for many residents.³⁴

B. LAWS/RULES/ORDERS

1. MCL 333.2251

(1) Upon a determination that an imminent danger to the health or lives of individuals exists in this state, the director immediately shall inform the individuals affected by the imminent danger and issue an order that shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. The order shall incorporate the director's findings and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.

(2) Upon failure of a person to comply promptly with a department order issued under this section, the department may petition the circuit court having jurisdiction to restrain a condition or practice which the director determines causes the imminent danger or to require action to avoid, correct, or remove the imminent danger.

(3) If the director determines that conditions anywhere in this state constitute a menace to the public health, the director may take full charge of the administration of applicable state and local health laws, rules, regulations, and ordinances in addressing that menace.

(4) If the director determines that an imminent danger to the health or lives of individuals in this state can be prevented or controlled by the promulgation of an emergency rule under section 48(2) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.248, to schedule or reschedule a substance as a controlled substance as provided in part 72, the director shall notify the director of the department of licensing and regulatory affairs and the administrator of his or her determination in writing. The notification shall include a description of the substance to be scheduled or rescheduled and the grounds for his or her determination. The director may provide copies of police, hospital, and laboratory reports and other information to the director of the department of licensing and regulatory affairs and the administrator as considered appropriate by the director.

³³ United Nations, Water, available at <https://www.un.org/en/sections/issues-depth/water/>

³⁴ Food and Water Watch, The State of Public Water in the United States, (Feb. 2016), available at https://www.foodandwaterwatch.org/sites/default/files/report_state_of_public_water.pdf

(5) *As used in this section:*

(a) *"Administrator" means that term as defined in section 7103.*

(b) *"Imminent danger" means a condition or practice exists that could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.*

(c) *"Person" means a person as defined in section 1106 or a governmental entity.*

2. MCL 333.2253

(1) If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.

(2) If an epidemic described in subsection (1) involves avian influenza or another virus or disease that is or may be spread by contact with animals, the department of agriculture shall cooperate with and assist the director in the director's response to the epidemic.

(3) Upon request from the director, the department of agriculture shall assist the department in any review or update of the department's pandemic influenza plan under section 5112.

C. ISSUES

Governor Gretchen Whitmer and the Michigan Department of Health and Human Services have recommended that all residents frequently wash their hands and limit their interactions with other persons in order to prevent the spread of the COVID-19 pandemic. As such, the relevant issues are:

- Whether the lack of water service by public water systems to residents during the COVID-19 pandemic constitutes an “imminent danger” as defined in MCL 333.2251 both in regards to those persons without water service as well as all Michigan residents requiring the health director to take “immediate action” to order all public water systems

to restore water service to all residents, and to prohibit any shutoff of water service during the COVID-19 pandemic.

- Whether the spread of COVID-19 constitutes an “epidemic” that requires the health director to issue an emergency order to all public water systems to restore water service to all residents, and to prohibit any shutoff of water service during the COVID-19 pandemic in order to “insure continuation of essential public health services” as defined by statute.

D. ANALYSIS AND CONCLUSION

The current COVID-19 epidemic within the state, and pandemic globally, and the State of Michigan’s response necessitates residential running water for all individuals and residents to wash their hands in order to prevent the spread of the Virus. MCL 333.2253 directly provides that:

If the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose **and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws.** Emergency procedures shall not be limited to this code.

MCL 333.2253(1) (emphasis added).

In addition, MCL 333.2251 provides in relevant part:

Upon a determination that an imminent danger to the health or lives of individuals exists in this state, the director immediately shall inform the individuals affected by the imminent danger and issue an order that shall be delivered to a person authorized to avoid, correct, or remove the imminent danger or be posted at or near the imminent danger. The order shall incorporate the director’s findings and require immediate action necessary to avoid, correct, or remove the imminent danger. The order may specify action to be taken or prohibit the presence of individuals in locations or under conditions where the imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove the imminent danger.

MCL 333.2251(1). The statute further provides that:

If the director determines that conditions anywhere in this state constitute a menace to the public health, the director may take full charge of the administration of applicable state and local health laws, rules, regulations, and ordinances in addressing that menace.

Id. at 333.2251(3). “Imminent danger” is defined as “a condition or practice that exists that could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.” MCL 333.2251(5)(b). Overall, the Director is given broad authority to issue orders and take drastic measures in order to protect the public from an epidemic and imminent danger or public menace.

Executive Order No. 2020-4 declared a state of emergency across the State of Michigan due to the outbreak of COVID-19 and its presence in Michigan. Executive Order No. 2020-4 states that the state of emergency is in place until “emergency conditions no longer exist and appropriate programs have been implemented to recover from any effects of the emergency conditions....” Executive Order 2020-11 further mandates that in order to “provide essential protections to vulnerable Michiganders and this state’s health care system and other critical infrastructure, it is reasonable and necessary to impose limited and temporary restrictions on large events and assemblages of people.” Accordingly the Order limits assemblages of more than 50 people, and orders the closure of all elementary and secondary school buildings in the state through April 5, 2020. *See* Executive Order 2020-11.³⁵ The Order further states that willful violation of these restrictions constitutes a misdemeanor offense.³⁶ Additionally, the Governor has issued a number of additional executive orders aimed at minimizing the spread of the

³⁵ Executive Order 2020-05 can be found online at: https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-521595--,00.html

³⁶ *Id.*

Virus.³⁷ Given the facts stated in these orders and the unprecedented measures taken to control the spread of the COVID-19 virus, clearly the State of Michigan considers COVID-19 an epidemic in Michigan pursuant to MCL 333.2253, and an imminent danger and public health menace to individuals pursuant to MCL 333.2251.

It is essential that Michigan residents have access to running water to wash their hands during the COVID-19 epidemic. Indeed, the World Health Organization published a technical brief that states:

Hand hygiene in non-health care settings is one of the most important measures that can be used to prevent COVID-19 infection. In homes, schools and crowded public spaces – such as markets, places of worship, and train or bus stations – regular handwashing should occur before preparing food, before and after eating, after using the toilet or changing a child’s diaper and after touching animals. Functioning handwashing facilities with water and soap should be available within 5 m of toilets.”³⁸

The very first step the CDC recommends for people to protect themselves is to “[w]ash your hands often with soap and water for at least 20 seconds....”³⁹ Likewise MDHHS has published its own Community Mitigation Strategies , and the first measure listed is “wash your hands often with soap and water....”⁴⁰

In the face of the ongoing outbreak, COVID-19 constitutes an epidemic, the control of which is necessary to protect the public health. Running water for washing hands has been recognized as essential to control the outbreak of COVID-19 by the CDC and the state of Michigan, and the Director should therefore order all public water systems to provide water

³⁷ Supra fn. 17-20.

³⁸ World Health Organization, Water, sanitation, hygiene and waste management for the COVID-19 virus, Technical Brief at p. 7 (March 3, 2020), found online at: <https://www.who.int/publications-detail/water-sanitation-hygiene-and-waste-management-for-covid-19>

³⁹ Center for Disease Control and Prevention, How to Protect Yourself, (emphasis in original), found online at: <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>

⁴⁰ Michigan.gov, Coronavirus Community Mitigation Strategies, found online at: https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98155-521467--,00.html

service to all Michigan residents regardless of their ability to pay in order to “insure continuation of essential public health services” pursuant to MCL 333.2253.

Additionally, the inability of residents to wash their hands due to a lack of water service at their residence presents an “imminent danger to the health and lives of individuals” and a public health menace. Depriving residents of water service in their homes renders such residents virtually incapable of washing their hands, which increases the likelihood of spreading the virus which in turn will lead to increased rates of death, disease, and serious physical harm. Thus, an order requiring all public water systems provide service to residents regardless of their ability to pay is necessary to prevent an “imminent danger” and a menace to public health pursuant to MCL 333.2251.

It is important to emphasize that the lack of water service at people’s households presents a severe public health risk not only for the members of that household, but for all residents of Michigan. The CDC recommends that people avoid close contact with people and to keep distant from other people if COVID-19 is spreading in the community.⁴¹ Recognizing this risk, Executive Order 2020-05 will also have the effect of confining people to their homes with their families as much as possible. MDHHS has also recommended that people practice “social distancing” and to “**STAY HOME WHEN YOU ARE SICK.**”⁴² Where water shut offs have occurred, and where they will continue, people will be forced to travel to wash their hands and person, and to obtain water for drinking and cooking even if they have contracted COVID-19.⁴³

⁴¹ Center for Disease Control and Prevention, How to Protect Yourself, found online at: <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>

⁴² Michigan.gov, Coronavirus Community Mitigation Strategies, found online at:

https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98155-521467--,00.html

⁴³ More than half of low-income residents surveyed reported purchasing bottled water as a way to cope with unaffordable water bills. Dahlia Rockowitz, Chris Askew-Merwin, Malavika Sahai, Kely Markley, Cria Kay, Tony Reames, Water Insecurity in Southeast Michigan: The Impacts of Unaffordability and Shutoffs on Resident Well-Being, (Apr. 2018), available at

This travel will increase person-to-person contact and increase the risk and spread of COVID-19. Additionally, there are currently serious strains on the supply of bottled water, which may make it unavailable for many residents that have had their water shutoff by their public water system.⁴⁴ For this reason, in addition to the reasons described above, the Director must issue an order pursuant to MCL 333.2253 requiring all public water systems to provide water service to all Michigan residents regardless of their ability to pay. Likewise, forcing the hardship of traveling and purchasing bottled water constitutes a menace to public health and imminent danger to the health of individuals in Michigan pursuant to MCL 333.2251 by causing increased person-to-person contact, thus providing another statutory justification for the order requested herein.

For all of the foregoing reasons, and because time is of the essence in this unprecedented ongoing public health crises, we respectfully request the Director issue an order pursuant to MCL 333.2253 and 333.2251 to ensure that the health of all Michiganders is protected during the COVID-19 pandemic. We acknowledge that pursuant to Mich. Admin. Code, R 325.1211(4), MDHHS has 60 calendar days within its receipt of this request to respond to the Applicants. Given the urgency of this matter, we implore MDHHS to take action immediately in order to slow the spread of COVID-19 and to prevent catastrophic harm that will befall many Michiganders as a result. Once again, this order should specifically require:

- All public water systems in Michigan to immediately begin supplying water to any and all households that have previously had their water service terminated for any reason;

https://deepblue.lib.umich.edu/bitstream/handle/2027.42/143169/Roadmap%20to%20Water%20Security_320%20%281%29.pdf?sequence=1&isAllowed=y

⁴⁴ Charisse Jones and Kelly Tyko, Preparing for coronavirus: Shoppers are finding empty shelves, long lines at stores nationwide, USA Today, (Mar. 13, 2020), available at <https://www.usatoday.com/story/money/2020/03/13/coronavirus-toilet-paper-selling-out-costco-walmart-target/5041064002/>

- For any customer that has been disconnected from water service at any time or is currently delinquent regarding any water or sewerage bill, require any and all public water systems to provide water service at a flat rate no greater than \$25 per month for as long as COVID-19 is classified as a pandemic by the World Health Organization. Public water systems shall not assess or collect any deferred payments for water service provided to residents during the COVID-19 pandemic that are eligible for a reduced pandemic rate;
- Prohibit all public water systems from terminating water service to any households for as long as COVID-19 is classified as a pandemic by the World Health Organization;
- Upon the reconnection of water to a household that was previously shutoff, require the public water system to ensure that the water being provided is compliant with state drinking water standards.

Respectfully submitted,

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