

**TESTIMONY OF
LAWRENCE LEVINE
DIRECTOR, URBAN WATER INFRASTRUCTURE & SENIOR ATTORNEY
NATURAL RESOURCES DEFENSE COUNCIL**

**BEFORE THE
NEW JERSEY STATE SENATE
COMMUNITY AND URBAN AFFAIRS COMMITTEE**

**IN SUPPORT OF A. 4126 AND S. 2526
(PERMITS LOCAL UNITS AND AUTHORITIES TO WAIVE INTEREST AND
LIEN ENFORCEMENT FOR CERTAIN DELINQUENT WATER AND SEWER
UTILITY PAYMENTS DURING EMERGENCY CIRCUMSTANCES)**

JUNE 10, 2020

Good afternoon Chairman Singleton and members of the Committee. I am Lawrence Levine, Director of Urban Water Infrastructure and Senior Attorney at the Natural Resources Defense Council (NRDC). Thank you for the opportunity to testify today, on behalf of NRDC's approximately 70,000 members and online activists in New Jersey. I offer NRDC's support for A. 4126 (as passed by the Assembly) and S. 2526, but also call on the Legislature to go much further to ensure uniform protections for residential water customers statewide during the COVID-19 crisis.

One of the most important public health recommendations to prevent the spread of COVID-19 is to wash hands frequently. But people cannot do this, in their own homes, if their water is shutoff for non-payment of a water bill. Yet, as described in further detail below, the economic fallout from COVID-19 puts hundreds of thousands of New Jersey families at risk of shutoff in the coming weeks or months. And some families may be without water service even now, having been disconnected for non-payment before the COVID-19 crisis began.

A. 4126 and S. 2526 authorize publicly-owned water and wastewater utilities to waive interest charges on late payments (including the exorbitant 18% annual interest rate mandated by state law for some utilities) and to forgo placing liens on property for overdue bills, during and for 90 days after a public health emergency or state of emergency such as the current COVID-19 pandemic.¹

This legislation is a step in the right direction to help protect access to life-saving water service during the COVID-19 crisis. **However, NRDC strongly urges the Legislature to go much further and establish mandatory protections for the residential customers of all water and wastewater utilities** (whether publicly owned or privately owned), including a prohibition

¹ A. 4126 / S. 2526 also authorize suspension of disconnections for non-payment. However, current law clearly gives water and wastewater utilities discretion as to whether to disconnect service in cases of non-payment. In regard to disconnections, the only thing these bills appear to change in existing law is that a water or wastewater utility that suspends disconnections during the emergency period would be required to apply that suspension "consistently to all properties, or to all properties of the same use type or other appropriate category."

shutoffs, interest charges, liens, and other collections activities during and for at 120 to 180 days beyond the state of emergency, and a guaranteed opportunity for extended repayment of past due bills after the shutoff moratorium ends.

The Legislature should also identify resources to help residential customers pay arrears after the shutoff moratorium ends. Even an extended repayment plan will not be enough to make water bills affordable for many households. For example, a portion of available state and federal COVID-19 relief funds should be made available for low-income water customer assistance.

The state may also need to devote resources – and work to secure federal resources – to ensure that water and sewer systems maintain sufficient operating revenues while protecting customers. Due to the substantial economic impact of COVID-19, many utilities expect to experience significant decline in the operating revenue they need to keep water flowing through the tap to all of their customers. Without relief from the state and/or federal governments, tied to customer protections, this revenue shortfall can not only threaten the short-term financial stability of some systems, but can also create financial pressure to defer or forgo capital improvements that our aging water and sewer systems so desperately need.

A committee of the Jersey Water Works collaborative which I co-chair, which is comprised of representatives from the water utility, business, labor, and non-profit sectors, made substantially all of these same recommendations in April 2020. A copy of those recommendations are attached to my testimony.²

Finally, we must recognize that the COVID-19 crisis and its severe economic fallout are shining a spotlight on significant challenges that low-income households in New Jersey faced long before COVID-19, which will continue even after a post-COVID economic recovery. Among these is the rising cost of basic water and sewer service, relative to household income, for low-income families. In 2018, the Joint Legislative Task Force on Drinking Water Infrastructure recognized that this water affordability challenge is not only detrimental to low-income households – e.g., by putting them at risk of shutoffs or leaving them to choose each month between paying for their rent or groceries or utilities – but also inhibits efforts to raise funds for necessary investments in local water and sewer systems.³

Therefore, I am attaching here a copy of testimony I delivered in the last session of the Legislature to the Assembly Telecommunications and Utilities Committee, recommending additional steps that the Legislature should take to help ensure that everyone in New Jersey has

² Jersey Water Works Asset Management & Finance Committee, Memo to Governor Phil Murphy re “COVID Response Recommendations to Ensure Universal Access to Clean Water,” April 17 2020, <https://www.jerseywaterworks.org/wp-content/uploads/2020/04/Jersey-Water-Works-AMF-Cmte-COVID-19-Response-Recommendations-4-17-20.pdf>. See also J. Kenny & M. Mauriello, “Op-Ed: Now More than Ever, Our Health Depends on Access to Clean Water,” NJ Spotlight, June 9, 2020, <https://www.njspotlight.com/2020/06/op-ed-now-more-than-ever-our-health-depends-on-access-to-clean-water/>.

³ The Joint Legislative Task Force on Drinking Water Infrastructure, Final Report, January 16, 2018, p. 16, http://www.njleg.state.nj.us/legislativepub/reports/tdwi_final_report.pdf.

affordable access to clean, safe, water and sewer service that protects their health and environment, at all times, not only during the pandemic.⁴

I also commend to your attention a 2019 report from the Jersey Water Works collaborative, which explains the water affordability challenges facing low-income customers in New Jersey and presents a range of policy options to address these challenges, many of which can be acted upon by the Legislature.⁵ One immediate step that the Legislature could take is to pass S.1457 / A.2846, to explicitly authorize publicly-owned water and wastewater utilities to offer low-income discounts. In the last legislative session, that legislation (numbered A.3864 / S.276) passed the Senate and passed out of all relevant Assembly committees. I urge the Legislature to prioritize it for speedy passage in the current session.

Below is my further testimony concerning the customer protections that the Legislature should enact for the COVID-19 crisis, specifically.

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The impacts of COVID-19 are still being felt across the state, but not all New Jerseyans are affected in the same way. Low-income customers and families experiencing unemployment are at the greatest risk of being unable to afford to pay their water bills – and, therefore, at greatest risk of having their water disconnected. Available data from other states suggest that many hundreds of thousands, and perhaps more than a million, New Jerseyans are already behind on their water and sewer bills, accumulating substantial arrears that would subject them to shutoff at their utility’s discretion without guaranteed protections from the state.⁶

By the end of April, over 750,000 people in the state were newly unemployed due to the economic fallout of COVID-19.⁷ These New Jerseyans, and others who have lost work since then, will need significant time to regain their financial footing when the state begins an

⁴ Testimony of L. Levine, NRDC, Before the Assembly Telecommunications and Utilities Committee, in Support of A. 3864 and S. 276 (Permitting Reduced Water and Sewerage Service Rates for Low-Income Persons), Dec. 3, 2018.

⁵ Jersey Water Works, “Promoting Affordability of Public Water and Sewer Service for Low-Income Households in New Jersey: Policy Options,” April 2019, <https://www.jerseywaterworks.org/wp-content/uploads/2019/04/Final-Affordability-Report-JWW-AMF.pdf>.

⁶ For example, data from North Carolina (a state with a population 18% larger than New Jersey, but with a less severe rise in unemployment in April) show that, by the end of April, over 770,000 people in that state lived in households that had fallen behind on their water bills. About half that number were far enough behind that they became eligible in April to be disconnected for non-payment, but avoided shutoff because of a state moratorium on water shutoffs. Many of the rest who had overdue bills at the end of April were likely to become eligible for shutoff in May; the state is expected to release next week its monthly data from May. Residential water customers had accumulated over \$38 million in arrears at the end of April. See L. Levine, “Data Show Millions at Risk of Water Shutoff During COVID-19,” May 7, 2020, updated May 19, 2020, <https://www.nrdc.org/experts/larry-levine/data-show-millions-risk-water-shutoffs-during-covid-19>; and North Carolina Justice Center, et al., Letter to North Carolina Governor Roy Cooper, dated May 19, 2020, https://appvoices.org/images/uploads/2020/05/Revised-Moratorium-Letter-to-Gov.-Cooper_-5_26_20.pdf.

⁷ S. Marcus, “N.J. unemployment rate soars to 15% as coronavirus slams labor market,” NJ.com, May 21, 2020, <https://www.nj.com/coronavirus/2020/05/nj-unemployment-rate-soars-to-15-as-coronavirus-slams-labor-market.html>.

economic recovery – including time and, in many cases, additional financial assistance, to get current on their water and sewer bills.

On March 31, 2020, Governor Murphy reported that all of the state’s nearly 600 drinking water utilities have committed to suspending shutoffs “throughout this emergency.”⁸ However, unlike at least 15 other states, New Jersey has not adopted a mandatory, statewide moratorium on water shutoffs during the COVID-19 pandemic.⁹ **This situation leaves it to each individual utility to decide when to resume disconnecting people’s water for non-payment.**

Additionally, the Governor did not receive commitments from 100% of water utilities to reconnect accounts previously shutoff for non-payment. No state agency has required utilities to report on whether they have done such reconnections, or whether anyone remains without water due to non-payment.

This situation calls for urgent action by the Legislature to enact uniform, statewide protections that ensure universal access to public water and sewer service. Specifically, the Legislature should, either through amendment to A.4126 / S.2526 or through the speedy introduction and passage of additional legislation, do the following:

1. **Establish a water shutoff moratorium:** Prohibit all residential water shutoffs for the duration of the COVID-19 crisis, extending until 120 to 180 days after the end of the declared health emergency, to allow people to regain their financial footing.
2. **Require safe and immediate reconnections:** Require all water utilities to safely reconnect service, as quickly as possible, to all currently occupied homes that were previously disconnected due to nonpayment, proactively and without the need for a customer to make a specific request.
3. **Waive interest charges on late payments, suspend other collections activities, and ensure opportunities for extended repayment plans:** During the shutoff moratorium, prohibit water and wastewater utilities from assessing late fees, interest, and related charges; using liens (including the placement, sale, and enforcement of liens) as a collection practice; reporting unpaid bills to any consumer reporting agency; and selling unpaid receivables to private collection agencies. Require utilities to offer extended repayment plans after the crisis.

Yesterday, NRDC joined over two dozen organizations on a letter calling on the Legislature to enact these protections.

Additionally, the Legislature should require water and wastewater utilities to provide ample notice to customers of the above protections, report on their compliance, and report data on customer arrears, avoided shutoffs, and other data relevant to understanding the financial

⁸ See <https://twitter.com/GovMurphy/status/1245038824285245442>. NJDEP Commissioner McCabe made the same statement at the Governor’s daily press briefing that day.

⁹ The 15 states (plus the District of Columbia and Puerto Rico) that adopted statewide water shutoff moratoria are listed here: <https://www.nrdc.org/experts/larry-levine/governors-safe-clean-water-essential-covid-19-crisis>.

implications of COVID-19 on both customers and the utility. Several other states are starting to require utilities to report this information. We would be pleased to provide more detailed recommendations for such reporting requirements.

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Thank you very much for the opportunity to testify today. NRDC looks forward to working with the Committee and the Legislature to help ensure that everyone in New Jersey has affordable access to safe, clean water and sanitation, throughout the COVID-19 pandemic and beyond.

I would welcome the opportunity to discuss NRDC's recommendations further with you. I can be reached by email at llevine@nrdc.org, and by phone at (212) 727-4548.



To: Governor Phil Murphy
Cc: Lt. Governor and Dept. of Community Affairs Commissioner Sheila Y. Oliver
NJ Dept. of Environmental Protection Commissioner Catherine R. McCabe
NJ Board of Public Utilities President Joseph L. Fiordaliso
From: Jersey Water Works Asset Management & Finance Committee
Date: April 17, 2020
Re: COVID Response Recommendations to Ensure Universal Access to Clean Water

**Jersey Water Works Asset Management & Finance Committee,
Affordability Subcommittee - COVID Response Recommendations**

We understand the stress New Jersey is currently under, bearing a heavy burden of the global COVID-19 pandemic. Over the past month, we have seen the state emerge as a leader in the country and in the world in fighting the spread of COVID-19. Building on your actions to date, we urge you to embrace a similarly strong approach in ensuring that all New Jerseyans have access to clean water during this critical time. We offer below a set of specific recommendations on which you and your administration can act now.

The COVID-19 outbreak is having a tremendous impact on individuals, communities and businesses throughout the state of New Jersey. However, not all New Jerseyans are affected in the same way. Individuals whose water is shut off are unable to follow public health guidelines, like hand washing, to keep themselves safe and prevent the spread of the virus. And everyone needs running water to meet basic needs for drinking, cooking, sanitation, and hygiene when sheltering at home. Low-income customers and individuals out of work are at the greatest risk of being unable to afford to pay their water bills -- and, therefore, at greatest risk of shutoff.

Additionally, due to the substantial economic impact of COVID-19, many utilities anticipate significant decline in the operating revenue they need to keep water flowing through the tap to all of their customers. Precipitous drops in non-residential demand due to business closures, and decreased collections from residential customers due to financial distress, will make this result inevitable for many utilities.

In the face of this crisis, the [Jersey Water Works](#) Asset Management and Finance Committee makes the following recommendations to the Murphy Administration for immediate action, to help address the inequitable public health, safety, economic, and social impacts of COVID-19 throughout the state during and immediately following the outbreak. The Committee is also developing recommendations for medium-term action that both the Administration and Legislature can take to address underlying water affordability challenges, which predated COVID-19 and will remain (likely more severely) after the immediate public health emergency ends.

I. Relief program for low-income customers

The state has secured voluntary commitments to suspend the use of shutoffs from the vast majority of water utilities, though it is unclear whether 100% of New Jersey's nearly 600 utilities are included and whether the utilities' commitments include reconnection of people previously disconnected. (See Appendix at the end of this document.) The state also has not addressed how it will ensure that anyone awaiting reconnection has access to bottled water to meet their immediate needs.

Further, relief for low-income customers requires ensuring that they are not again at the brink of shutoff for non-payment after the public health emergency ends, when the economic fallout continues. Many will face accumulated arrears, and many will remain unable to pay future bills until they regain their financial footing. Therefore, relief to customers must extend beyond shutoff moratoria during the health emergency and reconnection of people previously disconnected; it must also provide relief from the lasting economic impacts of COVID-19 that threaten their access to water.

In light of these concerns, we recommend that the state take the following actions, as soon as possible, invoking the Governor's emergency powers via executive order or using other relevant legal authorities:

1. **Ensure that all water utilities:**
 - a. **Suspend shut-offs** during the COVID-19 outbreak extending until 120-days after the end of the declared health emergency to allow people time to regain their financial footing. This action would apply to shutoffs related to nonpayment of water utility bills, and also shutoffs related to nonpayment of sewer bills where the sewer utility requests shutoff by the water utility.
 - b. **Safely reconnect all occupied homes** without water as quickly as possible, proactively and without the need for a customer to make a specific request.
 - c. **Make sure utilities waive late fees, interest, and related charges, suspend the use of liens as a collection practice, and provide extended repayment plans after the crisis.** This includes temporarily suspending the statutory requirement that certain water and sewer utilities charge 18% interest per annum on overdue water and sewer bills (N.J.S.A. § 40:14A-21; N.J.S.A. § 40:14B-21), as well as any other applicable laws that require water or sewer systems to charge interest on overdue bills (e.g., N.J.S.A. 40A:31-12).
2. **Use a portion of available state and federal COVID-19 relief funds to help customers pay arrears after the shutoff moratorium ends.** This may include coordination among the Governor's Office, Treasury, NJDCA, BPU, NJIB, NJDEP, NJOEM, and other state agencies to:
 - a. **Ensure that NJSHARES, in collaboration with its partner organizations, has sufficient funding** to address post-moratorium needs.

- b. **Ensure that any housing assistance or State emergency assistance funds are made available** to help with water utility bills.
 - c. **Explore the use of FEMA emergency relief funds** to provide water assistance, either directly to individual customers or via payments to utilities to reduce customers' arrears.
 - d. **Urge New Jersey's Congressional delegation to seek funds in the next federal stimulus bill**, which was proposed in the House version of the most recent stimulus but was not included in the final bill.
3. **Where necessary, establish emergency water distribution stations** for households waiting for their water to be turned back on.

II. Relief program for water and wastewater utilities

The following recommendations address the potential revenue implications of COVID-19 for the water and wastewater utility sector.

1. **Use a portion of available state and federal COVID-19 relief funds to offset water and wastewater utilities' lost operating revenues.** Set ranking criteria to identify utilities most in need, based on factors that could include: the portion of a utility's service area that represents an economically disadvantaged community, whether the utility generates a large percentage of its revenue from non-residential customers that were closed during the health emergency, and the percentage of a utility's financial reserves or annual revenues available to address COVID-19 impacts. The State should condition utilities' receipt of relief funds on (i) compliance with the "customer relief" provisions described above, and (ii) a commitment to identify and implement common-sense measures that reduce non-personnel operational expenses and increase efficiency.
 - a. **Consider using federal grant funds for this purpose**, from sources such as Community Service Block Grants (which received additional funds through the most recent federal stimulus bill), the state and local government "Coronavirus Relief Fund" from the most recent federal stimulus bill, or Stafford Act emergency funds from FEMA.
 - b. **Urge New Jersey's Congressional delegation to seek funds in the next federal stimulus bill.**
2. **Suspend the state law (known as Robert's Rule. N.J.S.A. § 40A:5A-12.1) that allows up to 5% of the annual operating costs of a municipal utility authority or sewerage authority to be diverted to the general fund of a municipality** where the authority has anticipated revenue in excess of anticipated expenditures. Given the impacts of COVID-19, few if any authorities or other utilities should expect to have any excess revenues, and those excess revenues that are not utilized for operating expenditures

need to be re-invested in capital upgrade projects and asset management optimization measures.

3. ***Encourage public water and sewer utilities to identify and implement common-sense measures to reduce non-personnel operational expenses to offset potential revenue shortfall.***
4. ***Encourage public water and sewer utilities to refinance existing NJ Infrastructure Bank loans through NJIB***, where doing so would significantly reduce debt servicing costs, and require that the resulting interest savings go towards the utility's or system's budget rather than the general municipal budget.

Thank you for your consideration of these recommendations. For more information or to discuss them further, please contact Jersey Water Works backbone staff person Lauren Belsky at NJ Future (lbelsky@njfuture.org) or Larry Levine, Asset Management & Finance Committee Co-Chair (llevine@nrdc.org).

[Jersey Water Works](#) is a collaborative effort of many diverse organizations and individuals who embrace the common purpose of transforming New Jersey's inadequate water infrastructure by investing in sustainable, cost-effective solutions that provide communities with clean water and waterways; healthier, safer neighborhoods; local jobs; flood and climate resilience; and economic growth. The Jersey Water Works Asset Management and Finance Committee advances policies and practices to ensure that communities maintain and improve drinking water, wastewater and stormwater infrastructure systems to deliver quality water services that meet community needs; and that utility operating budgets and capital investment are adequate and affordable, resulting in systems that operate efficiently and in a state of good repair.

APPENDIX: Previous New Jersey state action and utility commitments regarding water shutoffs and reconnections during the COVID-19 crisis

On March 20, DEP, DCA, and BPU jointly requested that “every water system private or public, including those operated by our municipal governments, commit to a suspension of any water shutoffs for reasons of non-payment, safe reconnection of anyone previously shutoff, and a suspension of the use of liens as a collection practice until the outbreak of COVID-19 has subsided.”¹

On March 31, 2020, Governor Murphy and NJDEP Commissioner McCabe announced that 100% of “municipal water companies” have committed to “voluntarily halting all service shutoffs throughout this emergency.”² However, this announcement did not refer to any commitment to reconnections or to suspending the use of liens. The statement also referred only to “municipal water companies” – not to privately-owned ones.³

Earlier news reports stated that New Jersey American Water, SUEZ, Aqua New Jersey, and Middlesex Water, the state’s four largest privately-owned water utilities, had adopted voluntary shutoff moratoria and were working to reconnect people previously disconnected.⁴ However, there are approximately ten other BPU-regulated privately owned water utilities in New Jersey, which collectively serve (as of 2015) approximately 25,000 customers.⁵

¹ <https://nj.gov/dca/news/news/2020/approved/20200320c.html>

² See Governor Murphy’s tweet here: <https://twitter.com/GovMurphy/status/1245038824285245442>. Commissioner McCabe made the same statement at the Governor’s daily press briefing that day.

³ The statement also did not specify whether the “municipal water companies” that have made the commitment include only those that are owned by “local unit” (i.e., a municipal government such as a city, borough, town, township, or village), or also included those owned by a municipal utilities authority, which are legal entities distinct from the local units of government.

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<https://www.nj.com/news/2020/03/water-wont-give-you-covid-19-how-nj-treatment-plants-are-handling-pandemic.html>

⁵ Data provided by BPU to Natural Resources Defense Council, dated July 7, 2017. <https://drive.google.com/open?id=1zHIVLCTG5aTKrslmIZB4BybWNRvnPT9T>

**TESTIMONY OF
LAWRENCE LEVINE
DIRECTOR, URBAN WATER INFRASTRUCTURE & SENIOR ATTORNEY
NATURAL RESOURCES DEFENSE COUNCIL**

**BEFORE THE
NEW JERSEY STATE ASSEMBLY TELECOMMUNICATIONS AND UTILITIES COMMITTEE**

**IN SUPPORT OF A. 3864 AND S. 276
(PERMITTING REDUCED WATER AND SEWERAGE
SERVICE RATES FOR LOW-INCOME PERSONS)**

DECEMBER 3, 2018

Good morning Chairman DeAngelo and members of the Committee. I am Lawrence Levine, Director of Urban Water Infrastructure and Senior Attorney at the Natural Resources Defense Council (NRDC). Thank you for the opportunity to testify today, on behalf of NRDC's over 76,000 members and online activists in New Jersey, in support of A. 3864 and S. 276, which would explicitly permit water and sewer utilities to provide reduced rates to low-income customers.

In my testimony, I would also like to call the Committee's attention to some additional steps that the Legislature should take, beyond passing this bill, to help ensure that everyone in New Jersey has affordable access to clean, safe, water and sewer service that protects their health and environment.

In sum, NRDC recommends that the Legislature:

- Adopt S. 276, as amended and passed by the Senate. The Senate's amendments: (1) revised the bill to address both water and sewer bills for low-income customers, (2) added language to ensure that the 2% "cap" on rate increases by sewerage authorities will not inhibit those utilities from adopting low-income water and sewer discount programs; and (3) made technical corrections to the bill.
- Move beyond authorizing utilities to create their own programs, by creating a statewide water affordability program, with the scale necessary to ensure all people across New Jersey can afford water and sewer service to meet their basic needs.
- Create new or improved mechanisms to ensure that water and sewer utilities' rate-setting, bill collection, and related activities consistently apply principles of transparency, equity, and consumer protection.
- Address the full suite of recommendations offered by the Joint Legislative Task Force on Water Infrastructure, which provide a holistic approach to improve New Jersey's water infrastructure in ways that are cost-effective and equitable for all residents.

* * * * *

NRDC is an environmental advocacy organization with more than 76,000 members and online activists in New Jersey, and more than 3 million nationwide. NRDC works to safeguard the earth – its people, its plants and animals, and the natural systems on which all life depends. We combine the power of our members and online activists with the expertise of some 500 scientists, lawyers, and policy advocates across the globe to ensure the rights of all people to the air, the water, and the wild.

I represent NRDC on the Steering Committee of the Jersey Water Works collaborative, which consists of over 450 members, representing the public, private and non-profit sectors, working together transform New Jersey's inadequate water infrastructure through sustainable, cost-effective solutions that provide communities with clean water; healthier, safer neighborhoods; local jobs; flood and climate resilience; and economic growth. NRDC's team of water experts at NRDC works on these same issues in states around the country and at the federal policy level.

In January of this year, New Jersey's Joint Legislative Task Force on Drinking Water Infrastructure issued its report and recommendations, which embraced many of the ideas offered by NRDC and other Jersey Water Works members. The Joint Legislative Task Force's report underscored the need for significant new investment in New Jersey's water, wastewater, and stormwater infrastructure to protect human health, economic well-being, and the environment. As Jersey Water Works also emphasized in a recent report of its own, this is an investment the state can't afford not to make.¹

The Joint Legislative Task Force recognized that a combination of federal, state, and local funding is needed and that, as communities in New Jersey inevitably raise their water and sewer rates to fund the local share of these investments, the state must act to ensure that water and sewer service remain affordable for all. Water infrastructure improvements are vital to the health of communities, but it is just as vital to ensure that funding mechanisms are fair and equitable.

To address this concern, the Joint Legislative Task Force recommended:

- Prioritizing economically distressed communities as recipients of state water infrastructure funding, to help keep the local share of infrastructure costs affordable.
- Enacting legislation establishing a statewide, low-income customer assistance program for water and sewer bills, similar to the State's household energy assistance program.
- Exploring legislation to authorize local, rate-funded customer assistance programs.

Further, many of the Task Force's other recommendations—such as improving asset management and limiting diversion of utility revenues to general municipal budgets—would help control costs for all water and sewer ratepayers.

A. 3864 and S. 276, which the Committee is considering today, would help to address the third recommendation above: authorizing local, rate-funded customer assistance programs. Although

¹ Jersey Water Works, "Our Water Transformed," 2017, <http://www.jerseywaterworks.org/our-work/watertransformed/>

further action is needed fully address that recommendation – and the Task Force’s broader suite of “affordability” recommendations – this bill is a step in the right direction, and NRDC supports its passage.

New Policies and Programs are Needed to Ensure that Water and Sewer Service Remains Affordable for Low-Income Households, Even as Utilities Generate Additional Local Revenue to Meet Clean Water Needs

We do not want to have in this state a two-tiered system where the wealthy get water that is clean and safe for their families, and the less well-to-do get second-class water, wastewater, and stormwater systems that pose risks to their health and environment. Rather, we need to create a system that ensures that all communities can afford to upgrade their water infrastructure and that everyone has affordable access to clean, safe, and sufficient water and sanitation for their families.

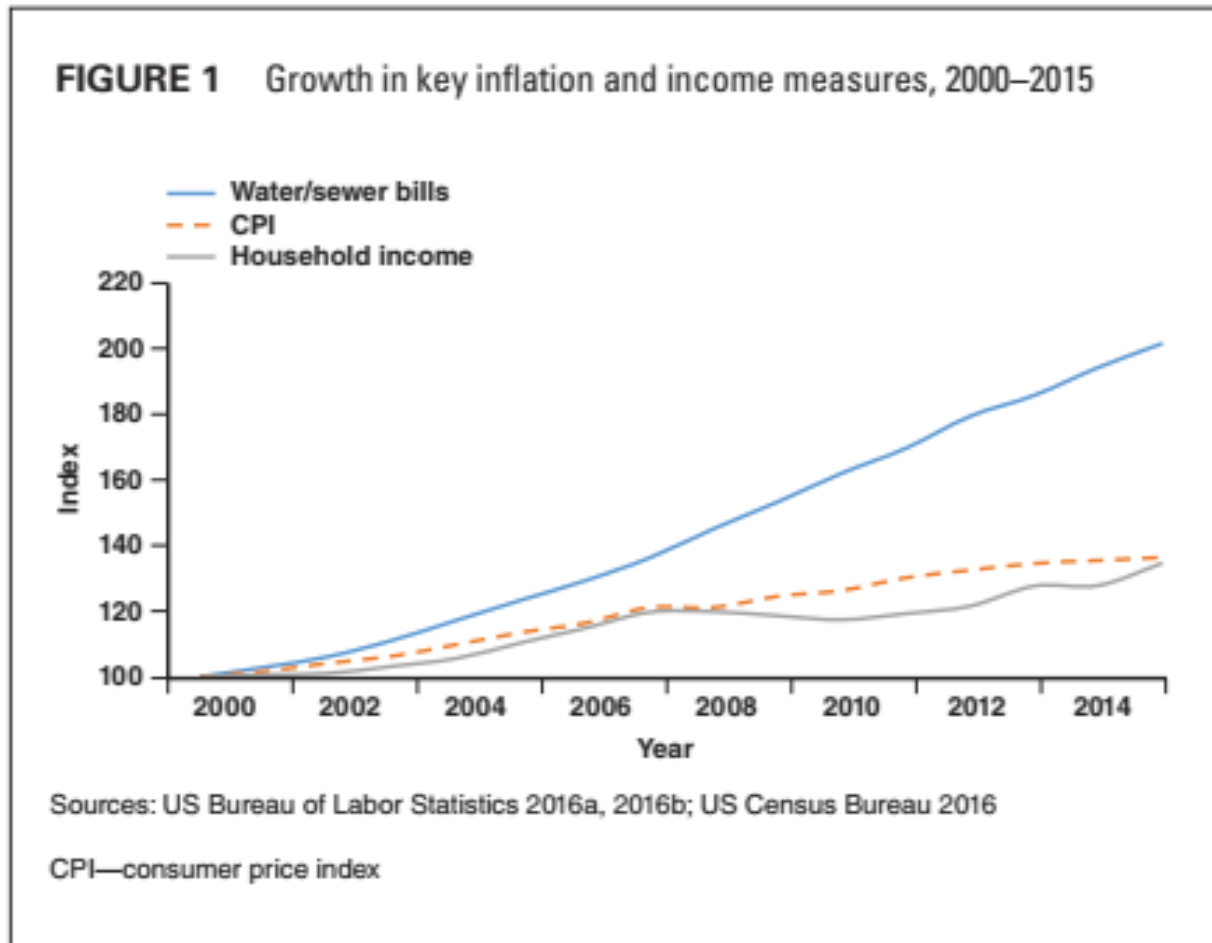
Capital investments in water and wastewater systems require local revenue streams – typically in the form of increased water and sewer rate rates.² When communities believe they are unable to raise rates without imposing undue burdens on those least able to pay, they will often seek to avoid or defer necessary investments. Conversely, when communities raise rates to pay for infrastructure improvements but do not have programs available to mitigate the effects on those least able to pay, low-, moderate-, and fixed-income customers can face unaffordable bills.

To sustainably generate the local rate revenues needed to provide 21st century water infrastructure, New Jersey must ensure that water and sewer service remains affordable for those least able to pay, even when a utility raises its rates.

Water and sewer rates have already been on the rise across the country. Over the last 15 years, increasing capital investment needs (and decreasing federal financial assistance) have caused water and wastewater rates to rise nationally at about twice the rate of both inflation and income growth. (See Figures 1 and 2 below.)

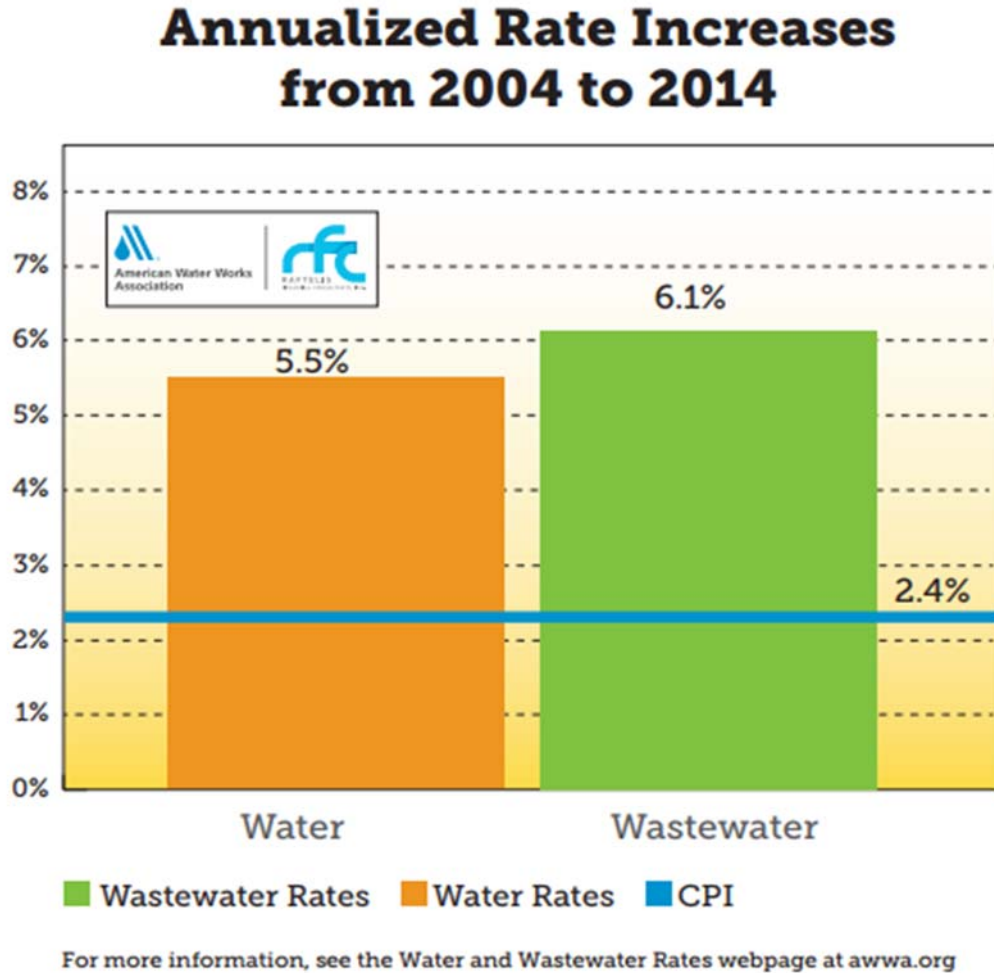
² In some cases, infrastructure investments can yield net savings for a utility by substantially reducing operating costs of outdated system components. However, on the whole, major new investment requires increased local revenues.

Figure 1. Growth in Water and Sewer Bills, CPI, and Household Income, 2000-2015.³



³ J. Mumm and J. Ciaccia, “Improving the Narrative on Affordability and the Measurements We Need to Take Us There” *Journal - American Water Works Association*, May 2017, <https://www.awwa.org/publications/journal-awwa/abstract/articleid/65274626.aspx>.

Figure 2. The Average Annual % Change in Cost of Drinking Water and Wastewater Charges vs. Consumer Price Index.⁴



There is no comparable, state-specific historical data available for New Jersey. But, as New Jersey reinvests in water infrastructure to protect public health and the environment, water and sewer bills will inevitably rise, making these basic services increasingly expensive – as a share of household income – for many people across the state.

Indeed, recent research sponsored by Jersey Water Works shows that, for many low-income New Jersey residents, the cost of basic amounts of water and sewer service already exceeds 4% of household income (an imperfect metric sometimes used as an indicator of affordability challenges).⁵ In nearly all communities across the state, there are some people for whom the cost

⁴ American Water Works Association, “Water and Wastewater Rate Summary Figures,” <https://www.awwa.org/resources-tools/water-and-wastewater-utility-management/water-wastewater-rates.aspx>, last visited 12/3/2017.

⁵ Van Abs and Evans, “Assessing the Affordability of Water and Sewer Utility Costs in New Jersey – Phase 1 Report: Methodology Review and Preliminary Assessment,” Sept. 2018, <https://www.jerseywaterworks.org/wp-content/uploads/2018/09/Van-Abs-and-Evans-2018.09.09-Assessing-Water-Sewer-Utility-Costs.pdf>.

exceeds that threshold. In some places, however, this is true for a very large share of the population. For example, in three counties (Essex, Hudson, and Camden), water and sewer costs exceed 4% of household income for all customers in the bottom 20 percent of county household income. At the municipal level, in 21 communities around the state, costs exceed that threshold for customers in the bottom 25 percent of income. Within some areas of concentrated poverty (e.g., at the census tract level), costs exceed that threshold for all customers except those in the top 20% of income.

Critically, the consequences of unaffordable water bills are not only financial. Unpaid bills can trigger water shutoffs; according to the Water Research Foundation, low-income households are three times more likely to have their water and/or sewer service disconnected than other households.⁶ Shutoffs, in turn, pose health risks and can lead to loss of housing and even temporary loss of custody of children, as well as property liens that ultimately lead to foreclosure on homes.⁷

Nearly all water and wastewater utilities, unlike electric, gas, and other public utilities, are not subject to oversight by the Board of Public Utilities, so most consumers have fewer protections from such consequences when they struggle to pay their water and sewer bills than they do when they cannot afford other utilities. Moreover, while low-income customer assistance programs are well-established for electric and gas customers – using a combination of federal funds (under the Low Income Home Energy Assistance Program block grant) and dedicated state funds (primarily the Universal Service Fund program, which is funded through and overseen by the Board of Public Utilities) – there are no such federally- or state-funded assistance programs for water and sewer customers, and local programs are scarce.

Experience in the energy sector shows that unaffordable bills for low-income households not only harm those particular households, but also adversely affect the financial stability of water and sewer systems as a whole, to the detriment of all ratepayers. Conversely, ensuring affordability not only helps low-income ratepayers – it helps all ratepayers, by improving a utility’s finances. For example, studies in Indiana and Colorado have shown that by offering affordable bill programs, utilities were able to generate increased customer revenues and/or increased “net back” (i.e., customer revenue minus bill collection costs).⁸

Leaders in the water and sewer utility sector are becoming more aware of these issues and beginning to take action. Some water and sewer utilities around the country – though by far a minority – are adopting low-income customer assistance programs. In a 2016 review of nearly 800 water and wastewater utilities,⁹ EPA found that 29 percent of them offered at least one type of low-income assistance program. But 71 percent of the utilities surveyed offered no customer

⁶ Cromwell, at al., “Best Practices in Customer Payment Assistance Programs,” Water Research Foundation, 2010, <http://www.waterrf.org/publicreportlibrary/4004.pdf>.

⁷ Jones, P., and Moulton, A., “The Invisible Crisis: Water Unaffordability in The United States,” Unitarian Universalist Service Committee, 2016, http://www.uusc.org/sites/default/files/the_invisible_crisis_web.pdf.

⁸ Colton, Roger D. “Water Bill Affordability for the City of Philadelphia,” 2015, pp. 4-7. <http://www.povertylaw.org/files/docs/Colton%20City%20Council%20comments--April%208%202015--Final.pdf>.

⁹ EPA, Office of Wastewater Management, *Drinking Water and Wastewater Utility Customer Assistance Programs* (April 2016), available online at https://www.epa.gov/sites/production/files/2016-04/documents/dw_utilities_cap_combined_508.pdf.

assistance program whatsoever, sidestepping responsibility to provide a basic safety net to ensure that the most vulnerable populations continue to receive an essential service. Moreover, of the customer assistance programs EPA identified, only about half were designed to provide long-term reduction in low-income customers' bills; those programs used approaches that are commonplace among energy utilities, such as bill discounts, "lifeline" rates, or water efficiency assistance (to reduce bills by reducing water usage).

In New Jersey, EPA's nationwide review identified only one water or sewer utility that provides ongoing assistance to low-income customers to reduce their water bills. Under a BPU-approved program funded by rate revenues, New Jersey American Water provides bill discounts and/or waivers of certain fixed charges to eligible customers. However, participation rates in this program have been very modest.¹⁰

The Legislature Should Adopt S. 276, as Amended and Passed by the Senate, to Authorize Water and Sewerage Utilities to Offer Reduced Rates to Low-Income Customers

Currently, publicly-owned water and sewer utilities are expressly allowed by statute to offer reduced rates to seniors, the disabled, and certain military service members on deployment. No other type of discount is expressly mentioned in state law. This may be taken to suggest that publicly-owned utilities cannot provide other discounts, such as a low-income customer discount. While this legal issue has never been tested, creating express statutory authorization for low-income water and sewer discounts is clearly a step forward, as it would remove any doubt on the issue.

The Legislature should adopt S. 276, as amended and passed by the Senate. A. 3864 and S. 276 were introduced with identical language authorizing reduced sewerage rates for low-income customers. The version passed by the Senate included an amendment to include water bills as well. Other amendments help ensure that the 2% "cap" on rate increases by sewerage authorities will not inhibit those utilities from adopting low-income water and sewer discount programs; and made technical corrections to the bill.

The Legislature Should Create a Statewide Water Affordability Program

Authorizing utilities to create their own low-income assistance programs, if they so choose, is a step in the right direction. However, there is a need to move well beyond this, by creating a statewide water affordability program, with the scale necessary to ensure all people across New Jersey can afford water and sewer service to meet their basic needs.

There are many ways in which authorizing utility-level programs is not, by itself, sufficient to ensure low-income customers can afford their water and sewer bills. For example:

- A. 3864 and S. 276 authorize, but do not require, utilities to adopt reduced rates for low-income customers. And it allows each utility to decide, on whatever basis it sees fit, how to define eligibility thresholds for the reduced rates, as well as how large a discount to

¹⁰ New Jersey American Water, "Low Income Program," <https://amwater.com/njaw/customer-service-billing/low-income-program>.

offer eligible customers. Therefore, where rate reductions are offered, they may fall well short of meeting the need for low-income customer assistance. And many places surely will not choose to offer a rate reduction at all.

- A. 3864 and S. 276 authorize reduced sewer charges, but in some municipalities the costs of sewer service are embedded within the property tax, without any separate “sewer service” line item charged to the property owner. In these places, it is not clear that reduced sewer rates could be offered to low-income households, as a practical matter.
- Utilities that serve a population with a very high percentage of low-income customers may lack a sufficient rate base to be able to cover the costs of a low-income discount for all eligible customers.
- A. 3864 and S. 276 apply only to one- and two-family dwellings. But a large percentage of New Jersey households live in multi-family buildings. And the state’s low-income residents, whose household budgets are most sensitive to utility expenses, are disproportionately represented among that group.
 - Addressing water and sewer affordability for residents of multi-family buildings – most of whom are renters – is especially challenging. These households typically are not “customers” of a water or sewer utility, but many of them indirectly bear the costs water and sewer service. Multi-family buildings are rarely sub-metered for water. In such buildings, the landlord is the water and sewer customer that receives and pays the bill. Therefore, water and sewer charges affect the residents’ cost-of-living only indirectly, if at all, as part of their rent. It is challenging – but important – to determine when these indirect water and sewer expenses impose an undue burden on low-income renters.¹¹ It is equally challenging – and important – to devise ways to ameliorate that burden, but this cannot be achieved by providing a reduced water or sewer rate to low-income “customers” because renters are not customers of the utility.¹²

For reasons such as these, New Jersey must develop a broader approach to water affordability, which is not limited exclusively to utility-scale programs. There is strong political support for developing a broader approach. In November 2017, NRDC joined representatives from 34 public-sector, private-sector and nonprofit organizations to urge Governor Murphy to embrace a comprehensive water agenda, which includes a call to “**launch a public process to recommend statewide policies and programs to ensure water and sewer services are affordable to all ratepayers.**”¹³ Supporters of this platform include leaders in the utility, environmental, community development, agriculture, municipal, smart growth, industry, engineering, resilience, and planning sectors.

¹¹ Some of these renters are likely sheltered from bearing the full cost of water and sewer service by various rent regulations that apply to public or subsidized affordable housing. Others are not, and their landlords can be expected to “pass on” their water and sewer costs to the extent the unregulated rental market will bear.

¹² A recent report by the Water Research Foundation offered some potential approaches. Water Research Foundation, “Customer Assistance Programs for Multi-Family Residential and Other Hard to Reach Customers,” 2017, <http://www.waterrf.org/Pages/Projects.aspx?PID=4557>.

¹³ <http://www.njfuture.org/news/news-releases/clean-water-agenda/>

The Joint Legislative Task Force on Drinking Water Infrastructure made a specific recommendation to enact legislation establishing a statewide, low-income customer assistance program for water and sewer bills, similar to the State’s household energy assistance program.

The Legislature should closely examine that recommendation and work to design a dedicated funding mechanism for such a program. This effort could be aided by creating a formal study process, bringing together key stakeholders with relevant state agency leadership to analyze alternatives and develop specific recommendations.

No state currently has a statewide water and sewer affordability program, but several state legislatures are moving in this direction. California passed a law several years ago requiring the development of a program – or recommendations for legislation needed to establish a program.¹⁴ Bills are pending in Michigan¹⁵ and Illinois¹⁶ that would direct creation of programs similar to low-income energy assistance programs, with details to be worked out by state agencies and/or stakeholders. New Jersey has an opportunity to be a national leader on this issue, and the Legislature can lay out the parameters for developing a program that works for this state.

Jersey Water Works members and committees recently completed one study, and are nearing completion of a second, that will aid in this effort. Earlier this year, Jersey Water Works released a report assessing household-level water and sewer affordability at the municipal, county, census tract, and utility service-area level, based on a comparison of utility rates with income data. And Jersey Water Works is nearing completion of a white paper reviewing legal and policy options to facilitate creation of low-income customer assistance programs. We will keep the Committee and the Legislature up-to-date as the white paper is completed.

I note that the Committee’s agenda today includes A. 2895, a bill to expand the “Lifeline Credit” and “Tenants’ Lifeline Assistance” programs to include water and sewer costs. Those programs currently provide assistance for gas and electric costs. Although A. 2895 would add water and sewer assistance to the programs, it would not increase the total amount of assistance received by eligible households; rather, it would split the existing per-household benefit across electric, gas, water, and sewer costs, rather than simply gas and electric. In other words, the new water and sewer benefit would come at the expense of an equivalent decrease in the gas and electric benefit. Existing low-income assistance programs for gas and electric service may, in fact, provide a useful structure for a new, state-funded assistance program for water and sewer costs, but A. 2895 does not get us there.

¹⁴ Calif. Water Code section 189.5. See California State Water Resources Control Board, “Water Conservation Portal - Low-Income Water Rate Assistance Program,”

https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/assistance/.

¹⁵ Mich. House of Representatives, HB 4394 (2017), <http://legislature.mi.gov/doc.aspx?2017-HB-4394>.

¹⁶ Ill. Gen. Assembly, HB 5044 (2018),

<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=5044&GAID=14&DocTypeID=HB&LegId=110517&SessionID=91&GA=100>.

The Legislature Should Develop Mechanisms to Promote Equity, Transparency, and Consumer Protection in Water and Sewer Utilities' Rate-Setting, Bill Collection, and Related Activities

Reduced rates for low-income customers and other forms of “assistance” directed towards individual low-income customers are one piece of a larger puzzle.

Because the vast majority of water and wastewater utilities in New Jersey are not subject to BPU jurisdiction, there is little or no state oversight of rate-setting processes, rate structures, or consumer protections. Accordingly, local practices vary widely and are highly influenced by local political considerations, which may or may not be consistent with best practices. (This is true in most states. Publicly-owned water and sewer utilities are rarely regulated by state utility commissions.)

Against this backdrop, there is much that the state can do to improve affordable access to water and sewer services by improving transparency in decision-making, promoting equitable rate designs, and establishing basic consumer protections.

One of the most important ways of improving water affordability is to promote more equitable rate structures. Low-income discounts and other “assistance” typically attempt to mitigate a high bill that a customer would otherwise be responsible to pay. But the rate *structure*, in combination with the total revenue needs of the system, determines how large the underlying bill is, for a given level of usage.

Rate structures can vary widely, and some are more equitable than others, from the perspective of affordability. The state should promote the use of utility rate structures that raise revenue with greater equity among users, such as “lifeline,” tiered, and/or seasonal rates for water and sewer service; volume-based (rather than flat rate) pricing for wastewater; and stormwater charges based on the burden a customer places on the public storm sewer system. The BPU can use its authority to drive the use of these equitable rate structures by regulated, investor-owned water and wastewater utilities – and the Legislature can direct the BPU to do so. However, the vast majority of water and wastewater utilities (which serve about 60% of water customers and all but a small number of wastewater customers) are publicly-owned and not subject to rate regulation by BPU. The state should find ways to promote and provide incentives to use these equitable rate structures, which help communities generate revenues needed for water infrastructure investment without unduly burdening low-income households.

One immediate next step the Legislature should take in this direction is to pass legislation, such as S. 1073, authorizing creation of local or regional stormwater utilities that can recover costs for public stormwater infrastructure through fees based on the amount of impervious area on a customer’s property. NRDC thanks this committee for reporting out S. 1073, and urge the Assembly Appropriations Committee to post it for a hearing expeditiously.

Experts and advocates in other states have compiled other state policy recommendations on rate-setting and related matters, geared toward promoting affordability, to which New Jersey should also give serious consideration. For example, an advisory panel convened in Michigan, to

address the water crisis in Flint, developed a very strong set of recommended state policies for “improving water ratemaking and affordability,” which are equally applicable to any state.¹⁷ The recommendations address issues such as promoting equitable rate structures; ensuring transparency and accountability in rate-setting, accounting, finance, and planning; providing water efficiency assistance targeted at low-income customers; establishing statewide water disconnection rules with appropriate consumer and public health protections.

Another strong set of state policy recommendations on water affordability was prepared by a leading national expert on water affordability, on behalf of the Unitarian Universalist Service Committee and submitted to the State of California for consideration.¹⁸ These recommendations, similarly, address such topics as transparency in rate-setting; equitable rate structures; consumer protections for customers in arrears, including rules on disconnections; and others.

The Legislature Should Enact the Comprehensive Recommendations of the Joint Legislative Task Force on Drinking Water Infrastructure

Finally, the Legislature should address the full suite of recommendations offered by the Joint Legislative Task Force on Water Infrastructure, which provide a holistic approach to improve New Jersey’s water infrastructure in ways that are cost-effective and equitable for all residents.

Two aspects of these recommendations are especially important for affordability: providing new money to help communities in need, and promoting strategies that help all utilities reduce costs for all customers. Specific examples include:

- *Increasing state funding for water infrastructure, with an emphasis on grants (rather than loans) and a priority for disadvantaged communities:* The state should make a major, long-term commitment to funding necessary water infrastructure investments, including a new water infrastructure grant program. (New York, for example, is in the midst of a five-year, \$2.5 billion water infrastructure grant program.) This program should emphasize aid to communities with low median household incomes, as well as communities with high income inequality and large numbers of low-income households. In addition, the state should continue its efforts to help small and disadvantaged communities more easily access existing grant and loan programs.
- *Increase utilities’ use of asset management, green infrastructure, and water efficiency strategies that reduce costs for all customers:* Sound asset management practices hold costs down for everyone in the long run, since preventive maintenance and repair on a regular cycle is far cheaper than reacting in emergency mode when something breaks or greatly exceeds its useful life, and water lost from leaking water mains is a financial drain on ratepayers. Likewise, maximizing the use of cost-effective water efficiency and green

¹⁷ Flint Water Interagency Coordinating Committee, “Water Rates Subcommittee Recommendations for Improving Water Ratemaking and Affordability in Michigan, 2017, http://www.michigan.gov/documents/flintwater/FWICC_Water_Rates_Subcommittee_Recommendations_for_Water_Affordability_072117_580277_7.pdf.

¹⁸ Colton, R., State Legislative Steps to Implement the Human Right to Water in California, Prepared for Unitarian Universalist Service Committee, March 2015, <http://www.detroitmindsdying.org/wp-content/uploads/2015/11/2015-colton-cali.pdf>.

infrastructure strategies, rather than relying exclusively on costly “gray” infrastructure investments to meet water supply and water quality needs, helps to mitigate costs for all customers. The Joint Legislative Task Force included strong recommendations on these issues.

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Thank you very much for the opportunity to testify today. NRDC looks forward to working with the Committee and the Legislature to help ensure that everyone in New Jersey has affordable access to safe, clean water and sanitation.