

The Honorable Andy Beshear
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3449

May 30, 2018

Re: Request for an investigation of the Martin County Water District

Dear Attorney General Beshear,

On behalf of Food & Water Watch, Martin County Concerned Citizens (MCCC) and the Appalachian Citizens' Law Center, we request that your office investigate the Martin County Water District because of its history of gross financial mismanagement and alleged misuse of public funds to determine if any state laws have been broken and to help remedy the community's long-standing water crisis.

The water crisis in Martin County is comparable to the one in Flint, Michigan, where the Michigan Attorney General is seeking accountability and helping to uncover the circumstances that led to it. We ask that your office seek similar redress for the residents of Martin County.

The Martin County Water District has provided unreliable water service for decades and has persistently violated federal water quality standards. From 2004 to 2016, the water district issued 113 boil notices and violated water quality standards 48 times. Many residents report skin irritation, gastrointestinal problems and autoimmune disorders that they worry may be caused by water contamination.

In January of this year, the situation became an emergency. For two weeks, the nearly 10,000 people served by the district would go to bed and wake up without any water at all, or they experienced extremely low pressure and boil water advisories. The Judge Executive Kelly Callahan declared a state of emergency.

Around this time, the district filed an emergency request to raise water rates by 49.5 percent. The water district was unable to pay its vendors to fund day-to-day operations. It has already imposed a 28 percent interim increase on residents. While the Public Service Commission (PSC) will decide the merits of the requested rate increase, your office has the ability to go beyond what the PSC can accomplish to investigate any misuse of funding and potential fraud or corruption.

There are three specific allegations of misuse of public funding that warrant your attention:

- (1) The district is unable to account for a \$3 million grant from the Coal Severance Fund.**

MCCC members often mention the \$3 million grant that was provided to the district from coal severance funds at some point between 1999 and 2003. No one seems to know where the money went, and there is quite a bit of speculation in the community about who pocketed the money and how.

On June 6, 2002, during a hearing for the PSC's investigation into the water district, then-water district board chairman John Triplett testified that the money was authorized by the state in 1998 to expand the capacity of the water treatment plant and "involves a complete renovation of the existing facility," including "the raw water system."

The \$3 million grant was discussed briefly again during a PSC hearing on June 1, 2017. At the time, PSC Staff Attorney Jeb Pinney referred to the \$3 million coal severance grant as an issue during the PSC's first investigation of the district. Pinney stated his recollection that the grant was for plant repair but was instead spent on a new raw water intake system. Martin County Judge Executive Callahan explained that he applied for the \$3 million grant for a new raw water intake during his first term as Judge Executive, which was from 1994 to 1998. He lost his reelection after his first term but was reelected in 2003. When he came back, he said, "[I]t was all a big mess."

In 2003, Michael Cain, another former water district board chairman, admitted that most of the district's financial records were missing. In 2014, six people pleaded guilty to stealing \$31,000 from the water district.

Proper investment of the \$3 million grant could have prevented the latest water crisis, which occurred because the pump at the water intake failed. The PSC, through three separate investigations into the district, has failed to uncover where the \$3 million grant went.

We ask your office to answer this simple question: Where did the \$3 million in state funding go?

(2) Residents consistently report that the water district is extremely lax in its employee spending policies, allowing workers and managers to charge personal expenses to the district.

MCCC members report that the district allows employees to use the district's account to put gasoline in their personal vehicles, buy lunch, and pay for commuting expenses. In addition, MCCC members have reported that the district bought a vehicle for one employee for his personal use because he commutes from Floyd County, Kentucky.

On January 10, 2018, the Martin County Fiscal Court held a special emergency meeting to hear from the water district regarding the water crisis. At the meeting, a resident questioned Joe Hammond, then-general manager of the water district, about his use of the water district's account to pay for gas for a personal vehicle. Mr. Hammond replied that he did use the district's account because he drives all over the place for the district. He ended saying, "What do you want me to do, keep account of all my miles?"

At a PSC hearing on January 26, 2018, the Appalachian Citizens' Law Center questioned the district's accountant regarding employee purchasing at the local gas station. According to the district's exhibit of aged accounts payable report as of December 31, 2017, the district owed ZipZone, the local gas station and convenience store chain, \$176,388.64. There was an unusual pattern of charges, with many amounts exceeding \$100 interspersed with smaller amounts (e.g., \$4.89 and \$7.18). According to the district's accountant, Linda Sumpter, the ZipZone account is an open account, and employees, including managers and all field workers, can charge to it. Ms. Sumpter testified that those receipts for purchases are looked at by the general manager to ensure that they are for legitimate business expenses, but the general manager at the time, Joe Hammond, was not at the hearing to testify and answer questions about employee spending.

While MCCC is attempting to investigate these indications of abuse of public funds through their interventions in PSC cases, they are dependent on the water district to answer their requests for information. Your office has a greater ability to uncover how the district is using public funds and then to hold parties accountable to correct existing wrongs and prevent future abuses.

(3) Residents worry that certain public officials and private entities may be receiving free water service.

More than half of the water pumped into the water district's system never reaches water district customers. Between 2012 and 2015, the system lost over 1.5 billion gallons of water, with annual losses ranging from 52 percent to 62 percent. In 2006, an independent evaluator reported that the "single biggest issue" facing the water district was "high, unaccounted for water" that was "contributing to increased costs" and made "regulatory compliance more challenging." The PSC reported that the system lost 64 percent of its water during 2016, but during 2017 losses fell slightly to 56 percent.

In 2016, Judge Executive Callahan contended that the loss rate was due not to leaks or failing infrastructure but instead to water theft from fire hydrants and coal mines. At a 2018 PSC hearing, in response to questioning, the district's accountant indicated that she didn't know if any public officials were not paying their water bills. Residents have long suspected that certain individuals and entities may be receiving free water service at the expense of everyone else.

There is an urgent need for action from your office.

The Martin County water crisis has been building over decades of mismanagement, disinvestment and ignored maintenance problems. Just like in Flint, Michigan, this crisis has been further compromised by indifferent leadership that has downplayed the problems and health risks (including stating that residents were more likely to get cancer from eating hot dogs) and that has suggested that the local problems are not unique — implying that residents are unreasonable, alarmist or selfish for demanding reliable, safe water service.

The entrenched local power system has squandered financial resources and been mired in small-town mismanagement that includes apparent nepotism, self-dealing and corruption that have prevented the necessary investment in crucial water infrastructure that the community relies on.

Nearly 40 percent of Martin County residents are living in poverty and they simply cannot afford to pay more for unsafe, unreliable water service. Using the international metric for affordability, this rate increase will make water service unaffordable for the 45 percent of Martin County households who live on less than \$25,000 a year. Because of the massive needs for Martin County and because water rates are coming up against households' ability to pay, there is a clear need for additional support from the state and federal government to ensure that residents have access to safe water at a reasonable price.

We worry, however, that the district's misuse of previous funds interferes with its ability to receive new assistance. Your investigation can help redress previous wrongs and clear up any misgivings from state officials as they help the county move forward and address its water problems. Moreover, without accountability for misuse of funds, residents have no reason to believe that the district will use the increased revenue from additional rate increases for the public benefit.

In January 2018, four new members were appointed to the water board and community members hope they will provide more accountable leadership for the water district. For these new board members and the new general manager to make the improvements that the system urgently needs, we believe they need your assistance to uncover and hold any parties accountable for previous misuse and abuse of public funding.

We ask you to shine a spotlight on this crisis and help move Martin County forward toward safe and affordable water.

Sincerely,

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