

**SUPPLEMENTAL  
MATERIAL FOR THE  
12-10-20 SPECIAL CITY  
COUNCIL AGENDA**

**OFFICE OF THE CITY COUNCIL**



**Kate Fields**  
**Council President**  
**Councilperson – Ward 4**  
**1101 S. Saginaw Street, Room 310**  
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December 10, 2020

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Dear Attorneys:

I will be asking some of the following questions in the Council meeting tonight but I would also request, and appreciate, a written response (by email) please, no later than Friday, December 11<sup>th</sup> by noon. to those questions that are appropriate to your firm. My questions are:

1. A) Who set the final Settlement decision date of December 31, 2020?  
B) What were the reasons for this particular date?  
C) Did potential tax law changes under our new President have anything to do with that decision? As in greater taxes may have to be paid by firms and individuals under potential tax law changes in 2021.  
D) Was this a consideration when the date of December 21, 2020 was set by attorneys?
2. A) Is there any reason why our Water Damage Settlement attorneys can't file a request for continuance with Judge Levy (and Judge Farah if appropriate) thereby giving City Council more opportunity to gather information and understand the ramifications of this Settlement (also the Public)?
3. A) Why was City Council not given the entire Settlement Agreement (82 pages or so) when it was first written and agreed upon instead of on December 8<sup>th</sup> when we had already had council sessions discussing the Settlement?
4. A) Why was it not brought to Council's attention that a clause in the Settlement said if a plaintiff agrees to the Water Damages Settlement that are then forgoing any

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opportunity to receive compensation (making themselves ineligible) if a Plaintiff's Judgment is awarded in either/both of the Water Refund Cases and/or the Water Illegally Raised Rates cases. Respectively Loyst Fletcher's cases and Val Washington's.

5. A) Who added that clause? The Judge? Defendant's attorneys? Plaintiff's attorneys? Both together?  
B) Why was this clause included?  
C) Who does it benefit, the citizens or the attorneys?
6. A) Who set the December 21, 2020 deadline for Plaintiffs to opt in or out or file objections?  
B) Who does that benefit?  
C) Does that really give citizens adequate time to file?
7. A) The Water Refund cases come under State Law for Consumer Protection. I believe it's something to do with "Unjust Enrichment". [NOTE – if you buy a bottle of coke to drink and the bottle is filled with undrinkable urine, you didn't get what you paid for and should be able to receive a full refund.] You can't sell me something to drink that the government (EPA I believe) forbids me to drink – and expect I will gladly pay for that privilege.
8. A) Does the settlement contain language that releases the claims seeking refunds for payments to the City of Flint under the commodity charge of the City water bills of water declared by the EPA to be unfit to drink during the period from Jan 2017-June 2019?  
B) What language releases those claims?  
C) How much would those claims be paid if the entire (full) dollar damages for a refund they seek was paid (I.e. what is the total dollar damages amount those claimants seek)?  
D) Why are their claims being released without paying them any dollar damages -- if that is the case?  
E) Didn't the Appellate Court rule in the Plaintiff's favor?  
F) If the answer is yes, why do we believe they would be willing to release the claims for zero amount of money?

9. A) Are monies paid to adults for non-physical injury damages -- e.g. within the category of economic loss or property damages -- specifically covering the Water Refund claims (paying for water declared unfit to drink by the EPA from period of Jan 2017-Jan 2019)?  
B) If not, why are those claimants getting zero dollars in damages under this settlement.  
C) If yes, what specific language covers those claims?
10. A) Were the cases seeking a refund for paying for water not fit to drink dismissed by federal court judge Levy and sent to be decided in state court?  
B) Did those state court water refund cases proceed in state court to a partial summary order finding they had a valid claim against the City for unjust enrichment?  
C) If so, how can the federal court settlement overturn that state court partial judgment on liability by awarding zero dollars in damages on those claims?  
D) Isn't that provision illegal or unenforceable) (outside the federal court's jurisdiction and/illusory)?
11. A) Is there a percentage of the total settlement that is paid to claimants (adults) seeking recovery for economic losses (paying for water unfit to drink, paying for bottled water, loss of value to property) and for damage to property (e.g. broken water heaters, damage to plumbing etc.)?  
B) What percentage of the \$641 million is that?  
C) Is it the 18% amount? D) Does 15% go to individuals and 3% to businesses?  
E) Are damages the individuals and/or businesses can get capped?  
F) How much are the caps?  
G) How many questions do the individual claimants have to answer to get the amount of economic loss they may receive?  
H) What proofs / evidence do they have to submit to prove their damages were caused by the unfit & contaminated water?  
I) If monies in this category of economic loss set aside in the settlement are not claimed, will they be given to others claiming economic loss in the form of higher recoveries?  
J) If not, why not?  
K) Are unclaimed economic losses within the set aside money diverted to cover physical injury claims?  
L) Why?

M) What is the reason why we cannot give a higher settlement to all economic loss claimants to cover more of their actual losses (above the caps on recoverable economic losses in the current settlement) if money is left over due to a low rate of qualified claimants?

N) Isn't that a fairer way to settle?

O) Isn't it true that keeping the money set aside for economic losses to cover economic loss only would not diminish recovery for children or for those suffering physical damages under the current allocation?

P) Why not set aside 2% of the recovery to pay the water refund claimants from within the 18% amount of the settlement set aside for economic losses?

12. A) Why is Council being told that if we agree to the terms of the Water Damages Settlement than in general we are "off the hook" for other water lawsuits when in reality we still have to defend and/or settle with Water Refund and Illegally Raised Rates lawsuits? These cases have the potential for judgments against the City (approx. \$28 M for Water Refunds and \$36 M for Illegally Raised Rates).

B) What funds are available to pay for those, if it happens?

C) Will our Insurance cover any of those?

13. A) How is the City protected by the release if it is later found to owe \$10 or \$14 million or more on the water refund claims?

B) Can Butzel Long indemnify the City against ever having to pay those claims?

C) Will Butzel Long warrant that this liability the City faces is covered?

14. A) Why did the Water Damage attorneys not include the Water Refund lawsuits in the Settlement?

B) Why can't we also include those and the Illegally Raised Rates in the Settlement?

15. A) Were Attorneys Fletcher and Washington notified of the clause regarding "accept one Settlement and you are then ineligible for any other"?

B) If not, why not?

C) Were they given an opportunity to agree/dialogue or negotiate on this?

16. A) Why can't the City remove that clause?

17. A) Have we even had Settlement discussion with attorneys Fletcher and/or Washington?

B) If not, why not?

18. A) Why can't we ask/sue the State to Bond more \$ out of the Strategic Fund and include enough money to settle all three types of Water Litigation at one time?

B) Why couldn't this amount be included in the percent set aside for Adults?

19. A) Is there any reason why we couldn't ask Judge Levy and Judge Farah for a Mediator to negotiate a Settlement between all three types of this Water Litigation?

20. A) Why can't Council vote to include the \$20 M of insurance money to the \$600 M but also ask for Mediation to negotiate other terms of Settlement?

21. A) Does City Council have the right to ask for this Mediation?

B) How do we do it?

C) Do we need a resolution or simply a majority vote on the motion?

22. A) Why is this Settlement Agreement not on the Flint Water Justice web site?

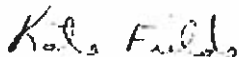
B) Why is it not accessible (as we were told) to/for the Public on the Plaintiff's web site?

C) Why is it not on the Flint City web site for citizens to review (the whole agreement)?

Again, I will ask some of these questions this evening but I would also like written responses (by email) please, no later than Friday, December 11<sup>th</sup> by noon. I think Council should have a chance to review your answers and discuss them prior to being asked to settle this case.

Thank you.

Sincerely,



Kate Fields

Flint City Council President

Cc: Inez Brown, City Clerk