

**Mandate of the Special Rapporteur on the human rights to safe drinking water and sanitation**

**Report to the 75th session of the UN General Assembly in 2020**

The Special Rapporteur’s thematic report to the General Assembly to be presented in October 2020 will focus on privatization and the human rights to safe drinking water and sanitation. For general guidance, the following tabel summarizes the limits of the report scope, clarifying what situations will or will not be included on it:

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| --- | --- |
| **The scope of this report includes:** | **The scope does NOT include :** |
| * Private sector actors (for-profit organizations)
 | * Non-profit organization that undertake service provision
* Informal service providers
* Community-led service provision
* State-owned enterprises
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| * Enterprises that government owns capital and shares in, but where a large proportion of shares are owned by private investors.
 | * State owned-enterprises, i.e., any corporate entity in which the government owns almost all the capital or the voting shares
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| * Private sector participation with specific focus on service provision
 | * Private sector participation in subsidiary activities across the whole water and sanitation cycle by, inter alia, supplying materials and equipment, developing engineering designs and building infrastructure
 |
| * Impact of remunicipalization and risk of private sector participation
 | * Comparative analysis on risks and advantages of water and sanitation provision by public and private entities
 |
| * Both water and sanitation services
 |  |
| * Assess the level of risks and reasons behind those risks that private sector participation brings when for-profit organizations are heavily involved in service provision
 | * Whether human rights dictates a specific type of model or service provision
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**Questionnaire - non-State actors**

The Special Rapporteur would welcome answers to the following questions:

1. **Please describe briefly the role and responsibilities of your organization in the water and sanitation sector, particularly concerning assessment or promotion of private provision.**

Food & Water Watch is national nonprofit environmental organization that assists communities in grassroots organizing to support public control of water and sewer services across the United States. For the last 15 years, we have worked closely in and with local communities to oppose privatization and to support efforts to improve water quality and accessibility through public ownership of water services. We are a clearinghouse of information and support, providing technical assistance to campaigns to defeat privatization attempts and to support affordable, safe, public water across the United States.

**Current situation and trends**

1. **In your view, what the role has the private sector played in the water and sanitation provision in the countries your organization works in (or at the global level)? How has this role evolved in recent decades? Please provide examples.**

Although water privatization receives a great deal of attention from policy makers, the dominant trend in the United States is in the other direction — toward public ownership. There are many good reasons for this trend. By owning and operating their water and sewer systems, local governments have control over the decisions that determine the cost and quality of services that are essential for public health and wellbeing as well as economic viability. This control allows governments to direct development, planning and growth and to better protect the environment and sustain their local economies.

*Public water prevails across the United States.*The vast majority of people receive tap water from a publicly owned utility. Nearly nine out of ten people in the United States receive their water service from a publicly owned utility.

* Publicly owned utilities served 87 percent of people that have piped water service.
* For-profit water companies own only about 10 percent of water systems, most of which serve small communities.

*There is a nationwide trend toward public ownership of water system in the United States.* More and more people each year receive their water service from a public utility.

* From 2007 to 2014, the portion of people with water service from publicly owned systems increased from 83 percent to 87 percent.
* From 2007 to 2014, the number of private systems dropped 7 percent (a loss of nearly 1,700 privately owned systems), while the number of people served by privately owned systems fell 18 percent (8 million people).
* At the same time, the number of publicly owned systems remained fairly constant, but these public systems saw their service population grow by 10 percent, adding 24 million people to their networks.
* Public water utilities are also taking over and consolidating private systems.

According to survey data from the U.S. Environmental Protection Agency (EPA), less than a quarter (22.3 percent) of the privately-owned systems are for-profit water businesses.[[1]](#endnote-1) The rest are non-profit entities or ancillary systems, which are systems that are owned by entities whose primary function is not water provision (for example, manufactured home parks).[[2]](#endnote-2)

Overall, for-profit water companies own only about 10 percent of U.S. community water systems.[[3]](#endnote-3) The vast majority of the water systems owned by for-profit companies are small, with about 90 percent serving fewer than 3,300 people.[[4]](#endnote-4)

Nationally, there has been an ongoing shift to public ownership of drinking water services. Between 2007 and 2014, the portion of the population with public water increased from 83 percent to 87 percent. Over this period, the total number of people served by public systems increased by 10 percent, as public systems added 24 million people to their customer base. Meanwhile, the number of people served by privately owned systems fell by 18 percent, as private companies served 8 million fewer people in 2014 than in 2007.[[5]](#endnote-5)

1. **Why do public authorities allow or even attract privatization of water and sanitation services? What would be the alternatives for public authorities?**

In the United States, some public officials have sought to lease or sell public water and sewer systems to fund ongoing government functions or to pay down liabilities. They have tried to use water privatization to create the illusion of having balanced the budget, when in fact they are just digging the hole deeper.[[6]](#endnote-6)

Water privatization is not a real solution to government financial challenges. It is a one-shot ploy that masks the underlying problems and that delays the hard decisions necessary for real fiscal sustainability.[[7]](#endnote-7) Instead of reducing public bills or mitigating the financial burden on taxpayers, it increases the long-term costs borne by households and local businesses.[[8]](#endnote-8)

The government’s primary objective in these privatization arrangements is to obtain a sizable upfront payment from the company or consortium that takes over the water or sewer system, often as a desperate response to a fiscal crisis. As a consequence, governments usually award contracts to the bidder that offers them the most money, instead of selecting the highest-quality or least-expensive option for households and local businesses.[[9]](#endnote-9)

Some smaller governments have sold off water and sewer systems to for-profit companies in hopes that the company will improve aging infrastructure. While it is true that much of the water infrastructure in the United States is aging and reaching the end of its useful life, the more appropriate and cost-effective solution is to use public financing. Public water utilities should invest in their systems using public borrowing on the municipal bond market and subsidized federal and state loans and grants. They can further improve their services themselves by:

* Enhancing public input through open and transparent procedures that encourage stakeholder involvement;
* Boosting in-house expertise through targeted hiring, reducing contracting and investing in job training for current staff;
* Implementing water affordability programs that provide credits to low-income households, adjusting their water bills to a level that they can afford to pay;
* Working to ensure source water protection locally and regionally;
* Maximizing services and reducing costs through greater coordination among their departments; and
* Sharing resources and expertise through public-public partnerships with other public sector, labor and non-profit entities.

U.S. local water systems should not have to go it alone. The U.S. federal government has a responsibility to ensure that our local public water and sewer systems receive the support they need. Communities across the country need a dedicated source of federal funding for our water systems to improve water quality, protect the environment, create good jobs and ensure safe, reliable water for generations to come. With a renewed federal investment in our water resources, robust, responsive and responsible public utilities can best meet the needs of communities and ensure safe and affordable water for all people in the United States.

1. **In your view, have International Financial Institutions (IFIs) recently encouraged privatization? Could you provide concrete examples?**
2. **In case of economic crises, have the promotion of privatization increased?**

Yes, in particular, following the Great Recession of 2008, we saw more Wall Street firms and certain government officials promote water privatization in the United States. In the wake of the economic downturn, many local governments across the United States struggled to balance their budgets as tax revenues fell and expenses grew.[[10]](#endnote-10) As state and local budgets continued to deteriorate through 2010,[[11]](#endnote-11) public officials searched for new revenue sources to avoid deep cuts to the public services that more and more of their constituents relied upon.

A growing number of cash-strapped cities and towns turned to one of their most basic resources: water. They began to explore cashing out or monetizing public water and sewer utilities through a sale or concession to generate funding to fill budget deficits. Frequently, the suggestion originated from a private water company that desired control of public water services.

In May 2010, Don Correll, then-CEO of American Water, the nation’s largest water company, told investors that the fiscal crisis coupled with the need for expensive water system improvements created golden opportunities for privatization. “So the idea of monetizing some assets,” he said, “something that was almost heresy some time ago is something that we’re seeing far more receptivity to today and we are busy with that as well.”[[12]](#endnote-12)

Correll reported that American Water was exploring more than 75 “opportunities” to take over municipal water or sewer systems, and he considered these prospective deals to be “more than casual.”[[13]](#endnote-13) The company claimed to be in talks with several large cities.[[14]](#endnote-14) Its targets were clustered on the East Coast and in the Midwest.[[15]](#endnote-15)

Aqua America, another large for-profit water utility, also sought to take advantage of the crisis and contacted thousands of cities about a potential deal. In April 2010, CEO Nick DeBenedictis told *USA Today* that the company was in talks to buy 40 water systems and expected to acquire about 20 by the end of the year.[[16]](#endnote-16) In August 2010, a day after the company held a strategic board meeting about acquisitions, DeBenedictis told investors that the company was concentrating on buying small systems in states where it already operates, adding, “We’re really hustling in this area.”[[17]](#endnote-17)

In 2010,Food & Water Watch reviewed 200 prospective and completed sales and concessions over the preceding two decades and uncovered five aspects of that trend in water privatization:

* Many cities and towns explored sales and long-term concessions of their water and sewer systems since 2008. There were five times as many prospective deals in 2010 as there were completed transactions in a typical year over the previous two decades.
* Prospective privatizations, if actualized, would affect an unprecedented number of people. The typical water system put forward for privatization in 2010 served around 45 times more people than the average system sold over the last two decades.
* Budget constraints drove the surge in potential privatization deals. Previously, the need for expensive improvements to water infrastructure was the main factor in a municipality’s decision to sell or lease its water system. Since 2008, several cities have considered privatizing well-maintained water systems to shore up weak budgets.
* Possible sales and concessions were clustered around the Rust Belt. Although the surge in interest was a nationwide phenomenon, prospective deals were concentrated in the Rust Belt, where cities were hit particularly hard by the recession.
* Strong public opposition hindered privatization. Public resistance thwarted at least 17 possible sales and concessions from 2008 to 2010 and seemed likely to block many more prospective deals. In fact, despite new attention on the idea, the number of sales and concessions completed each year remained small.

**Private provision**

1. **In your experience, if the private sector is involved in provision of water and sanitation services, what process was undertaken prior to the decision to adopt this model of provision? What types of concerns have been considered in such decisions?**

In the United States, too often, an elected leader may strong-arm and rush through the privatization for personal political gain, forcing the public into a bad deal.[[18]](#endnote-18) For example, several residents have accused the former mayor of Allentown, Pa., of trying to do this in his pursuit of a long-term concession of the city’s water and sewer systems.[[19]](#endnote-19)

Government officials pursue privatization without open public discussions about the proposal beforehand. The government official pushing the deal often makes unilateral and heavy-handed decisions to fast track it, while a “small cadre of government officials” negotiates and signs the contract behind closed doors and without public approval.[[20]](#endnote-20) Government officials also suppress public participation by refusing to disclose important information, including details about the potential private operators and about how the government will select the winning bid.[[21]](#endnote-21)

Water privatization has “the potential for ‘sell out’ of the public interest in a one-sided contract due to political influence, unequal bargaining power, or corruption,” according to Craig Anthony Arnold in an article in the *Pepperdine Law Review*.[[22]](#endnote-22) Arnold also found, “[I]t is clear that city officials ‘sold’ on a privatization proposal as a quick-fix to public infrastructure financing and operating deficiencies may be less than diligent in protecting the public’s interest — and arguably the public trust — regarding municipal water supply.”[[23]](#endnote-23)

According to Arnold, “Privatization failure tends to occur in communities in which pro-privatization local officials attempt to circumvent public scrutiny and participation with quick decisions, as was the case in Atlanta and in Stockton, California.”[[24]](#endnote-24)

There is typically little transparency or public input into the process. State laws have restricted public access to information about privatization bids prior to signing a contract, and water corporations actively seek to change state laws to cut the voting public out of the decision-making process.

In *Public Administration Review,* Pamela Bloomfield observed that government officials and their privatization consultants even have strong “disincentives to disclose accurate information regarding the budgetary consequences of long-term contracts.”[[25]](#endnote-25)

The lack of transparency and accountability in the privatization process makes corruption, high long-term costs and disproportionate rate increases more likely.[[26]](#endnote-26) To help protect the public interest, privatization decisions should be made in an open and transparent manner with public involvement at every step.[[27]](#endnote-27) But, Nicholas Miranda in the *Yale Law Journal* found that the privatization process essentially precludes “democratic deliberation” because governments treat concession agreements as private contracts instead of matters of public policy.[[28]](#endnote-28)

Making matters worse, privatization schemes can be inherently opaque. Bloomfield outlined three major barriers to transparency in long-term privatization contracts:

1. The “sheer complexity” of the privatization contract, which makes taxpayers dependent on public officials, and the privatization consultants, for information about the implications and effects of the deal;[[29]](#endnote-29)
2. The “willingness of some public officials and consultants to obscure or misrepresent the real costs and risks of long-term contracts;”[[30]](#endnote-30) and
3. The “lure” of private investment and concession fees as off-budget-financing that “enable local government to borrow funds without regard for local restrictions on debt.”[[31]](#endnote-31)

By limiting public knowledge about the deal, government officials severely undermine the public’s ability to weigh in on the fate of their essential water and sewer services.[[32]](#endnote-32)

Worse, private companies have sought to undermine public engagement in the decision making. In a very recent example, in Edison, New Jersey, citizens were attempting to stop the lease of their water and sewer facilities by collecting signatures to preserve the public systems by placing the control of the systems on the ballot in a special election.  The companies that were seeking the contract, Suez and KKR, hired a firm, misleadingly calling itself the “Edison Utility Improvement Program,” which confronted those people who had signed the petition in an apparent attempt to intimidate them into changing their minds.

To help protect the public, policymakers must ensure *real* public involvement in the process:

* Transparency: The public should have access to all studies, proposals and information of the government, the privatization consultants and the bidding companies that the government used to develop, assess and evaluate water privatization plans and contracts.[[33]](#endnote-33)
* Public participation: The public should be able to weigh in at every step of the privatization process. They should be able to review and comment on all initial plans to privatize, assessments of those plans, proposals, bids, project selection criteria and analyses, and draft and final contracts. The government should consider, review and respond to all public comments and suggestions.[[34]](#endnote-34)
* Public approval: Governments should require a public referendum on any proposed lease, concession or sale of a public water or sewer system.
1. **How could public authorities use the features of private providers to foster the realization of the human rights to water and sanitation (HRtWS)? Is private provision positive for the progressive realization of the human rights to water and sanitation? If yes, in which circumstances?**

It is clear that involving private enterprises in utility operations is not a means to satisfying the human right to water. Bringing private players into the situation often obstructs the human right to water.

1. **How have instruments and mechanisms in place allowed the users (and non-users) to complaint and get remedy from private providers?**

In the United States, when water systems are privately owned and regulated, consumers can file complaints with a state regulation utility commission. This process can be cumbersome. Often, it also means delaying the right of consumers to immediate legal remedy, as courts have rejected civil suits against companies because consumers had not exhausted their options from a regulatory agency.

For example, Veolia took over management and operation of the water and sewer system in Indianapolis, Indiana, in 2002. Within a year, thousands of residents experienced billing problems,[[35]](#endnote-35) and consumer complaints more than doubled.[[36]](#endnote-36) In 2005, because the company lacked proper safeguards, an error caused a boil-water alert for more than a million people, closing local businesses and canceling school for 40,000 students.[[37]](#endnote-37) Three years later, numerous consumer complaints prompted a state agency to begin an informal probe into the company’s meter reading, and residents sued the company for allegedly using unfair billing practices and overcharging them.[[38]](#endnote-38) In 2011, a resident filed another lawsuit accusing the company of improper service shut-offs.[[39]](#endnote-39) Judges dismissed both lawsuits telling residents to first pursue their claims through the Indiana Utility Regulatory Commission.[[40]](#endnote-40)

1. **Do private providers advocate for stronger regulation? If so, why?**

In the United State, private utilities have apparently advocated for stronger water quality regulations only when they can recoup any resulting investment costs through rates. They are driven by profit motive since they earn a rate of return on their investment. Their profit model depends on capital expenditure to drive rate hikes.

Water companies expect to recover their investment through rate increases. A company official told state regulators as much at a Mid-America Regulatory Conference. In his presentation, Mike Hoffman, the senior manager of financial evaluation and analysis at American Water, explained that a buyer of a water system is “not willing to make [an] investment that it will not be able to recover in rates.”[[41]](#endnote-41)

Private utilities have simultaneously worked to pass laws that curtail economic regulation of their companies. They have spent millions of dollars on state-level lobbying to pass laws, such as Fair Value legislation, that removes some regulatory oversight of purchase prices, allowing higher rates on consumers following utility acquisitions.[[42]](#endnote-42)

1. **How has been the relationship between private providers and public authorities at the local level? What are potential concerns public authorities and users face vis-à-vis private providers?**

By selling and leasing water systems, local governments abdicate control over a vital public resource. This limits public input into the operation of water and sewer systems. Because water service is a natural monopoly that lacks a true market, consumers can exercise choice only at the ballot box through the election of the public officials who oversee their utility. They don’t have a vote in the corporate boardroom.

Because a water corporation has different goals than a city does, it will make its decisions using a different set of criteria, often one that emphasizes profitability. This can create conflict. For example, private water companies are unlikely to adopt the same criteria as municipalities when deciding where to extend services. They are prone to cherry-picking service areas to avoid serving low-income communities where low water use and frequent bill collection problems could hurt corporate profits.[[43]](#endnote-43)

*Water resource protection.* Some private companies have sold land protecting water supplies to developers.[[44]](#endnote-44) In the 1980s, United Water transferred about 600 acres of land, originally acquired to protect the water supply in Bergen County, New Jersey, to its real estate development subsidiary, which planned to resell the land to developers for substantial profits.[[45]](#endnote-45)

Local governments also have paid the costs of private mismanagement. The city of Willits, California, bought its water utility and watershed lands from a private firm in 1984, only to find that the company had failed to make required investments in the water system when it logged the valuable old timber from the land. The city’s water system was failing, had many water quality problems and needed a new treatment plant, in large part because of the private company’s financial neglect and logging activities.[[46]](#endnote-46)

Instead, investor-owned utilities often enter into deals with developers to provide water service to new suburban developments.[[47]](#endnote-47) In some cases, their participation in these arrangements can facilitate sprawl.[[48]](#endnote-48) For example, the Brandywine Conservancy believed that American Water’s expansion of a treatment plant in Coatesville, Pennsylvania, would induce unwanted development.[[49]](#endnote-49) Because low-density developments require greater capital investments, they can be profitable for private water companies.[[50]](#endnote-50) In contrast, several cities use the provision of water services to encourage smart growth.[[51]](#endnote-51)

*Inflexible Contracts.* With concessions, local governments and private companies are bound to the terms of a single contract for the full duration of the deal. Inflexibility of concession contracts restricts innovation and responsiveness to changing circumstances. Because no one can predict all the changes that occur over decades, these contracts invariably are incomplete and can require costly renegotiations.[[52]](#endnote-52) This could cause conflict.

“If the government ever wanted to change something, the lessee is in [too] strong a position,” Aaron Renn, an urban affairs analyst, said in the American Planning Association’s *Planning* magazine. “The longer the lease, the more likely something like this [a conflict with future public needs] will happen.”[[53]](#endnote-53)

*High costs.* Municipalities should not expect privatization to reduce costs. Empirical evidence indicates that there is no significant difference in efficiency between public and private water provision.[[54]](#endnote-54) In many cases, privatization increases costs. Corporate profits, dividends and income taxes can add 20 to 30 percent to operation and maintenance costs,[[55]](#endnote-55) and a lack of competition and poor negotiation skills can leave local governments with expensive contracts. Municipalities tend to get the bad end of the deal when privatizing monopoly services. For example, many wastewater contracts allow private operators to pass through production costs leaving the local government paying more than it would have with public provision.[[56]](#endnote-56)

*Job loss.* When private operators do cut costs, it is usually by downsizing the workforce or reducing employee benefits.[[57]](#endnote-57) As a result, these changes are likely to worsen service, for example, by slowing responses to customer service requests or broken water lines. In addition, such cost cutting likely translates to private profits, not savings for consumers.[[58]](#endnote-58)

A state investigation of the lease of the Lynn Water and Sewer Commission in Massachusetts found that the company planned to cut the workforce by 20 percent and “… any cost savings achieved through future staff reductions will produce increased profits for U.S. Filter [the company] rather than lowering rates for Commission ratepayers.”[[59]](#endnote-59)

On average, more than one-third of water utility jobs are lost after privatization.[[60]](#endnote-60) Both Fairfield-Suisun Sewer District and Petaluma, Calif., ended contracts and remunicipalized their sewer services to save money, while offering better compensation packages needed to attract qualified personnel.[[61]](#endnote-61)

*Service Quality.* When private operators attempt to cut costs, practices they employ could result in worse service quality. They may use shoddy construction materials, delay needed maintenance or downsize the workforce, which impairs customer service and slows responses to emergencies.[[62]](#endnote-62) Such neglect can hasten equipment breakdowns and increase replacement costs, which are usually the responsibility of the municipality. In many contracts, private operators can technically comply with their contract terms while effectively shifting upkeep costs to the local government.[[63]](#endnote-63)

A report published by the National Rural Water Association found deterioration of water systems can be “particularly problematic” in long-term contracts.[[64]](#endnote-64) Because 70 to 80 percent of water and sewer assets are underground, a municipality cannot easily monitor a contractor’s performance. Consequently, as a researcher for the Global Water Advisory Committee warned, “The effects of shoddy work may not become evident during the contracting period.”[[65]](#endnote-65)

1. **How have private providers contributed to or harmed the realization of the HRtWS? Please give examples.**

Evidence is mounting that private control of water services can actually stand in the way of the human right to water more than it can help to achieve it. Due to a misalignment of public and private interests, bad regulation and poor implementation, public private partnerships can fail to achieve their goals and lead to increases in the price of water service.[[66]](#endnote-66)

*High rates.* In the United States, large private water companies charge on average 59 percent more than their government peers. All too often, these higher prices and their effects serve to strip users of their right to water. These price hikes can disproportionately affect low-income households particularly when pricing structures force poor users to pay much higher bills.[[67]](#endnote-67)

When the poor are unable to pay for service, private players usually respond by cutting existing connections driving some households to rely on unsafe water sources.[[68]](#endnote-68) In the United States, private companies have outright refused to provide data about their water shutoff rates to the public.

*Cherry picking.* Private companies also often cherry pick service areas to avoid low-income households. For-profit companies tend to exclude those with the greatest need*.[[69]](#endnote-69)* An interview conducted by the UNC Environmental Finance Center with West Virginia-American Water — the largest for-profit water provider in the state of West Virginia — perfectly illustrates this point. The researchers reported that when asked about expanding the system into high-cost, impoverished areas, “company officials responded that those areas make a case for public systems.”[[70]](#endnote-70) When a profit-motivated utility is uninterested in expanding service to customers that cannot cover the added costs, goals between the public and private parties come into conflict.[[71]](#endnote-71)

Research has found that in the United States poor, rural communities with weak government power are most easily harmed by privatization. Researchers suggest that cooperation between municipalities can substitute for private sector involvement in a constructive way.[[72]](#endnote-72) Such collaboration between public entities is commonly referred to as a public-*public* partnership. Public sector collaboration can mitigate price increases and avoid other problems associated with private participation. They can improve water system capacity at minimal cost and promote fair and equitable use of water services in a transparent and accountable manner.[[73]](#endnote-73) Rather than engaging in risky deals with the private enterprises, governments must explore public-public partnerships as a way forward in meeting the basic human right to water.

Historically, private water companies had served many of the nation’s largest cities until the turn of the twentieth century, when cholera outbreaks and destructive fires inspired a surge of cities to take over water provision for health and public safety reasons. From about 1880 to about 1920, thousands of cities — including Los Angeles and San Francisco ­— assumed public control of their water systems. This wave drew inspiration from earlier movements toward public water in Boston, New York City, Philadelphia, Baltimore and Chicago.[[74]](#endnote-74)

In the 1800s, New York City took over responsibility for providing drinking water services, creating a new system apart from the one privately held by the Manhattan Company.[[75]](#endnote-75) The city did this after the Manhattan Company, the predecessor of JPMorgan Chase,[[76]](#endnote-76) was blamed for an outbreak of cholera that killed 3,500 people and for inadequate water infrastructure to fight fires.[[77]](#endnote-77) Similarly, by 1900, concerns about water supply, high prices and poor service had led both Los Angeles and San Francisco to take public control of their water systems from private entities.[[78]](#endnote-78)

Public provision of water services has led to better quality, less-expensive and more-equitable service, and substantial improvements in public health in the United States.

Finally, while most U.S. courts have yet to recognize a U.S. Constitutional right to water, the U.S. Court of Appeals for the 6th Circuit recently recognized that the victims of the lead-in-water crisis in Flint, Michigan could sue city and state officials for violating the U.S. Constitution’s “right to bodily integrity.”[[79]](#endnote-79) The right to bodily integrity is a substantive component of the liberty interest protected by the U.S. Constitution’s 14th Amendment.[[80]](#endnote-80) This decision is precedent-setting, and the U.S. Supreme Court declined to review it. Such constitutional protections are more difficult to extend to private water companies, however, since the U.S. Constitution generally does not apply to private entities.[[81]](#endnote-81)

1. **What is the nature of the information available on service provision? Does it allow for the adequate accountability of private providers and public authorities?**

The U.S. Environmental Protection Agency maintains a Safe Drinking Water Information System that tracks ownership of water systems and compliance with federal water quality regulations. This database has many errors, but it provides for some insights.

There is no national database or agency that tracks public-private partnerships in the water sector. There is no national database about water rates or water disconnections due to nonpayment. While public agencies are subject to state transparency laws allowing public access to this information on local level, private providers have no obligation to disclose this information to the public. This is a serious data gap that hinders holding private providers accountable.

1. **Who monitors the performance of private providers in respect to the normative content of the HRtWS and how? Who intervenes when there are risks of human rights violations and how is it done? Who imposes penalties in case violations occur?**

In the United States, there is no agency that monitors for violations of the human rights to water and sanitation, but there are regulatory bodies for water quality and in some cases tariffs.

Both public and private water providers are regulated by the same state water quality agency to the same state or federal standards. These agencies can impose penalties and provide assistance to compel compliance.

State public utility commissions regulate the rates of private systems (and some public systems) to try to avoid price gouging under private monopolies. Local governments have democratic procedures that provide transparency and public input into the rate-setting process - two things completely lost with privatization.

In most states, a regulatory agency oversees the rates and services of investor-owned water utilities. This regulation, while important, fails to compensate for the loss of local control. With public ownership, residents can visit their elected officials and directly express their opinions about the operation of their water systems. If the officials fail to respond, the community can vote them out of office. The public lacks similar mechanisms to address their concerns with private utilities and appointed regulators.[[82]](#endnote-82)

State regulation of water rates can also have unintended consequences. It often provides a financial incentive for water companies to overinvest in water systems, leading to unnecessarily high water rates. Because regulated companies earn a profit based on the size of their infrastructure investment, they earn more money by building costlier projects.[[83]](#footnote-1)[[84]](#endnote-83) For example, consumers in Coatesville, Pennsylvania, accused American Water of overbuilding their wastewater plant. In 2010, the company sought to triple household sewer bills, primarily to recover the cost of expanding the treatment facility, which many customers said was operating at only half its capacity.[[85]](#endnote-84)

1. **What are the main challenges public authorities face regarding availability, accessibility, quality and affordability when private actors provide water and sanitation services? Please give examples.**

In the United Sates, public-private partnerships in the water sector often increase costs, worsen service quality and allow infrastructure assets to deteriorate. They are an impractical alternative to traditional public water provision.

*Availability.* Private companies also often cherry pick service areas to avoid low-income households. For-profit companies tend to exclude those with the greatest need*.[[86]](#endnote-85)* An interview conducted by the UNC Environmental Finance Center with West Virginia-American Water — the largest for-profit water provider in the state of West Virginia — perfectly illustrates this point. The researchers reported that when asked about expanding the system into high-cost, impoverished areas, “company officials responded that those areas make a case for public systems.”[[87]](#endnote-86) When a profit-motivated utility is uninterested in expanding service to customers that cannot cover the added costs, goals between the public and private parties come into conflict.[[88]](#endnote-87)

*Affordability.* In the United States, large private water companies charge on average 59 percent more than their government peers. All too often, these higher prices and their effects serve to strip users of their right to water. These price hikes can disproportionately affect low-income households particularly when pricing structures force poor users to pay much higher bills.[[89]](#endnote-88)

Because the private entity recovers its investment and profit through user bills, privatizing water and sewer systems can lead to considerable rate hikes for consumers.[[90]](#endnote-89) In fact, consumers can expect future rate increases to reflect the size of the upfront payment that a local government receives in a privatization scheme. Or, from the perspective of the company, in the words of consulting firm KPMG, “The greater the ability of the concessionaire to raise charges, the larger the upfront payment they will likely make.”[[91]](#endnote-90)

In the United States, after purchasing a municipal water or sewer system, investor-owned utilities typically increase household rates by 18 percent every other year, adding hundreds of dollars onto their annual bills within the first decade.[[92]](#endnote-91) According to data from the U.S. Environmental Protection Agency, on average households pay higher water bills to privately owned water systems than to publicly owned ones.[[93]](#endnote-92) Several academic surveys have arrived at the same finding.[[94]](#endnote-93) For example, a survey of the largest water utilities in the Great Lakes region found that privately owned systems charged more than twice as much as municipal systems. The researchers attributed this difference to private companies’ profits, ratemaking practices and higher overall service costs and taxes.[[95]](#endnote-94)

High water bills are a common complaint after the lease or sale of a water utility. For example, in 1996, North Brunswick leased its water and sewer systems to a private company (now owned by United Water) that agreed to pay the town a total of $54 million over the term of the contract.[[96]](#endnote-95) Six years into the 20-year deal, after meter changes doubled or tripled the bills of many households,[[97]](#endnote-96) the town exited the water portion of its contract by buying out the remaining 14-year term at a cost of $30 million.[[98]](#endnote-97) “It’s become a model for the way not to do such deals,” David Spaulding, the mayor at the time, told the *Star-Ledger*, adding, “The people saw themselves getting screwed.”[[99]](#endnote-98)

In Coatesville, a struggling steel city in southeastern Pennsylvania, soaring water bills left residents questioning the soundness of the sale of their drinking water and wastewater systems to Pennsylvania American Water in 2001.[[100]](#endnote-99)

The city saw the sale as a way to generate perpetual funding for city services by investing the proceeds of the sale, some $40 million,[[101]](#endnote-100) so that “the assets of the sale will be used forever to generate interest which will assist in the funding of the City.”[[102]](#endnote-101) Tough economic times and city spending,[[103]](#endnote-102) however, drained the trust fund by three-quarters, leaving only $10 million by 2012.[[104]](#endnote-103) As the community’s financial situation deteriorated, the water system’s new private owner pursued aggressive rate increases.

In 2010, the city budgeted $40,000 for legal support to fight the company’s proposal to hike household sewer rates by 229 percent.[[105]](#endnote-104) The company claimed that it needed to recoup the cost of building a new wastewater treatment facility, but consumers and community organizations disagreed and accused the company of overbuilding the plant to boost its profits. At the time, the plant was operating at only half its capacity, according to municipal officials and residents.[[106]](#endnote-105) Nonetheless, in December 2010, the company received approval for a phased-in rate increase to more than triple sewer rates over the following four years.[[107]](#endnote-106)

In total, even though the company agreed to freeze rates for the first three years, the typical household’s water and sewer bill has more than tripled since American Water took over. In 2001, a household using 54,000 gallons of water paid $505 for water and sewer service.[[108]](#endnote-107) By 2013, a household using the same amount of water was paying three times as much — $1,587 a year.[[109]](#endnote-108) That is a considerable amount of money for an essential service, particularly in a community like Coatesville where nearly half of households make less than $35,000 a year.[[110]](#endnote-109) Under American Water control, water and sewer service is becoming increasingly unaffordable.

*Quality.* There is ample evidence that maintenance backlogs, wasted water, sewage spills and worse service often follow privatization.[[111]](#endnote-110) In fact, poor performance is the primary reason that local governments reverse the decision to privatize and resume public operation of previously contracted services.[[112]](#endnote-111)

Examples:

* A federal and state investigation found an association between childhood cancer and contaminated drinking water served by United Water Toms River. In 1996, a state report uncovered that Dover Township in southern New Jersey had significantly higher rates of certain types of childhood cancers.[[113]](#endnote-112)
* In 2009, 10 years into the 20-year, $178 million deal, the New Jersey State Comptroller’s Office issued a scathing audit of Camden’s privatization contract. It found that inadequate contract supervision and the company’s poor performance cost the city millions of dollars and potentially jeopardized the health and safety of its residents.[[114]](#endnote-113)
* In 1996, Gladewater, a small city near Longview, Texas, privatized its water and sewer systems to Veolia’s predecessor.[[115]](#endnote-114) By 2012, after years of the company’s poor performance, the city had had enough.[[116]](#endnote-115) The system had violated federal water quality standards 16 times since 2004,[[117]](#endnote-116) and residents described the water as “dark brown” and “foul.”[[118]](#endnote-117) The company failed to perform work required by its contract, and its water plant operators were underqualified, lacking the necessary certification. City officials questioned whether the company was cutting corners and jeopardizing the safety of the city during emergencies by having operators split their time at other cities instead of working full-time in Gladewater.[[119]](#endnote-118)
* In 2010, the Gary Sanitary District dissolved its contract with United Water to save money with public operation.[[120]](#endnote-119) After Suez took over the system 12 years earlier, the company intended to eliminate 62 jobs, half of the workforce, through attrition.[[121]](#endnote-120) Perhaps because of the downsizing, residents experienced numerous service problems. Between 2003 and 2007, there were more than 80 cave-ins as the sewer lines fell apart.[[122]](#endnote-121) In May 2008, a state inspection found that the district, under United Water’s management, violated discharge limits 84 times from 2005 to 2007, had at least 25 pieces of broken equipment, filed inadequate monitoring reports and failed to meet mandated deadlines.[[123]](#endnote-122)

Then in December 2010, a 26-count federal indictment accused United Water Services of conspiracy and felony violations of the Clean Water Act for manipulating wastewater quality tests at the Gary treatment plant.[[124]](#endnote-123) Although a jury acquitted the company of all charges,[[125]](#endnote-124) the case raised questions about the company’s priorities. The federal government alleged that the company sought to save money on chemical costs by lowering chlorine levels between water quality tests,[[126]](#endnote-125) and claimed that the company’s annual appraisal of its project manager gave “substantially higher weight to improving the financial performance of United Water’s [Gary Sanitary District] operation than to compliance with environmental requirements.”[[127]](#endnote-126) The company never denied that it lowered chlorine levels; it argued, and the jury agreed, that it was following standard operating procedures to reduce chlorine levels to reflect lower water flow levels later in the day.[[128]](#endnote-127)

* In 2009, after bacterial contamination left residents and businesses boiling their drinking water, some for 20 days,[[129]](#endnote-128) Gloucester decided against renewing United Water’s contract to run its water system.[[130]](#endnote-129)

*A clear violation.*

Aqua America did a great disservice to the residents of Neuse River Village, North Carolina, when it took over their water and wastewater systems in 2004. Within a year, Aqua had cut off water service to more than half of the 130 households in this small manufactured home park, just a few miles outside of the state capital of Raleigh.[[131]](#endnote-130)

Dozens of families had to fill jugs of water at their neighbors’ faucets for daily cleaning and cooking, and many resorted to using the nearby woods as a bathroom. Parents and children faced possible eviction because a county health ordinance required homes to have running water. Residents worried about the health of their children and loved ones. “The children are going to get sick,” said resident Juan Rivera. He pointed to his neighbor, and with anger and frustration in his voice, he said, “She’s pregnant, and she has to go to the woods to use the bathroom.”[[132]](#endnote-131)

“You’re talking about families with children and no water to take baths or cook,” said resident Barbara Wright.[[133]](#endnote-132)

It all started when Aqua bought the water system, installed meters and began charging residents water bills to cover not only water service but also the cost of the meters and corporate profits.[[134]](#endnote-133) Before, water and wastewater service was included as part of their monthly lot rents. This rental fee did not decrease.[[135]](#endnote-134)

For many customers, the change was confusing. If Aqua gave any notification of the new charges, it sent letters in English to this predominately Spanish-speaking community.[[136]](#endnote-135)

High rates exacerbated by leaking pipes made the transition all the more difficult. Several households received bills that topped $200 a month, and others accrued debts upwards of $1,000.[[137]](#endnote-136) Many families were paying more for water than for rent.

1. **Do you know any case of corruption involving private provision of water and sanitation services? Please give the necessary details.**
* In 2004, Rockland, Massachusetts, canceled a contract with Veolia (then USFilter) for the operation of its sewer plant after state officials found that the agreement may have been illegally tailored to the company.[[138]](#endnote-137) That same year, a company manager and former town official pleaded guilty to stealing $166,000 from the city by submitting phony invoices and intercepting reimbursement checks.[[139]](#endnote-138) In 2007, a U.S. District Court found that the Veolia subsidiary acted “unfairly and deceptively” to win the contract, and fined the corporation more than $230,000, doubling the amount of actual damages because of its “willful misconduct.”[[140]](#endnote-139)
* In 2003, Atlanta, Georgia, dissolved its 20-year, $428 million contract with United Water (now called Suez) after four years of terrible service.[[141]](#endnote-140) Allegations of corruption tainted the deal. After a lengthy probe, former Mayor Bill Campbell was charged in 2004 with multiple federal corruption charges, including accepting $12,900 from United Water to pay for a trip to Paris with a friend, and taking United Water’s $6,900 campaign contribution at a time he was not eligible for re-election.[[142]](#endnote-141) At Campbell’s trial in early 2006, it was suggested that one of Campbell’s top aides may have forged the letters.[[143]](#endnote-142) Campbell was convicted of tax evasion in March 2006, but acquitted of racketeering and bribery. He was sentenced to 30 months in prison.[[144]](#endnote-143) United Water was not charged. It was not corruption, though, that doomed United Water, but the corporation’s performance. United Water saved only half the amount of money it had anticipated[[145]](#endnote-144) and amassed a backlog of 14,000 work orders.[[146]](#endnote-145) Atlanta terminated its contract with United Water in March 2003, four years into the 20-year deal.[[147]](#endnote-146)
1. **Has the private sector shown more capacity to mobilize funds than the public sector? Could you please give concrete examples?**

Most U.S. governments have access to the municipal bond market or federally subsidized financing. When localities cannot access public financing or the bond market, privatization is also not a solution because private companies typically do not seek to invest in cash-strapped communities where cost recovery is low. Plus, because it is more expensive than government borrowing, the use of private financing translates into higher prices.[[148]](#endnote-147)

Making matters worse, long-term privatizations can also cause a government utility in the United States to lose the tax-exempt status of its existing bonds. In these cases, local governments have to retire the utility’s outstanding debt,[[149]](#endnote-148) often using part of their upfront payments from the company to do so. For example, when Cranston, R.I., leased its wastewater utility, it used $25 million of its $48 million concession fee to retire the system’s outstanding municipal bonds.[[150]](#endnote-149)

Any money received from the private sector is certainly not free money; rather, it should be thought of as a loan.[[151]](#endnote-150) Residents and local businesses will have to repay it, with interest, through their water bills.[[152]](#endnote-151) In a 1997 report about wastewater privatization, the U.S. Environmental Protection Agency said as much: “In summary, any payments a local government receives from the sale or lease of a wastewater infrastructure asset represent a loan from the buyer or lessee which must be repaid with interest by the wastewater users in the form of additional user fees.”[[153]](#endnote-152)

For example, in 2012, the city of Rialto, Calif., privatized its utility authority through a 30-year concession contract with a company controlled by Table Rock Capital.[[154]](#endnote-153) The private equity firm delegated the management and operation of the water and sewer systems to Veolia Water North America.[[155]](#endnote-154) Through the privatization, the city received $35 million up front,[[156]](#endnote-155) and will receive about $2 million annually,[[157]](#endnote-156) but the city also agreed to more than double water and sewer rates within four years.[[158]](#endnote-157)

Rialto’s mayor claimed that the rate increases — which would total about 115 percent from 2012 to 2016[[159]](#endnote-158) — were necessary to renovate the utility and to replace the financing option lost when California closed the city’s redevelopment agency.[[160]](#endnote-159) But this is only part of the story.

Consider that the deal involved a total upfront capital investment of $177 million, with $7 million coming from the utility’s existing reserves and the rest from the concessionaire.[[161]](#endnote-160) Of this investment, only about 40 percent was for improvement projects: $41 million for utility upgrades and $30 million for lease payments to the city, which was going to use the money on other projects. The rest of the money, $106 million, was going to be used to cover the costs of refinancing the existing debt, issuing new debt, paying legal and other transaction costs, offsetting increases in operating costs and mitigating rate increases during the early years of the deal.[[162]](#endnote-161) Thus, costs specific to privatization were a main factor driving the rate increases.

For example, through the privatization, Rialto refinanced its utility’s low-cost public debt with expensive private capital and increased the utility’s total liabilities. It had to retire about $27 million of existing low-cost debt, which had an average interest rate of 3.8 percent. At the same time, the city signed up its residents to repay the concessionaire’s $170 million capital investment with an interest rate of 8.6 percent, which includes a 19.6 percent return on its equity investment.[[163]](#endnote-162)

At this higher financing cost, ratepayers will have to pay about $16 million a year to cover the $170 million capital investment through the privatization. In contrast, public financing of the capital improvements would have cost less than half that. That is, the city could have saved its residents more than $8 million a year if the utility had simply remained public, kept the existing debt and issued revenue bonds to finance the $41 million of planned capital improvements and the $30 million that the city received as the upfront payment in the privatization scheme.[[164]](#endnote-163)

1. **In your opinion, is there power imbalance in a public-private partnership? Could you please give concrete examples of effects of this relationship?**

The local government is at a disadvantage when entering privatization deals. Local governments have less bargaining power than national or multinational companies, especially the large financial institutions that finance privatization deals.[[165]](#endnote-164) Even without fiscal pressure, municipalities usually lack the skills necessary to effectively negotiate long-term privatization contracts,[[166]](#endnote-165) and a cash-strapped municipality can have particular difficulty affording adequate legal and other assistance necessary to evaluate and negotiate a deal.[[167]](#endnote-166) Because of the complexity of these long-term privatizations, Aidan Vining *et al.* observed, “Indeed, one way of thinking of P3s [public-private partnerships] is simply government contracting out under relatively unfavorable conditions.”[[168]](#endnote-167)

Even when local governments pay high fees for legal and financial advice, it does not guarantee that the advice is accurate and trustworthy. Lynn, Mass., spent more than $3 million on consultants as it negotiated a deal to privatize its wastewater facilities for 20 years, but according to Robert Cerasoli, the Inspector General of Massachusetts in 2001, “[U]nfortunately, this expensive investment in expertise has not protected the ratepayers from a bad deal.”[[169]](#endnote-168) His audit found that the privatization was “likely to result in unnecessarily high costs for ratepayers.”[[170]](#endnote-169)

The likely reason is that financial advisors are not impartial judges of privatization contracts. Even though they are not bidding on the privatization project, they still have a strong incentive to push through a big deal because their compensation as a consultant often depends on it. Their payment typically includes a “success based” or “contingent” fee that they receive only if the privatization goes through. This fee is usually a percent of the transaction value,[[171]](#endnote-170) so the advisors can increase their earnings by recommending the biggest deal possible, regardless of the consequences for the public.[[172]](#endnote-171) This presents a serious conflict of interest. Local governments in fiscal duress, eager for a windfall, are especially vulnerable to being misled.[[173]](#endnote-172)

1. **When there is private participation in the water and sanitation sector, to what extent the private actor brings its own financial resources to the service?**

Private financing typically occurs in the U.S. water sector when the private entity outright owns the utility system. Private financing is rare in water-related public-private partnerships in the United States because of the private sector’s higher capital costs. Public utilities finance projects with municipal bonds, which are generally less expensive than private capital. In the United States, municipal bonds have an average interest rate of 4 percent, while a private water utility’s financing can cost approximately 11 percent.

In the United States, municipalities usually want to use low cost, tax-exempt municipal bonds to finance water-related projects, so they structure public-private partnerships in accordance with specific tax rules that restrict contract terms to 20 years. For that reason, contract terms rarely exceed 20 years.[[174]](#endnote-173)

There have been very few recent concession deals in the United States that involve private financing: Rialto, California; Bayonne, New Jersey; and Middletown, Pennsylvania.

**Remunicipalization**

1. **Have you studied any case of remunicipalization? Why and how has it occurred? What types of difficulties has the public authority faced to establish the new municipal provider? Please, provide details of those processes.**

From Evansville, Indiana, to Cave Creek, Arizona, local governments across the country exited private contracts and brought water services in-house to save millions of dollars. With local finances in dire straits, immediately following the Great Recession, these municipalities decided to cut out the wasteful spending associated with privately run water systems.

Public operation of water and sewer systems averaged 21 percent cheaper than private operation, according to a Food & Water Watch review of 18 local governments that ended contracts with private operators between 2007 and 2010. For Sioux City, O’Fallon, Petaluma and Fairfield-Suisun, the return to public operation came after more than two decades of private control.

Several cities found that public management can simultaneously cut costs and improve performance. Cave Creek, Arizona, reported in its 2009 financial report, “During the fiscal year the Town managed and operated its water system eliminating an operating contract with a private company and improving operations while reducing operating costs.”[[175]](#endnote-174)

Evansville, Indiana, expected to save $14 million over five years with public operation. The city’s utility director planned to use the savings to repair equipment that was not properly maintained under private management and to minimize water rate increases.[[176]](#endnote-175)

With effective local oversight and public involvement, publicly run water systems can achieve cost savings not possible under private operation. Public control eliminates overhead expenses associated with profits and taxes, and it ensures that funding spent on water infrastructure is reinvested into the community and supports good jobs for residents. Municipalization of water and sewer services can provide a simple way to chip away at the budget shortfalls facing too many of our nation’s cities and towns.

Despite these benefits, privatization deals can be difficult to undo. Under most circumstances in a long-term concession deal, assuming no violation of contract provisions, a local government could regain control of its water system only by paying a substantial termination fee, which usually involves repayment of the remaining balance on the concession fee.[[177]](#endnote-176)

In addition to ending private contracts, many communities across the United States want public ownership of their water and sewer services. Municipalization — the purchase of a privately-owned system by a local government — is a fairly common occurrence.

Nationally, there is an ongoing shift away from private provision of drinking water services. Between October 2007 and October 2011, the number of people served by privately owned systems fell by 16 percent, while the number of people served by publicly owned systems increased by 8 percent.[[178]](#endnote-177) A report by the U.S. Environmental Protection Agency identified a similar trend between 2006 and 2008 among small community water systems.[[179]](#endnote-178) Given these shifts, municipalization appears much more common than privatization. Indeed, local governments purchase privately owned systems with relative frequency.[[180]](#endnote-179) In Georgia, for example, between 1998 and mid-2010, municipal utilities purchased 379 privately owned water and sewer systems, or about 29 systems a year,[[181]](#endnote-180) and Florida had a dozen government acquisitions in 2010 alone.[[182]](#endnote-181)

Municipalization of drinking water service was even more prevalent a century ago than it is today.[[183]](#endnote-182) Around the turn of the 20th century, many of our country’s largest cities — including Baltimore, Boston and New York City — took over drinking water provision from private companies to improve service, reduce waterborne disease rates and increase water supplies to better fight fires.[[184]](#endnote-183) New York City, for example, took over drinking water services from the Manhattan Company,[[185]](#endnote-184) the predecessor of JPMorgan Chase,[[186]](#endnote-185) after an outbreak of cholera killed 3,500 people and a devastating fire caused extensive property damage.[[187]](#endnote-186)

Although communities take public control of water and sewer systems for a number of reasons, three common ones are to:

* *Gain local control.* Public ownership of water and sewer systems allows local governments to better manage water resources, growth and development.[[188]](#endnote-187) For example, public officials for the city of Cottonwood and the town of Prescott Valley in Arizona found, “Acquiring private water companies by municipalities (Chino Valley & Prescott Valley) allowed for better water management through more robust planning and control.”[[189]](#endnote-188)
* *Improve service.* Other communities have bought systems to improve water quality and service.[[190]](#endnote-189) Washington State’s Department of Health found that small privately-owned community water systems were 30 percent more likely to have violated drinking water rules than small publicly owned systems,[[191]](#endnote-190) leading it to conclude, “The department’s data suggest that public ownership provides better assurance for providing safe and reliable water than private ownership.”[[192]](#endnote-191)
* *Lower water bills.* Communities have also bought privately owned systems to control household water costs.[[193]](#endnote-192) In general, compared to local governments, for-profit water utilities charge considerably higher rates.[[194]](#endnote-193)

A key difficulty in the process is the obstinance of private providers to negotiate a sale, much less a reasonable purchase price. Certain large water corporations typically refuse to negotiate a sale of a system to a local government. When this happens, in most states, a local government can exercise its power of eminent domain to condemn the privately owned system.[[195]](#endnote-194)Eminent domain is a government’s right of sovereignty to take private property, so long as it is done for the public’s use and best interest and the private property owners receive just compensation, as required under the U.S. Constitution’s Fifth Amendment.[[196]](#endnote-195) When a government uses eminent domain, the Fourteenth Amendment guarantees due process of law.[[197]](#endnote-196)

States must delegate policymaking power, including eminent domain authority, to localities. As a result, the extent of a municipality’s power varies by state. Most states, however, grant more autonomy to home-rule cities, giving them authority to municipalize for city planning purposes.[[198]](#endnote-197) A couple of states, including Missouri, however, do not allow municipalities to condemn privately owned water utilities.[[199]](#endnote-198) Some states restrict a city’s condemnation powers to within municipal limits,[[200]](#endnote-199) while others allow a city to condemn water and sewer systems assets outside their boundaries.

As communities pursue local public control of their water supplies, they may encounter resistance from the private company that owns the system. Certain large water companies habitually oppose municipalization efforts, perhaps as a matter of corporate policy.

Common tactics used by these companies to try to stop public efforts include:

* Mass mailings, robocalls and newspaper advertisements[[201]](#endnote-200)
* Push polls[[202]](#endnote-201)
* Dubiously named websites (For example, American Water created FeltonWaterFacts.com for Felton, Calif.; LexingtonWaterFacts.com for Lexington, Ky.;[[203]](#endnote-202) and ChicagoMetroWaterFacts.com for Will County, Ill.[[204]](#endnote-203) Golden State Water Company created OjaiWaterFacts.org for Ojai, Calif.[[205]](#endnote-204))

Companies may adopt aggressive communication, organizing or lobbying strategies. For example, American Water hired the public-relations firm the Moriah Group to help oppose local control efforts including those in Lexington, Ky.,[[206]](#endnote-205) and Felton, Calif.[[207]](#endnote-206) In Felton, the company — via the Moriah Group — even hired a political organizer to live and work in the community to “serve as both an ambassador and a strategist.”[[208]](#endnote-207)

Some corporations may obstinately refuse to negotiate with the public. This forces communities to pursue eminent domain action to convince a water corporation to come to the bargaining table. The purchase price can also be an area of contention. For-profit water corporations, of course, want to get the most out of public purchases and can aggressively try to inflate the price. Certain companies expect to be compensated above and beyond the actual book value of their systems.[[209]](#endnote-208)

With slick lawyers and sizable legal budgets, some litigious companies might even try to exploit the legal process to drive up the public’s acquisition costs. In some cases, a company waits until just prior to the start of the actual eminent domain trial before coming to the bargaining table and agreeing to a negotiated settlement. This delays the transfer and wastes public resources while avoiding actual adjudication. Some companies have spent years in court bickering over the public’s legal authority to condemn a system and about what constitutes a fair market value.

American Water said that it might dedicate a considerable amount of corporate resources to fight condemnation efforts. “Should a municipality or other government subdivision seek to acquire our assets through eminent domain, we may resist the acquisition,” the company said in its annual report to shareholders. “Contesting an exercise of condemnation through eminent domain may result in costly legal proceedings and may divert the attention of the affected Regulated Business’s management from the operation of its business.”[[210]](#endnote-209)

Dollar figures for corporate campaigning against local control are not typically available to the public, but American Water disclosed to investors that in 1999 alone, it spent $5.6 million ($7.6 million in 2011 dollars) fighting municipalization efforts in Chattanooga, Tenn., and Peoria, Ill.,[[211]](#endnote-210) eventually defeating both.[[212]](#endnote-211) In Felton, Calif., American Water spent hundreds of thousands of dollars in just the first two years to stop the public acquisition,[[213]](#endnote-212) but the public control movement triumphed.[[214]](#endnote-213)

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