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# The Water Crisis in Martin County, Kentucky

## Executive Summary

The residents of Martin County, Kentucky are facing a water emergency comparable to Flint, Michigan and other water systems across the country that have suffered from disinvestment and contamination. Lower-income communities in urban and rural areas suffer disproportionately from unsafe and unaffordable water service. Martin County is one of the poorest counties in the country, and the nearly 10,000 people served by the Martin County Water District (MCWD) frequently wake up without any water at all, or with extremely low pressure or boil-water advisories.

The failure of the MCWD was precipitated and highlighted by an environmental disaster in 2000 when a local coal company owned by Massey Energy (now a subsidiary of Alpha Natural Resources<sup>1</sup>) spilled 300 million gallons of coal slurry (waste coal, chemicals and water) that polluted local water supplies. At the time, it was the biggest environmental catastrophe in the southeastern United States, but the Bush administration under the leadership of then-Labor Secretary Elaine Chao (wife of Kentucky Senator Mitch McConnell and current head of the U.S. Department

of Transportation) whitewashed the investigation, filed few charges against Massey and recovered a paltry \$5,600 to penalize the company.

But the coal slurry disaster brought the flaws in the MCWD into sharp focus as well as exacerbated the problems. The community was legitimately concerned about the impact of the spill on their water supply and on the public's health. Between 2004 and 2018, the MCWD more than doubled its service network, largely to address concerns about the water quality of private household wells that relied on "degraded ground and surface sources for drinking water."<sup>2</sup>

In 2002, Kentucky regulators investigated the capacity and operations of the MCWD in the wake of the disaster; they found the water system in a "general state of disrepair" and imposed more than 40 directives to make necessary improvements to the system. Follow-up reviews in 2006 and 2016 found that the MCWD still failed to take necessary steps to repair the broken infrastructure and the system's management, as well as to implement the majority of the recommended improvements.

In 2018, the MCWD still leaks more water than it delivers to people’s homes, but it is requesting a regressive 49.5 percent rate hike — average household ratepayers would pay 60 percent more (\$16.14 per 1,000 gallons) than the largest industrial user (\$10.06 per 1,000 gallons). This steep rate increase would be unaffordable in a county where about a third of the population lives below the poverty line.

The root of these longstanding problems has been a failure of local political leadership and a lack of good governance necessary to address the dangerous shortcomings of the water system. 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. If Martin County had dedicated a comparable amount of coal severance funds as other counties — as well as the state slurry disaster settlement funds — toward the water system, there would have been nearly \$20 million more for the water system, 50 percent more than what the MCWD estimated it would have needed.

These financial shortcomings have been magnified by a tax system that favors corporate land and mineral holdings, including out-of-state interests — among them Harvard University and Norfolk Southern railroad — that have paid little or nothing for land and mineral rights while the community’s public services such as water are ignored.

The residents of Martin County cannot afford steep price hikes for water that they cannot even drink. The MCWD has a demonstrated inability to manage the water system and deliver reliable, safe water to the thousands of people that need, deserve and pay for a water system that rou-

tinely fails. The state of Kentucky needs to take decisive action. Governor Matt Bevin should issue an emergency declaration, and the federal government must provide immediate funding to repair the system and avoid an unfair and unaffordable rate hike.

## Unfair rate hike for a failing water system

In 2018, the MCWD sought a 49.5 percent rate increase to generate an additional \$900,000 annually.<sup>3</sup> This surge in water rates was for a system mired in problems, with decades of leaky, unreliable and even contaminated water service (see below). The rate hike announcement coincided with another in a series of service disruptions. In January 2018, the MCWD issued a boil-water advisory and announced that it would cut off service for some customers for up to 14 hours a day because of declining water pressure that the system managers said was the result of “circumstances beyond our control.”<sup>4</sup> Some households were without water for as many as 21 days during January.<sup>5</sup>

Before the rate hike, Martin County water customers already paid higher water bills than many surrounding counties — all for unreliable service that frequently violated U.S. Environmental Protection Agency (EPA) standards for some chemicals.<sup>6</sup> In 2017, typical households paid \$40 monthly for 4,000 gallons of water.<sup>7</sup> But many residents drink and cook with bottled water because of concerns about the safety of their tap water.<sup>8</sup> One resident estimates that he pays an additional \$50 per month for bottled water to drink on top of the typical \$40 monthly residential water bill.<sup>9</sup>

The proposed rate hike continues the same regressive pricing structure where households pay a disproportionate share of the water system’s costs and pay more per

**TABLE 1. Current and Proposed Average Water Rates and Usage, Martin County Water District**

	Meters <sup>10</sup>	Water Use	Funding	Av. Current Price (\$/1,000 gallons)	Proposed Av. Price <sup>11</sup> (\$/1,000 gallons)
Household 5.8” connection	3,462	82%	86%	\$10.80	\$16.14
Large commercial 2” connection	29	10%	8%	\$7.88	\$11.78
Larger commercial 3” connection	3	2%	2%	\$7.27	\$10.88
Largest commercial 4” connection	1	3%	2%	\$6.73	\$10.06

SOURCE: Martin County Water District Application for Rate Increase 2018.

gallon than businesses that use more water. Currently, households pay 86 percent of the water system's costs but receive under 82 percent of the water. The three largest classes of water users make up 12 percent of the water system's revenue but receive 15 percent of the water. And the proposed rate hike would make households pay considerably more for water than businesses do — 60 percent more per gallon than the biggest user (likely a coal mine), and one-third more than a business with a two-inch water connection (see Table 1 on page 2).

President Lyndon B. Johnson launched his "War on Poverty" in Martin County, and although things have improved in the past half century, the county is far from prosperous.<sup>12</sup> According to the Appalachian Regional Commission, Martin County is an economically distressed county.<sup>13</sup> In 2016, nearly one-third (32.4 percent) of Martin County residents were below the poverty line, nearly double the poverty rate for non-metropolitan areas in the United States (17.4 percent) and a third higher than the non-metropolitan Kentucky poverty rate (24.1 percent).<sup>14</sup> The typical household earnings in Martin County were \$29,000 in 2016, 18.6 percent lower than other Kentucky non-metropolitan counties.<sup>15</sup>

Many people in the county are on fixed incomes that make it difficult to pay high water bills for water that they cannot drink, and then also are forced to buy bottled water.<sup>16</sup> The

proposed water rate would be an economic burden for many lower-income households, since the typical household bill would run upward of \$715 annually, or about 7 percent of income for the lowest-earning fifth of households, considerably above the common water affordability standard of no more than 3 percent of income.<sup>17</sup> And that does not include the \$600 a year that families may spend for bottled water.

This water crisis has been building during decades of mismanagement, disinvestment and ignored maintenance problems. It 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.<sup>18</sup>

In 2016, the County Executive-Judge (the head of the county executive branch) Kelly Callaham denied problems with the water system and contended that the loss rate was due not to leaks or failing infrastructure but instead to water theft from fire hydrants and coal mines.<sup>19</sup> Callaham also dismissed concerns about the safety of the water, stating that "'could cause cancer' and 'will cause cancer' is a whole different deal."<sup>20</sup> Martin County residents deserve better from their elected leaders.



President Lyndon B. Johnson launches his 1964 Poverty Tour visiting the Fletcher family in Inez, Kentucky.

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## The 2000 coal slurry disaster precipitated a water crisis

Although the MCWD was troubled long before the 2000 environmental disaster, the coal slurry spill catalyzed concerns about the floundering water system and contributed to the system's ongoing problems. The spill compromised the water system and contributed to concerns about the safety of private household wells, which encouraged the system to double in size and further stressed the already inadequate financing.

The coal mining areas of Appalachia, such as Martin County, have higher concentrations of poverty and higher mortality rates than the rest of the country, and these income and health gaps have been widening.<sup>21</sup> The federal government largely whitewashed the disaster, collecting paltry penalties, and the funds collected by Kentucky that were dedicated to the water system never ended up in the MCWD coffers.

In October 2000, a 2.2-billion-gallon coal waste lagoon owned by Martin County Coal Company, a Massey Energy subsidiary, burst near Inez, Kentucky, spilling over 300 million gallons of coal slurry including coal waste, treatment chemicals, toxic heavy metals (including mercury, lead and arsenic) and polluting 100 miles of waterways that reached the Ohio river.<sup>22</sup> The impoundment lagoon sat atop underground mines. When the 15- to 18-foot earthen barrier between the slurry impoundment lagoon and the mines ruptured, millions of gallons of sludge poured into the mines and ultimately broke through the seals intended to secure any breaches.<sup>23</sup>

The spill was 28 times bigger than the 1989 *Exxon Valdez* Alaska oil spill and was at that time the worst environmental catastrophe in the southeastern United States.<sup>24</sup> It caused "extensive environmental damage," according to the Mine Safety and Health Administration (MSHA), and the spill exterminated the once plentiful aquatic life, including 1.6 million fish, in Coldwater Creek, Wolf Creek and other surface waters.<sup>25</sup>

Massey was the biggest coal producer in Kentucky and Central Appalachia at the time of the disaster, and it had a poor environmental, worker safety and anti-union record.<sup>26</sup> The spill only added to the environmental injustice faced by the one of the region's most persistently economically distressed counties that was already disadvan-



A typical coal slurry impoundment (Brushy Fork, WV).

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FLYOVER COURTESY OF SOUTHWINGS.ORG

tagged by the coal industry.<sup>27</sup> The coal company and county authorities failed to warn residents or issue evacuation orders about the overnight disaster.<sup>28</sup> The community was unprepared for the disaster, and its economic vulnerability and distrust of corporate and political leaders created a hurdle to recovering from the disaster.<sup>29</sup>

The black slurry that residents compared to a "flow of black lava" coated streams, roads and lawns, in some areas to a depth of seven feet.<sup>30</sup> The spill clogged water system intake pipes and overwhelmed the MCWD water treatment system, and the surface water source of the MCWD was contaminated, making it impossible to provide reliable, quality water.<sup>31</sup> Five water treatment plants were temporarily shut down.<sup>32</sup> The spill polluted the water supply of over a dozen local communities across 10 Kentucky counties as well as the household water wells used by families unconnected to the water system.<sup>33</sup>

Some residents developed severe rashes, respiratory problems, nausea and headaches that they attributed to drinking or bathing in potentially contaminated water.<sup>34</sup> A law firm representing concerned residents tested the coal slurry and found high levels of toxic chemicals and heavy metals, and also that the metals and fuel oils were present in local tap water, although the EPA insisted that the water was safe.<sup>35</sup> After the spill, residents reported that their water had a foul odor and taste and that there was a powdery residue in the water.<sup>36</sup>

## **Investigation and cover-up of an environmental disaster**

The 2000 disaster was not a complete surprise. The company initially contended that the spill was caused by a “sudden and unexpected collapse” and even suggested that it was an unforeseeable “act of God.”<sup>37</sup> As one resident noted, “an act of God is flooding, tornadoes, hurricanes, lightning. An act of God is not a sludge spill.”<sup>38</sup>

In 1994, Massey had spilled 100 million gallons of mostly water from the same impoundment; the MSHA fined the company only \$1,600 and ordered Massey to reinforce the slurry lagoon.<sup>39</sup> But after the 1994 accident, the MSHA did little to ensure that the company actually shored up the impoundment. The MSHA and Massey knew that the 20-foot rock barrier at the bottom of the coal slurry lagoon was insufficient to prevent another spill and that another spill was essentially inevitable.<sup>40</sup> The MSHA even allowed Massey to increase the height of slurry by 70 feet prior to the disaster, despite the company’s failure to repair the impoundment.<sup>41</sup>

The federal investigation was almost immediately derailed by regulators cozy with the coal industry. The coal slurry disaster occurred in the waning days of the Clinton administration, but the investigation would be pursued — and sidelined — by President George W. Bush’s Labor Department led by Elaine Chao, wife of Kentucky Senator Mitch



Ten days after the Massey Energy coal slurry spill in October 2000, pollution is still clearly visible in Wolf Creek, a local waterway.

PHOTO COURTESY OF DAVE COOPER / WIKI COMMONS

McConnell.<sup>42</sup> Many believed that Chao took what the *Lexington Herald-Leader* reported as “a relaxed attitude toward the regulation of coal mines.”<sup>43</sup> Chao peppered the Labor Department and its MSHA with mining and coal industry insiders as well as former McConnell staffers.<sup>44</sup> A Democratic House Education and Workforce staffer said that mine safety was overlooked by the coal industry insiders in the Labor Department, noting, “It’s totally the fox guarding the henhouse over there.”<sup>45</sup>

A few days before Bush was sworn in, a new leader was assigned to the MSHA investigation who ordered the inquiry to wrap up in a week.<sup>46</sup> Chao urged the MSHA to quickly finish the Martin County slurry spill investigation, although career safety officials were far from done with their investigation.<sup>47</sup> The new investigation head took orders from the coal-friendly agency leadership, deleted portions of the report that were critical of the MSHA’s oversight, reduced the number of recommended violations and asked inspectors to sign the final draft without reading it.<sup>48</sup>

In April 2001, only six months after the accident, Chao issued a dismissive statement urging the MSHA to stop its “food fight” over whether to complete the investigation and just “finish the investigation and consider all points of view.”<sup>49</sup> The final report was “whitewashed,” according to MSHA engineer Jack Spadaro, who was ultimately forced out of the agency for pursuing a vigorous investigation.<sup>50</sup> Spadaro told *60 Minutes* that the Bush administration’s interference in the investigation into a serious environmental disaster was “corrupt and lawless.”<sup>51</sup>

The federal investigators originally wanted to charge Massey with eight violations, including potentially charging the company with willful and criminal negligence, which could have brought substantial legal and financial penalties.<sup>52</sup> But ultimately, the Bush administration filed only two contributory violations against Massey for the spill and sought a statutory maximum fine of \$110,000, and an administrative law judge reduced the penalty to only \$5,600.<sup>53</sup> Massey donated \$100,000 to the National Republican Senatorial Committee five months after the initial fine was levied.<sup>54</sup> Ultimately Massey’s federal fine for the Martin County disaster amounted to less than 2 cents for every 1,000 gallons spilled.<sup>55</sup>

In contrast, Kentucky immediately cited the company for unsafe practices — including five contributory violations

that federal authorities did not file.<sup>56</sup> Massey paid Kentucky \$3.5 million in fines and damages, the largest mining penalty in state history and more than 600 times larger than the penalty assessed by the U.S. Labor Department under Secretary Chao.<sup>57</sup>

The pro-coal cover-up of the investigation was so contentious that even Chao had to initiate an Inspector General investigation into the investigation.<sup>58</sup> When the Inspector General report came out, it cleared the MSHA of any misdeeds, but half of the report was redacted.<sup>59</sup> Some MSHA officials knowledgeable about the investigation believed that the redactions prevented the report from revealing documents or discussions that might have implicated Secretary Chao and MSHA leadership in a cover-up.<sup>60</sup>

Senator Paul Wellstone convened a hearing (months before he died travelling to a mining area in Minnesota's Iron Range) to investigate his "grave concerns about MSHA's enforcement efforts," including the Martin County disaster.<sup>61</sup> The short-circuited MSHA investigation made no recommendation about impoundments over underground mines, and, in Martin County, experts estimated that up to 100 miles of abandoned mineshafts could still be filled with slurry.<sup>62</sup>

A similar set of conflicts bedeviled the EPA investigation. The EPA investigators were based on Massey property, and the EPA allowed Massey to draft agency press releases on the disaster.<sup>63</sup> The environmental assessments of the spill and water samples were provided by consultants that were paid by Massey.<sup>64</sup> As a local schoolteacher said, "The watchdogs became guard dogs."<sup>65</sup>

Massey even reviewed the EPA enforcement order and recommended that the EPA abandon violations under the Superfund law.<sup>66</sup> The EPA ultimately agreed and pursued lesser violations under the Clean Water Act instead of the Superfund statute, and in 2001 it ceded oversight of the clean-up to Massey.<sup>67</sup> The surrender on Superfund meant that the federal government could not recover penalties for environmental or public health damages and precluded the sludge from being considered a "hazardous substance."<sup>68</sup> Community efforts to engage with the EPA fizzled. The agency sidelined community efforts to participate in clean-up and recovery planning, and the EPA finalized the Massey settlement without local input or consultation.<sup>69</sup>

Massey got off pretty easy. It paid \$46 million to clean up the disaster, the \$3.5 million in state fines and an undisclosed amount to residents who sued for property damages.<sup>70</sup> But the clean-up itself was largely scraping up the sludge that it could and covering the remaining stained land with hay and sprayed grass seed.<sup>71</sup> The slurry remained on some people's land for years after the accident.<sup>72</sup> The streams that were most impacted by the spill are expected to never be free of the coal slurry residues.<sup>73</sup> In 2003, the company received a \$21 million insurance settlement to cover losses to property and business operations, and it told shareholders that the environmental disaster did not harm its finances.<sup>74</sup> Nor did it appear to operate any differently. Massey had 22 more impoundment spills in the decade after the Inez, Kentucky disaster.<sup>75</sup>

## Environmental disaster precipitates and exacerbates water crisis in Martin County, Kentucky

The coal slurry disaster focused attention on the flaws of the Martin County Water District. The MCWD has been plagued with management problems and failure to perform routine maintenance of the system for at least two decades.<sup>76</sup> But the environmental disaster prompted a closer look at the system by state regulators after the coal slurry compromised water that supplied the system as well as private household water wells.

The MCWD had to add a new intake line to circumvent the water supplies polluted by the coal spill.<sup>77</sup> And it substantially expanded its service area. Between 2004 and 2018,



Water intake point on Tug Fork.

PHOTO COURTESY OF BENNY BECKER / OHIO VALLEY RESOURCE

the MCWD more than doubled its service network (from 130 miles of water mains to 275 miles), largely to address concerns about the water quality of private household wells that relied on “degraded ground and surface sources for drinking water.”<sup>78</sup> The financial condition of the system deteriorated during the 2000s after the slurry spill.<sup>79</sup> The MCWD was already troubled, but the additional demands and expanded footprint made it even more difficult to right the foundering water system.

After the coal disaster, the Kentucky Public Service Commission (PSC) investigated the MCWD, the first of at least three scathing reviews. In 2002, the PSC declared that the system was “in a general state of disrepair” when the system’s only functioning pump broke down and the MCWD had to scramble to find a replacement.<sup>80</sup> The PSC found that “there is a very real, and entirely unacceptable, possibility that the hundreds of homes and businesses served by Martin District could lose water service.”<sup>81</sup>

During this period, the MCWD briefly pursued a failed privatization effort. In 2002, the MCWD contracted with the private water company American Water Services to operate the system, but the company left after two years because it was not getting paid and alleged that the MCWD owed it more than \$600,000.<sup>82</sup> Private water companies are no solution for Martin County’s water woes. These companies have no interest in failing, rural systems — unless they can charge their customers statewide much higher rates to take over the struggling system.

The PSC issued several pages of recommendations that the MCWD flaunted; subsequent reports found many repeat problems dating back to 2002.<sup>83</sup> A 2005 investigation found that the MCWD “current practices prevent the provision of adequate and reasonable water service.”<sup>84</sup> A 2007 audit found poor recordkeeping and lax financial controls but also “poor equipment and maintenance” and a “persistent inability to comply with regulatory requirements.”<sup>85</sup>

Today, the system remains a mess. In 2016, the PSC found “longstanding concerns” with “lingering problems of significantly high water loss, lack of performance of routine maintenance and testing and failure to follow acceptable management practices.”<sup>86</sup> Between 2002 and 2014, the MCWD failed to address 37 of 43 actions to remedy the many flaws in the system’s operation and management;

by 2015, it still had not addressed half of the problems identified a decade earlier, and the system remains plagued with “continued deficiencies.”<sup>87</sup> In 2016, schools had to be closed because of unreliable water service, and the school system had to install filtered water fountains because parents were worried about their children drinking the water.<sup>88</sup>

### ***System leaks more than half the water***

More than half of the water pumped into the MCWD’s system never reaches water taps because of extensive leaks.<sup>89</sup> Between 2012 and 2015, the system leaked over 1.5 billion gallons of water, with annual losses ranging from 52 percent to 62 percent.<sup>90</sup> The leaky water system has been a problem of underinvestment for decades. In 2006, an independent evaluator reported that the “single biggest issue” facing the MCWD was “high, unaccounted for water” that was “contributing to increased costs” and made “regulatory compliance more challenging.”<sup>91</sup> In 2016, the MCWD former general manager reported that the system desperately needed to replace its leaky and old distribution lines.<sup>92</sup>

The PSC has repeatedly ordered the MCWD to address these losses, which exceed the 15 percent loss “that is permitted to be recovered in rates” under state law.<sup>93</sup> The PSC reported that the system leaked 64 percent of its water during 2016, but during 2017 losses fell slightly to 56 percent, purportedly attributed to technical assistance from the Kentucky Rural Water Association.<sup>94</sup>

The widespread leaks create the low-pressure problems that mean that residents farther away from the pumping station often do not have water in their taps.<sup>95</sup> The MCWD often distributes the water unfairly, providing water to the towns while remote, rural areas go without water.<sup>96</sup>

### ***Low-quality water and low-quality service***

Local residents have longstanding concerns about the quality of water service and the quality of water. There are frequent water service outages, advisories to boil water and low-pressure periods, and, when the water does come out of the taps, it can contain gray, brown or yellow discoloration or suspended solids, or be milky-white with strong chemicals or smelling of sewage.<sup>97</sup> From 2004 to 2016, the MCWD issued 113 boil notices and violated water quality standards 48 times.<sup>98</sup>

The 2016 PSC investigation included 247 filed complaints for issues including customers being without water for days; very or extremely low pressure; milky or cloudy water; muddy water; water with stale, bad or foul odors; greasy water and foamy water with dirt.<sup>99</sup> Many residents have refused to drink the water for years or even decades.<sup>100</sup>

The water system's high leaks also contributed to the MCWD's persistent violations for disinfectant chemicals.<sup>101</sup> The water system is supplied by surface water (rivers and streams) and not groundwater, which requires more treatment to reduce the risks from runoff from decomposition and household sewage that is commonly discharged into local streams.<sup>102</sup> The system has often reported excessive amounts of the disinfectant chemicals trihalomethanes (THMs) and haloacetic acids (HAAs) that can irritate eyes and skin and can cause cancer.<sup>103</sup>

The MCWD warns on its water bills that the elderly, infants and the immune-compromised should not drink the water without talking to their doctors about health risks.<sup>104</sup> The system routinely violated THM and HAA standards, failing 80 percent of the tests for HAA and 60 percent of the tests for THM in 2016 and early 2017.<sup>105</sup> Many residents report skin irritation, gastrointestinal problems and autoimmune disorders that they worry may be caused by water contamination.<sup>106</sup> In some cases, the MCWD waited months to notify residents that the water violated EPA standards.<sup>107</sup>

## Culture of fiscal mismanagement and corruption contributes to water woes

The MCWD has longstanding finance and management problems that have prevented it from addressing the substantial needs of the system. The 2002 PSC report identified many management lapses including the failure to maintain records, poor cash management and inadequate procurement and payment systems.<sup>108</sup> In 2003, the former MCWD chairman admitted that most of the financial records were missing.<sup>109</sup> In 2014, six people pleaded guilty to stealing \$31,000 from the MCWD.<sup>110</sup>

In large part, the local political leadership has failed to direct needed resources to the water system and to ensure proper management. The system is controlled by the local political powers — the judge-executive and fiscal court — that appoint the MCWD board.<sup>111</sup> The com-

munity had long viewed the water board as incompetent and believed that its members received their positions to “repay political favors.”<sup>112</sup> In January 2018, four new members were appointed to the water board, which some community members say will create more accountable leadership for the MCWD.<sup>113</sup>

Public opinion has not improved. Some residents believe that the water board does not care about providing service or listening to customers.<sup>114</sup> In a 2017 PSC public meeting, residents expressed extreme disappointment in the MCWD and near-total lack of confidence in its leadership. One person asked “if Martin District will ever be fixed,” another stated that “Martin District does not care what happens to people in Martin County,” another said that the “commissioners of Martin District deny that there is a major problem,” and one concluded by asking, “Why should the current organization be allowed to continue to oversee MCWD after years of mismanagement which has left the water system grievously neglected and which has continuously failed to meet water standards?”<sup>115</sup>

The problems appear to begin at the top. In 2016, the MCWD estimated that it needed \$13.5 million in repairs and upgrades, but county leaders, including Judge-Executive Callaham, had already issued bonds to build a new \$10 million county courthouse that housed government headquarters, giving themselves posh new offices and consuming most of the county's debt capacity through 2038.<sup>116</sup> Callaham (who succeeded his father in the post) refused to comment on problems with the water system repeatedly in 2016.<sup>117</sup> In January 2018, after another shut-off left several communities without water, Callaham declared



Martin County recently spent \$10 million on a new government headquarters building.

PHOTO COURTESY OF BENNY BECKER / OHIO VALLEY RESOURCE

a state of emergency and hoped that state and federal authorities would follow suit and provide needed funding.<sup>118</sup>

The misallocation of resources into the brand-new courthouse is only part of the problem; the county failed to invest funds from the coal industry and the coal slurry spill settlement into the water system. From 2001 to 2016, Martin County received \$34.5 million in coal severance payments (payments from the coal industry to the state and local communities), but spent only \$7.3 million of this money (about 21 percent) on the water system, far lower than the 70 to 75 percent of coal severance payments that other counties spent on water infrastructure.<sup>119</sup>

Moreover, Martin County failed to direct the \$3 million from the Massey coal settlement to improve water quality into the water system, as was intended.<sup>120</sup> If Martin County had dedicated a comparable amount of coal severance

funds as other counties, as well as the slurry disaster funds, toward the water system, there would have been nearly \$20 million more for the water system — about 50 percent more than what the MCWD estimated it would have needed.

The county's history — and continued culture — of corruption could be the root of the fiscal mismanagement. When the county-executive was sentenced to 20 years in prison for pocketing federal anti-poverty funding, his beautician wife temporarily kept his post warm until President Richard Nixon pardoned him five months later.<sup>121</sup> According to a 2015 Kentucky Center on Investigative Reporting exposé into Kentucky nepotism, Callaham's wife is also on the county payroll as a finance officer, receiving \$35,000 a year since 2003.<sup>122</sup> The Callahams' combined public paycheck approached \$120,000 in 2013 — about four times more than the typical household earnings in the county.<sup>123</sup> And

### **Absentee land, mineral and timber owners compromise Martin County finances**

The biggest land, mineral and timber owners have historically owned substantial portions of Appalachia and Martin County, but they paid little in taxes to support local services like roads, schools and water.<sup>136</sup> The *Pittsburgh Post-Gazette* reported that “the issue of land ownership is near the heart of most discussions about poverty” in Appalachia, and that inadequate tax revenues from corporate and absentee owners starved local governments of needed funds for services.<sup>137</sup> A 1980 comprehensive survey of land ownership by the Appalachian Land Ownership Task Force found that 57 percent of Martin County's surface acres and 59 percent of the mineral acres were owned by absentee and corporate interests.<sup>138</sup> It appears that some of these far-flung owners are still major landowners and still pay a pittance in taxes to the county that generates a portion of their wealth and earnings.

**Norfolk Southern:** The Norfolk Southern railroad is a major landowner and coal producer in Martin County through its Pocahontas Land Corporation. In 1980, it was the largest landowner and mineral rights holder in Martin County, with nearly 48,000 acres of surface land and more than 81,000 acres of mineral rights, and because the tax was only one-tenth of a penny (\$0.001) per \$100 in value, the company paid \$76 dollars in taxes.<sup>139</sup> Today, Norfolk Southern owns more than 1 million acres across Appalachia,<sup>140</sup> including substantial coal rights in Martin County that do not appear to have diminished since the 1980s.<sup>141</sup> The taxes on mineral rights are higher today, but even still the county taxes amount to a pittance on the value of mineral rights in Martin County. According to the Kentucky Department of Revenue, the total value of all oil, gas and unmined coal in Martin County was valued at \$50.6 million in 2017, but the county tax revenue on this value would amount to only about \$158,000.<sup>142</sup>

**Harvard University:** The Land Ownership Task Force reported that Harvard University held more than 11,000 acres endowed by wealthy donors in Martin and Johnson counties.<sup>143</sup> The *New York Times* identified these donors as descendants of the 19th-century scientist Louis Agassiz, and it appears that some 12,500 acres in Martin County were owned and about 40 natural gas well permits were submitted by the Agassiz holdings that appear to be associated with Harvard University.<sup>144</sup> As a non-profit, Harvard would not pay taxes on its land, but it might pay some portion on its mineral rights. In 2014, seven of the Agassiz wells produced 71 million cubic feet of natural gas, worth about \$400,000.<sup>145</sup> While these Harvard-associated wells might not pay taxes on this gas, the university would earn a 12.5 percent royalty worth \$50,000; the drilling company would pay a gas severance of 4.5 percent to Kentucky, and at most half of that, or \$9,000, might come into the Martin County coffers.<sup>146</sup>

the county pays \$140,000 annually to six county jailers, even though the county has no jail, and the head jailer also moonlights full-time for nearly \$22,000 as a school custodian.<sup>124</sup>

There also have been several notable examples of small-town corruption that suggest a culture of using public resources for personal gain. In 2013, the county clerk was required to repay more than \$25,000 to repay a deficit in the county accounts attributed largely to financial mismanagement.<sup>125</sup> A year earlier, two of her daughters who also worked in the clerk's office pleaded guilty to stealing nearly \$29,000 from the county coffers and agreed to serve five years in prison.<sup>126</sup> A former Martin County school superintendent hired his wife at a salary of \$50,000 more than the employee who had previously held the position and awarded scholarships to his children and other employees' children.<sup>127</sup> A former Martin County community organizer said, "There was always terrible corruption, so locally, the level of expectation for government was always very low."<sup>128</sup>

The unresolved — and unaddressed — complaints about a failing, dangerous water system have undermined residents' confidence in democratic governance, while local officials ignore persistent complaints.<sup>129</sup> Some fear retaliation from the coal companies and the loss of jobs or severance packages for complaining about the water service.<sup>130</sup> A survey of local residents after the coal disaster found that residents "did not trust local government to guarantee water quality, protect public health or advocate for the public interest over private corporate interests; most saw local government officials as essentially corrupt, incompetent or both."<sup>131</sup>

Nor have federal officials stepped up to protect the county, even though the community is represented by powerful legislators in Majority Leader Senator Mitch McConnell (R) and House Appropriations Committee Chair Representative Hal Rogers (R). Both are widely seen as coal industry allies. The coal industry gave over \$580,000 to the National Republican Senatorial Committee while it was run by Senator McConnell between 1997 and 2000.<sup>132</sup> McConnell has been the all-time highest Senate recipient of coal industry campaign contributions, raking in more than \$845,000 from the industry since 1990; Rogers ranked fifth in the House with over \$397,000 in donations.<sup>133</sup>



Water from a residential tap in Buffalo Horn.

PHOTO COURTESY OF JOSHUA STACY

Since 2001, after the Martin County coal slurry disaster, the coal industry has donated nearly \$65 million to federal candidates, almost all of it to Republicans.<sup>134</sup> One Martin County resident concluded: "Mitch McConnell could do a lot more if he would. But I've never seen anything that showed me he's even interested in this. If you want my honest opinion, he'd stand firm behind the coal company."<sup>135</sup>

## Conclusions and recommendations

Martin County residents have put up with shoddy, unreliable and unsafe water service for years. Now, the Martin County Water District is asking to raise rates by 50 percent. The MCWD and the local leadership in Martin County have displayed an almost willful disregard for the waterless plight of the county residents and a demonstrated inability to manage and maintain the water system.

**The Kentucky Public Service Commission must reject the MCWD's application to raise water rates.** While the system clearly needs funding, residents cannot afford to pay more for unsafe water. The PSC has repeatedly found that the MCWD has not maintained the system, has often had water loss rates around 60 percent over the past decade (four or more times higher than the state-directed 15 percent loss rate). The PSC should provide training to the MCWD's new board members and facilitate onsite training by the Kentucky Rural Water Association.

**Kentucky must take decisive action.** The state of Kentucky should declare a state of emergency in Martin County over the failure of its water system, which cannot provide reliable, safe drinking water to the 10,000 people served by the MCWD. The state should take all possible actions to rescue the MCWD, including providing immediate financial relief to repair the ailing system, funding continued technical assistance from the Kentucky Rural Water Association and encouraging a nearby functioning public water system to work with the MCWD to improve its operations on a not-for-profit basis. This should include ensuring that needed resources are directed to the MCWD from the Kentucky Infrastructure Authority or the Kentucky Department for Local Government.

**Kentucky's Congressional delegation must take action.** Kentucky's federal leadership — including Senators Mitch McConnell and Rand Paul and Representative Hal Rogers — should form a federal task force to investigate the federal, state and local failures in Martin County. These three powerful legislators should ensure that Martin County is declared a federal emergency to receive immediate aid, and that in the long term the county receives needed resources from the Abandoned Mine Land Fund, the Water Resources Development Act, the U.S. Department of Agriculture (USDA) Rural Development Water & Waste Disposal Loan and Grant Program, the Appalachian Regional Commission and any other federal funding sources. These leaders must work to preserve these crucial federal water funding programs

— including the Drinking Water State Revolving Fund Program and the USDA's Rural Water grant program — from budget cuts.

In February 2018, Representative Hal Rogers and Kentucky Governor Matt Bevin secured \$3.4 million for the MCWD (which is in addition to a \$1.2 million grant already provided by the Appalachian Regional Commission).<sup>147</sup> This desperately needed funding eliminates the justification for an emergency rate hike, or any steep water rate hike, as it exceeds the system's annual expenses and revenue needs.<sup>148</sup> It also provides a sufficient financial cushion for political leaders in Washington and the state capitol to provide the full public funding the MCWD needs without gouging the residents that have long been plagued with poor service and low-quality water.

**Congress should reject any infrastructure plan that relies on privatization or private equity financing to improve public water and wastewater systems.** Privatization, including public-private partnerships, do not work for rural or low-income communities. Water corporations and Wall Street firms are disinterested in investing in smaller, rural and poorly-maintained water systems that are generally unprofitable. Any infrastructure package that relies on privatization will fail to serve the people that need it most — ratepayers in lower-income and rural areas that need public funding to renovate and restore their water systems to ensure they have access to safe, clean and reliable water.

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