

Jim Olsen

[00:00:16 Ok, you can show me around]

Ok, so this is the top of the stairs, so to speak and our offices are this way.... and so come right in and I'll introduce you to some of our young people here. Uhh, so let's see, this is Katie Levy and this is Allison Voguson, so you're both from Detroit.

[00:00:46 Cool, where in Detroit?]

(inaudible)

[00:00:50 Oh cool, I grew up in Birmingham. Where'd you go to high school?]

(inaudible)

[Olsen] Yeah, so she's at James Madison, she's doing communication policy and running the office. And Kate's doing a film in conjunction with a presentation I did at the conference at Wayne State. She happened to see it on.. were you watching it on TV or somewhere?

[00:01:15 I was watching it on the internet in New York]

Oh, somewhere in New York? And so she wants to do some uh, journalism and filming about it, about the Detroit situation. *Person in background makes a couple comments followed by more introductions.*

So she was watching on the internet a streamed video of the Wayne State conference. And she was in New York so she's here now to do some journalistic filming. And she's from the Detroit area, and it just so happens that we're gonna talk about line 5 after we talk about Detroit. Her parents live on the East Block up by the LenFesties. We want to do a major meeting on Mackinac Island this summer.

[00:02:40 I would like to be there for that (oh yeah, you should)... and anyway I can help you...]

Great. Yeah, we think that's the place to start.

[I'm sure my mom would be very interested in that. She's quite the environmentalist.]

.... *Other introductory comments.*

[00:04:36 Do you mind if I film this board? Is that OK? I know sometimes strategy is sensitive, but...]

Well, it's old enough where it probably isn't sensitive anymore. It just shows you that we don't just pick numbers out of a hat although, sometimes that might be a lot better. No, I'm just kidding. No, we don't. We actually work pretty hard to make things right.

[I can tell]

A little more logistics and background discussion

Actually, this occurred some time ago, but what's evolved is the Work of Flow having its mission in water and looking at water as **[00:05:52 video turns on]** not only how we use it as humans, but how the integrity of water, both the level and quality of water, and how it's important for everything; whether it's a human being or a fish, or a frog. The ecosystem, everything works together and we as a society have separated and fragmented water from air from land for so long, even though we have good legal programs and policies around each of those fragments, we don't look at it as a whole. So what we started doing was realizing that when you look at water in something like the Great Lakes or the Detroit River or Lake Huron or Lake St. Clair, that's the water we see and use in many ways, from survival and drinking water up to leisure time activities as we were talking earlier. So what we understood was if you can see that that's what needs to be protected, but what you see in the Detroit River and Lake St. Clair and the Great Lakes is only part of the arc of the whole water cycle. It's all one, and whatever you're seeing in terms of diminished water and diminished water quality and that water you use to drink and use to enjoy, when that's adversely affected it's either happening directly to it or you move to the ground water or the air such as climate change, and whatever is happening to that cycle affects that water. There's a doctrine of public trust that protects that water which you can use to look at the whole cycle. Once we figured that out, we started looking at water, energy, food land as one, and there's whole movement and economy and science and engineering and all other fields, about the water-energy-food-nexus. What that lacks is a cohesive and comprehensive policy and principle.

[00:07:49] What we think ties these together is the science of the hydrologic cycle in its greatest depth, both hydrologically, geologically, geographically, economically, you name it, you name the discipline. But it ties it all together as one whole to start understanding and once you look at the water piece as the baseline of life and you protect the integrity of water as part of that hydrological cycle, you protect the whole. The public trust doctrines according to the U.S. Supreme Court in 1892 for water like the Great Lakes are subject to a public trust, which means it's held for the government just like the government is a trustee for you the citizen as a legal beneficiary, just as if you were left an inheritance and actually, you were left an inheritance: it's water. It's connected to the whole of the Great Lakes, particularly us of the Great Lakes, and it's inalienable. It can't be sold for private gain, it can't be polluted even though it is, and what we're looking at is a basic legal structure to begin to correct the mistakes we've made in the past, to integrate the fragmentation that's keeping us from solving these problems now, and then finally to move forward in this century using these principles to make the right decisions. And the Detroit water situation is one example of many. The extreme energy and

pipeline in the great lakes basin is another. The nutrient run off and dead zone in Lake Erie--they shut off one third or one fourth of the lake in 201-- is yet another, climate change and the swings in water levels and extreme weather and rainfall events, winters, that's another. The threat of privatization or export is going to be huge given the global water crisis in this century.

[00:09:58] And we have to be prepared for that. And so by developing this approach and the commons and public trust principles, we, all of us together, this is all of us in the same boat together, all of us together have a way to move forward.

[00:10:10 Let's go sit down and we'll continue talking. That's a great intro. So... small talk about a magazine, the space, orientation and the lighting. video off.]

[00:13:41 (video back on) Alright, this is perfect. So, um, let's start by, just give me a run down of a couple of precursor cases that you're aware of that established water as a public trust.]

The history of public trust starts really with the Justinian Code almost 2,000 years ago, actually 1,600 years ago or so in Rome, that carried forward to England because of the Roman Empire and the idea of water as a commons basically meant at that time that things that are wild like air and water and running free like wildlife are not owned by anybody. They're a commons and each person has a right to use and enjoy those for first of all for their survival, which I think is an important principle and then later for other uses. In England, it was sort of incorporated into the magna carta because of the principle of limitation on kings and queens, the idea of limited government, and they buoyed the people to limit abuses and to protect fundamental, essential rights. In that, there was a case that occurred shortly after the Magna Carta in England involving an attempt to sell the, an attempt by the crown to sell the seabeds, that everybody, the poor and the normal person lived off these seabeds and they basically were gonna sell them to the lords in exchange for money to fight another campaign in Europe. And there was a huge rebellion, and as a result, there was a principle that limited, based on the Magna Carta, that limited kings and queens from selling off the seabeds of the people.

[00:15:47] And that's where that started. That came to this country through the colonies and the declaration of independence and the formation of the states. And every state has that principle embedded in its common law, and the next case I'll tell you about is really important because you can't get rid of this principle it's so fundamental to human survival and human community. So, a case called *Arnold v. Mundy* in 1821 in New Jersey recognized that English principle that I told you about and was the first state to adopt it in the United States, and that's followed in virtually every state in the country, as well as Canada, only in a little bit different form. Fundamentally, the same. The U.S. Common Law and the Canadian Common Law come from the same root, which is the English principle that I just told you about. So, fast forward to 1892-- Illinois Central Railroad was a very powerful railroad in the central part of the United States. Rather than run east and west, it ran from Chicago to New Orleans. So North and South. And with lots of limbs on the tree of it's trunk system or railroad line system everywhere, one

of the centers is Chicago, and they decided that they wanted to expand their industrial beachhead on Lake Michigan and so convinced the Illinois legislature to deed one square mile of Lake Michigan to the company. One square mile of Lake Michigan, including the water, to the railroad company. It didn't sit well with the voters of Chicago 'cause it was in Chicago. The next, a couple years later, there was a new legislature in Illinois and a new attorney general and the new legislature, pressured by the people, basically rescinded the deed that had been given to the railroad company from the earlier legislatures.

[00:17:58] The company said, uh, too late, we have the deed, it's ours. Well, it went to the Supreme Court, and the history of all this, a lot of the history of this is you know, is in a couple of good libraries in Chicago if anybody wants to trace it, Newberry Library is one. So, uh, it gets to the U.S. Supreme Court and the U.S. Supreme Court Said: "the deed is worthless." Why? Because based on the Magna Carta and these early cases in the United States, the seabeds are subject to a public trust, so is all navigable waters, like the Great Lakes. The great lakes are there for a public, impressed with this public trust. The states have an obligation to hold it for the people. They have to hold it for drinking water, which is your right of sanitation/basic need, fishing, which is food and survival, following--this is early law-- boating, swimming, bathing and other forms of recreation and human need. The govt has to hold it, and to assure that they hold it right and citizens have a right to enforce this public trust just like if we're the beneficiary of the bank where somebody left you \$100,00, guess what, they left you Lake Michigan or Lake Erie or the Detroit River. It is held by your state in trust for you and you're a legal beneficiary and if the state doesn't do it right as the trustee, you have a right to correct that. So that's an important principle

[00:19:39 THAT's very important piece of it. So can we talk... I'm just gonna put this down here because sometimes your hands on the table ... *adjusting microphone*. So how does this fact of water being held in the public trust and that being a supreme court law, a constitutional law?]

Well it's constitutional in nature in many respects. It's also what they call a common law, which is inherent in the law of each state. So the State Supreme Court of Michigan on numerous occasions has recognized a public trust doctrine in our own state based upon that Illinois central railroad case, so bringing this whole thing from Rome to England to New Jersey to the Great Lakes, it also applies to every lake and stream that's navigable in the state of Michigan and anything that impacts those lakes and streams.

[So how does this inform the water issue in Detroit?]

Well I think in a couple of ways. One is, the water from Detroit is primarily from Lake Huron and the Detroit River. Right? So, that water is probably Trust Water. Under the public trust doctrine, public trust resources like the Great Lakes, cannot be sold or

alienated to, for private purposes or for private subsidy and gain. That's a very basic thing to remember. Secondly, the trustee, whoever is managing that water, has to make sure that that water is transferred to the next generation in basically the same condition that it is today. So there's a duty to protect it from material impairment. So no private purpose game, no material impairment, and there's a basic duty of fundamental disclosure and accounting, so there's transparency, about the decisions of the trustee, just as if you have a bank managing a trust, you have a right to see the books.

[00:22:14] So those are the basic principles when you make a public trust decision. How did you make the decision, for example, to put a thousand foot dock in, you know, in market harbor or a thousand foot dock in Lake Superior in 1960? Did you go through the analysis of is it for a public purpose or a private purpose? Did you see if it was going to cause harm? If you didn't make those findings and disclose those and justify what you're doing for the people, then your decision is invalid. so it has this duty of accountability. So, three things: no primary private purpose, no material impairment now and for future generations--we're talking about water-- and a duty to account to your basic citizen. 3-things, those are the basic principles. Now, let's move that to the Detroit water situation. You have public trust waters that come into pipes. They're part of the system, right? They're treated, they're distributed, they're collected, they're discharged. So, that water, just because it comes into the Detroit system, doesn't lose the public trust nature. It's still public, just because it comes into pipes. 'Cause it goes back as wastewater, right? Now it's used, and some of it ends up in your body or materials or whatever, but the fact of it is a great, most of it ends up back in the Great Lakes. So you have a circuitous tracing of water that is basically public. The other reason it's public is because the Detroit Water Board, like any municipal water service, is based upon public infrastructure. So you have publicly held infrastructure owned by the taxpayers, owned by the city but really for the people, the sovereign taxpayers of that city, public infrastructure with public water held in public trust, alright, basically doesn't lose its public nature or it's trust nature. So, what I'm suggesting is the way decisions could be made concerning the situation in Detroit is start with a fundamental principle that already exists and that's a way of public here, we have public infrastructure, and if we do, if we have public water that's held in trust at least when we took it out and we had to return it, then are we following the fundamental principles of that reality?

[00:24:49] And then the next set of questions I think would have to do with well, what is that? What are those center principles regarding this reality and how might it help the Detroit situation?

[So if the argument is made that part of protecting the public infrastructure is maintaining the monetary equilibrium of that infrastructure, thereby collecting delinquent fees through the threat of shutoffs is actually bettering the public infrastructure, how do you argue with that?]

Well, I mean, let's, I mean there's 2 things going on in Detroit that we could talk about as I understand it, and I'm only offering the background in water law and public trust law and other things regarding these kinds of issues to see if we can ask the right questions

to get some better answers. There are a lot of people who know a lot more **[video shutoff 00:26:01]** about the Detroit water system than I do at this point, so **[video back on]**. But I think if you talk about shutoffs and perhaps this proposed so-called privatization or leasing to a large water company, the water system, and you might also add in this proposed agreement to expand the water board to include the suburbs themselves and have a regional water authority; I mean, that's another thing you can look at. So, starting with the shutoffs, what you've got 120,000 residences slated for shutoff um, some of those are probably vacant, so they get shut off pretty easily but I think most of them are not, as I understand it, so it's a pretty serious situation. So you ask yourself, what's the water held for? What is it held for? It's held in trust. Did it lose its public trust nature? No, the public infrastructure is paid for by taxpayers. Are owners of residences taxpayers? Some of them are. Well what if they're tenants? Well, they pay their rents and the landlord pays the taxes, and that helps pay the infrastructure. So, uh you have a fundamental relationship here, and one of the fundamental uses and rights protected by the public trust doctrine is the use of water for drinking and sanitation. So, if you're telling somebody because they don't have money they don't have access to drink water or wash themselves, or cook, you're violating a very fundamental principle of the commons of water. That's kind of like saying, that's like the crown, like the example I used earlier where the crown wanted to sell off the seabeds, uh, and the people couldn't sustain themselves and there was quite an uproar. Understandably there was an uproar, but also understandably that principle protected their fundamental right to survive. It wasn't because you didn't have money. It wasn't because you had money that you got the right to survive; it was because it was fundamental to everyone. The lowest economic person, the person most impoverished, had the same right as anybody else. Nobody had a greater right or preferred right to the commons over somebody else in a particular watershed or in a state where that public trust doctrine is recognized. So, in accordance with the public trust in each jurisdiction in each state, for example. And we're talking about Michigan here.

[00:28:35] So I mean that's one thing to think about in terms of that shutoff is the responsibility of managing this problem differently than the sort of, you know, we're all dealing arm's length width here; you don't pay your bill, you don't get the water. There has to be something offered them that allows them the basic right while you're figuring out how to collect the larger bill. AND not to bleed too much water while they get to do that. But you don't let the people bleed because they can't get the water either. So something needs to happen to make that more sensitive, more, I think, adjusted, consistent with that kind of public trust idea and principle. The other thing connected with this is the fundamental right to water itself, I think, arguably in the Constitution of the United States because of the due process and equal protection clauses of the constitution, people are supposed to have fair access to these commons, they can't be denied without fair hearings and fair measurements and accurate facts, and as I understand the situation in Detroit, there are some questions in the size of the bills, the manner of the metering, the shutoffs within 60 days notice without further hearings. So there's a whole set of issues that are of constitutional nature that also should be looked at. And then the third piece of this shutoff I think is the human right to water and sanitation that was recognized by the UN including in the second resolution by the

United States and how that plays out in the Detroit situation. It would seem to me that in some instances like this, we can look by analogy to the human right to water as a guidance to solve this problem and I think if you apply the public trust principle of the basic right to water with the human right to water and sanitation to the shutoff situation, it calls for a more sensitive, it calls for something other than a hammer.

[00:30:45] So I think the shutoffs should be halted until something else is put in place that is more equitable and more respectful of a person's right to water as a beneficiary of this trust to water in the Great Lakes Basin. So that's the thing I would offer.

[You were speaking earlier about sort of about your speculation on the ways that the water shutoffs sort of prepare the water department to be taken over by a private entity. Could you actually talk about how those shutoffs end up hurting the infrastructure as an inherited entity?]

Yeah, I think there are a couple things... One could, first of all, it's pretty obvious if there's a debt of.. what's the outstanding debt right now? Something like... well it's five or six billion... But, the shutoffs would solve, would generate, what? 57, 47 million dollars? [A hundred.] A hundred million dollars or something? Alright, so, that's a debt, ok. So just because you shut off the people's water, doesn't mean you're going to collect the debt. In fact, you won't, right? You're not achieving the collection of the debt in improving the revenue situation. But, by doing that, if you were to restructure with the suburbs or you were to restructure by leasing infrastructure to a large private water company that would seek to gain profit by operating that system, you are basically, by shutting off water it would seem to me you are taking that responsibility off the shoulders of the new entity.

[00:32:45] Because that new entity certainly doesn't want to take over something and then shut off the water of 120,000 homes, alright. And they certainly don't want to, if they don't want to do that, they certainly don't want to go into a new system that they're running that has 120,000 homes taking water and not paying for it. So it seems to only make sense that before these changes take place something has to be done about that situation, that dragging and draining, if you will, on the system. So it would seem logical that this would happen to improve the attractiveness to the suburbs if they're going to a regional authority. Or I suppose to appeal to the company that's wanting to bid on this thing. So, that's, do I know that's what's in their mind? No. I'm only saying that it's reasonable to suspect that it is a motivating factor.

[So could you maybe propose your vision for a rate system that allows the right to survival, ie the right to water, water as a public trust? So a rate system that keeps the infrastructure but doesn't disenfranchise hundreds and thousands of people...]

Well, the dilemma in Detroit, I mean the basic way to do that, the infrastructure is public, it's originally based on the idea of taxation and the value of property in a locale over, and they're backed by bonds, public infrastructure is built by bonds sold in the market, sold in municipal bonds backed by the taxpayer. Over time, a lot of bonds have shifted to

revenue bonds so you don't need the taxpayer's vote to build infrastructure, um, and the legislature has recognized revenue bonds and so has the Michigan Supreme Court.

[00:35:02] So, more and more, the question is then revenue bonds and the attractiveness of building improvements like the 174 million slated for last year and, what is it? 322 million slated for the next four years or three years. That's a lot of infrastructure! How does that get paid for? You either have to have revenue or tax base. And the problem that Detroit is facing is that they don't have either. You know, and it's a really negative, unfortunate situation. So the question is, do we call that so desperate and such a crisis that we should somehow make exceptions to principles such as public trust and the right for people to have water, and I would suggest it should be just the opposite. The more you respect the fundamental rights of water and build on that, the more security you have for everyone in that community. The more secure the community is at the bottom, the more secure it's gonna be all the way up. So yeah, I think the challenge for Detroit is to rebuild with the right principles. And I guess what I would suggest is start with the principle that this water is held for the public and start with the principle that it's public infrastructure and begin to ask some fundamental questions about how-to. And to answer your question, how to pay for this. Well, there's lots of ways I mean, there's the Grand Bargain that has moved through the legislature and to be signed by Governor Snyder if it hasn't already been signed by the time you show this, but that's, some necessary cash short-term basis does not answer the water board problem at all. And interestingly enough, it does answer the DIA problem, and that's tremendous. I'm glad to see the recognition of that public resource and really almost a stewardship of something of value that transcends everybody's walk of life and everybody wants to save that.

[00:37:16] Why is that being saved and nobody's offering 3 or 400 or 500 million to save the water board and build the infrastructure it needs? Why isn't that something of equal or greater value? And I would submit that it's of greater value because of this public trust principle and the Great Lakes. It's derived from a water commons that's incalculable in value and we're not respecting that. So the next Great Bargain that we need is the other half, I think, and that is, you know 4 or 500 million for the Detroit Water Board to be in a situation where it can do the infrastructure, attract the people we need in Detroit, take care of the pressure of having to get rid of it by leasing it somewhere else, or entering into some new agreement, or finance and tie it to some regional agreement that truly is a publicly managed, fair, operating system that is run by professionals and not politics. And so, you know there could be some options for Detroit that regionalize it but still kept some basic principles of right to water, stewardship, public trusted water and an infrastructure that is handled in a way and managed in a way that doesn't benefit a few but benefits everyone equally.

There are a couple of constitutional provisions in Michigan that I think you have to pay attention to that you had asked about earlier I think. One is, to the extent that Detroit infrastructure-- and I'm only raising a question here. I haven't had time to look into the history of financing of the Detroit water system. But I suspect if you go back far enough, a great deal of it is probably supported by tax-backed bonds, and more modernly

[00:39:18 video off] from revenue bonds, from its **[video back on]** its revenues and as it gets in trouble and loses residents, the revenues drop and the bonds, they go in debt and the bonds have less values. So, that's where we are today, but part of the infrastructure was tax-based infrastructure, I'm gonna guess. And somebody should find out, because if it is, the Michigan Constitution says the public infrastructure that is paid for by the taxpayer cannot be used to subsidize the general fund of other municipalities or to create private profit areas for other municipalities or private persons. Now what does that mean for the Detroit situation? From what I know, it means a couple of things. There's some, disproportionate sharing of wealth off of Detroit's water. Because as I understand it, and to the extent the suburbs for example, were to jack the price up after buying it from Detroit, let's say they double the price of water. I don't know if they do or not, but as an example, the suburbs buy the water, have no liability, have no headaches, double the price to pay for their needs, and uh actually make a gain. So, the question is, can the taxpayers of Detroit absorb through their loss, the gain of another municipality under the lending of credit clause. And I'm not sure you can. I'm not sure you can create that situation, and I only raise the question, but it may be that it's fine, but let's play by the rules. And so that's one issue to look at.

[00:41:07] The other issue I think you have to look at is the appropriation of the Michigan constitutional provision that bans the appropriation of public property, appropriation of public property for other local or private purposes. Well, ok, what's that mean? Well that means that you can't, the city of Detroit can't pass the law that decides to pay four or five of their favorite people a thousand dollars a piece out of the general fund, ok? Uh, and, a tax infrastructure cannot be sold to another entity where there's a private purpose to make private gain. Now it can be if there's market value but the question is just what is fair market value and what does Detroit get in exchange and that's in the long run, k. So that's another one. Now, to wrap this discussion up, tying what I just mentioned with the public trust principle, there was a case in New Jersey a couple of years ago where three municipalities joined together to have a municipal water system, and the municipalities basically out of a surplus one year they still had some debt, they still had some capital investments to make, but out of a surplus, they decided to each take a hundred thousand dollars or so or 300,000 dollars or so, and drop it into their general fund out of the Water Board Fund. It went to the New Jersey Supreme Court and the NJ Supreme court said: look, the water of these three municipalities comes from the Delaware River. The Delaware River just like the Detroit River is impressed with a public trust. The water doesn't use the public trust when it comes into the public infrastructure of the municipalities. The municipality stands as a trustee, the water board, the municipal water authority, stands as a trustee to operate this not to create subsidies for any other municipalities in the general fund, but to operate in a way that the water is there for the water needs of the people and the infrastructure investments before anything else happens.

[00:43:35] Ok, so the court in that case held that just because the water was in public infrastructure doesn't mean it lost the public trust principle and under public trust laws, water could not be used to subsidize a non-water-board purpose like putting money into the general fund of those municipalities.

[This is excellent, I'm gonna ask you again to... (Olsen: it's 3:30) It's 3:30? Ok. So I think maybe if we could spend 5-7 minutes of you telling me about the Nestle lawsuit...? Um, and I don't know if we want to bring... I forgot her name, I'm so sorry (Olsen: Liz Cooper) Liz, I'm terrible with names I'm so sorry... If we want to bring Liz in for that.. I'd like you to sort of get at the length of challenging something through policy. But the I also wana talk to you about , um... and then we can talk about pollution and how that sort of affects water as a public trust and that would be a good time to talk about the Ambridge line, the lake line. And then I also want to ask a little bit about your position as a researcher and as a person who analyzes policy like, what your position is with certain foundations and how you circumnavigate becoming beholden to some of their financial politics, if that makes sense.]

[00:45:29] We don't, we pretty much do our work and leave it to the foundation to make their decisions. We don't play politics. [That's really cool...] But we also depend on the Great Lakes Society and encourage people in the Great Lakes Basin to become a member of the Great Lakes Society for a four year, or pledge a certain amount of money for four years. Or you just donate because that's how we can remain independent.

[Yeah, so just, uh, so, do you wanna, I mean, you mentioned how important it is for the lawsuit to get at what's happening or any sort of legal work, and then also direct action as public... So how do you, you know, could you sort of analyze that in the context of the Nestle...]

Yeah, I mean, I think for the people of Detroit, they're faced with a very difficult problem in that, you know, the history of what's happened, which I don't wanna take the time at this point to talk about what happened to Detroit. My only, I know other people have felt this way. First of all, I think everyone in Michigan is a citizen of Detroit, and we should think that way. We are all beneficiaries of water, of the public trust of water. So, it's not them and lucky us. Whether it's up here in Traverse City or sitting out in a suburb of Oakland county. And I think we need to start building the bridges that are needed, and maybe that's the kind of bridge that Detroit actually really needs, is that kind of a bridge. So, um, that's an important piece of what I think Detroit faces and the people of Detroit that need to do what they have to do.

[00:47:28] The other thing is, is if there are, if these questions have to be answered and it takes a lawsuit, it takes a great deal of effort on the part of people and lots of help from all kinds of places. Nobody can do it alone. The people of Detroit are gonna need help from others in Oakland County and elsewhere, I mean, people are gonna have to reach out. Secondly, the, it's gonna take a lot of different actions. It's gonna take a legal team and the funding of the legal team, it's going to take probably direct action when it's needed, and it's gonna take a lot of meetings and education and talking. So people understand what this is--and a lot of research. So, there are a lot of pieces, including the media response to this and how the media addresses this issue with the kind of, I think, careful care that's needed. So, and I can give for an example the Nestle Water case in

Michigan where the Michigan Citizens for Water Conservation fought nine years to bring justice to a watershed that has actually until this day saved the levels and flows of that particular local watershed.

[00:48:52 Changing battery... Sorry, ok, continue 00:49:50]

The Nestle case was a 9-year case that ultimately protected the local watershed. And it worked because there was a lot of, first of all there were 2,200 members that helped finance it year to year by big sales and kick sales and you name it. Garage sales, uh, and other fundraising and they hung in there. So, when you do this, it's the long haul. I mean, these things are not something you take lightly. It's something you commit to and it takes a lot of work. But it works, if you have it organized and are just planning year by year with your goal in mind. Secondly, as I said before, these things worked together in the Nestle case. For example, there were other organizations that were willing to sit down in front of the trucks leaving the plant to bring this to the public eye. And which was completely separate from those of us who took the courtroom approach so they worked together and then there were others meeting in the legislatures and meeting with government officials trying to educate them about this and having public meetings so the public and Michigan was aware of it. And it brought about a great deal of awareness about that case and the importance of that case to the Great Lakes Basin. It wasn't just Big Rapids Michigan or Macauster County Michigan and the Nestle Water Plant because the precedents that are at stake in these things including what Detroit is facing could be very long-lasting if not handled correctly where you maintain water as public and a public trust.

The city of Milwaukee was faced with a similar problem, similar in the sense that the city of Milwaukee a few years ago wanted to lease to a private company their water system **[00:51:55 video shut off]** for, you know, 99 years for a lot of money. The public organized, people just like the people in Detroit, organized, led by some terrific people, and one was Jane Montgomery and she was a young woman, is a young woman that still is in Milwaukee, and led a large coalition of different organizations to get the City of Milwaukee to rescind the idea that they would lease the Milwaukee water system. They declared that they would not, they declared that it was held in public trust, that it was public and that they **[video back on]** wouldn't do it. And so Milwaukee set a principle, and Milwaukee now is a leading city in the United States dealing with water. They have the largest, I think the largest water policy, largest funded water policy center in the country at the University of Wisconsin in Milwaukee. They have probably the most proactive water and sewage waste system which has nearly zero nutrient discharge to Lake Michigan with no waterway, no waste of water. And they have in the city a program that is leading the way on local foods grown in the city with people who live in the city. It's a landmark, I know they have worked with some other people or been to Detroit and seen the situation. Detroit obviously has that potential. And I might add, that when you think in the bigger picture, water is just not water. Water is business, it's home, and it's farm and food, all of those things, energy, it takes water for energy.

[00:53:52] So, we have to think about all these things together and if Detroit, for

example, wants to have a local foods, where some people are talking about using some of the land to generate crops, ok, value added local foods let's say, for Southeast Michigan. If you don't have a stable principle of water as a public trust from generation to generation, and that water shifts in control and becomes subject to pricing that prices the little person out of the market and leaves the big person in the market, you fundamentally lose the control you need for local, home grown agriculture.

[So say, you know, I think for cities that are not under emergency management or in a bankruptcy it's much easier to sort of protest these privatization efforts. And...]

Yeah, that's where Milwaukee is different. I was trying to say that earlier, and I was gonna say that earlier that Detroit is in a real bind. They don't have population, they don't have tax base, they're in bankruptcy, the government has an emergency manager running the city...

[00:55:12 changing memory card]

[I know but it's like do you have any advice, i guess is the question, for citizens of Detroit so that, to act quickly because I think they're under the gun. The emergency manager and the government while they have the power that they do are going to push this through....]

I'm gonna go back to what I just said a little while ago and that is people need to question, and through the courts if necessary, the limitations... I don't know that the governor or the legislature or the bankruptcy court has the power to breach the public trust or the constitution. That's what I'll say. And so what people have to do is run down, you know, answer these questions and pursue it.

[Right, fast, unfortunately. But with thought, you know... Ok go ahead, so you were saying that you don't believe that the emergency manager or the governor have the right to breach the public trust? (video remains off)]

[00:56:54] Well, I mean the question is: what can people do? And one is the civil rights and the constitutional rights and the stewardship responsibilities surrounding the public trust of water and the public infrastructure that's managed by Detroit for its residents certainly can be directed at the shutoffs and the bankruptcy court could be asked for example to restrict temporarily the shutoffs until a different way and method was brought to bear to address that situation that did not deprive the basic human right to water, which is what, 100 gallons of water a day or 125 gallons of water a day. I mean, there are some basic rights here that should not be ignored. Then, the other questions are: to what extent can an emergency manager or a bankruptcy court somehow superimpose the sale or the leasing or disposition of the Detroit Water Board or the, you know dissolution of it, although I suppose it's not going to be dissolved if they lease it there will still be some revenues coming in, but let's just say the decision is to lease it, a company can create new pricing and they have to have a profit for their shareholders and it may

be that that's not permissible if there are constitutional and public trust limits on what the Detroit Water Board can do. Just like the, if there are constitutional and public trust limits on what the Water Board can do like the NJ Supreme Court Case I mentioned, or like the constitutional limitations in Michigan that I described, then those limitations I think are such, the nature of such that they can't be ignored and they can't be violated even by an emergency manager.

[00:59:08] You can't legislate away, you can't as an executive take away, the fundamental public trust nature of water as Derived from the Detroit River and Lake Huron. They're held in public trust. I mean, that's the problem. And I'm just saying the US Supreme Court, when it was faced with whether the Illinois legislature for good business reasons decided to convey one square mile of Lake Michigan, whether they could do that, and the US Supreme Court of Michigan said NO. They said no, that's beyond your limits as a legislature and a government.

[Um. let's talk about line five for the last ten -15 minutes... (long pause)]

[01:01:17 Hi, I have so little time I want to talk to you! I'm just wondering, tell me what your schedule is... We can talk another time (figures out schedule with another individual from the office, possibly Liz)... My interest in line 5 has much more to do with a personal project that I'm working on--- a written and photographic piece that connects the notion of the frontier of the frontier of Bakan with what's happening in Detroit and the notion, like these two sort of parallel places, so I'm thinking about line 5 more poetically. (Olsen: No, no, I think that's an important connection) So this is less pressing than the water situation in Detroit which is dire... (more rescheduling around line 5, Liz provides Kate with some resources for further communication)]

Video ends with conversation between Kate, Jim and Liz regarding line 5 and future collaboration plans.