

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re Flint Water Cases.

Judith E. Levy

United States District Judge

_____/

This Order Relates To:

Brown v. Snyder

Case No. 18-cv-10699

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**ORDER VACATING ORDER TO SHOW CAUSE AND
REMANDING CASE TO THE MICHIGAN COURT OF CLAIMS**

On March 29, 2018, the Court issued an order partially remanding the State defendants in this case and ordering the removing MDEQ defendants to show cause why this case should not be remanded to the Michigan Court of Claims for lack of subject-matter jurisdiction, as federal-officer removal jurisdiction does not exist in this case, and a substantial federal question did not appear on the face of the complaint. (Dkt. 9.) On April 13, 2018, the MDEQ defendants responded to the order to show cause. (Dkt. 29.)

As set forth in the order to show cause, the United States Court of Appeals for the Sixth Circuit has determined that the MDEQ

defendants are not federal officers within the meaning of 28 U.S.C. § 1442 for lawsuits arising from the Flint water contamination crisis, and cannot remove cases from state court to federal court based on that statutory provision. *Mays v. City of Flint, Mich.*, 871 F.3d 437, 449 (6th Cir. 2017). On April 16, 2018, the United States Supreme Court denied *certiorari* as to an appeal of that holding. Also, the Sixth Circuit issued *Nappier v. Snyder* immediately after the Supreme Court's denial of *certiorari*, affirming *Mays*. *Nappier*, Case No. 17-1401, Doc. 42 (April 16, 2018). Accordingly, removal based on federal-officer removal jurisdiction was improper.

The MDEQ defendants also premised removal of this case on substantial federal question jurisdiction under 28 U.S.C. § 1441. In *Nappier*, the Sixth Circuit also held that removal based solely on substantial federal question jurisdiction must be unanimous. *Nappier*, Doc. 42-2 at 6 n.2. Removal in this case was not unanimous (*see* Dkt. 7), and several defendants have already had claims against them remanded to the Michigan Court of Claims. (*See* Dkt. 9.)

It is hereby ordered that:

The order to show cause is VACATED; and

This case is REMANDED to the Michigan Court of Claims.

IT IS SO ORDERED.

Dated: April 17, 2018
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on April 17, 2018.

s/Shawna Burns
SHAWNA BURNS
Case Manager