



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
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VIA ELECTRONIC MAIL

Ted Henifin, ted@jxnwater.com
Paul Calamita, Esq., paul@aqualaw.com
Malissa Wilson, Esq., Malissa.Wilson@formanwatkins.com

Re: United States v. City of Jackson, Case No. 3:22-cv-00686 – HTW-LGI
(USDC S.D. Miss.)

Dear Ted, Paul & Malissa:

Thank you for your May 18, 2023 response (“Response”) to our letter dated May 16, 2023, in which the EPA outlined concerns, questions, and suggestions regarding the Consolidated Report of Activities for the quarter ended March 31, 2023 (“Quarterly Report”). We offer the following responses, and potential paths forward on the various issues.

1.) System Stability and Stabilization Plan. Thank you for acknowledging the Interim Stipulated Order (“ISO”) deadline extension process and committing to improving future coordination on such extensions.

As to the System Stability and Stabilization Plan, your Response indicates that you will not have critical information to inform the Plan until at least December 31, 2023. Is the EPA correct in reading your Response to indicate that the Plan may not be completed by December 31, 2023, but rather, at a date sometime in early 2024? If so, the EPA would thus request a firm deadline for completion of this Priority Project List task. In addition, the EPA requests that the ITPM provide a scope of work for the Plan, including when various work and assessments (i.e. Distribution System Assessment, Valve Assessment and treatability studies) will be completed. The EPA further requests that the ITPM provide, at minimum, a narrative discussion of the status and findings of these inputs in future Quarterly Reports to improve transparency and improve our communication.

2.) Thank you for the information regarding the Priority Project #1 (O&M Contract) extension from July 2023 until October 2023. The EPA and MSDH concur with the proposed extension.

3.) Thank you for agreeing to post future Quarterly Reports on the JXN Water website and file them on the Court Docket in addition to sending them to Chambers.

4.) Thank you for uploading the Quarterly Report to the JXN Water website.

5.) Boil Water Notices (“BWNs”). Thank you for your response. The EPA is available to discuss with you how BWNs and lift information (such as locations, time to address, time to lift, number of connections/impacted customers, reason for BWN, whether or not AWSP triggered, day notice made to EPA and MSDH, and any other contextual information the ITPM finds useful) can be presented to the public in a manner that contextualizes such BWNs, while also providing public transparency. We are also willing to help develop a template for tracking BWNs that could assist in streamlining this effort going forward. The EPA recommends that this be placed on an agenda for an upcoming call between the EPA and the ITPM.

6.) Thank you for your response.

7.) Thank you for your response.

8.) Scopes of Work. Thank you for your response. The EPA would appreciate the ITPM providing scopes of work for projects when such scopes of work are available, and in future Quarterly Reports. We reiterate that this would enable more transparency and better enable EPA to provide accountability to the public in its oversight role.

9.) Alternative Water Supply Plan (“AWSP”). Thank you for your response. You indicate that “no single entity is prepared to provide one gallon per day per resident for the entire 150,000 people in Jackson,”¹ and that, while “the planning process continues to seek solutions to meet the requirement of the PPL, . . . that may be impossible.”

The implementation of an AWSP continues to be a requirement of the ISO. See ISO at ¶ 6(a); PPL Item No. 4(a). The EPA is concerned that there has been no durable AWSP in-place for the adequate provision of alternative water to Jackson’s customers for the more than three years since the EPA first ordered Jackson to develop such an AWSP. See Emergency Administrative Order, Docket No. SDWA-04-2020-2300 (Eff. Apr. 2, 2020) at ¶ 39. The PPL does not require that this be achieved through a single entity, but can be achieved through various means, including by a licensed water distributor; purchased bottled water; or by another public water system that meets the requirements of the SDWA. The EPA also notes that, if the AWSP triggering event is localized to a specific portion of the distribution system and the entire system is not impacted, the AWSP can be designed to serve only the portion of the population impacted.

Please let the EPA know how we might support the expeditious implementation of an AWSP .

10.) Debt Retirement. Thank you for your response and the update on your efforts towards a text amendment for the Consolidated Appropriations Act. You indicate that, “We have identified another \$90 million in private debt related to the metering system that appears eligible under the SDWA. . . .”

¹ The EPA notes that the Safe Drinking Water Information System (“SDWIS”) lists the population served by the City’s surface water system, PWS ID No. MS0250008, as 188,723.

A determination of whether any of this debt is eligible for retirement using the funds appropriated by Congress under the Disaster Relief Supplement Appropriations Act, 2023, Division N of the Consolidated Appropriations Act of 2023 is subject to review by MSDH² and the EPA, pending receipt of supporting records. Any debt retirement would have to be included as part of the MSDH's capitalization grant application for these funds, and as part of the State's Intended Use Plan and associated IUP-project priority list to be approved by the EPA prior to grant award.

We look forward to continuing to work with you in support of the City of Jackson's public water system, and are available for a call to further discuss any issues herein at your convenience.

Sincerely,

On Behalf of
Suzanne G. Rubini
Deputy Regional Counsel

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² Pursuant to its authority under Section 1413 of the SDWA, 42 U.S.C. § 300g-2, for primary enforcement responsibility for public water systems, MSDH administers the Drinking Water State Revolving Fund in Mississippi, called the Drinking Water Systems Improvements Revolving Loan Fund (DWSIRLF) Program.