



REGION 4

ATLANTA, GA 30303

November 15, 2023

VIA ELECTRONIC MAIL
CONFIRMATION OF EMAIL RECEIPT REQUESTED

Edward "Ted" Henifin
Interim Third-Party Manager
JXN Water, LLC

Re: United States v. City of Jackson, Case No. 3:22-cv-00686 – HTW-LGI, (S.D. Miss.), Safe Drinking Water Act Case, Comments on Consolidated Report of Activities for the Quarter Ended September 30, 2023

Dear Mr. Henifin:

The U.S. Environmental Protection Agency has reviewed the JXN Water, LLC's (JXN Water) Consolidated Report of Activities for the Quarter ended September 30, 2023 (hereinafter, "Q3'2023 Status Report"), prepared in accordance with the Interim Stipulated Order (ISO) for the above-referenced matter. Based on its review of: (1) the Q3'2023 Status Report, (2) previously-filed Quarterly Status Reports, (3) the JXN Water website, and (4) discussions with the ITPM and/or representatives of JXN Water, the EPA makes the following requests for improvements to the Interim Third-Party Manager's (ITPM)¹ adherence to the terms of the ISO, as well as discrete comments on the items contained in the Q3'2023 Status Report. The EPA respectfully requests that the ITPM meet with the EPA and the Mississippi State Department of Health (MSDH) to discuss these concerns.

The EPA also notes that the comments and concerns outlined herein do not include any comments that the Agency may have regarding quarterly reporting for Safe Drinking Water Act Section 1442(b) Grant Nos. 84054501-0 and 84060101-0. The Agency reserves its right to provide such comments in separate correspondence.

1. Priority Project Schedule Modifications Lacking Required Written Justification and/or EPA Opportunity for Prior Concurrence. Paragraph 18.a. of the ISO requires the ITPM to submit to the EPA and MSDH written justification, prior to making any changes to the Implementation Schedule, that would reprioritize, modify, or update a Project, or any changes that would impact the approved

¹ Acting by and through JXN Water as the entity responsible for operation of, inter alia, the City of Jackson's drinking water System and the Water and Sewer Billing Administration.

timetable for completion of any Priority Project by more than 60 Days.^{2, 3} Pursuant to Paragraph 18.c. of the ISO, the EPA and the MSDH have 20 days from receipt of a written modification proposal to make comments on such a proposal. If the EPA and MSDH makes any such comments, then the parties shall undertake best efforts to reach agreement on the issue. If the parties cannot reach agreement after a period of 20 days (or longer, if agreed to by the EPA, MSDH and the ITPM), then the EPA has the right to petition the United States District Court for the Southern District of Mississippi for relief. If the EPA does not petition the court within five days after the end of our discussion period, then the ITPM may proceed with implementation.

It is imperative, therefore, that the ITPM provide the EPA and MSDH any proposed schedule modifications as early as possible, but in no case less than 45 days before an agreed-upon deadline,⁴ so that we can discuss the appropriateness of the extension with the ITPM. Failure to provide sufficient notice prohibits the EPA and MSDH from exercising relief rights as contemplated by the ISO.

As of the date of this letter, the EPA has not received the required written justifications for modification of the timetables for the following Priority Projects and/or has not received confirmation that such Priority Projects have been completed as scheduled:

- a. **Priority Project No. 2 – O&M Contract, Phase 2.** In its Quarterly Status Report for the quarter ended March 31, 2023 (hereinafter, “Q1’2023 Status Report”), the ITPM noted that it was adjusting the completion date for Phase 2 of the O&M Contract by more than 60 days, to October 31, 2023. The EPA concurred with the proposed extension in a letter dated May 31, 2023. On page 4 of the Q3’2023 Status Report, a new deadline of December 2023 is listed. A written justification supporting the deadline modification was not submitted to EPA and MSDH. Instead, notice was provided to the EPA on October 27, 2023, four days before the revised completion date. Therefore, the ITPM has not provided a written schedule extension justification within a timeframe that would allow the EPA and MSDH to exercise their rights under Paragraph 18.
- b. **Priority Project 3- Optimal Corrosion Control Treatment.** The December 29, 2022, Implementation Schedule included a completion date for this Project of September 2023. In the Q2’2023 Status Report, the ITPM noted that, “Extensive lead times on equipment has slowed completion down at both plants. JH Fewell is further along and anticipated to be complete in early Q4 with [O.B. Curtis WTP] a few months behind. ITPM will be requesting a revision to this schedule to extend to December 31, 2023.” The EPA acknowledged that such a proposed revision would be forthcoming in its August 21, 2023 comments on the Q2’2023 Status Report, and reserved its rights to review that proposal.

² The ITPM submitted a Priority Project Implementation Schedule to the EPA, as required by Paragraph 18.a.i. of the ISO, on December 29, 2022, which outlined the initial timetable for completion of Projects. The EPA recognizes that the ITPM has modified the schedule for some tasks with the EPA’s concurrence, and highlights those without the required concurrence here.

³ If any change, modification, or reprioritization under Paragraph 18.a is necessary to abate an imminent and substantial endangerment or is due to conditions beyond the control of the ITPM, the ITPM shall notify EPA and MSDH as soon as practicable, but in no event later than forty-eight (48) hours after the change, modification, or reprioritization was implemented.

⁴ Notwithstanding Paragraph 18.b of the ISO.

As of the date of this letter, the EPA has not received an extension for completion of the Optimal Corrosion Control Treatment project, and the deadline set forth in the ISO has passed. Therefore, the ITPM has not provided a written schedule extension justification within a timeframe that would allow the EPA and MSDH to exercise their rights under Paragraph 18.

- c. **Priority Project No. 5 – Distribution system study, analysis, and implementation.** Pursuant to Appendix A of the ISO, the ITPM was required to develop a plan, for EPA approval, to include at a minimum: GIS-based hydraulic modeling; valve and hydrant locations and assessments; an asset management system; water loss identification and reduction; system operation optimization and configuration standards; corrosion control; and service line identification and replacement planning.

The December 29, 2022, Implementation Schedule included a plan submittal deadline of July 2023. In the Q2'2023 Report, the ITPM indicated that the Plan would be submitted to the EPA in the quarter ending in September 2023. The ITPM did not submit an extension justification for the plan's submittal 45 days before the July 2023 due date. The Q3'2023 Status Report now indicates a plan submittal date of December 2023. As of the date of this letter, the ITPM has still not submitted an extension justification to the EPA. Therefore, the ITPM has not provided a written schedule extension justification within a timeframe that would allow the EPA and MSDH to exercise their rights under Paragraph 18.

- d. **Priority Project 8- Chemical Feed Replacement.** The December 29, 2022, Implementation Schedule included a completion date for this Project of October 2023. In its Q2'2023 Status Report, the ITPM noted that, "This project grew to a complete replacement of all chemical feed systems at OB Curtis. [Priority Project No. 9] has been included in the design currently at 30 percent. Schedule for contract completion extends to end of 2024. Detailed schedule will be provided with request to adjust." The EPA acknowledged that such a proposed revision would be forthcoming in its August 21, 2023 comments on the Q2'2023 Status Report, and reserved its rights to review that proposal. The EPA did not receive a justification supporting an extension of the Chemical Feed Replacement completion date 45 days prior to the October 2023 deadline.

The Q3'2023 Status Report now indicates a project completion in December 2024, as part of Priority Project No. 9. However, as of the date of this letter, the ITPM has still not submitted an extension justification for Priority Projects No. 8 to the EPA. Therefore, the ITPM has not provided a written schedule extension justification within a timeframe that would allow the EPA and MSDH to exercise their rights under Paragraph 18.

- e. **Priority Project No. 9 – Chlorine system improvements at O.B. Curtis WTP.** The Priority Project List, Appendix A to the ISO, required the elimination of the use of gaseous chlorine at the O.B. Curtis WTP. The December 29, 2022, Implementation Schedule included a completion date for this Project of October 2023. In its Q2'2023 Status Report, the ITPM stated that a final completion date had not yet been determined. The EPA acknowledged that a proposed timeline revision would be forthcoming in its August 21, 2023 comments on the Q2'2023 Status Report, and reserved its rights to review that proposal. The EPA did not receive an extension justification 45 days prior to the October 2023 chlorine systems improvements project completion deadline.

As with Priority Project No. 8, the Q3'2023 Status Report now indicates project completion in December 2024. However, as of the date of this letter, the ITPM has still not submitted an

extension justification for Priority Project No. 9 to the EPA. Therefore, the ITPM has not provided a written schedule extension justification within a timeframe that would allow the EPA and MSDH to exercise their rights under Paragraph 18.

- f. **Priority Project No. 10 – Intake Structure Repair.** The Priority Project List, Appendix A to the ISO, required the assessment and repair of the intake structures at the O.B. Curtis and J.H. Fewell WTPs. The December 29, 2022, Implementation Schedule included a completion date for the assessment of Summer 2023 and for repairs in December 2023. The Q3'2023 Status Report now lists a completion date for the assessment of September 2024, with no explanation for the delay.

As of the date of this letter, the ITPM has not submitted a written schedule extension justification to the EPA for the assessment of the intake structure. Moreover, the ITPM has not submitted an extension justification to the EPA for completion of the repairs. Therefore, the EPA expects that the ITPM will complete Priority Project No. 10 by the December 2023 deadline, or, alternatively, submit an extension justification to the EPA and MSDH in accordance with Paragraph 18.a. of the ISO no later than November 16, 2023 (45 days prior to the currently-approved deadline).

In addition to the concerns noted above, the EPA respectfully reminds the ITPM of the upcoming deadline for **Priority Project No. 6 - System stabilization and sustainability plan**. The December 29, 2022, Implementation Schedule included a plan development date of March 2023. The ITPM subsequently adjusted the due date, with which the EPA concurred, to December 31, 2023. The EPA notes that, any proposed extension of this deadline should be submitted to the EPA and MSDH no later than November 16, 2023.

The EPA also notes that the "Summary of Delays Encountered or Anticipated" on page 29 of the Q3'2023 Status Report is unclear. The ITPM indicates that no delays should impact the achievement of the objectives, but there is a column in Table M that outlines delays for specific projects. Please clarify whether and to what extent the ITPM expects delays of Priority Projects and ensure the accuracy of summaries of delays in future reports.

2. Requirement to Make Contract Requests for Proposals Available on Website. Pursuant to Paragraph 17.b. of the ISO, any contract requests for proposals should be made available on the JXN Water website. On page 30 of the Q2'2023 Status Report, the ITPM indicated that it had received responses to the request for proposals for the Alternative Water Source Plan (AWSP), however, to the best of EPA's knowledge, such request for proposal is not posted on the JXN Water website. The EPA previously noted this type of concern in its August 21, 2023, Q2'2023 comments to the ITPM. Therefore, consistent with Paragraph 17.b. of the ISO, the EPA requests the ITPM ensure that all requests for proposals be made available on its website.

3. Priority Project No. 2 – Winterization, page 4 of the Q3'2023 Status Report. Section 2.3.4 of the Winterization Technical Memorandum includes a list of 11 additional winterization tasks recommended for the O.B. Curtis WTP, and Section 2.4 of the Technical Memorandum includes a list of 19 additional winterization tasks recommended for the J.H. Fewell WTP. All of these 30 tasks had anticipated completion dates of October 31, 2023. The EPA understands that these tasks are now complete; please include updated status for these projects in the next Status Report.

4. Priority Project No. 12 – Sludge Assessment and Removal, page 5 of the Q3’2023 Status Report. The Q3’2023 Status Report states that Priority Project No. 12 (Sludge Assessment and Removal) is on-hold indefinitely because JXN Water cannot shut down the WTPs long enough to do the required assessment. As noted during the emergency response, lime accumulation in the O.B. Curtis WTP clearwells limited the maximum water production due to the decrease in storage capacity at the WTP. The project also requires that all finished water storage facilities be assessed for sludge removal, not just the clearwells at the WTPs. JXN Water should be able to assess off-site finished water storage facilities for sludge build-up without major impacts to the System, as evidenced by the Chastain Tank rehabilitation project performed earlier this year. JXN Water should prioritize assessing facilities that will not impact WTP production until such time that the System is stable enough to assess finished water storage at the WTPs.

5. Priority Project No. 13 – Resilient Power Plan, page 5 of the Q3’2023 Status Report. The Priority Project List, Appendix A to the ISO, required the assessment of power vulnerability throughout the System and development and implementation of a plan to address issues identified in the assessment. The December 29, 2022, Implementation Schedule included a September 2023 completion date for the resilient power plan assessment. The ITPM now indicates that the assessment is complete, and the technical memorandum should be submitted by end of December 2023. The EPA requests a copy of that technical memorandum be sent to the EPA addressees identified below in Comment No. 10.

6. Lead Service Line Replacement Project, page 12 of the Q3’2023 Status Report. The Quarterly Status Report indicates that lead service line replacement is estimated at \$88M. The EPA understands that MSDH has currently agreed to fund up to \$5M, contingent on the submission of a facilities plan and receipt of other supporting documentation to show cost eligibility under the Drinking Water State Revolving Fund (DWSRF) program for this project. The DWSRF for Lead Service Line Replacement, funded through the Bipartisan Infrastructure Law, includes eligibilities beyond lead service line replacement. This can include: planning work, such as developing a service line inventory; replacing other potentially leaded components, such as lead connectors (e.g., goosenecks); or replacing service lines made of galvanized iron or galvanized steel that are currently or may have previously been downstream of lead components. As JXN Water completes the Service Line Inventory (by October 16, 2024 as required by the Lead and Copper Rule Revisions), more clarity on the number of galvanized lines requiring replacement will be known. The Lead and Copper Rule Revisions also require any lead connectors, while not considered lead service lines, to be replaced as they are found.

The EPA suggests that the ITPM clarify for the public, both in the next Status Report and on its webpage, the rationale for the estimate of \$88M for a lead service line replacement undertaking, and what components would be included in such project.

7. O.B. Curtis and J.H. Fewell WTP Chemical Feed System Improvements, page 16 of the Q3’2023 Status Report. The Q3’2023 Status Report indicates that the gaseous chlorine system will be replaced by on-site hypochlorite generation. This will add another set of equipment that needs operation and maintenance, when JXN Water is already lacking maintenance staff. The EPA would like to know if JXN Water considered purchasing hypochlorite in bulk rather than generating it on site.

8. Communications Strategy Summary, page 21 of the Q3’23 Status Report. The EPA notes that the “public education campaign” should reach residents without internet access (i.e., the strategy should include more than just a website and email newsletter).

9. Precautionary Boil Water Notices, page 28 of the Q3'2023 Status Report. The EPA reiterates its August 21, 2023, comments on additional areas for transparency with Boil Water Notices, in which the EPA noted:

The EPA appreciates the list of Boil Water Notices (BWNs) included in the Q2'23 Report. The EPA believes that there are additional opportunities to increase transparency around BWN events, which may include posting BWN lift dates (to demonstrate to the public which BWNs may still be in effect and/or how quickly BWNs are being lifted); maintaining a list of historical (i.e., past, lifted BWNs) and current BWNs on the JXN Water website to facilitate public awareness; and utilizing broader and/or more varied means for alerting the public about BWNs so that all affected customers (including those without reliable internet access) have timely and accurate information regarding the status of their drinking water.

Additionally, the EPA notes the following:

- The following three BWNs received by the EPA were not included in the Q3'23 Status Report:
 - July 21, 2023 groundwater, serving 100 connections;
 - July 23, 2023 surface water, serving 25 connections; and
 - August 2, 2023 surface water, serving 26 connections.
- The following three BWNs mentioned in the Q3'23 Status Report were not submitted to the EPA:
 - August 3, 2023 surface water, serving 26 connections;
 - September 13, 2023 groundwater, serving 40 connections; and
 - September 16, 2023 surface water, serving 23 connections.

10. Alternative Water Source Plan (AWSP). While the EPA acknowledges that it did not timely respond to the AWSP scope change which was submitted to the EPA on September 19, 2023, the EPA nevertheless wishes to voice its objection to the revised scope of the AWSP. We respectfully request that the ITPM consider these concerns in the implementation of the AWSP.

The ITPM justifies not needing to make a plan to provide one gallon of water per person per day by assuming, “The citizens of Jackson are prepared for any water disaster,” and all customers have adequate stockpiles of bottled water on-hand. The ITPM concludes that people in Jackson can purchase bottled water at local retail shops and are already paying for bottled water out of their own budgets, so there are no “additional cost burdens” during a water supply interruption.

This approach incorrectly lays the obligations for safe drinking water at the feet of the System’s customers rather than its operator, JXN Water. The intent of the AWSP is to provide one gallon of water per affected person per day in the event of circumstances that call into question the safety of the System’s potable water, regardless of whether some of the System’s affected customers have the means to and make the personal choice to purchase/obtain and maintain a stockpile of bottled water. Access to safe and clean drinking water should be available to all customers, not just those with the means to procure bottled water.

Additionally, the events triggering the ITPM’s AWSP are more limited than what the EPA contemplated under the Emergency Order issued to the City, Docket No. SDWA-04-2020-2300 (as amended). The EPA

intended the AWSP to be triggered under two circumstances, regardless of causation, based on sampling results for total coliforms:

- If, based upon RTCR sampling data collected in accordance with 40 C.F.R. § 141.857, the System exceeds 5.0% total coliform-positive samples in any monthly period during the term of this Order, the AWSP should be implemented within twenty-four (24) hours of receiving such sampling results; or
- If, based upon daily special purpose samples taken pursuant to 40 C.F.R. § 141.21(a)(6), the System has a total coliform-positive sample, the AWSP should be implemented within 24 hours of receiving such sampling results. Implementation of the AWSP should continue until all daily special purpose sample results are total coliform negative.

That being said, the AWSP does not necessarily need to include prepositioned bottled water stockpiles, but rather, it should be a plan for how water will be procured and distributed to all affected customers if triggered by sampling results, regardless of affected customers' individual access to bottled water in the private market. In particular, the ITPM states in the last paragraph of the scope change that "there are a number of national disaster vendors who can provide bottled water in a major emergency." The EPA respectfully requests a list of such vendors. The EPA also requests that the ITPM notify the EPA and MSDH any time that the Alternative Water Source Plan is implemented and provide the EPA and MSDH with the approximate number of impacted customers.

11. Request for Provision of ISO Communication to be Sent to Additional EPA and MSDH Personnel. To ensure that the EPA and MSDH receive and have timely notice of the ITPM's deliverables, the EPA and MSDH request that the ITPM, or those transmitting documents, deliverables, or other correspondence on his behalf to the EPA and MSDH, transmit such documents to the following personnel:

For the EPA:

- Bryan Myers, Region 4 Drinking Water Enforcement Section at myers.bryan@epa.gov;
- Charlotte Bunch, Region 4 Drinking Water Enforcement Section at bunch.charlotte@epa.gov; and
- Heidi Rausch, Office of Enforcement and Compliance Assurance, Water Enforcement Division, at Rausch.Heidi@epa.gov;

with copies to the following EPA legal counsel:

- Suzanne Armor, Region 4 Office of Regional Counsel, Water Legal Office, at Armor.Suzanne@epa.gov; and
- James Vinch, Office of Enforcement and Compliance Assurance, Water Enforcement Division, at vinch.james@epa.gov.

For MSDH:

- Les Herrington, P.E., BCEE, CPM, Director, Office of Environmental Health, at Lester.Herrington@msdh.ms.gov; and
- William Moody, P.E., Director, Bureau of Public Water Supply, at William.Moody@msdh.ms.gov.

Ensuring that a diverse team of EPA and MSDH enforcement officers charged with oversight of the ISO, and the legal staff assigned to this matter, receive important documents will enable the regulatory authorities to undertake timely review and provide necessary responses to the ITPM in accordance with the ISO.

The EPA looks forward to discussing these issues with you. Please contact me at (404) 562-9701 or via email at Armor.Suzanne@epa.gov to schedule a meeting. Thank you for your attention to this matter.

Sincerely,

Suzanne K. Armor
Attorney-Advisor

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