



REGION 4

ATLANTA, GA 30303

February 16, 2024

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 December 31, 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 December 31, 2023 (hereinafter, "Q4'2023 Status Report"), and the Updated Financial Management Plan, dated January 31, 2024 (hereinafter, "Updated FMP"), both prepared in accordance with the Interim Stipulated Order (ISO) for the above-referenced matter. Based on its review of: (1) the Q4'2023 Status Report; (2) Updated FMP; (3) previously-filed Quarterly Status Reports; (4) the JXN Water website; and (5) discussions with the ITPM and/or representatives of JXN Water, the EPA makes the following comments on the items contained in the Q4'2023 Status Report and Updated FMP.

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. Comments on Q4'2023 Status Report

- a. Page 3 of 97, Executive Summary.** For Priority Projects Nos. 11, 12, and 13, while the EPA recognizes that these projects are ongoing, we request that the ITPM work with the EPA to establish mutually-agreeable schedules for their full implementation. The EPA reserves its right to comment on and/or object to future proposed schedules with regard to work components under these projects.
- b. Page 10 of 97.** In the discussion of Emerging Contaminants, the Q4'2023 Status Report states, "The Emerging Contaminant project, scoped to add Granular Activated Carbon (GAC) filtration

to the O.B. Curtis Water Treatment Plant [WTP], is estimated at \$119 million." Please provide the EPA with your most recent PFAS sampling results, clarify the rationale for proposing to add GAC to O.B. Curtis WTP, and provide a breakdown of the cost estimate.

- c. **Page 60 of 97, Priority Project No. 5, Distribution System Study, Analysis, and Implementation.** The Q4'2023 Status Report indicates that the technical memorandum for the distribution system study and analysis is anticipated March 30, 2024. Please provide a copy to EPA when this is available.
- d. **Page 61 of 97, Priority Project No. 6, System Stabilization and Sustainability Plan.** The EPA is concerned about the continued delay in the System Sustainability and Stabilization Plan. The ITPM initially indicated this would be complete by March 2023, but it is now slated for completion by the end of December 2024.

Additionally, key items to be addressed by the Plan include sustainable revenue models. To date, no viable mechanism has been identified that will provide needed long-term funding for adequate operation and maintenance. Beginning next year, grant funds for critical water treatment plant and distribution system contracts will be exhausted and, in its Updated FMP, JXN Water has identified an inability to generate the revenue needed to establish sustainable operation of existing infrastructure in the near- and long-term. The Updated FMP proposes a preferred option for the retirement of debt through use of the Drinking Water State Revolving Fund (DWSRF) program. However, the EPA has previously communicated its position that the DWSRF program does not have the authority to refinance wastewater-related debt, and the ITPM has indicated that the City has been unable to provide sufficient documentation on the general bond debt to demonstrate eligibility for debt retirement based on any drinking water-related projects. Given that the ITPM has not identified a funding stream to ensure that the existing drinking water treatment plants can provide sustained drinking water service for the long-term, the EPA cannot support further delay in the development of a plan that establishes a viable path for sustained drinking water service for the City of Jackson.

- e. **Page 63 of 97, Priority Project No. 12(a).** This section includes the following narrative statement: "Can we say something about these tanks – that we are now able to understand how much water is in them and that we have not been hampered by a lack of tank capacity - something to undercut any urgency in assessing solids levels[?]" Please clarify.
- f. **Page 64 of 97, Unaudited Financial Statements.** Please provide a date by which the EPA should expect to get copies of these statements.

2. Comments on Updated Financial Management Plan

- a. **Page 17 of 24, Debt Restructuring Evaluation.** In the Debt Restructuring Evaluation, the ITPM identifies challenges with using the DWSRF funding from the 2023 Consolidated Appropriations Act to retire CWSRF and general bond debt. The Updated FMP states, "The System, with cooperation of EPA and facilitation through the DWRLF, could use \$257 million of the \$450 million under section 1452 of the Safe Drinking Water Act to pay off the existing debt." As the EPA has stated previously, the EPA does not have statutory authority to use the DWSRF program for this purpose. The appropriated funds cannot be used to pay off the CWSRF-or non-drinking-water-related general bond debt.

- b. **Page 23 of 24, Appendix B, Investment Plan.** SDWA Section 1442(b) funding appropriation supporting the current treatment plant and distribution system operation and maintenance (O&M) contracts is projected to be exhausted by 2025, with funding for distribution system leak repair ending in 2024. The original 2022 Financial Management Plan projected a treatment plant O&M contract cost of \$12M/year for five years. The Updated FMP now indicates a 2024 cost of \$30M, with grant-supported O&M costs ending in 2025. It is unclear what necessitated the increased cost, and what the funding source for future O&M costs will be for water treatment plant and distribution system operations. Please clarify.

Additionally, the DWSRF Omnibus funding line in Appendix B identifies \$24M in FY25 and FY26 for “find and fix water leaks”. Emergency repair work is associated with operation and maintenance, rather than capital expenditures, and is therefore not an eligible activity under EPA DWSRF guidelines.

The EPA is available to meet with JXN Water to discuss these comments if desired. 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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