



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
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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:

We write to document some concerns, questions, and suggestions regarding the Consolidated Report of Activities for the quarter ended March 31, 2023 (“Quarterly Report”). We do not intend to raise these items with the Court at this time as we would like to discuss them with you first and believe that many, most, or all of the items raised below can be worked out through further discussions amongst the parties.

1.) With respect to the System Stability and Stabilization Plan, according to the Priority Project Implementation Schedule, dated December 29, 2022, this Plan was due at the end of March 2023. On pages 12-13 and 31 of the Quarterly Report it states that the deadline for this “is adjusted to December 31, 2023.” As you are aware, the Interim Stipulated Order (“ISO”) provides a process for extending deadlines. *See ISO at ¶ 18.* First, the ITPM is to provide a written justification to EPA and MSDH prior to any modification or change to the Implementation Schedule. (*Id* at ii and iii.). EPA and MSDH then have 20 days to review. (*Id* at c. and d.). Given the text of the ISO and the Quarterly Report’s statement that the deadline is already adjusted, it leaves the public and the Court with the impression that EPA and MSDH have already approved of the modification. EPA requests that in the future any such requests be made in advance of the deadline in the implementation schedule, and be made in writing, separate and apart from the Quarterly Report. As to the merits of the underlying request, EPA understands that the Plan would benefit from the additional information that will be forthcoming over the summer, however, EPA and MSDH would like more information as to why that information could not be considered and factored into the Plan before 12/31/23.

2.) In addition, the Quarterly Report appears to propose an extension of Priority Project #1 (O&M Contract) from July 2023 until October 2023. EPA and MSDH would like additional information as to the reasons for this extension before it concurs with the proposed extension.

EPA also submits the following for your consideration:

3.) Also, in addition to posting of the Quarterly Reports on the JXN Water website, we suggest that they be filed on the Court Docket rather than only being sent to Chambers. This will enhance public transparency by allowing the public to find the reports in another location.

4.) As of the date of this letter the Quarterly Report has not yet been uploaded to the JXN Water website, as required by the ISO. *See ISO ¶ 14.k. and ¶ 17.b.*

5.) EPA recommends that JXN Water include a summary of boil water notices (“BWN”) and associated lifts (locations, days in-place, number of connections/impacted customers, reason for BWN, whether or not AWSP triggered, day notice made to EPA and MSDH, etc.) in future Quarterly Reports. This helps track the progress and status of the system and build public trust in the quality of the drinking water. EPA also believes that active boil water notices, and their associated lifts, should be posted publicly to the JXN Water website in order to increase public transparency and build public trust.

6.) Does the compromise of more than \$16M in disputed, aged WSBA arrearages change the Financial Management Plan in any material way?

7.) Pages 20-21 of the Quarterly Report indicates that Jacobs has a number of vacancies left to fill and that Jacobs will continue recruitment through the next quarter. EPA understands that successful recruitment and retention can be challenging. What actions does Jacobs plan to take to increase recruitment and/or retention? Is there any assistance that the ITPM would like EPA to provide on this issue, to the extent possible?

8.) On pages 23-36, on the PPL update chart in the Quarterly Report, work completed and anticipated work in the next quarter are being reported piecemeal, and the ITPM has not submitted any plans or scopes of work to EPA. Most projects on the PPL require plan development and submittal to EPA. EPA requests that the ITPM provide the scopes of work for projects to contextualize progress reported in the quarterly report. This would enable more transparency and better enable EPA to provide accountability to the public in its oversight role.

9.) On page 26, with respect to the alternative water supply plan (“AWSP”), what is the ITPM’s plan to provide alternative water if needed prior to having a contract in place in October 2023?

10.) On pages 5-6, the ITPM notes that the Omnibus Act funds will be used to retire all debt (SDWA and CWA related). The Report does acknowledge that Drinking Water State Revolving Funds (“DWSRF”) money is limited to retirement of debt that would have been DWSRF-eligible, and thus may not include some portion of the existing debt if it is ineligible for DWSRF reimbursement. EPA has previously notified the ITPM that only \$32M of debt associated with past DWSRF loans is currently eligible for refinancing through the special omnibus DWSRF appropriation. The ITPM has suggested that he is seeking a legislative fix for this issue. Please provide an update of these efforts.

We think it may be useful to schedule a call to discuss these issues further. Please let us know your availability for such a call in the next couple of weeks.

Sincerely,

Suzanne G. Rubini
Deputy Regional Counsel

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