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**Subject:** Response to Comments on Q3 Report  
**Date:** Wednesday, November 20, 2024 2:17:26 PM  
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[November 20 Response to Agency Comments PC.pdf](#)

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Please find responses to the comments on the attached.

Ted



**Ted Henifin**  
*Interim Third-Party Manager*

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## REGION 4

ATLANTA, GA 30303

### **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, 2024

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 ending on September 30, 2024 (hereinafter, “Q3’2024 Status Report”), prepared in accordance with the Interim Stipulated Order (ISO) for the above-referenced matter. Based on its review of the Q3’2024 Status Report, the EPA makes the following comments and/or requests clarification on the items contained in the Q3’2024 Status Report.

The EPA 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. Page 5, Priority Project Status – Project No. 2, Winterization; page 44, Winterization; page 47, Winterization of System; page 53.** The Q3’2024 Status Report includes inconsistent statements about the status of the membrane winterization project, and it is unclear to the EPA whether this project is complete and effective as intended, or not. On page 5, JXN Water indicates that this project was complete as of December 2023. On page 44, JXN Water states that it is “monitoring foundation of membrane building as litigation is pursued related to potential design defects.” On page 47, JXN Water indicates that, although winterization is complete and final close-out is underway, foundation issues have been discovered that may delay closeout and that the timing for correction of those defects cannot be estimated at this time. On page 53, JXN Water indicates that winterization and the membrane building are both complete and the projects are administratively closed-out.

Please clarify whether the foundational issues materially affect the effectiveness of the winterization. To the extent that the foundational issues impact the effectiveness of the project

and the deadline for completion of the project will be delayed by more than 60 days, the ITPM is required under Paragraph 18.a 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 timetable for completion of any Priority Project by more than 60 Days. Proposed schedule modifications need to be submitted to the EPA and MSDH in advance of the modification taking effect.

The potential foundation defects do not impact the use and effectiveness of the winterization project and as such winterization is complete and the membrane building has been administratively closed out. The parties will be briefed by the JXN Water legal team in Q4 2024 about the building defects and anticipated litigation to resolve the issues.

**2. Page 5, Priority Project Status – Project No. 3, Corrosion Control [O.B. Curtis Water Treatment Plant].**

- The EPA respectfully requests a copy of the revised OCCT plan for the O.B. Curtis WTP that has been approved by MSDH.
- The comments for this project now state, “Negotiations with CMAR continue – project added to existing OBC Filter Project with ARPA funding. New completion date to be submitted to EPA in Q4.” The estimated completion date is still listed as December 2024, although JXN Water acknowledges on page 39 of the Q3’2024 Status Report that, “Project design was delayed and longer than anticipated lead times for equipment will require a modification to the estimated completion date.”
  - It may be unclear to the reader what “CMAR” negotiations are; please clarify.
  - The EPA understands that JXN Water is working directly with Mississippi Department of Health (MSDH) on this project, but Paragraph 18.a. of the ISO requires the ITPM to submit to the EPA, as well, 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 timetable for completion of any Priority Project by more than 60 Days. Proposed schedule modifications need to be submitted to the EPA and MSDH in advance of the modification taking effect. Because the currently-approved completion date is December 31, 2024, the EPA expects a revised anticipated completion date and justification to be submitted for our review no later than December 1, 2024, to provide the Agency ample time to review and discuss with the Parties to the ISO. The EPA reserves its rights under the ISO to object to any further delay of this project.

A revised schedule will be submitted to the agencies by December 1 with a copy of the approved OCCT plan.

**3. Page 5, Priority Project Status – Project Nos. 5 and 6, System Planning and Stabilization and System Stabilization and Sustainability Plan; page 15, Building Resilient Infrastructure and Communities (BRIC); pages 48-49, System Planning and Stabilization; pages 54-55.**

Development of PPL 5 is an integral component for future system compliance, and is a first step for the long-term sustainability of the System. As such, it is critical that a comprehensive and cohesive plan be in-place prior to making large-scale infrastructure changes, with the input of

the parties to the ISO who, in the case of the EPA and MSDH, will be responsible for regulatory oversight, and, in the case of the City, will ultimately be responsible for long-term SDWA compliance as the owner of the System. Thus, the EPA suggests that the ITPM, EPA, MSDH, MEMA, and the City discuss how best to coordinate that effort in a way that maximizes the benefits of the \$450 million DWSRF appropriation to address long-term drinking water treatment infrastructure needs of the City.

Additionally, at page 49 of the Q3'2024 Status Report, regarding the Distribution System, the statement that previously read, “Implementation of many activities has commenced with all elements to commence no later than plan approval date. Implementation will continue into 2024 and beyond,” is shown in strikethrough, with no explanation of the project status. A discussion about the scope and timing of this effort would help clarify and coordinate this important effort, so that future reports can provide additional clarity to the public about this work.

**Will clarify the project status in all future quarterly reports. The projects will be implemented with SRF funding and as such have significant agency review as well as an opportunity for public comment for each project. Nevertheless, we will schedule a workshop with the parties in early 2025 to walk through elements of the plan.**

4. **Page 5, Priority Project Status – Project Nos. 8 and 9, Chemical Systems and Chlorine System at OBC – Replacement; page 39, Summary of Delays Encountered or Anticipated.** The comments for this project on page 5 of the Q3'2024 Status Report state, “SRF approval pending at end of Q3. CMAR has bid packages and ready to award. New completion date to be submitted to EPA in Q4.” However, the estimated completion dates for both projects are still listed as December 2024 in this table. JXN Water also acknowledges project delays on page 39 of the Q3'2024 Status Report.

Paragraph 18.a. of the ISO requires the ITPM to submit to the EPA, as well, 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 timetable for completion of any Priority Project by more than 60 Days. Proposed schedule modifications need to be submitted to the EPA and MSDH in advance of the modification taking effect. Because the currently-approved completion date for this project is December 31, 2024, the EPA expects a revised anticipated completion date and justification to be submitted for our review no later than December 1, 2024, to provide the Agency ample time to review and discuss with the Parties to the ISO. The EPA reserves its rights under the ISO to object to any further delay of this project.

**Will submit a schedule modification proposal by December 1, 2024.**

5. **Page 7, Grant Financial Dashboard:**

- **O&M Contract.** The average monthly cost of the O&M contract between January 1, 2023 and June 30, 2024 (as shown in the Q2'2024 Status Report) was approximately \$2.15M per month. The new total of approximately \$54.2M results in an average

monthly increase of \$5M per month (for a total increase in O&M costs during Q3'2024 of \$15.5M). Please clarify if these figures are accurate, and, if so, the basis for the monthly increase of \$5M per month.

The total reported for Jacobs O&M contract was \$54,179,405.57. That was for the period February 2023 (grant eligibility began on 2/2/2023) through July 2024 due to the slow processing of invoices with the grant reimbursement process. The July invoice was paid on 9/16/2024 and was the last payment made in Q3. The monthly average for those 18 months was \$3,009,966.98. The new fixed price contract was negotiated at \$2.9 M per month, in line with our actual operating experience over the first 18 months of the reimbursable contract.

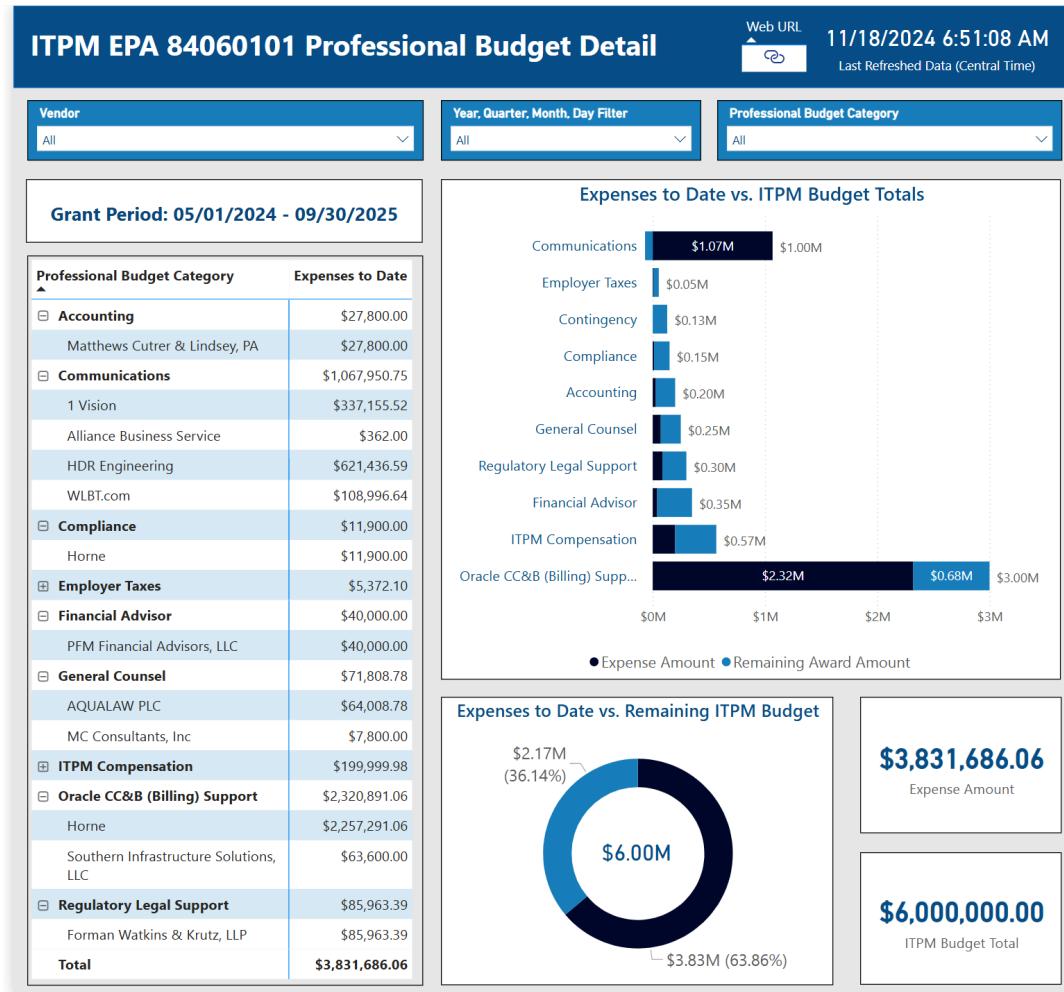
- **ITPM Professional Budget.** The ITPM Professional Budget, as approved in the Interim Stipulated Order, included ITPM compensation of \$33,333.33 per month (or \$400,000 annually), with a total estimated ITPM Professional Budget of \$2,976,500. The Q2'2024 Status Report reflected ITPM Professional Budget expenditures between January 1, 2023 and June 30, 2024 of \$550,616.49, and an overall ITPM Professional Budget for the period from May 1, 2024 to September 30, 2025 of \$6,000,000, with ITPM Compensation of \$566,665 for that same 16-month period (for a monthly ITPM Compensation of \$35,416.56). It is the EPA's understanding that a justification for any monthly increase in the ITPM Compensation has not been provided to the EPA or MSDH, pursuant to Subparagraph 11.g. of the ISO.

Moreover, the Q3'2024 Status Report now reflects ITPM Professional Budget expenditures of \$1,643,030.09. It is unclear to the EPA what the quarterly expenditure of approximately \$1.1M is going toward, and how that budget aligns with the court-approved ITPM Professional Budget.

Therefore, the EPA requests a breakdown of the current ITPM Professional Budget expenditures to-date, to reflect the same categories of costs included in Appendix B of the ISO. To the extent that the ITPM is proposing an increase of the ITPM compensation, the ITPM must follow the process outlined in the ISO for seeking such an increase. The EPA reserves its rights, subject to Paragraph 18 of the ISO, to comment on, object to, or seek appropriate relief regarding such proposed increase.

There has been no increase in the ITPM compensation. The reporting period for this grant began on 5/1/2024, upon closeout of the first ITPM grant. The ITPM expenditures are part of Grant 84060101 going forward. The grant funds the same categories of expenses as were previously included in the ITPM grant, based on the budget in the ISO. The detailed status is shown in the dashboard below and includes the specific budgeted line items. This detail will be provided in future reports.

The budget and work plan, as approved, and included in Grant 84060101 is shown on the attached grant application narrative. The grant period of 5/1/2024 through 9/30/2025 covers 17 months. The ITPM compensation is budgeted at \$33,333 per month for the 17 months for a total of \$566,665.



6. **Page 14, SRF Funding.** Due to the recently released Lead and Copper Rule Improvements (LCRI), anything referencing the “proposed LCRI” should be changed to “Lead and Copper Rule Improvements (LCRI), published in the Federal Register on 10/30/2024.”

The LCRI was not published until after 9/30/2024 – the end of the reporting period. Future reports will refer to LCRI.

7. **Page 44, Emergency Water Supply to Juvenile Detention Center.** JXN Water should clarify what the situation is with the Juvenile Detention Center's water service and pressure. How many individuals (on average) are being served by the Emergency Water Supply? For how long has this been going on? How much water and on what frequency is JXN Water supplying to the Center? Are the problems on JXN Water's side of the system, or on the "private" side? Who is responsible for installing a "new system"? What does the "new system" encompass?

The juvenile detention center houses 200 to 300 juvenile offenders at any one time. Early in the water system recovery, JXN Water was not able to maintain adequate pressure at this location

in the system. As a result, JXN Water contracted for water to be brought to the facility with tanker trailers on a daily basis. Although pressure has been restored in this area, the facility cannot maintain adequate pressure due to internal plumbing issues. The facility is addressing these issues as part of the new jail project under construction next door to the juvenile detention facility. With hundreds of juveniles impacted, JXN Water agreed to continue to supply emergency water services until the new system is in place in early 2025.

8. **Page 47, Modifications to the Priority Project List or Schedule.** JXN Water states that, "No modifications to the Priority Project List or Schedule were requested during the quarter. The list remains as submitted with the 2024 Q1 report . . ." That is not an accurate statement, as more fully detailed in the EPA's comments above. JXN Water has identified several projects for which completion dates have or will change, and which will require prior justification to the EPA and MSDH.

JXN Water did not **request** modifications as EPA has pointed out. JXN Water will be submitting its requests before the end of Q4.

9. **EPA Comments on Quarterly Report for Q2'2024.** The EPA previously requested copies of the Model Build and Pressure Zone Boundary Analysis technical memo, summary technical memo documenting the approach to evaluating the proposed rate structure and the billed revenue potential of the proposed rates, J.H. Fewell water treatment plant conversion assessment, and Resilient Power Plan technical memo. Please use the file sharing service transmitted to you on October 28, 2024 to upload the requested documents.

Documents were uploaded on 11/20/2024.

10. **Pages 56-57, Priority Project Nos. 5.a.ii.3, Valve Repair, and 5.a.ii.4, Hydrant Replacements; Pages 61-62; Priority Project Nos. 5.a.v.2 and 5.a.v.3, 30-inch Pipe Design (Gallatin & McDowell), 20-inch Pipe Design (Siwell Road – McClure Street to Terry Road), 30-inch Pipe Design (West Street and Rankin Road), and Merit Hospital Fire Line Connection Pipeline Design (Project No. 2309); Page 62, Priority Project No. 5.a.vi.2 (Choctaw Village Water and Sewer Replacement Design (Project No. 2310); and Page 66, Priority Project No. 7, SCADA Improvements.** JXN Water has indicated that it intends to publicly bid these projects and award the contracts in the quarter ending December 31, 2024. The EPA respectfully reminds JXN Water that, pursuant to Paragraph 17.b. of the ISO, any contract requests for proposals should be made available on the JXN Water website. To the best of EPA's knowledge, such requests for proposal are not yet posted on the JXN Water website. The EPA previously noted this type of concern in its August 21, 2023, Q2'2023 and November 15, 2023 Q3'2023 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.

JXN Water will link Planet Bid (the bidding site) to the JXN Water website. All of these projects are SRF funded and are following MSDH SRF procurement processes.

11. **Page 54, Priority Project No. 5.a., Distribution Plan for EPA Review and Approval.** It is reported that the Distribution Plan has been completed and submitted to JXN Water. In the

column "Projection of Work Quarter Ending December 31, 2024," it is stated that work will continue to advance efforts outlined in the submitted plan. Please provide a copy of the plan to the EPA and clearly indicate what, if any, work has already begun. As a reminder, pursuant to Appendix A, Paragraph 5.a. of the ISO, the plan for the distribution system study and analysis is to be submitted to the EPA for review and approval.

This technical memo was submitted to EPA via email on March 17, 2024. JXN Water received no comments on the technical memo as submitted.

**12.** **Deliverables.** As a general note, the EPA respectfully requests that JXN Water provide a copy of any technical memo, scope of work, plan, or any other deliverable that directly impacts the priority projects to the EPA and MSDH at the same time that Quarterly Reports are submitted, to expedite our review and coordination. Such documents can be included in the Quarterly Report or as an addendum to the Quarterly Report to protect sensitive information.

Will do for future reports.

**13.** **Page 26, Precautionary Boil Water Notices.** The EPA received notices during Q3'2024 of a number of precautionary boil water notices (BWNs) that are not included in the Q3'2024 Status Report, on the following dates and impacting the listed connections/addresses:

- July 6, 2024, 33 surface water connections
  - [100-333] Duncan Ave
- July 7, 2024, 32 surface water connections
  - [160-240] Fairbanks Street
  - [1320-1326] N. Mills Street
  - [1409] Blair Street
  - [1519-1607] N. Lamar Street
- July 8, 2024, 52 surface water connections
  - [5800-5895] Ferncreek Dr
  - [1505-1632] Springridge Dr
- July 11, 2024, 17 surface water connections
  - [2405-2438] Courtview St
- September 4, 2024, 40 surface water connections
  - [1602-1741] Winchester St
- September 20, 2024, 100 surface water connections
  - [4313-4561] Meadowhill Dr
  - [948-1093] Meadow Heights Dr
  - [949-1084] Parkwood Pl
  - [1000-1078] Whitsett Walk
  - [1001-1078] Cedar Hill Dr
  - [946-1078] Meadowbrook Rd

- [787] E Northside Dr

JXN Water has changed tracking methods for BWN. Will work on QA to ensure all BWNs are included in future quarterly reports.

Additionally, the EPA notes that some of the precautionary BWNs listed in the chart were longer than a week in duration (7 days). The EPA recommends that JXN Water offer a source of alternative water to residents who are under a BWN for over a week.

No impacted residents have raised this issue, most are pleased improvements are being made to the water system. Bottled water is widely available at local stores and most residents maintain a significant stock of bottled water in their homes due to the historical issues with the water system and a general distrust of local government and related institutions.

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](mailto:Armor.Suzanne@epa.gov) to schedule a meeting. Thank you for your attention to this matter.

Sincerely,

**SUZANNE  
ARMOR**

Suzanne K. Armor  
Attorney-Advisor

  
Digitally signed by  
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