IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
(Northern Division)

UNITED STATES OF AMERICA and the STATE OF MISSISSIPPI, *Plaintiffs*, v. THE CITY OF JACKSON, MISSISSIPPI, *Defendant*.	Case No. 3:12-cv-790-HTW-LGI (Clean Water Act Case)
UNITED STATES OF AMERICA, *Plaintiff*, MISSISSIPPI POOR PEOPLE'S CAMPAIGN and the PEOPLE'S ADVOCACY INSTITUTE, *Intervenor-Plaintiffs*, v. THE CITY OF JACKSON, MISSISSIPPI, *Defendant*.	Case No. 3:22-cv-00686-HTW-LGI (Safe Drinking Water Act Case)

RESPONSE TO NON-PARTIES' OPPOSITIONS TO INTERVENOR-PLAINTIFFS' MOTION TO AMEND THE INTERIM STIPULATED ORDER

(Safe Drinking Water Act Case)

Intervenor-Plaintiffs Mississippi Poor People's Campaign and People's Advocacy Institute ("Intervenors") hereby file this response to the opposition letters submitted by "Non-Party Participant" Interim Third-Party Manager ("ITPM") Ted Henifin and non-party the Mississippi Department of Environmental Quality's ("MDEQ") to Intervenors' Motion to Amend the Interim

Stipulated Order, CWA Docs. 175-76 ("Motion").[1] Neither submission should bear any weight in this Court's consideration of Intervenors' Motion for two significant reasons, as detailed below.

First, MDEQ's untimely opposition was submitted *after* the Court's already enlarged deadline for responses to Intervenors' Motion—already imposed *months* after briefing on the Motion to Amend the ISO closed, per this Court's Local Rules. Additionally, because MDEQ is neither a party to this litigation nor a signatory to the Interim Stipulated Order ("ISO") at issue in Intervenors' Motion, it has no legal interest to respond to this Motion.

Second, the Court should disregard the ITPM's opposition because, as a federal receiver and officer of the court, it is improper for him to take an adversarial position with respect to a party's motion in this litigation—especially when that Motion seeks to amend the very order that is the genesis of his role and powers.[2]

I. Brief Procedural History

The ISO, which was entered the same day that this case was filed, appointed the ITPM and described his powers and responsibilities. *See* SDWA Doc. 6.[3] The ISO was stipulated to by all parties to the case at that time—Plaintiff the United States and Defendant the City of Jackson—and "Non-Party Participant" Mississippi Department of Health ("MSDH"). *See id*. Intervenors were not yet parties to this case, as they were not granted intervention until March 2024. *See* CWA Doc. 102 (order granting Intervenors' motion to intervene in SDWA case). Intervenors filed their

[1] All citations to docket items in the Safe Drinking Water Act ("SDWA") Case, No. 3:22-cv-00686-HTW-LGI, are denoted herein as "SDWA Doc." All citations to docket items in the Clean Water Act ("CWA") Case, No. 3:12-cv-790-HTW-LGI, with which the SDWA case administratively consolidated on August 14, 2023, are denoted herein as "CWA Doc." Wherever available, Intervenors cite to the CWA docket.

[2] Because of the procedural impropriety of the ITPM's and MDEQ's responses that Intervenors establish herein, Intervenors do not substantively respond to the ITPM's and MDEQ's arguments in their letters, except to note that their arguments must be disregarded and must fail for the same reasons that Plaintiff the United States' arguments in opposition to the Motion fail: Intervenors' claims are not moot and the relief they seek in the Motion is well within the bounds of the ISO and their claims. *See* CWA Doc. 197 at 7, 8-9.

[3] The ISO was later amended to permit the ITPM to operate through the company he incorporated for the purposes of carrying out his duties under the ISO, JXN Water, Inc., or its successor. SDWA Doc. 23.

Motion to Amend the ISO and a supporting memorandum on May 15, 2025. CWA Docs. 175 & 176. Intervenors' proposed changes to the ISO include: (1) adding Intervenors as parties to the ISO in light of their party status in this case; (2) ensuring that the ITPM, as the manager of a public water system, is subject to state open records and public procurement laws; (3) expressly requiring the ITPM to maintain a position of neutrality; (4) develop a plan to transition the system back to local, democratically accountable public control; and (5) improve public reporting, transparency, and oversight of the ITPM's operations. *See* CWA Doc. 176 at 2-3.

After receiving several extensions, the United States timely filed its opposition to the Motion on June 26, 2025, CWA Doc. 185, and Intervenors filed their Reply in Support of their Motion to Amend, CWA Doc. 197. No other party or "Non-Party Participant" responded to the Motion at that time. *See generally* Dkt. After Intervenors requested a hearing, CWA Doc. 238, the Court set a hearing on the Motion and other pending matters for November 13, 2025. *See* Minute Order dated Oct. 29, 2025.

At the November 13 hearing, the Court reset the hearing on Intervenors' Motion to Amend the ISO for November 19,[4] and reopened and extended the timeline for any additional responses to the Motion until November 14—six months after Intervenors filed their Motion, briefing closed, and the Motion became ripe for ruling. On November 14, 2025, the ITPM submitted a letter to this Court's chambers via email, copying the parties. While the letter stated his opposition to Intervenors' Motion, it also acknowledged the need to comprehensively update the ISO and expressed an openness to discussing some of Intervenors' proposed changes, including the ITPM's exemption from the state's open records and public procurement laws and the creation of a

[4] The Parties have agreed to continue the hearing to January 20, 2026, to allow the parties and non-party participants to discuss a possible resolution regarding Intervenors' proposed changes to the ISO. *See* Email from Karl Fingerhood to Chambers of the Hon. Henry Wingate, re proposed order to reset hearing on Mot. To Modify ISO (Nov. 24, 2025) (on file with chambers).

transition plan for the water system. Ltr. to Chambers of the Hon. Henry T. Wingate, from Malissa Wilson, Legal Counsel for ITPM & JXN Water (Nov. 14, 2025) (on file with clerk). Five days later, the ITPM filed the same letter on the docket. CWA Doc. 249.

On November 17, 2025, three days *after* the Court's enlarged deadline for responses, and without requesting additional leave for a late filing, MDEQ submitted a letter to this Court's chambers via email, copying the parties, the ITPM, and the Mississippi Department of Health, stating its opposition and asking the Court to deny Intervenors' Motion on the same grounds set forth in the United States' opposition. *See* Ltr. to Chambers of the Hon. Henry T. Wingate, from Laura Gibbes, Legal Counsel for MDEQ (Nov. 17, 2025) (on file with chambers).

Intervenors now file this response to preserve their opposition to the ITPM's and MDEQ's responses to the Motion.

II. Argument

A. This Court Should Disregard MDEQ's Opposition as Untimely and Improper.

This Court should disregard MDEQ's opposition for two reasons. First, MDEQ submitted its opposition after the Court's enlarged November 14 deadline for responses to Intervenors' Motion. Thus, MDEQ's submission (which was never filed on the docket), is untimely, and this Court is empowered to disregard it in its entirety. *See Kitchen v. BASF*, 952 F.3d 247, 254 (5th Cir. 2020) (affirming district court's striking of late-filed response to motion for summary judgment). Here, MDEQ did not seek—much less obtain—an extension of the Court-imposed deadline, or even attempt to demonstrate excusable neglect, which could have justified an out-of-time submission with the requisite showing. *See id*. ("We have held a district court has discretion to refuse to accept a party's dilatory response to a motion for summary judgment, even if the court acknowledges reading the response, and has discretion to deny extending the deadline when no

excusable neglect is shown" (citing *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 161 (5th Cir. 2006))). While district courts enjoy "broad discretion to expand filing deadlines," *Hetzel v. Bethlehem Steel Corp.*, 50 F.3d 360, 367 (5th Cir. 1995)—an authority the Court exercised here—parties and other non-party participants in litigation are not entitled to the same leeway. MDEQ's opposition is due to be disregarded in its entirety as untimely.

Second, MDEQ's opposition is of no import to this Court's consideration of Intervenors' Motion because MDEQ is not a party to the SDWA case, or even a non-party signatory to the SDWA ISO. The SDWA ISO was signed and stipulated to by the parties—at the time, the United States and the City of Jackson—and Non-Party Participant MSDH. *See* SDWA Docs. 6 & 23. MSDH, along with the parties (including, upon amendment, Intervenors), is also a signatory to the amended confidentiality order in the SDWA case. CWA Doc. 123. While the SDWA case has been administratively consolidated with the Clean Water Act ("CWA") case, in which the State of Mississippi, through MDEQ, participates as a plaintiff, *see* CWA Doc. 45, MDEQ plays no role in the SDWA case—either as a party or a "Non-Party Participant." Perhaps MDEQ's November 17 letter was the result of an oversight or confusion about which state agency was involved in which case. Regardless of the reason, MDEQ's position on Intervenors' proposed changes to the SDWA ISO should play no role in the Court's consideration of Intervenors' Motion.

B. As a Federal Receiver, the ITPM Should Not Take an Adversarial Position in This Litigation, and Should Have No Say on the Scope of His Own Powers.

ITPM Ted Henifin, along with the company he incorporated to carry out his responsibilities as ITPM, JXN Water, Inc., are officers of the court who have a duty to remain neutral in these proceedings. Taking a position on the very order that created his position and set his powers is a particularly improper transgression of the ITPM's role as a receiver and an extension of the

judiciary. Accordingly, this Court should give no weight to the ITPM's opposition to Intervenors' Motion to Amend the ISO.

The ITPM is a court-appointed federal receiver. *Mississippi v. JXN Water*, 134 F.4th 312, 325 (5th Cir. 2025). As such, he is governed by the federal receiver statute, *see* 28 U.S.C. § 3103, and this Court's equitable powers, *see JXN Water*, 134 F.4th at 325 ("[T]he receiver's powers . . . stem[] from both a statutory grant and 'the court's equitable power to fashion appropriate remedies as ancillary relief' measures . . . . " (internal quotation marks & citation omitted)). The appointment of a receiver is a well-recognized, if drastic, exercise of courts' equitable powers in environmental cases. *United States v. Alisal Water Corp.*, 326 F. Supp. 2d 1010, 1012, 1016 (N.D. Cal. 2002) (citing *United States v. City of Detroit*, 476 F. Supp. 512, 520 (E.D. Mich. 1979)) (SDWA case involving post-trial appointment of receiver), *aff'd on reh'g*, 431 F.3d 643, 658 (9th Cir. 2005) ("[A] district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad.").

As an arm of the judiciary, receivers are bound to remain neutral and impartial. A federal receiver "is 'an officer or arm of the court appointed to assist the court in protecting and preserving, for the benefit of all parties concerned, the properties in the court's custody.'" *Zacarias v. Stanford Int'l Bank, Ltd.*, 945 F.3d 883, 896 (5th Cir. 2019) (alterations & citation omitted). "A receiver is a neutral court officer appointed by the court, usually to 'take control, custody, or management of property that is involved in or is likely to become involved in litigation for the purpose of ... undertaking any appropriate action.'" *Sterling v. Stewart*, 158 F.3d 1199, 1201 n.2 (11th Cir. 1998) (alteration omitted) (quoting 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure* § 2981, at 5 (1973)). While a receiver may, depending on her court-appointed powers and duties, initiate or participate in separate litigation as a party in

furtherance of her duties, her position in the litigation that generated her appointment is that of a neutral court officer—not a party or an adversary. *Cf. In re Teknek, LLC*, 343 B.R. 850, 875 (Bankr. N.D. Ill. 2006) ("[T]he receiver, as an extension of the court, should normally be a neutral, impartial entity not otherwise interested in the main litigation as a party or creditor." (citations omitted)). Thus, it is improper for the ITPM to take an adversarial position with respect to a motion filed by a party to this litigation.

The ITPM's opposition to Intervenors' Motion to amend the ISO is especially improper because that order is the source of the ITPM's powers. It is not unexpected for a receiver to hold a personal opinion about a party's proposal to change his powers—especially when the proposal is to circumscribe those powers or impose additional duties—but that does not mean that his opinion on the matter should be expressed to, or taken into account by, the very court that appointed him and that is authorized to modify the scope of his powers at any time. *See* 28 U.S.C. § 3103(e) (authorizing courts to *sua sponte* modify or terminate a federal receivership).[5] This Court should look to the interests of Jackson residents and the City's public water system users—who are, in different ways, represented by the parties to this action—and not to the ITPM's position when setting the terms of the receivership.

[5] The ITPM also takes issue in his opposition to Intervenors' position "that the emergency is over," casting the water system's current financial woes as a new type of emergency. CWA Doc. 249 at 2. Intervenors share the ITPM's deep concern over the precarious financial standing of their City's public water system. They are also keenly aware of the ongoing public health and affordability concerns facing the system's users. Their proposal to modify the ISO is based, in part, on the fact the state and federal *declarations* of a *state* of emergency had expired, and the acute phase of the city's water crisis, which precipitated the filing of this action and the entry of the ISO, has subsided. *See* CWA Doc. 176 at 2, 15, 21; *see also* Anthony Warren, "Governor ends Jackson water emergency; says city's 'crisis of incompetence' continues," *WLBT*, Nov. 22, 2022, www.wlbt.com/2022/11/23/governor-ends-jackson-water-emergency-says-citys-crisis-incompetence-continues/ (reporting that Governor Reeves issued executive order ending state of emergency declaration, and similar declarations from federal government and MSDH were slated to expire November 28 and December 28, 2022, respectively). Thus, as set forth in Intervenors' opening Memorandum and their Reply in Support of their Motion, CWA Doc. 176 at 6-7; CWA Doc. 197 at 6-7, many of the provisions in the ISO should be revisited and updated to reflect the current needs of the Parties and public that have changed since the Fall 2022 state of emergency that justified many of the ISO provisions, including the ITPM's exemptions from state law.

III. Conclusion

Based on the foregoing, this Court should disregard the ITPM and MDEQ's opposition to Intervenors' Motion to Amend the Interim Stipulated Order.

Dated: November 26, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all the parties on today's date through the Court's electronic case filing system.

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