



## **Draft Master Plan**

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### ***Citizens Advisory Council Members***

Jimmie Gardner, Mayor of Prichard, AL

Barry Broadhead, Mayor of Chickasaw, AL

Dr. Beatrice Morse, District 97

Carletta Davis, We Matter Eight Mile Community Association

Severia Campbell-Morris, President, United Concerned Citizens of Prichard

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Chris Williams, County Commission, Pastor, Yorktown Missionary Baptist Church

Katie Davis, District 2

Clifford Bryant, District 99

***Jessica James, City of Chickasaw representative***

## **EXECUTIVE SUMMARY**

The Prichard Water Works & Sewer Board (the “PWWSB” or “Board”) owns the water and wastewater systems serving Prichard, Alabama, and the water system serving Chickasaw, Alabama (collectively the “System”). In 2019, the Board issued \$55,780,000 in water and sewer revenue bonds secured by and payable exclusively from the revenues derived from the System (the “Series 2019 Bond(s)” or “Bond(s)”). The Series 2019 Bonds were issued for the purpose of refunding the outstanding bond previously issued by the Board (the Series 2018 Bond) and paying for certain capital improvements to the System as well as funding required deposits and bond issuance costs. As the result of multiple subsequent defaults under the Series 2019 Bond Trust Indenture (the “Indenture”), Synovus Bank, in its capacity as the Indenture Trustee (“Synovus” or “Trustee”), filed a complaint and emergency motion for the appointment of a receiver over the Board. After a hearing in October 2023, the Court entered the “Order Appointing Receiver” (the “Order”) (*see Appendix*).

The Court found multiple defaults by the Board under the Indenture and that the Board had not taken corrective action to cure the defaults. Most telling, the Court found compelling circumstances supporting the appointment of a Receiver, noting the dilapidated condition of the System resulting from years of mismanagement, fiscal irresponsibility, fraud, theft, and abuse occurring on the Board’s watch.

### **Appointment of a Receiver**

The Order was entered on November 10, 2023, appointing John S. Young, Jr. LLC as the receiver of the System (the “Receiver”). The Receiver was given full operational control and authority to manage the System. Among other things, the Order required by July 31, 2024, the Receiver to submit a Status Report detailing community and agency engagements and the Receiver’s progress on several specific tasks.

The Order also required the Receiver to develop and submit a Draft Master Plan (in form and substance acceptable to the Trustee) “to address the stabilization of the [System] and to address the capital improvement and infrastructure of the System to ensure the compliance with rate covenants in the Indenture (the “Rate Covenants”). In particular, the Order required:

*The Draft Master Plan shall be filed with the Court on or before July 31, 2024, and shall contain (i) a detailed plan to repair and replace existing System assets and undertake capital improvements of the System to the extent necessary to ensure (A) safe and affordable access to water and (B) sufficient revenues of the System to pay Operating Expenses and Debt Service (each as defined in the Indenture), and to meet the Rate Covenant throughout the term of the Bonds (as defined in the Indenture); (ii) a timeline for the implementation of any repairs, replacements, or capital improvements contemplated by the Draft Master Plan, including specific deadlines for the initiation, intermediate deadlines, and*

*completion of individual projects; and (iii) a budget of expenses, and, to the extent possible, projected revenues, for the System (the "Budget") which shall be acceptable in form and substance to the Trustee and include (A) Operating Expenses and, to the extent possible, System Revenues; (B) the aggregate amount required by the Indenture to be paid into Indenture Funds; (C) capital improvements to the System, including estimated costs and proposed sources of funding for each contemplated project included in the Draft Master Plan; and (D) a plan for the disposition and use of the funds remaining on deposit in the 2019 Construction Fund.<sup>1</sup>*

As directed by the Order, the Receiver immediately contacted EPA and ADEM to assess the environmental compliance issues of the System and to request both technical assistance and needed capital funding. After multiple discussions with ADEM, the Receiver in January 2024 entered a consent order with ADEM regarding the water assets of the System (the "Water Consent Order") (see Appendix). The Water Consent Order required several submissions. In particular, the Water Consent Order required the Receiver to submit a public water system alternatives analysis report (the "Alternatives Analysis") by July 31, 2024, "which analyzes the public water system supply and management options and outlines the options for long-term ownership and operational structure. This [Alternatives Analysis] will recommend the most cost effective and feasible long-term ownership and operational control structure that maintains reliable and efficient service for customers (the "Structure")."<sup>2</sup>

In the process of complying with the requirements of the Order for the development of the Draft Master Plan, it became abundantly clear that the Receiver could not prepare a detailed plan to ensure that there are sufficient System revenues to pay operating expenses and debt service and meet the Rate Covenant throughout the term of the Bonds without first:

1. Determining the recommended long-term ownership and operational structure of the System required by the Water Consent Order;
2. Obtaining agreement by the required entities for the long-term solution;
3. Performing the financial analysis necessary to demonstrate that under the recommended long-term solution, the System can generate sufficient revenues to pay for the operational expenses and capital investment needs, pay the debt service on the Bonds, and ultimately meet the Rate Covenant throughout the term of the Bonds.

It has been the Receiver's objective to comply with each provision of the Order's requirements for the Draft Master Plan, but the budgetary requirements of the Draft Master Plan cannot be

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<sup>1</sup> *In the Matter of Synovus Corporate Trust v. Water Works and Sewer Board of City of Prichard* (Case No. CV-2023-901332.00), Circuit Court of Mobile County, Alabama, Order Appointing Receiver, p. 20-21.

<sup>2</sup> *In the Matter of Water Works and Sewer Board of the City of Prichard*, Alabama Department of Environmental Management, Consent Order No. 24-037-CDW, p. 12.

performed before the financial and operational modeling based on the recommended long-term ownership structure is completed.

Accordingly, the Receiver needs instruction from the Court on the direction it should take in regard to compliance with the Order's specific requirements at this stage of the receivership. In short, should the Receiver proceed with its recommendations on the path forward set forth herein or does the Court desire it to proceed in another direction? Following is an outline of the path forward as recommended by the Receiver.

### **Progress and Future Steps**

Assuming the Court and necessary entities approve the recommended solution for the System's long-term ownership and operations, the Receiver will conduct a detailed Technical, Managerial, and Financial Capacity (TMF) analysis. This analysis will assess the System's ability to ensure safe water access, fund operating costs, address capital improvements, and *to the extent possible*, meet the Rate Covenant throughout the term of the Bonds. The TMF analysis will be a key component of the Final Master Plan submitted to the Court. Only after the TMF Capacity analysis is completed will the Receiver be able to prepare:

1. a detailed plan to repair and replace existing System assets and undertake capital improvements of the System to the extent necessary to ensure (a) safe and affordable access to water and (b) sufficient revenues of the System to pay operating expenses and debt service, and to meet the Rate Covenant throughout the term of the Bonds;
2. a timeline for the implementation of any repairs, replacements, or capital improvements contemplated by the Draft Master Plan, including specific deadlines for the initiation, intermediate deadlines, and completion of individual projects; and
3. a budget, in form and substance acceptable to the Trustee, that includes;
  - a. projected operating expenses and revenues;
  - b. the aggregate amount required by the Indenture to be paid into Indenture Funds;
  - c. capital improvements to the System, including estimated costs and proposed sources of funding for each contemplated project included in the Draft Master Plan; and
  - d. a plan for the disposition and use of the funds remaining on deposit in the 2019 Construction Fund.

### **The Bond Debt as of July 31, 2024**

Due to the lack of sufficient System revenues to pay operating expenses, the Receiver has not been able to replenish the Indenture funds or make current monthly payments of \$280,448.95 to the Trustee since the date of appointment. Based on the System's actual financial performance, the Receiver does not project that System revenues will be sufficient to resume paying the monthly payments to the Trustee specified in the Indenture or to begin to replenish the Reserve Fund and the Bond Fund before the final recommended solution for long-term ownership is realized, which is not projected to occur until FY 2026. However, the Receiver does not intend to draw down on the Construction Fund during that period provided the anticipated grant funding from ADEM for capital improvements continues to flow.

### **The outstanding Bond Debt and the amounts needed to be paid to the Reserve Fund and Bond Fund as of July 31, 2024, are:**

1. Bond Debt \$54,772,596.88
2. Reserve Fund
  - a. Requirement: \$3,343,600.00
  - b. Current Reserve Fund Balance: \$1,240,880.81
  - c. Required amount to be paid into Reserve Fund: \$2,101,719.19
3. Bond Fund
  - a. Required Balance: \$1,438,846.80
  - b. Current Bond Fund Balance: \$16.77

As noted, the Bond Debt will be specifically addressed in the TMF analysis under the recommended long-term ownership and operation structure. In fact, satisfaction of the Bond Debt must be addressed under all of the structures outlined in the Alternatives Analysis.

### **Historical Challenges and Mismanagement**

The challenges facing PWWSB are rooted in a history of fiscal and operational mismanagement compounded by geopolitical factors. Initially thriving post-incorporation in 1925, Prichard's population declined in the 1960s due to "white flight" and annexation by Mobile. By 2020, Prichard had a population of 19,322 with significant poverty and low median incomes. Similarly, Chickasaw, incorporated in 1946, faced similar socioeconomic challenges.



PWWSB, formed in 1943, has faced persistent operational issues. The Board's mismanagement led to severe financial problems, including a default on Series 2019 Bonds and criminal actions against former employees involving misuse of funds.

Previous attempts to transfer PWWSB assets to the Mobile Area Water & Sewer System (MAWSS) failed due to legal, political, and contractual complications, including a costly management contract entered by the Board and severe infrastructure needs. Despite constitutional amendments supporting the transfer, MAWSS declined the acquisition citing excessive liabilities and unfavorable financial conditions.

## **More Recent Developments and the Receiver's Actions**

### **Financial and Operational Assessments**

Since 2015, PWWSB's water and sewer rates have risen significantly, while its service quality and infrastructure maintenance have declined. In 2022, a Federal Bureau of Investigation raid of PWWSB revealed employees' misuse of PWWSB funds, leading to criminal indictments. On the environmental front, ADEM imposed penalties on PWWSB for wastewater management failures and continued non-compliance, further straining finances.

## **The Receiver's Actions and Progress**

### **Immediate Steps and Community Engagement**

In the initial 45 days following the appointment, the Receiver took control, meeting with System staff, evaluating the financial condition, and identifying severe operational issues. Challenges included insufficient funds, multiple sanitary sewer overflows, high water leakage, staffing issues, and environmental compliance failures. Initial actions included meetings with ADEM and MAWSS, reviewing financial audits, and securing technical assistance. Contracts were signed for key projects, including a hydraulic study and affordability analysis. A public-facing website was launched for updates.

### **Financial Revisions and Funding Secured**

Between January and March 2024, the Receiver faced troubling System financial performance, with revenues 19% below the budget approved by the Board and significant operating cost overruns. The Receiver revised the budget, uncovering a \$5 million deficit resulting from erroneous revenue and expense estimates by the Board. The Receiver successfully negotiated a Water Consent Agreement and secured \$5.8 million in ADEM grants for critical projects, with additional funding expected. Major contracts were authorized, including those for leak detection and asset management. Progress included meeting regulatory requirements and prioritizing projects based on compliance and efficiency.

### Studies and Public Meetings

Between April 2024 and June 2024, analyses and studies were completed, including the Asset Management Report and Source of Supply study. The water storage tank improvement project was advertised for bid and design work for pipeline replacement and other projects continued. The revised budget showed improved financial alignment. Ongoing activities included meetings with ADEM and other stakeholders, managing grant-funded projects, and addressing community concerns.

Between January 2024 and July 2024, the Receiver conducted seven public meetings with the Citizens Advisory Council, which were livestreamed. During that time, over 70 emails were received through the public website, FixPrichardWater.com, indicating active community engagement. The website and meeting summaries have been regularly updated to ensure transparency and communication.

### Strategic Planning for Long-Term Sustainability

The Draft Master Plan for the PWWSB system focuses on ensuring sufficient revenue to cover operating costs, Bond Debt, and capital expenditures. The utility's ultimate ownership and governance structure significantly impacts its long-term sustainability, influencing factors such as funding access, operational efficiency, and satisfaction of the Bond Debt. Before finalizing cost and revenue requirements, the utility's recommended long-term structure must be defined. The Receiver analyzed various ownership and governance options for PWWSB and presented them to the Citizens Advisory Council in June and July meetings.

### Ownership and Governance Alternatives

#### Five Alternatives Analyzed

1. Transfer PWWSB assets and liabilities to MAWSS.
2. Retain PWWSB ownership with governance and operation under a long-term concession agreement.
3. Transfer PWWSB ownership to the City of Prichard, with governance and operation under a long-term concession agreement.
4. Transfer ownership of PWWSB assets in Prichard to the City, with the Chickasaw system transferred to MAWSS.
5. Create a new, independent state-appointed authority to govern the PWWSB system.

### **Evaluation Criterion and The Receiver's Recommended Solution**

At no cost to System customers, the Receiver engaged Moonshot Missions Inc., a nonprofit organization, to assist in developing evaluation criteria for each of the five alternatives. The evaluation criteria included protection of health and environment, customer cost, ownership experience, and community impact. The benefits and drawbacks of each option were summarized. A fundamental component of the evaluation was how each alternative would address payment of the Bond Debt through the term of the Bonds since satisfaction of the Bond Debt is critical to enable the ultimate owner of the System to access the bond market in the years to come.

The Receiver concluded that ownership/operation alternatives involving long-term concession agreements were unsupported due to concerns about cost, transparency, and past mismanagement by the existing Board.

The Receiver preferred the MAWSS alternative with its high potential for operational efficiency, low capital costs, and support from some key stakeholders. However, further steps, including financial modeling, capital source determination, due diligence, and a cost-of-service study, are needed to confirm its feasibility. If the MAWSS solution is pursued, the process involves legislative action for a constitutional amendment, a referendum vote, the MAWSS Board's approval, and the eventual transfer and dissolution of PWWSB. This process is estimated to take until early 2026.

## **INTRODUCTION**

### **Receiver's Status Report**

On November 10, 2023, the Court entered the Order appointing John S. Young, Jr. LLC as the receiver ("Receiver") for the Prichard Water and Sewer System (the "System") pursuant to the terms of the Indenture. The Receiver was directed to exercise all rights and powers of PWWSB with respect to the operation and control of the System. The Receiver was also vested with all contractual, statutory, and common law powers, rights, and privileges of a receiver under state law and all powers granted to a receiver under the terms of the Indenture.

With respect to the duties of the Receiver, the Order required the Receiver to develop and submit to the Court a Status Report, on or before July 31, 2024, containing a summary of community engagement efforts as well as efforts to engage EPA, ADEM, and other federal, state, and local agencies. Although not required by the Order, the Receiver filed monthly status reports with the Court describing the Receiver's actions during the previous month to keep the Court and the public apprised of its progress.

The Order also directed the Receiver to develop, on or before July 31, 2024, a Draft Master Plan to stabilize the water system and address the capital improvement and infrastructure needs of the System to ensure compliance with the Rate Covenant throughout the term of the Bonds.

Following the direction of the Order, the Receiver quickly contacted ADEM and began discussions regarding alleged violations of the Alabama Safe Drinking Water Act. These discussions led to the entry of the Water Consent Order. Among other things, the Water Consent Order required the Receiver to complete an Alternatives Analysis, which coincides with the submission of the Draft Master Plan.

The goal of the Alternatives Analysis is to recommend the most cost-effective and feasible long-term governance and/or operational structure solutions that maintain reliable and efficient water service for customers. In particular, the Water Consent Order required the Receiver to identify and consider, at a minimum, the following possible alternatives:

- Changes to the PWWSB's operation, management, governance, and finances that would enable the System to provide proper water service in compliance with the Permit and ADEM Admin. Code Div. 335-7.
- Consolidation, sale, or transfer of ownership of the System to another public entity permitted to supply public drinking water.
- Contractual agreements with third-party entities to provide significant management and/or administrative functions.
- A combination of the alternatives presented above.

The Receiver has made significant progress in stabilizing the System and in identifying and addressing its immediate and long-term capital and infrastructure needs. On March 20, 2024, the Receiver obtained \$5.8 million in grants from ADEM for critical projects to be completed by December 31, 2026. The Receiver was also able to secure commitments for additional funding subject to ADEM's requirements.

### **A Perspective on the Draft Master Plan and Alternatives Analysis**

The Receiver is not currently able to provide the Court with a blueprint in this Draft Master Plan that ensures "compliance with the Rate Covenant" through the term of the Bonds as contemplated in the Order. The Receiver's recommendation, once accepted by the Court and required entities, will establish a process that includes "compliance with the Rate Covenant" as part of the financial modeling predicated on the new ownership and operational structure of the System.

Assuming the required entities concur on the appropriate solution for the long-term ownership and operational structure of the System, the Receiver will undertake a detailed Technical, Managerial, and Financial Capacity ("TMF") analysis of the proposed structure, which will (among other things) address the ability of the System over the long-term to ensure safe and affordable access to water and, to the extent possible, provide sufficient revenues to pay operating expenses and debt service to meet the Rate Covenant through the term of the Bonds. It is anticipated that the TMF Capacity analysis will be a key component of the Final Master Plan that is ultimately filed with the Court.

## PWWSB HISTORY

The past teaches us about the present. History yields the tools to analyze and explain problems in the past and positions us to see patterns that might otherwise be invisible in the present. History provides a crucial perspective for understanding (and solving) current problems while informing future solutions. Therefore, it is instructive to review factors that contributed to the dilemma facing PWWSB today.

Over the past several years, much has been said and written about PWWSB related to recent events, including PWWSB's default under the Indenture, the litigation giving rise to the Order appointing the Receiver, environmental concerns and related litigation, and criminal proceedings related to former PWWSB employees. However, the difficulties currently facing the System are not solely the result of recent events but, instead, are the products of years of fiscal and operational mismanagement of the System, as well as the products of geopolitical activities spanning multiple decades. Accordingly, understanding the difficulties and challenges currently facing the System requires a clear understanding of its history.

### **The Cities of Prichard and Chickasaw-General Overview**

Prichard was initially incorporated as a city in 1925, after which it experienced a period of growth fueled by industrial development, primarily in the paper and shipbuilding industries. The local population peaked at approximately 47,000 residents in 1960; however, in conjunction with the Civil Rights movement of the 1960s, the area experienced a population decline based on "white flight" from the area,<sup>3</sup> as well as due to the subsequent annexation of portions of Prichard by the City of Mobile.

According to the 2020 U.S. Census Bureau, the City of Prichard has a total population of 19,322, spread across 6,747 households. Of the total population, 16,340 (84.6%) are African American and 31.6% of Prichard residents live in poverty. The median household income in Prichard is \$36,110, which is substantially lower than the median household income across the rest of the State (\$59,674).<sup>4</sup>

PWWSB also owns and operates water infrastructure within the municipal bounds of the City of Chickasaw, Alabama. Chickasaw was incorporated as a city in 1946 after the formation of PWWSB. Following Chickasaw's incorporation, the water infrastructure continued to be owned and operated by PWWSB.

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<sup>3</sup> <https://alabamareflector.com/2023/10/03/first-floods-now-fires-how-neglect-and-fraud-hobbled-prichard/>.

<sup>4</sup> [https://data.census.gov/profile/Prichard\\_city,\\_Alabama?g=160XX00US0162496#populations-and-people](https://data.census.gov/profile/Prichard_city,_Alabama?g=160XX00US0162496#populations-and-people).

According to the U.S. Census Bureau, as of the 2020 census, the City of Chickasaw had a total population of 6,457, spread across 2,357 households.<sup>5</sup> 49.2% of Chickasaw's population is African American, and 44.6% of the population is White.<sup>6</sup> 31.5% of Chickasaw residents live in poverty.<sup>7</sup> The median household income in Chickasaw is \$39,985 – again, substantially lower than the median household income across the rest of the State.<sup>8</sup>

Centrally located within the City of Prichard is a neighborhood known as Alabama Village. Originally built during the World War II period as inexpensive housing for shipbuilders and their families,<sup>9</sup> over the past 50+ years, Alabama Village has fallen into a state of disrepair, including deteriorating water and sanitary sewer pipes. The pipes that service PWWSB customers in Alabama Village were installed in the mid-1940s, *i.e.*, water and sewer infrastructure located within Alabama Village is now over 80 years old and beyond its useful life expectancy.<sup>10</sup>

Currently, the System serves only 40 active customers out of the 518 property sites located within the footprint of Alabama Village. However, third-party consultants have estimated that 32.4 million gallons of water pumped into Alabama Village is lost through leaking pipes each month,<sup>11</sup> which third parties have calculated costs PWWSB ratepayers approximately \$2.7 million per year for water that no customer receives or uses.<sup>12</sup> While potentially inflated (based on a review of total water sales data), such third-party estimates underscore the magnitude of the leakage issues within Alabama Village.

Based on the dilapidated state of infrastructure in Alabama Village, on March 21, 2023, the PWWSB Board passed a resolution providing for a moratorium on new customer water meter installations in Alabama Village (but which did not impede existing customers' ability to continue to receive water and sewer service).<sup>13</sup> Any long-term solution for the System needs to take the redevelopment of Alabama Village into account. However, that task must involve the City of Prichard, the Prichard Housing Authority, and other local, state, and national stakeholders and resources. In short, the failing water and sewer infrastructure in Alabama Village cannot be solved by the Receiver or the ultimate recommended owner in a vacuum.

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<sup>5</sup> <https://www.census.gov/quickfacts/fact/table/chickasawcityalabama/RHI225222>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> <https://alabamareflector.com/2023/10/03/first-floods-now-fires-how-neglect-and-fraud-hobbled-prichard/>.

<sup>10</sup> See Waggoner Technical Memorandum dtd April 10, 2023.

<sup>11</sup> *Id.*

<sup>12</sup> <https://myabc15.com/news/local/alabama-village-residents-could-be-moved-against-their-will>.

<sup>13</sup> See PWWSB Resolution No. 2023-3 dtd March 21, 2023.

### **Formation of PWWSB and Acquisition of Utility Property**

PWWSB has been engaged in the business of providing water utility services to customers in and around Prichard since the 1940s. In 1943, the Water Works of the City of Prichard was formed by Resolution of the Mayor and City Council of the City of Prichard and incorporated by filing a Certificate of Incorporation in the Office of the Judge of Probate of Mobile County, Alabama, pursuant to the provisions of Alabama Code Title 37, Article 5, Sections 394-402 (now ALA. CODE § 11-50-230 *et seq.*). In 1953, the Water Works of the City of Prichard acquired the exclusive franchise over the sanitary sewer system from the City of Prichard, resulting in the present-day PWWSB. PWWSB later purchased the sanitary sewer system from the City of Prichard in 1973. PWWSB has maintained an exclusive water and sanitary sewer franchise over the combined water and wastewater utility system since 1953. Most recently, in 2005, the exclusive franchise term was extended through 2035 by an Amendment to City Ordinance No. 1406.

Today, PWWSB continues to own and operate the water and sanitary sewer systems serving the City of Prichard and surrounding areas, including the water system in the City of Chickasaw. These systems serve a combined customer population of 25,700 via 9,664 active water accounts.<sup>14</sup> PWWSB operates approximately 268 miles of water mains and associated hydrants, valves, and meters, as well as four elevated water tanks and one ground storage tank.<sup>15</sup> On the wastewater side, the system is comprised of 10 miles of force mains and approximately 132 miles of gravity mains.<sup>16</sup> Wastewater is treated at two wastewater treatment plants.<sup>17</sup>

PWWSB's water supply is purchased from neighboring MAWSS and delivered through seven master meters.<sup>18</sup> The daily average System customer demand is estimated to be 1.94 million gallons of water; however, an estimated 56% of the average daily demand is lost to system leaks and water theft, resulting in an estimated additional 2.5 million gallons being lost from the System each day.<sup>19</sup>

### **Prior Attempts to Dissolve PWWSB and Transfer Assets to MAWSS**

This is not the first attempt to address alternatives to PWWSB's ownership of the water and wastewater systems. Twice in the past 15 years, voters in the State of Alabama have voted to

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<sup>14</sup> See Hazen Technical Memorandum, PWW&SB Asset Evaluation Technical Memorandum dtd May 30, 2024.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See Hazen Technical Memorandum, Water Supply and Treatment Alternatives Analysis Report dtd July 1, 2024.



approve amendments to the Constitution of the State of Alabama to effectuate PWWSB's divestment of the System.

In 2011, the Alabama Legislature approved and adopted Act No. 2011-53, proposing an amendment to the Alabama Constitution that would result in the assets of PWWSB being transferred to MAWSS and the subsequent dissolution of PWWSB. Such transfer was conditioned upon MAWSS's agreement to assume all assets and liabilities of PWWSB as evidenced by a resolution of the MAWSS Board. The initiative was sponsored by local state legislators and was aimed, in part, at combating inflated monthly rates and poor service by PWWSB, particularly when compared to rates paid by MAWSS customers, as noted in media coverage of the referendum initiative in 2014.<sup>20</sup>

Prichard water customers for years have complained about high bills and poor service. According to information provided by MAWSS, its minimum monthly bill for water and sewer service is \$27.76 for 2,500 gallons of water. The minimum bill in Prichard is \$41.50 for 2,000 gallons.

On November 6, 2012, a statewide election was held, and a majority of statewide voters approved the proposed amendment, resulting in such proposed amendment becoming part of the Constitution of Alabama (*see* Ala. Const. § 49-11.01). Subsequently, the MAWSS Board adopted a resolution authorizing its acquisition of all PWWSB assets and liabilities.

However, immediately following MAWSS's agreement to take over PWWSB, the PWWSB Board sued MAWSS seeking a judgment declaring Ala. Const. § 49-11.01 invalid and void, as well as injunctive relief preventing MAWSS from taking any action to take over PWWSB assets and/or dissolve PWWSB.<sup>21</sup> PWWSB asserted that the procedures for amending the Alabama Constitution related to local amendments (*i.e.*, amendments only affecting a single county) were not followed, and therefore, Ala. Const. § 49-11.01 was not a valid amendment.

At the trial court level, the validity of Ala. Const. § 49-11.01 was upheld. However, the issue was appealed to the Alabama Supreme Court, where the Court reversed the trial court's ruling, holding that compliance with the procedures outlined in Ala. Const. § 284.01 was mandatory when dealing with a constitutional amendment affecting only a single county. Thus, as of September 13, 2013, Ala. Const. § 49-11.01 was held to be invalid.

Subsequently, in accordance with the procedures promulgated under Ala. Const. § 284.01, the Alabama Legislature passed Act No. 2014-86, which was substantially similar to the prior-enacted Act No. 2011-53/Ala. Const. § 49-11.01. This Act again called for the transfer of all PWWSB

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<sup>20</sup> [https://www.al.com/news/mobile/2014/09/citing\\_poison\\_pill\\_mobile\\_wate.html](https://www.al.com/news/mobile/2014/09/citing_poison_pill_mobile_wate.html).

<sup>21</sup> *Water Works and Sewer Bd. of Prichard v. Bd. of Water and Sewer Commissioners of the City of Mobile*, 141 So. 3d 958, 960 (Ala. 2013).

assets and liabilities to MAWSS contingent upon MAWSS's agreement to assume such obligations, followed by the subsequent dissolution of PWWSB. The Act was voted upon by electors in Mobile County on June 3, 2014, and was passed. Accordingly, Act No. 2014-86 was ratified and became part of Alabama's Constitution, codified at Ala. Const. § 49-11.02.

However, following the ratification of Ala. Const. § 49-11.02, the MAWSS Board voted not to proceed with acquiring PWWSB, citing a "poison pill" in the form of an unfavorable management contract entered by PWWSB just before the referendum election in June of 2014.<sup>22</sup> The management contract called for PWWSB to be operated by a third party, Severn Trent Services, at a minimum cost of \$32.8 million over a period of five years. The contract further provided that Severn Trent Services could increase the contract price by 2.5% per year, further increasing PWWSB's fiscal obligation.<sup>23</sup>

MAWSS also became aware of severe infrastructure upgrade needs, including repairs to PWWSB's two wastewater treatment plants (estimated to cost \$900,000), as well as costs to comply with an Order from ADEM prohibiting dumping of untreated water into Three Mile Creek, at an estimated cost of \$4 million.<sup>24</sup>

Based on these unanticipated contracts and costs, the MAWSS Board declined to approve the takeover of PWWSB's assets, citing a lack of funds to address such costs and improvements. At the time, stakeholders and State Legislators suggested that PWWSB's actions in entering the unanticipated contracts were intentional and calculated to disincentive MAWSS from taking over the System.<sup>25</sup>

"I'm disappointed for the people of Prichard and Chickasaw," said state Sen. Vivian Davis Figures, a Mobile Democrat who sponsored legislation to put the proposed takeover on the ballot. "The Prichard water board worked tirelessly to make sure they would make it as hard as possible for MAWSS to take it over."

Rep. Napoleon Bracy, D-Prichard, called the Severn Trent contract extension an act of sabotage to kill the deal.

"I think the Prichard water board is acting in a very selfish way," said Bracy, one of the leading proponents of the legislation that authorized the referendum that paved the way for the takeover. "It's wrong what they are doing. It shouldn't be legal what they are doing."

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<sup>22</sup> [https://www.al.com/news/mobile/2014/09/citing\\_poison\\_pill\\_mobile\\_wate.html](https://www.al.com/news/mobile/2014/09/citing_poison_pill_mobile_wate.html).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

Since 2015, no efforts were made to effectuate the transfer of PWWSB assets and liabilities to MAWSS.

**PWWSB Management Post-2015 through Appointment of the Receiver**

Following the failed initiative to transfer PWWSB’s assets to MAWSS, PWWSB continued to own and operate the System. The following highlights certain key information and events related to the Board’s management of the System since 2015.

**A. Water and Sewer Rates Since 2015**

Since March 2, 2015, PWWSB customers have been charged the following water and sanitary sewer rates:

DATE	Minimum Water (2,000 Gallons)	Minimum Water + Sewer (2,000 Gallons)	Water Cost/1k Gallons Above Minimum	Sewer Cost/1k Gallons Above Minimum
3/2/15-11/30/19	\$21.05	\$42.10	\$5.26	\$6.57
12/1/19-9/30/20	\$22.11	\$44.22	\$5.53	\$6.90
10/1/20-9/30/21	\$23.22	\$46.44	\$5.81	\$7.25
10/1/21-9/30/22	\$24.39	\$48.78	\$6.10	\$7.61
10/1/22-10/31/23	\$25.61	\$51.22	\$6.41	\$7.98
11/1/23-Present	\$31.24	\$62.48	\$6.60	\$8.23
<i>Charges above do not include tax</i>				

Since 2015, minimum water rates have increased by \$10.19, and minimum sewer rates have increased by \$22.38. Note that there were no rate increases for a period of nearly four and a half years (March 2, 2015, through November 30, 2019) before the Board began implementing yearly rate increases. There is no record that any of these rate increases were supported by cost-of-service studies.

The following chart shows the current PWWSB-charged minimum water and wastewater rates for retail customers versus rates charged by MAWSS:

PWWSB – Minimum Water (2,000 gallons)	\$31.24
<b>PWWSB – Minimum Water + Sewer (2,000 gallons)</b>	<b>\$62.48</b>
MAWSS – Minimum Water (2,500 gallons)	\$9.63
MAWSS – Minimum Sewer (2,500 gallons)	\$24.06

MAWSS – Combined Min. Water + Sewer <sup>26</sup> (2,500 gallons)	<b>\$33.69</b>
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***B. Criminal Actions Against PWWSB Employees***

On February 23, 2022, the PWWSB office was raided by federal and state agencies based on allegations that PWWSB employees were using System funds for personal use, including purchasing high-end luxury goods, vacation expenses, airline tickets, and Mardi Gras expenses.<sup>27</sup> The raids and related search warrants resulted in the entry of criminal indictments against former PWWSB Manager Nia Bradley, as well as six other former PWWSB employees.<sup>28</sup> Civil forfeiture actions were also initiated against Bradley and her husband, Anthony Bradley.<sup>29</sup>

Charges made using PWWSB credit cards were investigated by Dana Foster-Allen in a report commissioned by PWWSB, who identified suspicious charges in the following categories and amounts:<sup>30</sup>

Personal Expenditures	\$68,880.91
Mardi Gras	\$38,676.14
Travel	\$70,591.74
Unlimited Auto	\$248,206.01
<b>TOTAL</b>	<b>\$426,354.80</b>

Note that the foregoing charges are only those that were readily identifiable by Ms. Foster-Allen based on credit card statements and may not represent the entire amount(s) converted by Bradley and/or other PWWSB employees. In fact, the Mobile County District Attorney performed an independent investigation into potential illegal spending by PWWSB employees, concluding that the amount converted from PWWSB could be up to nearly \$4 million dollars.<sup>31</sup>

As of the date of this Draft Master Plan, criminal proceedings remain pending against Bradley and other former PWWSB employees.

<sup>26</sup> MAWSS rates available at [https://www.mawss.com/uploads/2024FeeSchedule\\_163705.pdf](https://www.mawss.com/uploads/2024FeeSchedule_163705.pdf); MAWSS rates do not take into account monthly administrative charges and other fixed charges.

<sup>27</sup> <https://www.wkrg.com/mobile-county/former-prichard-water-works-sewer-board-manager-taken-into-custody/>.

<sup>28</sup> <https://1819news.com/news/item/water-works-employees-accused-of-extravagant-purchases-with-public-funds-02-09-2022>.

<sup>29</sup> See *State of Alabama vs. Bradley, et al.*, Civil Action No. 02-CV-2022-900572.00, Circuit Court of Mobile County, Alabama, Doc. 6, Amended Complaint.

<sup>30</sup> See Dana Foster-Allen Report – Significant Credit Card Transactions January 2018 through October 2021.

<sup>31</sup> <https://www.wkrg.com/mobile-county/prichard-water-being-investigated-for-over-3-million-dollars-in-credit-card-charges/>.

### **C. ADEM Wastewater Consent Order**

In 2022, PWWSB entered a Consent Order with the ADEM related to the operation of System’s sewer system. (see *Appendix*).<sup>32</sup> In the Consent Order, ADEM recited multiple violations and deficiencies attributed to PWWSB’s management and operation of the System’s two wastewater treatment plants, the Carlos Morris WWTP and the Stanley Brooks WWTP, including, repeated, unpermitted discharges from both plants, multiple failures to monitor discharges, repeated late submittals, failure to maintain facilities and testing apparatus, and failed compliance inspections, resulting in multiple Notices of Violations and Warning Letters.<sup>33</sup>

The Consent Order further found that conduct and historical performance merited enhanced penalties. Specifically, ADEM found that PWWSB “could have easily avoided some of the violations cited herein” by simply conducting required monitoring and recordkeeping, submitting reports on time, and implementing routine maintenance.<sup>34</sup> PWWSB’s standard of care (or lack thereof) with respect to these routine operations gave rise to an enhanced penalty.<sup>35</sup> Similarly, ADEM noted that it was “unaware of any efforts by [PWWSB] to minimize or mitigate the effects of [its] violations,” as well as that PWWSB “[ha[d] a history of previous violations” meriting an enhanced penalty.<sup>36</sup>

As a result of PWWSB’s violations and ADEM’s application of penalty enhancements, PWWSB was assessed a total penalty in the amount of \$234,675.<sup>37</sup> While PWWSB had the option to reduce the penalty amount to \$78,225 based on its creation and execution of a Supplemental Environmental Project aimed at repairing/replacing private lateral lines,<sup>38</sup> PWWSB ultimately elected not to pursue the reduced penalty and System improvements and instead decided to pay the full penalty amount.

### **D. Series 2019 Bond Issuance, Default, and Litigation**

In 2019, PWWSB issued the Series 2019 Revenue Bonds for the purposes of “(i) refunding on a current basis the Board’s Water and Sewer Revenue Bond, Series 2018... (ii) paying the cost of certain capital improvements to the System, (iii) making a deposit to the Reserve Fund, (iv) making a deposit to the Series 2019 Capitalized Interest Account and (v) paying the costs of issuance of the Series 2019 Bonds.”<sup>39</sup> Synovus was named as Trustee of the Series 2019 Bonds.<sup>40</sup>

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<sup>32</sup> See *In the Matter of Water Works and Sewer Board of the City of Prichard*, Alabama Department of Environmental Management, Consent Order No. 22-121-CWP.

<sup>33</sup> *Id.* at ¶¶ 3-27.

<sup>34</sup> *Id.* at Contention ¶ A.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at Contentions ¶¶ D-E.

<sup>37</sup> *Id.* at Order ¶ A.

<sup>38</sup> *Id.* at Order ¶¶ A-B.

<sup>39</sup> See PWWSB Water and Sewer Revenue Bonds Series 2019 Issuance packet.

<sup>40</sup> *Id.*

The total amount raised via the bond offering was \$59,151,144.95, which was more particularly allocated for use as follows:<sup>41</sup>

- Redemption of Series 2018 Bond – \$22,790,253.11;
- Capital Improvements – \$30,002,351.28;
- Deposit to Reserve Fund – \$3,343,600.00;
- Capitalized Interest – \$2,089,580.56;
- Costs of Issuance – \$256,000.00; and
- Underwriter’s Discount – \$669,360.00.

Subsequently, on June 29, 2023, Synovus, in its capacity as Trustee, sued PWWSB in the Circuit Court of Mobile County, Alabama, alleging multiple breaches of the Indenture, including, *inter alia*, failure to make full debt service and interest payments, failure to provide audits, failure to meet rate covenants, and failure to pay the reasonable fees of the Trustee.<sup>42</sup> Synovus’s Complaint further cited “gross mismanagement, a lack of fiscal integrity, and endanger[ment of] public safety by failing to maintain vital system infrastructure.” The Trustee’s complaint also included an Emergency Motion to Appoint a Receiver.<sup>43</sup>

On November 10, 2023, in the Court entered the Order appointing John S. Young, Jr. LLC as receiver for the System.<sup>44</sup> The Court made specific findings of fact, including that the “compelling circumstances at hand” merited the appointment of the Receiver:

As a result of years of mismanagement and fiscal irresponsibility, PWWSB’s assets have dissipated and fallen into ruin. The undisputed evidence showed that 60% of the water purchased by PWWSB is lost through the dilapidated PWWSB system before it reaches its consumers. That is a staggering figure, and it constitutes compelling evidence that the system is in crisis – without regard to the fiscal fraud, theft and abuse which occurred on PWWSB’s watch. This is not a situation where a natural disaster (hurricane, earthquake, etc.) caused immediate and unforeseen damage to the infrastructure of PWWSB, but instead, the dilapidated state of PWWSB’s system is the result of years of poor planning, mismanagement, or worse. Consequently, when seeking a badly

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<sup>41</sup> *Id.*

<sup>42</sup> *See Synovus Bank v. The Water Works and Sewer Board of the City of Prichard*, Civil Action No. 02-CV-2023-901332.00, Doc. 2, Complaint dtd June 29, 2023, at ¶ 4.

<sup>43</sup> *Id.* at ¶ 188.

<sup>44</sup> *See Synovus Bank v. The Water Works and Sewer Board of the City of Prichard*, Civil Action No. 02-CV-2023-901332.00, Doc. 167, Order Appointing Receiver dated November 10, 2023, at ¶ 2.

needed bond issue, PWWSB undoubtedly had no choice but to agree to the terms of the Indenture which provided for the appointment of a receiver upon the occurrence of any contractual default. The evidence also showed that bond proceeds of the Indenture, which were earmarked for specific capital improvements, were mostly used as operational funds. That is, very little of the bond money received in 2019 was actually used for the capital improvements designed in the Indenture. Accordingly, the Court finds that the Trustee was entitled to seek this remedy, and the Court further finds that irreparable harm will occur through the dissipation and wasting of PWWSB's assets if a receiver is not appointed by the Court.<sup>45</sup>

On appeal by PWWSB, the Alabama Supreme Court affirmed both the trial court's appointment of the Receiver and the scope of authority granted to the Receiver under the trial court's order, thus bringing the Receiver to the current day and the submission of this Draft Master Plan.<sup>46</sup>

#### ***E. ADEM Water Consent Order***

Following the Receiver's appointment, on January 25, 2024, the Receiver entered a second Consent Order with ADEM related to deficiencies in PWWSB's operation of the water utility.<sup>47</sup> The facts giving rise to the Water Consent Order predated the Receiver's appointment.

The Water Consent Order recounts multiple operational and management deficiencies on the part of PWWSB, including failure to procure and submit revised purchase water contracts, failure to maintain water infrastructure, failure to respond to EPA requests for a corrective action plan arising from facility inspections, failure to address a water loss rate nearly six times industry averages, failure to maintain records sufficient to create a reliable asset management plan, failure to submit audit reports, failure to maintain records sufficient to conduct a reliable audit, and PWWSB's default under its bond indenture.<sup>48</sup> As a result of these deficiencies, ADEM negotiated the terms of the Consent Order with the Receiver, which included requiring the Receiver to undertake multiple System studies, including a hydraulic analysis of the water system, development of an asset management plan, development of an alternatives analysis for long-term ownership and operation of the combined water and wastewater system, and a TMF Report outlining steps to effectuate transfer of system assets to the entity identified as the best alternative to continued PWWSB ownership.<sup>49</sup>

To date the Receiver has complied with all filing requirements of the Water Consent Order.

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<sup>45</sup> *Id.* at Recital P.

<sup>46</sup> See *The Water Works and Sewer Board of the City of Prichard v. Synovus Bank*, SC-2023-0881, Appeal from Mobile Circuit Court (CV-23-901332), Order of the Supreme Court of Alabama dtd May 17, 2024.

<sup>47</sup> See *In the Matter of Water Works and Sewer Board of the City of Prichard*, Alabama Department of Environmental Management, Consent Order No. 24-037-CDW.

<sup>48</sup> *Id.* at ¶¶ 7-30.

<sup>49</sup> *Id.* at ¶¶ A-G.

## **ACTIONS TAKEN BY THE RECEIVER**

### **1. The First 45 Days**

Following the entry of the Order on November 10, 2023, the Receiver promptly took action to assume control of the operation of the System and instituted internal financial controls. Initially, the Receiver met with System supervisors and staff, toured the water and sewer systems, and evaluated the PWWSB “operating budget” for the fiscal year 2024 (October 1 – September 30) passed by the Board in August 2023, which included a 22% rate increase. It was readily apparent that the System’s financial and operational condition was not stabilized when the Receiver took control. There were insufficient funds in the bank accounts to timely pay the ordinary operating expenses of the System or the monthly Bond payments. As an example, prior to the entry of the Order, the Board used the majority of funds received from the settlement of hydrant litigation with the City of Prichard to pay overdue water bills from MAWSS.

Further, it was apparent that the System faced severe operational challenges arising from multiple sanitary sewer overflows, high water leakage in the distribution system, staffing issues, and failure to comply with ADEM and EPA Sanitary Surveys. The Board had presented testimony at the Receiver hearing that Mobile County had committed to provide \$5 million of capital funding to be matched by an additional \$5 million from ADEM. However, Mobile County advised the Receiver that those funds were no longer available. So, the Receiver faced an uphill battle upon entering the scene. To comply with the Order, stabilize the System and explore funding sources, the Receiver’s actions included:

- Multiple calls and meetings with ADEM to review water/sewer compliance issues and funding opportunities.
- Meeting with MAWSS to discuss billing issues and water supply.
- Reviewing financial audits for 2019, 2020, and 2021 and the status of completion of the 2022 audit, which were all funded by ADEM.
- Meeting with the Mayors of Prichard and Chickasaw.
- Receiving proposals to conduct (a) an Affordability Analysis and Low-Income Customer Assistance Program -- (b) an Asset Management Plan and Hydraulic Analysis, (c) a Source of Supply Study.
- Signing a contract to complete the last phase of the meter reading project.
- Entered contract for a system leak study.
- Applying for technical assistance from EPA – multiple phone conferences.



- Holding the first Citizen Advisory Council meeting.
- Securing website domain (FixPrichardWater.com) and launched a website (active Jan. 2023) to provide public access to updates, system information, and monthly progress reports.
- Meeting with the Concession team to review their proposal.
- Meeting with the County Commission to discuss construction projects and their impact on the System and possible grant funding.
- Discussion with non-profit funding sources.

## **2. The Next 90 Days (January - March 2024)**

The System continued to struggle both operationally and financially with the first quarter financial results (ending December 31, 2023) showing revenues were 19% below the Board's FY24 budget. In turn, first-quarter operating costs were substantially above budget due to increased purchased water costs, legal fees, and maintenance expenditures. To address the discrepancy in the FY24 budget, the Receiver revised the FY 24 budget to reflect reality and it resulted in a budget deficit exceeding \$5 million. The Board's budget errors included:

- Revenues did not reflect the actual timing of the 22% rate increase and the incorrect assumption of a 100% collection rate.
- Significant underestimation of purchased water costs and volumes from MAWSS.
- Ignoring City of Prichard franchise fees and legal fees resulting from bond default.
- Not including the necessary funds to replenish the depleted Bond Reserve Fund.

The Receiver continued meeting with ADEM and completed negotiating the Water Consent Agreement, which was entered into in January 2024. The Receiver also had multiple meetings with USEPA and Moonshot Missions to request technical assistance and training. These efforts resulted in contracting with Communities Unlimited to develop needed utility policies and procedures and employee training. These services are being provided at no cost to the System.

The Receiver secured \$5.8 million in ADEM grant funds for 2024/2025, and an additional \$15 million in grant funding from ADEM is anticipated to support several critical projects. This funding and additional funding from the Trustee enabled the Receiver to contract with the following service providers to provide key components of information needed for the Draft Master Plan:

**Contracts Authorized by the Receiver**

1	Asterra	Leak Detection	ADEM Grant
2	Hazen & Sawyer	Storage Tanks Improvements - Design & Construction	ADEM Grant
3	Hazen & Sawyer	Asset Management/Source of Supply	Bond Funds
4	Hazen & Sawyer	Preliminary Engineering Report	ADEM Grant
5	Communities Unlimited	Operating Procedures and Training	No Cost
6	Galardi Rothstein Group	Affordability/Customer Financial Assistance	Bond Funds

Progress was also made on the regulatory front:

- The requirements of the first phase of the Water Consent Order were met with the completion of the hydraulic analysis, the development of a program for water tank improvements, and the development and implementation of a backflow prevention program.
- Asset Management Study fieldwork was completed.
- ADEM grant-funded projects were prioritized based on Water Consent Order compliance, water leakage reduction, and operating efficiency and effectiveness.
- Design proposals were solicited for water tank improvements, Morris WWTP improvements, the Lovejoy Loop pipeline replacement, and a SCADA (Supervisory Control and Data Acquisition) project.

The Receiver continued its monthly meetings with the Citizens Advisory Council and other stakeholders and regularly updated the [fixprichardwater.com](http://fixprichardwater.com) website with postings of Receiver reports, proposals, agreements, studies, and legal filings.

**3. The Next 90 Days (April - June 2024)**

The Receiver submitted the completed Asset Management Plan to ADEM on May 31, 2024, in compliance with the Water Consent Order, and presented its findings to the Citizens Advisory Council in the May meeting. The Source of Supply study was completed in June 2023.

The Receiver continued gathering input on the Alternatives Analysis from the Citizens Advisory Council and other stakeholders and interested parties.

The water storage tank improvement project was advertised for bid, and competitive bids will be received in August 2024. Painting and improvements on four tanks should begin in the Fall of 2024. The Lovejoy pipeline replacement design continues, and the 3-phase, 9-mile pipe replacement is projected to be completed in early 2026. The Morris WWTP improvement design

is continuing, with bids scheduled to be solicited early next year. An RFQ (Request for Qualifications) has been issued for the SCADA design Project.

The FY24 3rd quarter budget results show that revenues continued to track closely with the Receiver’s budget. Actual expenses were below the Receiver’s forecast primarily due to pausing payments to the Trustee for replenishment of the Reserve Fund, monthly interest expenses, and legal fees from earlier in 2024. Based on the utility’s actual financial performance, the Receiver does not project that System revenues will be sufficient to resume paying the monthly payments to the Trustee specified in the Indenture or to begin to replenish the Reserve Fund and the Bond Fund before the final recommended solution for long-term ownership is realized, which is not projected to occur until FY 2026. However, the Receiver does not intend to draw down on the Construction Fund during that period provided the anticipated grant funding from ADEM for capital improvements continues to flow.

	Board’s 20232024 Annual Budget Submitted to Court in October 2023	Receiver’s Revised 2023-2024 Annual Budget	Receiver’s 9-Month Budget	9-Month Actual	Receiver’s 9-Month Budget to Actual
Revenue	\$14,432,633	\$12,735,742	\$9,551,807	\$9,604,174	\$52,367
Expenses	\$14,190,556	\$18,216,969	\$13,662,727	\$11,398,740	\$1,578,480
Net Income	\$242,076	(\$5,481,226)	(\$4,110,920)	(\$1,794,566)	

As shown above, the “balanced” budget passed by the Board (column 1) was based on incorrect assumptions and oversights since it does not accurately reflect the utility’s actual financial performance.

Other Receiver activities during this period included:

- Multiple meetings and discussions with ADEM regarding project grant funding and compliance issues.
- Meetings with engineers to manage grant-funded projects.
- Addressing numerous customer inquiries regarding billing and service issues.
- Meetings with MAWSS.
- Meeting and discussions with the Concession team.
- Meeting and discussions with Moonshot Missions regarding their review of the Alternatives Analysis.
- Addressing PWWSB internal personnel and administrative issues.

## **Community Engagement**

### **Citizens Advisory Council Meetings**

The Receiver conducted seven two-hour meetings with the Citizens Advisory Council beginning December 15, 2023, and thereafter on the third Thursday of each month from 2 p.m. to 4 p.m. The public was invited to each meeting, and summaries of each meeting were posted on FixPrichardWater.com. At the May 2024 Meeting and each meeting thereafter, the public was formally invited to address the Citizens Advisory Council and the Receiver for up to 3 minutes.

The first meeting was held in the Assembly Room at 205 Government Street, Mobile, AL, and the January 18, 2024, meeting was held at the John E. McConnell Civic Center in Chickasaw, AL. The February 2024 through June 2024 meetings were all held at the A.J. Cooper Municipal Complex at 216 E. Prichard Ave in Prichard, AL. The July 18, 2024, meeting was held at Charles E. McConnell Civic Center, 224 Grant Street in Chickasaw, AL.

The Receiver's written summaries of each meeting from December 2023 through July 18, 2024, are available in the Appendix (*Summary Citizens Advisory Council Monthly Meetings*).

### **Live Stream of Citizens Advisory Council Meetings**

Beginning in January 2024, the Citizens Advisory Council Meetings were livestreamed and promoted on FixPrichardWater.com and in Media Advisories. The live streamed meetings were recorded and can be played back at <https://www.youtube.com/@FixPrichardWater/streams>. In some cases, the quality and volume of the audio made it hard to hear because each meeting space had its challenges.

### **Emails Received from FixPrichardWater.com**

The Receiver, as of July 2024, has received more than 70 emails from customers and the community that were generated from FixPrichardWater.com, which means the public was visiting the website. In some cases, the Receiver personally contacted the people, and in other situations, he sent them to the System's operations or customer service team to follow up. Many of the emails were just providing their contact information, so their names were added to the FixPrichardWater email list. Copies of some of those emails are in the Appendix (*Emails Sent to Receiver from FixPrichardWater.com*).

### **Launching FixPrichardWater.com**

A link to FixPrichardWater.com was added to the System's website and promoted on the electronic billboard located at the PWWSB office.

## **ENGINEERING AND AFFORDABILITY STUDIES SUPPORTING THE DRAFT MASTER PLAN AND ALTERNATIVES ANALYSIS**

Both the Order and the Water Consent Decree directed that the Receiver conduct various studies and assessments of affordability and low-income Customer Assistance Programs, System condition, source of supply, asset management, necessary capital improvements, and options for ownership and operational structure.

In December 2023, the Receiver began the process of requesting proposals from qualified companies to address each of the study areas to provide qualitative and quantitative data that was necessary to ultimately support the recommendations made in this Draft Master Plan and Alternatives Analysis. As noted above, the Receiver not only identified and engaged companies with the requisite experience and qualifications to perform the studies, the Receiver also secured funding from ADEM and the Trustee to pay for the work.

The following describes the studies/assessments and the conclusions from each report.

### **Hydraulic Analysis (see Appendix)**

Scope of Work: A hydraulic analysis of the System's water assets to determine how the System should properly operate to maintain adequate pressure while optimizing the existing water storage. The report was provided to ADEM to comply with the Water Consent Order.

Conclusions: System deficiencies have occurred due to deteriorating infrastructure as well as changes in customer needs and demands over the past several decades. Using a calibrated hydraulic model of the water system, the study concluded that several of the water storage tanks within the system need to be at different elevations under the current system configuration and/or require additional storage volume. The proposed system improvements recommended in the report will eliminate one tank, maintain four tanks through the addition of control valves and piping enhancements, and ultimately build one larger storage tank.

Three pressure gradients would be established within the system, and storage tank water operating levels would be maintained through control valves located at the MAWSS purchased water connection points. The analysis also concluded that the water tank located at the main office should be removed from the system. All remaining tanks will require significant maintenance, including painting, overflow modifications, and other improvements.

### **Asset Management Plan (see Appendix)**

Scope of Work: Significant infrastructure issues have led to multiple Notices of Violations and Wastewater and Water Consent Orders. As a result, an Asset Management Plan was required to

address these issues, develop a prioritized capital investment program for the System, and ensure reliable water and sewer infrastructure for the communities.

Conclusions: The projected capital replacement needs for the System are approximately \$404.7M over the 20-year period, or \$551.6M if one accounts for inflation. Following is a summary of the recommended improvements:

#### Water Pipes

- Based on factors including age, risk, and modeled fire flow, 70% of water pipes were estimated to be in poor or very poor condition and require replacing in the next 20 years.
- Replacing 70% or 188 miles of pipe over the next 20 years will cost approximately \$240M if completed today, or \$332M over the next 20 years.

#### Sewer Pipes

- Based on a combination of factors, including age and historical sanitary sewer overflows (SSOs), 32% of sewer pipes were estimated to be in poor or very poor condition and will likely require replacing in the next 20 years.
- Replacing 32% or 46 miles of pipe over the next 20 years will cost approximately \$104M if completed today or \$144M if spread over the next 20 years due to inflation.
- The report recommends conducting condition assessments (e.g., camera inspections) of sewer pipes to confirm that short-term replacement projects address the pipes with the greatest structural defects.
- Additionally, it is recommended that a program be implemented to identify and address areas with significant infiltration and inflow into the sewer system.

#### Wastewater Treatment Plants

- At the Carlos Morris Wastewater Treatment Plant, several treatments and overall site deficiencies were observed, including an inoperable influent bar screen and degritter. ADEM recently approved and funded \$5M in wastewater projects to address several of these issues.
- At the Stanley Brooks Wastewater Treatment Plant, several treatment and overall site deficiencies were observed, including inoperable degritters and structural defects.

- Replacement costs at the Carlos Morris Plant and Stanley Brooks Plant over the next 20 years are approximately \$34M if completed today or \$45M if spread over the next 20 years due to inflation.

### Lift Stations

- Twenty-nine lift stations were inspected, and it was found that fifteen of the lift stations had only one functional pump. Additionally, three of the lift stations were completely inoperable requiring on-site bypass pumping.
- The replacement costs for the lift stations over the next 20 years are approximately \$8M if completed today or \$10M if spread over the next 20 years.

### Source of Supply Study (see Appendix)

Scope of Work: All potentially available surface water (rivers, lakes, etc.), groundwater, and purchased water sources were identified and assessed to determine their suitability as potential supplies.

The Source of Supply study included identifying the a) location of the potential source water supplies, b) quantity of water believed to be available, c) transmission requirements, d) quality of the potential source water supplies, and e) proposed treatment schematics.

Conclusions: In the near term, it was recommended that the System remain on MAWSS-purchased water.

Two surface water options were identified, Big Creek Lake and Eight Mile Creek. MAWSS owns Big Creek Lake capacity, so this source is not a supply option. Eight Mile Creek contains pathogens and will not be permitted by ADEM as a drinking water source.

The Miocene aquifer was identified as a potential drinking water source. However, multiple concerns exist regarding the Miocene aquifer, including water quality issues (elevated iron and manganese) and limited data (only one test well). Multiple treatment options for this groundwater source were evaluated, including sequestration, aeration followed by filtration, chlorine oxidation followed by filtration, and manganese greensand. Also, potential locations for well sites were prioritized by proximity to current MAWSS-purchased water connections. However, groundwater supplies are not deemed viable options in the near term but should be investigated for yield and quality and reconsidered when TMF capacity issues are addressed.

**Affordability and Customer Assistance Plan (CAP) Analysis (see Appendix)**

Scope of Work: The affordability of System water and sewer rates was analyzed based on current methods of assessing customer water/wastewater affordability. The analysis was also to consider and recommend the most effective way to assist “low-income” customers.

Conclusions: The affordability analysis demonstrates that while PWWSB bills under existing rates do not necessarily impose an unsustainable burden for households with median service area incomes; however, there is limited capacity to bear additional financial (rate) burdens. Perhaps more importantly, a substantial proportion of low-income customers are already heavily burdened. Compared to many other economically distressed communities, the System’s current rate structure is a severe financial burden on the low-income customers.

The System’s options to institute a CAP are limited by the fact that at least half the households would be eligible for income-qualified assistance (one-half to two-thirds of resident households fall below 200 percent of the Federal Poverty Line, a measure often used to define eligibility). The System’s small customer base simply does not have the economic diversity that has been leveraged in other communities around the country to develop a CAP.

Therefore, a utility-funded CAP is probably not achievable. The CAP funding would need to be derived from Federal/State grants, philanthropic organizations, and/or voluntary contributions.

**Leak Detection Report (see Appendix)**

Scope of Work: To conduct a leak detection study to identify the location of water loss in the water distribution system and quantify the water volume lost through these leaks.

Conclusions:

- A total of 42 leaks were found based on the satellite-directed field inspection.
- The water system had 21 leaks, and there were an additional 21 leaks on the customer side of the meter.
- The identified water loss is valued at \$409,771 per year.
- The total real water loss volume found was 0.41 MGD or 149 MGY.



## **THE RECEIVER'S RECOMMENDATION**

Many of the required components of the Draft Master Plan were aimed at developing information regarding future system revenues, operating costs, and capital investment requirements. The goal is to achieve a utility revenue level that adequately funds operating costs, needed capital expenditures and, to the extent possible, meet the Rate Covenant throughout the term of the Bonds. In addition, each of the considered alternatives would ultimately require the approval of the Trustee as directed by the Bond Holders in order to proceed.

However, the ownership, structure, and operating approach of the utility significantly impacts how the long-term sustainability of the utility is achieved. For example, the ownership and governance of a utility can impact how efficiently it can access the bond market, other funding sources, and its overall cost of capital. The size and management of the utility will impact operating cost efficiencies obtained through economies of scale, expertise of scale, and the implementation of best practices.

Therefore, it is necessary to define a utility's ownership and structure before the cost of operation, capital improvements, and revenue requirements can be finalized. ADEM also recognized this sequential analytical approach in the Water Consent Order by requiring an Alternative Analysis to be completed before a TMF capacity study is completed for a well-defined utility structure.

The Receiver spent seven months researching and defining the various ownership, governance, operating, and source of supply options for the System. The various options were presented to the Citizens Advisory Council, which resulted in discussions, debates, and modifications to the options. After more than twenty alternatives were reviewed and discussed and reviewed again, the following alternatives were identified:

1. Transfer of the assets and liabilities of PWWSB to MAWSS.
2. PWWSB retains ownership of the utility with the governance and operation of the utility being performed under a negotiated, long-term concession agreement.
3. PWWSB's ownership is transferred to the City of Prichard, and the utility's governance and operation are performed under a negotiated, long-term concession agreement.
4. Ownership of the City of Prichard portion of the PWWSB system would be transferred to the City and governed/operated under a concession agreement, and the PWWSB water system assets and liabilities in the City of Chickasaw would be transferred to MAWSS for their governance and operation.
5. A new, independent State appointed authority would be created to own and govern the System. The State-appointed authority may initially operate the system through a negotiated short-term operations and maintenance agreement.

To assist the Receiver and the Citizens Advisory Council with evaluating these alternatives, Moonshot Missions Inc., a 501(c)(3) nonprofit organization with a mission to help under-resourced communities solve water problems, provided resources.

The Receiver sought the input of an independent, unbiased, and qualified third party to conduct an alternative analysis, evaluate all options, and make recommendations to the Receiver based on their review of the facts. Moonshot Missions was uniquely qualified to fulfill this role.

Moonshot Missions serves as a trusted peer advisor for communities to secure safe, accessible, and affordable drinking water and clean waterways, regardless of zip code. Moonshot Missions is comprised of dozens of veteran utility and federal, state, and local government leaders who have banded together to provide trusted advice to their peers.

Moonshot Missions services were provided at no cost to the Receiver since they are funded by the U.S. Environmental Protection Agency as part of its National Environmental Finance Center Water Technical Assistance program. The Receiver, Moonshot Missions, and the Citizens Advisory Council agreed to use the following criteria to evaluate and compare the various options:

- Protection of human health and the environment.
- Customer cost and affordability.
- Ownership experience, transparency, and management capability.
- Community impact and representation.

The “PWWSB Ownership, Governance, and Operations Alternative Analysis” completed by Moonshot Missions can be found in the Appendix.

The “Benefits” and “Drawbacks” of each option based on the evaluation criteria is summarized in the following table.

Alternative	Benefits	Drawbacks
1: MAWSS Ownership	<ul style="list-style-type: none"> <li>• MAWSS already provides drinking water to PWWSB, so no physical configuration changes are needed.</li> <li>• Potential to connect to the MAWSS sewer distribution and treatment system resulting in the retirement of one of the System’s WWTP’s.</li> <li>• MAWSS has proven technical capacity and a favorable track record of receiving grants, principal forgiveness, and low interest loans.</li> <li>• Offers a history of high accountability and transparency in operations.</li> <li>• Offers high administrative (back-office) efficiencies that could lower operations and maintenance (O&amp;M) costs.</li> <li>• MAWSS is a non-profit entity with access to lower cost of capital (when compared to private equity under a concession model), which in turn offers access to favorable financing and refinancing options in the bond market.</li> <li>• Best option for reducing operational expenses and generating System revenues sufficient to meet the Rate Covenant throughout the term of the Bonds.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires a constitutional change and referendum. This may take over a year to establish.</li> <li>• This option is only viable if the MAWSS Board is interested in taking over ownership.</li> <li>• The System would be treated as a stand-alone entity at least for the near term so as to not adversely impact the rates of current MAWSS retail customers. However, the System would always be a standalone entity under the other alternatives.</li> </ul>
2: PWWSB with Concession	<ul style="list-style-type: none"> <li>• Minimum timeline for negotiation could be 4-6 months. This includes negotiating a discount with Bond Holders.</li> <li>• Private capital is immediately available; no need to wait for public funding sources to be approved.</li> <li>• Concession will need to satisfy the Bond Debt in whole or through a negotiated discount with Bond Holders. Upon information and belief, the Board is still interested in and supports the concession model.</li> </ul>	<ul style="list-style-type: none"> <li>• PWWSB financial standing may limit access to state and federal loans or grants.</li> <li>• The concessionaire will have more limited access to state and federal funding compared to a public governance alternative.</li> <li>• A minimum rate of return for the benefit of investors may be required in addition to accounting for the cost of private capital.</li> <li>• Less transparency in decision-making compared to public entities.</li> </ul>

Alternative	Benefits	Drawbacks
		<ul style="list-style-type: none"> <li>• Customer rates will increase based on the process defined in the concession agreement which could allow rates to be set without meaningful public participation.</li> <li>• Chickasaw is opposed to this alternative.</li> <li>• Negotiation of protective risk management strategies consistent with industry standards should be required.</li> <li>• While the Bond Debt may be satisfied, Concession proponents have advised the Receiver, bond holders may have to agree to a significant discount for the concession financial model to be feasible.</li> </ul>
<p>3: City of Prichard with Concession</p>	<ul style="list-style-type: none"> <li>• Minimum timeline for establishment may be 6-12 months. This includes negotiating a discount with Bond Holders.</li> <li>• Private capital may be immediately available, rather than needing to wait for public funding sources to be approved.</li> <li>• Concession will need to satisfy the Bond Debt in whole or through a negotiated discount with Bond Holders.</li> </ul>	<ul style="list-style-type: none"> <li>• City’s financial standing may limit access to state and federal loans or grants.</li> <li>• Private capital may be the primary funding source with the same potential for a minimum rate of return as discussed in Alternative 2.</li> <li>• Significant governance challenges for Prichard; may require new governance capacity.</li> <li>• Customer rates will increase based on the concession agreement which could allow rates to be set without meaningful public participation.</li> <li>• Chickasaw is opposed to this alternative.</li> <li>• Negotiation of protective risk management strategies consistent with industry standards will be required.</li> <li>• While the Bond Debt may be satisfied, Concession proponents have advised the Receiver, bond holders may have to agree to a significant discount for the concession financial model to be feasible.</li> </ul>

Alternative	Benefits	Drawbacks
		<ul style="list-style-type: none"> <li>Note that based on representation from the Mayor of Prichard, the City prefers Alternative 5 over the other 4 alternatives.</li> </ul>
<p>4: City of Prichard with Concession and MAWSS Ownership of Drinking Water Infrastructure in Chickasaw</p>	<ul style="list-style-type: none"> <li>For both, minimum timeline for legislative changes may be 6-12 months.</li> <li>For both, offers high transparency in decision making because the utility will be publicly governed.</li> <li>For Prichard, capital may be immediately available, rather than needing to wait for public funding sources to be approved and same benefits of concession in alternatives 2 and 3</li> <li>For Chickasaw, greater access to public funding and opportunities for low cost of capital.</li> <li>For Chickasaw, high economies of scale and administrative (back-office) efficiencies from incorporating with MAWSS that could lower O&amp;M costs.</li> </ul>	<ul style="list-style-type: none"> <li>For both, alternative is only viable if the concessionaire agrees to a concession agreement without Chickasaw’s system. As of this writing, the concessionaire is only interested in an agreement that includes Chickasaw.</li> <li>For both, negotiation of protective risk management strategies consistent with industry standards will be required.</li> <li>For Prichard, City must agree that MAWSS can deliver water in Chickasaw.</li> <li>For Prichard, may rely on private capital for funding because of limited access to public funds.</li> <li>For Prichard, a minimum rate of return for the benefit of investors may be required in addition to accounting for the cost of private capital.</li> <li>For Prichard, negotiation of protective risk management strategies consistent with industry standards will be required.</li> <li>For Chickasaw, cost to physically isolate the two systems requires valves and additional infrastructure.</li> <li>While the Bond Debt may be satisfied, Concession proponents have advised the Receiver, bond holders may have to agree to a significant discount for the concession financial model to be feasible.</li> <li>Note that based on representation from the Mayor of Prichard, the City prefers Alternative 5 to the other 4 alternatives.</li> </ul>

Alternative	Benefits	Drawbacks
5: New Independent State-Appointed Authority	<ul style="list-style-type: none"> <li>• Access to public funding, and low cost of capital, similar to Alternative 1, with the caveat that a newly established independent authority would take more time to get established and the speed of acquiring capital could be slow at first.</li> <li>• Likely will provide high transparency in decision making, with potential for administrative cost efficiencies because established state administrative processes may be applicable to operations.</li> <li>• Has potential to have governance/leadership configured to offer some degree of local public control.</li> </ul>	<ul style="list-style-type: none"> <li>• Creating a new independent authority appointed by the state may require a minimum timeline of 1-2 years.</li> <li>• Complexity of setting up a new legal entity and governance structure.</li> <li>• This alternative is only viable if the state can legally form this authority and agrees to do so.</li> <li>• With no operational or financial track record, there would be little possibility for the new authority to meet the Rate Covenant throughout the term of the Bonds.</li> </ul>

Based on the analysis performed by the Receiver, the Moonshot Mission recommendations, and the feedback from the Citizens Advisory Council, the following observations/conclusions are made.

Any options that include a long-term concession agreement (Alternatives 2, 3, and 4) had very little support from stakeholders in the evaluation process. Only the existing Water Board and one member of the Citizens Advisory Council support the concession. In fact, the Mayor of the City of Prichard has advised the Receiver that the City prefers Alternative 5 as opposed to the concession model. As presented in the Asset Management study, significant capital improvements are required for the PWWSB system. The cost of capital to perform these improvements would most likely be highest with the concession approach, negatively impacting customer rates. Further, the prospects of fully paying off the Bonds is doubtful. The Concession proponents have advised the Receiver that they would need to negotiate a significant discount on Bond repayment for the concession model to be feasible.

*“A guaranteed rate of return to investors may be a feature of the concession agreement. This rate of return could be negotiated to secure constant or set rates of return to investors over time. For example, a similar past concession agreement made in 2012 in Bayonne, NJ, has a rate of return in the low double digits (11%, according to one article).<sup>1</sup> In this option, the rates paid by PWWSB ratepayers will be established by protocols included in the concession agreement and will not be subject to typical public participation processes employed by public water utilities when setting rates.”*

- Moonshot Missions

Additionally, the continued presence of the existing Water Board was not viewed positively, given the decades of mismanagement through their governance.

*“An important consideration for customers is whether they want the council and PWWSB to remain in control of the water/wastewater system. Decades of financial and operational mismanagement have led to the utility being in receivership. Prichard and Chickasaw’s water rates, reportedly higher than Mobile’s, highlight these challenges and emphasize the need for an effective governance structure to ensure future sustainability and affordability.”*

– Moonshot Missions

Concerns were also raised about the transparency, local control, and risk profile associated with a concession agreement.

*“In summary, while the concession arrangement allows for local representation and control, it may also introduce constraints that may limit direct local oversight and customer protection. The historical context of the PWWSB board management underscores the importance of evaluating this governance model to ensure it meets the community's needs and addresses longstanding issues and future risks effectively.”*

– Moonshot Missions

**The MAWSS Solution (Alternative 1)**

Transfer of the System assets and liabilities to MAWSS is the most operationally efficient solution and should provide the opportunity for the lowest cost of capital and most feasible alternative to provide sufficient revenues to meet the Rate Covenant throughout the term of the Bonds. This alternative is the preferred solution by the City of Chickasaw and a representative of United Concerned Citizens of Prichard (UCCOP) (UCCOP provided documentation of support from members of the organization). Future customer rate adjustments should be lowest under this Alternative, and rate increases will be transparent and supported through formal cost-of-service studies. Given the operational and capital efficiencies associated with the MAWSS solution, this Alternative probably has the highest potential of fully meeting PWWSB’s existing debt obligation under the Indenture.

*“...this governance model [MAWSS] would allow for an overall reduction of costs passed to the consumer because of the following factors: the economies of scale for O&M needs, the lower cost of borrowing money combined with a higher likelihood of principal forgiveness for a disadvantaged community, the prospect of lower operating costs over time as infrastructure needs are addressed, and the potential for external funding to augment the existing assistance program.”*

– Moonshot Missions

MAWSS has an excellent environmental compliance record, transparent governance as a public entity, and a strong connection with customers. Local participation would be less than that of the City ownership model, but MAWSS successfully provides service to other communities outside of Mobile.

*“The utility features a strong customer connection base, as evidenced by the information in its Strategic Plan, budget and expenditures, contact information, water report, newsletter, and more, all of which are located on the MAWSS website.”*

- Moonshot Missions



### The Creation of a New Regional Authority

The creation of a new regional authority has the support of several of the Citizens Advisory Council members, including the City of Prichard. As a public entity, a new regional authority should over time have the ability to attract capital at a lower rate than the concession and would not have the reputational baggage associated with the existing Water Board.

*“A state-appointed authority could gain access to capital markets and funding for the much-needed capital investments. While this authority’s access to capital would initially be slower than MAWWS, it is anticipated that after the authority is fully established, it would have high access to state and federal funding and grants, with low-interest capital sources including municipal bonds, SRF (BIL), WIFIA, FEMA, and USDA loans.”*

- Moonshot Missions

However, there are unknowns regarding how the new regional authority could legally be formed, the legislative and legal actions required, the degree of local control and self-governance, this new entity's access to the capital markets, and how the system would be operated to ensure regulatory compliance.

Significant additional analysis needs to be performed to determine if the creation of an independent authority is a feasible alternative. The Citizens Advisory Council desires to further define the scope and structure of this alternative. It is recommended this analysis be performed by the Citizens Advisory Council concurrently with the previously presented MAWSS tasks. If feasible, the creation of this independent authority would be worthy of consideration should the MAWSS solution be unattainable.

*“...while establishing a new independent authority will require significant time and effort, potential benefits in terms of governance, funding, and operational efficiency make this alternative worthy of consideration.”*

– Moonshot Missions

### Potential Next Steps for Receiver’s Recommended MAWSS Solution

The transfer the System assets and liabilities to MAWSS is the preferred long-term solution for the customers receiving water/wastewater service from the PWWSB system. However, additional work needs to be performed to confirm that this solution is feasible.

*“Moonshot ranks Alternative 1 as the most preferred option. MAWSS is a public entity with a longstanding history of successfully operating, maintaining, and managing water and sewer systems in the region. It would be the entity best suited to continue to deliver safe drinking water and clean wastewater services to Prichard and Chickasaw, provided adequate funds are available. This alternative depends on new legal arrangements and service level agreements being negotiated among MAWSS, PWWSB, and possibly Prichard and Chickasaw. This alternative is preferable to continued operations by the PWWSB, based on its past record, with or without the proposed concession agreement.”*

- Moonshot Missions

To date, the fiscal and operational issues associated with the acquisition of the PWWSB system have not been considered by the MAWSS Board for review or approval. Significantly more information needs to be developed before a comprehensive transfer solution is presented to the MAWSS Board.

The MAWSS Board needs assurances that the acquisition would not have a negative impact on their existing retail customers and that sufficient and cost-effective capital resources are provided to address System’s infrastructure challenges. Therefore, the following actions are recommended:

- Develop a financial model for the System and validate the assumptions for several critical operational and financial factors such as non-revenue water, collection rates, programmed maintenance, one-time costs, etc.
- Determine sources of capital available to MAWSS and their cost, including grants and principal forgiveness on loans.
- Continue to provide due diligence information requested by MAWSS.
- Perform a Synergy Study to define the efficiencies generated for both MAWSS and System by combining the operation of the two utilities.
- Perform a cost-of-service/rate design study for the System customers assuming MAWSS ownership.

Once the above steps are completed, the MAWSS Board can decide if they will be part of the overall solution to creating a sustainable utility for the PWWSB customers. In addition, these steps should satisfy the TMF capacity requirements outlined in the Water Consent Order.

### **Transferring PWWSB Assets to MAWSS**

The following represents the process and anticipated timeline to transfer the assets and liabilities of PWWSB to MAWSS. The blueprint for authorizing MAWSS's acquisition of PWWSB's assets and liabilities via constitutional amendment has been implicitly approved by the Alabama Supreme Court. Accordingly, there is no need to "reinvent the wheel." Such approved procedure includes the following:

*1. Initiating the Transfer – Action in the Alabama Legislature.*

The transfer of PWWSB assets and liabilities is initiated via a proposed amendment to the Constitution of the State of Alabama. Because the System is located entirely within a single county (Mobile County), the procedure for proposed constitutional amendments affecting only one county (Ala. Const. § 284.01) must be followed.

Ala. Const. § 284.01(b) prescribes the following procedure within the Alabama State Legislature:

(b) To determine whether a proposed amendment shall be placed on the ballot in only one county or a political subdivision within one or more counties and the affected county or counties, as provided in subsection (a), the proposed amendment shall be approved by each house of the Legislature under the following process:

- (1) The proposed amendment must first be approved, if at all, by at least three-fifths of all the members elected to the house in which it originates.
- (2) Immediately following approval under subdivision (1), the house shall consider a resolution of local application declaring that the proposed amendment affects or applies to only one county or a political subdivision within one or more counties...[.]
- (3) The proposed amendment shall then be sent to the other house for consideration and, if at least three-fifths of all the members elected to that house vote in favor of the proposed amendment, that house shall likewise immediately proceed to consider a resolution of local application as provided in subdivision (2).

In the event that both houses of the Legislature approve the amendment by at least a three-fifths vote of their elected members and also determine by vote without dissent that the proposed amendment affects or applies to only one county or a political subdivision within one or more counties, the proposed amendment shall be placed on the ballot only in the county or political subdivision and county or counties affected.

Note, however, that if any representative dissents to the vote for local application of the proposed amendment, "the proposed amendment shall automatically be submitted in a statewide referendum

in accordance with the procedures for proposed statewide constitutional amendments under Sections 284 and 285 of the Constitution of Alabama of 1901.” Ala. Const. § 284.01(c).

In the event the proposed amendment is approved by both houses of the legislature and is certified as a single county amendment, the proposed amendment must be approved by a “favorable vote of a majority of the qualified electors of the affected county[.]” Ala. Const. § 284.01(a). “Notice of the election, together with the proposed amendment, shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in each newspaper qualified to run legal notices in the county or counties affected.” Ala. Const. § 284.01(d).

The referendum election shall be held “either at the general election next succeeding the session of the legislature at which the amendments or proposed or upon another day appointed by the legislature, not less than three months after the final adjournment of the session of the legislature at which the amendments were proposed.” Ala. Const. § 284.

The Alabama Legislature convenes regular annual sessions in either January or March (depending on the year of the legislative term). The length of the session is limited to 30 meeting days within a period of 105 calendar days. Accordingly, proposed amendments are typically voted on by the Legislature in the Spring. Alternatively, the Legislature can convene for special sessions called by the Governor, for which the Governor must issue a proclamation in advance setting forth the specific subjects to be addressed at the special session.

Note that the Alabama Legislature has already voted twice to approve amendments to the Constitution of the State of Alabama that would effectuate the transfer of PWWSB’s assets and liabilities to MAWSS, and such amendments have been approved by referendum vote. See Ala. Const. §§ 49-11.01 and 49-11.02. However, the conditions precedent contained in the amendments to MAWSS’s assumption of PWWSB’s assets and liabilities were not met, resulting in such amendments being rendered moot.

In short, the steps for the proposal of an amendment to the Constitution of the State of Alabama that would authorize the transfer of PWWSB’s assets and liabilities to MAWSS:

- Engage with State Legislators to propose single county amendment to the Constitution (timeline TBD; can begin interfacing to determine legislative support ASAP).
- Present proposed amendment during the legislative session (estimated – Spring 2025).
- Vote to approve the proposed amendment (estimated – Spring 2025).

2. *Approving the Transfer – Referendum Vote.*

Upon approval of a proposed amendment by the Alabama Legislature, such proposed amendment must be approved in a referendum vote by a majority of the electors of Mobile County. Typically, general elections in Alabama are held in November, while local elections/referendum elections are held in August. The Alabama Legislature is tasked with setting forth the time and place of the election to consider the proposed amendment. Regardless, the referendum vote to approve any proposed referendum is estimated to take place in Fall of 2025 at the earliest.

*3. Accepting the Transfer – MAWSS’s Resolution.*

Assuming a proposed amendment is approved by both the Alabama Legislature and via referendum vote, it will become part of the State of Alabama's Constitution. However, codifying such an amendment does not guarantee the transfer of PWWSB’s assets and liabilities to MAWSS.

In each of the prior occasions where the Constitution of the State of Alabama was amended to authorize MAWSS’s acquisition of PWWSB, such acquisition was contingent upon MAWSS’s agreement to assume the assets and liabilities of PWWSB, as “evidenced by resolution of [MAWSS’s] board.” Indeed, in 2014, MAWSS expressly declined to assume PWWSB’s assets and liabilities on the basis of a “poison pill” contract entered by PWWSB preceding the vote by MAWSS’s board, as well as unanticipated costs that rendered MAWSS’s takeover as financially unviable.

Based on historical precedent, any proposed constitutional amendment related to MAWSS’s acquisition of PWWSB is expected to incorporate similar terms and a similar timeframe (90 days) in which MAWSS can decide whether to proceed with the acquisition. The 90-day timeframe thus extends the anticipated timeline to effectuate a transfer (assuming the MAWSS board approves the same) until late 2025/early 2026.

*4. Implementing the Transfer – Transfer of Assets and Liabilities; PWWSB Dissolution.*

Assuming all prerequisites are met, the constitutional amendment is expected to direct PWWSB to convey and transfer all of its assets and liabilities to MAWSS immediately upon passage of a resolution by the MAWSS board agreeing to assume the same. Subsequently, by operation of the amendment, PWWSB shall be automatically dissolved.

The estimated timeline to complete the transfer of PWWSB’s assets and liabilities to MAWSS, from initiation of the constitutional amendment process to the dissolution of PWWSB, is expected to take close to one year – from March 2025 to January 2026.