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3 DISTRICT COURT OF GUAM
4 TERRITORY OF GUAM
5

6 UNITED STATES OF AMERICA,

CIVIL CASE NO. 02-00022

7 Plaintiff,

8 vs.

9 GOVERNMENT OF GUAM,

ORDER
Denying Renewed Request for Stay

10 Defendant.
11

12 On September 13, 2013, the Government of Guam filed a Motion to Stay and for Further
13 Relief (the “Motion to Stay”). *See* ECF No. 1177. On October 29, 2013, the court denied the
14 Motion to Stay and ordered the Receiver to proceed with the procurement process and awarding of
15 contracts for the Ordot Dump closure construction project and the construction management services
16 associated thereto.¹ *See* Order (Oct. 29, 2013) at 21, ECF No. 1243.

17 Subsequently, the Government of Guam filed a Renewed Request for a Stay While the
18 Motion to Stay and for Further Relief is Pending and for 14 Days Afterward (the “Renewed Motion
19 for Stay”). *See* ECF No. 1248. Therein, the Government of Guam renewed its oral request made
20 at the hearing held on October 25, 2013, that in the event the court denied the Motion to Stay, the
21 Government of Guam asked that the court at least consider staying the pending procurements for a
22 14-day period. The Government of Guam argued that this delay would afford it the time needed to
23 decide what course of action it would take next and to possibly seek emergency relief with the Court
24 of Appeals. The Renewed Motion for Stay further asserted that this “short extension to the existing
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27 ¹ Consistent with the terms of its previous Order denying the Government of Guam’s
28 Emergency Motion to Stay Pending Appellate Review, *see* Order (Oct. 11, 2013) at 26, ECF 1230,
the court directed the Receiver not to proceed until after October 31, 2013, at 5:00 p.m. Chamorro
Standard Time.

1 stay . . . would likely not affect the timing of any actual construction because . . . neither the United
2 States Environmental Protection Agency nor the Guam Environmental Protection Agency ha[d]
3 issued the necessary approvals for the construction work yet.” *Id.* at 2 and Rawlen M.T. Mantanona
4 Decl. at ¶2,² ECF No. 1249.

5 The court directed the United States and the Receiver to file immediate responses to the
6 Renewed Motion for Stay. *See* Order (Oct. 30, 2013), ECF No. 1250. The Receiver filed a Special
7 Report stating that Mr. Mantanona’s information is incorrect. According to the Receiver,

8 Both U.S. EPA and GEPA have fully reviewed the construction plans and all of their
9 comments on those plans have been fully addressed. U.S. EPA issued a no further
10 comment in May (this is regulatory jargon for approval) and GEPA also indicated at
the time that they had no further comment. Subsequently, on September 20, 2013,
GEPA issued a formal letter of approval.

11 Special Report (Oct. 30, 2013) at 2, ECF No. 1253. A copy of GEPA’s letter of approval was
12 appended as an exhibit to the Special Report.³

13 Additionally, the Receiver re-emphasized that any further delay beyond the October 31, 2013
14 date

15 _____
16 ² According to Mr. Mantanona, he was informed at a meeting with officials from the Guam
17 Environmental Protection Agency (“GEPA”) that

18 certain approvals of the closure plan for the Ordot Dump from the . . . U.S. EPA and
19 GEPA are required before any construction can begin. . . . [B]ased on this
20 meeting[,] . . . approval by the U.S. EPA must be issued before review by GEPA can
21 commence. According to GEPA officials, once the U.S. EPA acts, GEPA’s review
can begin but the time for completing [GEPA’s] review is difficult to estimate before
receiving the U.S. EPA final approval.

22 Rawlen M.T. Mantanona Decl. at ¶2, ECF No. 1249.

23 Mr. Mantanona stated that he received the above information after meeting with GEPA
24 officials on October 23, 2013. The court finds it curious that Mr. Mantanona failed to identify the
25 GEPA officials who provided this information nor did he bring this information to the court and
parties’ attention at the October 25, 2013 hearing.

26 ³ According to this letter, GEPA “conditionally approved the 100% design submittal and
27 construction permit application” subject to certain requirements such as having the contractor submit
28 a Clearing, Grading and Stockpiling Permit application and pay the associated fee, ensuring that
certain oil storage tanks have secondary containment, etc. None of these “conditions” are
considered “pre-conditions” to GEPA’s final approval.

1 put[s] the project for closure of the Ordot Dump at serious risk of a delay of a year
2 due to the lead time needed to order and receive supplies and materials by the
3 contractor and the time required for the contractor to mobilize its crews and
4 equipment to the construction site. It is vital that this activity begin as soon as
5 possible in order for the contractor to begin construction when the dry season on
6 Guam arrives. None of this activity can begin until a Notice of Award is issued.

7 Special Report (Oct. 30, 2013) at 2, ECF No. 1253.

8 The United States also agreed with the Receiver's assessment. *See* U.S. Resp. at 2, ECF
9 No. 1254. According to the United States, "both U.S. EPA and GEPA have fully reviewed the
10 construction plans for the closure plan for the Ordot Dump" and "no further U.S. EPA approval
11 [was] required for the closure plan."⁴ *Id.* The United States further emphasized that "no permit is
12 required for the Receiver to issue a Notice of Award for the Ordot Dump closure contract." *Id.*

13 Based on the United States and Receiver's responses, the court finds no merit to
14 Mr. Mantanona's claims that a further stay in this case would not adversely affect the construction
15 project based on a lack of final approval from U.S. EPA and GEPA. The court finds that no further
16 approvals are required from either regulatory agency before the Receiver can award the contracts and
17 construction can begin on the closure of the Ordot Dump. Additionally, as the court has stated
18 previously, a stay of this action is unwarranted and would not further the orderly course of justice
19 but would instead delay the Government of Guam's compliance with the Consent Decree.
20 Accordingly, the court hereby denies the Renewed Motion for Stay.

21 IT IS SO ORDERED.



22 /s/ Frances M. Tydingco-Gatewood
23 Chief Judge
24 Dated: Oct 30, 2013

25 ⁴ This information was based on conversations Mr. Mullaney had with Karen Ueno, a U.S.
26 EPA employee who worked on this matter. Because of the time difference between Guam and San
27 Francisco, the United States' response to the Renewed Motion for Stay was filed after regular
28 business hours in California. Thus, Mr. Mullaney was unable to provide Ms. Ueno's supporting
declaration when he filed the United States' response. *See* U.S. Resp. at 1-2, ECF No. 1254. The
court directs the United States to file Ms. Ueno's declaration on October 30, 2013 Pacific Daylight
Time.