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DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOVERNMENT OF GUAM,

Defendant.

CIVIL CASE NO. 02-00022

ORDER
re Receiver’s Special Report Concerning
Access to Legal Counsel

On January 29, 2014, the Receiver filed a Special Report Concerning Access to Legal Counsel in Connection with the Environmental Closure of the Ordot Dump and Other Consent Decree Related Matters (“Special Report”). *See* ECF No. 1295. Therein, the Receiver requested guidance from the court with regard to how to proceed in the various areas since the Receiver no longer had access to assistance from Guam’s Office of the Attorney General (“Attorney General”) after the law firm of Cabot Mantanona LLP (“Cabot Mantanona”) was permitted to fully substitute as counsel for the Government of Guam. The matter was thereafter briefed, and the court heard argument from the Receiver and the parties on February 27, 2014. Having reviewed the submissions and relevant authority, the court hereby issues the following Order.

I. BACKGROUND

The court has previously issued various orders that are relevant to the Receiver’s concerns about access to legal counsel. These orders will be briefly discussed in order to provide context to the issues now before the court.

///

1 A. The Consent Decree

2 On February 11, 2004, the court approved the Consent Decree entered into by the parties.
3 *See* Consent Decree, ECF No. 55. The Consent Decree specified that its terms “shall apply and be
4 binding upon the Government of Guam and its boards, directors, agencies, *authorities*, departments
5 (including *and not limited to* DPW¹ . . .), *and their successors and assigns*[.]” *Id.* at ¶2 (emphasis
6 added). The Consent Decree further stated that the “*Government of Guam* shall correct all
7 compliance problems that form the basis for the Complaint filed in this action by undertaking the
8 actions identified [therein] within the specified times.” *Id.* at ¶7 (emphasis added).

9 Among other things, the Consent Decree established a schedule for the closure of the Ordot
10 Dump and the construction and operation of a new conforming municipal solid waste landfill. *Id.*
11 at ¶¶8-9. With regard to the closure schedule of the Ordot Dump, the Consent Decree required DPW
12 – an agency of the Government of Guam – to take certain interim steps that would eventually lead
13 to the dump’s closure. These steps included the submission of a Draft Closure Plan, a Final Closure
14 Plan, and a final plan and schedule to implement post-closure care requirements. *Id.* at ¶¶8(a)(i),
15 (c)(i) and (c)(ii). The Consent Decree required operations at the Ordot Dump and discharges to the
16 Lonfit River cease by October 23, 2007. *Id.* at ¶¶8(h) and (i).²

17 B. The Appointment of a Receiver

18 Following the entry of the Consent Decree, the Government of Guam was able to complete
19 some preliminary tasks but failed to meet the more critical deadlines. Concerned over the
20 Government of Guam’s lack of progress, on December 6, 2006, the United States petitioned the
21 court to hold a status hearing and then later moved to enforce the Consent Decree. *See* ECF Nos.
22 56 and 68-69. After conducting monthly status hearings and site visits, the court concluded that the
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24 ¹ The Department of Public Works is a department within the Executive Branch of the
25 Government of Guam. *See* 5 GUAM CODE ANN. § 3106.

26 ² The Ordot Dump stopped receiving municipal solid waste for disposal on August 31, 2011.
27 *See* Minutes, Sept. 1, 2011, ECF No. 795 and Order, Sept. 2, 2011, ECF No. 798. Although
28 operations at the Ordot Dump have ceased, discharges to the Lonfit River have not ceased because
 the Ordot Dump still has not been environmentally closed six years and five months after the agreed
 upon deadline.

1 “problem of a highly dysfunctional, largely mismanaged, overly bureaucratic, and politically charged
2 solid waste system . . . is beyond correction by conventional methods.” Order Re: Appointment of
3 Receiver at 1, Mar. 17, 2008, ECF No. 239.

4 After much deliberation and upon consideration of the Government of Guam’s lengthy
5 history of violating the Clean Water Act and failing to comply with the Consent Decree, the court
6 exercised its equitable powers and appointed a Receiver with “full power and authority to enforce
7 the terms of the Consent Decree, and assume all of the responsibilities, functions, duties, powers and
8 authority of the Solid Waste Management Division³ of the Department of Public Works, and any and
9 all departments, or other divisions of the Department of Public Works insofar as they affect the
10 Government of Guam’s compliance with the Consent Decree.” *Id.* at 15-16. In granting the
11 Receiver “the authority required or necessary for the complete management and control of the
12 Consent Decree projects,” the court also vested the Receiver with authority to hire “such consultants,
13 professionals, contractors, engineering firms or *counsel* which the Receiver deems necessary for the
14 performance of administrative, financial advisory, *legal*, accounting, engineering, construction, and
15 operations services[.]” *Id.* at 16 (emphasis added).

16 The court also ordered the parties to “use their best efforts to assist the Receiver in the
17 performance of its duties.” *Id.* at 18. Additionally, the court ordered the parties to “cooperate with,
18 and assist the Receiver to the extent necessary and appropriate to permit the Receiver to carry out
19 its responsibilities.” *Id.* at 19.

20 C. The Transition from Receivership to GSWA Board Control

21 The Receiver expects the final closure of the Ordot Dump to occur in December 2015,
22 barring any unforeseen events or circumstances that would result in a delay. *See Quarterly Report*
23 *at 43, Fig. 14, May 21, 2013, ECF No. 1067-1.* In anticipation of the eventual end of the
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25 ³ Under Guam law, the Solid Waste Management Division (“SWMD”) was “a sub-entity”
26 of the DPW. 10 GUAM CODE ANN. § 51A103. Upon enactment of Guam Public Law 31-020, the
27 SWMD is now known as the Guam Solid Waste Authority (“GSWA”), an autonomous, public
28 corporation of the Government of Guam. *Id.* Following said enactment, the court vested the
Receiver with “full power and authority over GSWA, to the full extent of its previously granted
authority over SWMD.” Order at 9, Sept. 2, 2011, ECF No. 798.

1 receivership, the Receiver proposed a timeline for GSWA's transition from Receivership to GSWA
2 Board⁴ control.⁵ *Id.*, Fig. 15. The Receiver assured the court that it would continue to work with the
3 GSWA Board to ensure that its members were well prepared to assume full responsibility when the
4 court determined it was appropriate to transition from the Receivership to Board control. *Id.* at 42.
5 On July 1, 2013, the court formally adopted the Receiver's Transition Timeline. *See* Order re
6 Transition from Court-Appointed Receiver to the GSWA Board at 1, ECF No. 1132.

7 On June 26, 2013, the court held a hearing to address certain concerns raised by the GSWA
8 Board. Among its concerns, the Board stated it wished to retain a law firm or an in-house attorney⁶

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11 ⁴ The Guam Legislature established the GSWA as a successor to the SWMD. *See* Pub. L.
12 31-20 at 2 (Section 1: Legislative Findings and Intent). The Legislature recognized that the court
13 had appointed a Receiver who was vested with "full power and authority to enforce the terms of the
14 Consent Decree to include assumption of the functions, powers and authority of the [SWMD] of the
15 [DPW] insofar as they affect [the Government of Guam's] compliance with the Consent Decree." *Id.*

16 GSWA was created to be under the governance of a Board of Directors. *Id.* at 3. The Board
17 was directed to "establish a liaison with the Receiver . . . and begin discussions preliminary to
18 achieving the objective of [the Government of Guam's] *eventual* resumption of all functions,
19 responsibilities and authority for solid waste management and operations, and governance thereof." *Id.*
20 at 3 (Section 2: Transition Liaison) (emphasis added).

21 ⁵ This timeline shall hereinafter be referred to as the "Transition Timeline."

22 ⁶ The GSWA Board is statutorily authorized to hire its own attorney or in-house counsel to
23 "advise the Board and the General Manager on all legal matters to which [GSWA] is a party or in
24 which [GSWA] is legally interested. *See* 10 GUAM CODE ANN. § 51A110(a) and (c). Said attorney
25 may also represent GSWA in connection with legal matters before the Legislature, boards and other
26 agencies of the Government of Guam. 10 GUAM CODE ANN. § 51A110(c). In contrast to other
27 autonomous agencies (*e.g.*, the Guam International Airport Authority) that are statutorily authorized
28 to employ their own legal counsel separate from the Attorney General to represent their interests, *see*
Guam Int'l Airport Auth., 2005 WL 291577, at *18, 2005 Guam 5, ¶64, Guam law requires the
Attorney General to represent GSWA in all litigation concerning GSWA, subject to the Attorney
General delegating this duty to in-house counsel. *Id.* ("The Attorney General *shall* represent the
Authority in litigation concerning the affairs of the Authority provided that he may delegate this duty
to the Attorney of the Authority, with respect to any such litigation.") (emphasis in original).

The Receiver did not believe it would be financially prudent to hire an in-house attorney for
GSWA at that time, but the Receiver agreed to support the funding of a law firm or attorney
contracted through a Request for Proposals ("RFP") to assist the GSWA Board. The Board did not
have any general objections to the Receiver's proposal. *See* Decl. of Joseph W. Duenas at ¶8, ECF
No. 1122.

1 to assist with drafting rules and regulations⁷ governing the Board's operations and as needed during
2 the transition period. In this regard, the court issued an order directing the Receiver and the Attorney
3 General to "jointly assist the Board in obtaining the services of a law firm to provide such services
4 as are statutorily authorized. Until such time as the services of a law firm are obtained, the Office
5 of the Attorney General shall provide needed legal support to the Board." Order re Transition from
6 Court-Appointed Receiver to the GSWA Board at 3, July 1, 2013, ECF No. 1132.

7 Although the Board sought to transition into authority at a much sooner time than
8 contemplated by the Receiver, the court stated that "[t]he Receiver shall continue, status quo, in their
9 day-to-day operations of GSWA and the Consent Decree projects." *Id.* at 4. Additionally, in order
10 to prevent further delay, the court ordered the Receiver and the Attorney General "to proceed with
11 the acquisition of property needed for the closure of the Ordot Dump." *Id.*

12 D. Substitution of Counsel for the Government of Guam

13 When this suit was initially filed, the Attorney General represented the Government of Guam
14 and continued in this capacity except for a brief four-and-one-half-month period where the
15 Government of Guam was represented by private counsel.⁸ Following the appointment of the
16 Receiver, the Attorney General obeyed the court's directive by assisting the Receiver with a variety
17 of issues, from procurement matters to permitting issues and even work related to obtaining right of
18 entry agreements allowing environmental testing on private properties adjacent to the Ordot Dump.
19 The Attorney General cooperated with and assisted the Receiver in performing its duties – duties that
20 the Government of Guam was required to fulfill under the Consent Decree, but failed to do. The
21 Receiver described the work of the Attorney General as follows:

22 the Attorney General has been an important part of the progress made to date in
23 achieving compliance with the Consent Decree. Without doubt, the work of the
24 Attorney General has saved the Government of Guam hundreds of thousands in legal
25 expenses to date. Of particular importance at this time is the Attorney General's work
26 to clear up land ownership issues on lands required for the closure of the Ordot

26 ⁷ See 10 GUAM CODE ANN. § 51A105 ("The Board may adopt Rules and Regulations
27 pursuant to AAL governing the conduct of its affairs.").

28 ⁸ From September 27, 2002 to February 5, 2003, the Government of Guam was represented
by the Mair, Mair, Spade & Thompson law firm. See ECF Nos. 6 and 21.

1 Dump. On this issue and many others, any limitation on the Receiver's access to the
2 Attorney General will likely delay the final closure of the Ordot Dump and
significantly increase cost.

3 Quarterly Report at 35, May 21, 2013, ECF No. 1067-1.

4 Beginning in late April 2013, the Government of Guam took actions to completely replace
5 the Attorney General with private counsel.⁹ The court repeatedly denied the attempts to remove the
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7 ⁹ On April 26, 2013, a Substitution of Counsel was filed by the Lieutenant Governor on
8 behalf of the Government of Guam, *see* ECF No. 1045, and thereafter disapproved by the court on
9 May 3, 2013, because the Substitution of Counsel did not comply with the technical requirements
of Local Rule GR 19.1(b)(1). *See* ECF No. 1047.

10 On May 10, 2013, the Lieutenant Governor filed an Amended Substitution of Counsel (the
11 "Amended Substitution"), seeking to substitute the Cabot Mantanona firm as counsel for the
12 Government of Guam for and in place of the Attorney General. *See* ECF No. 1052. The Amended
13 Substitution asserted that a change in counsel was necessitated by the Attorney General's conflict
14 of interest, specifically with regard to the dispute over the mechanism for payment of the \$25 million
15 judgment in the Layon Condemnation Case. On May 16, 2013, the court issued an Order on the
16 Amended Substitution (hereinafter referred to as the "May 16th Order"). *See* ECF No. 1064. The
17 court refuted the Lieutenant Governor's assertions that the Receiver was the former client of the
18 Attorney General in the Layon Condemnation. However, based on what had been presented, the
19 court found there was "a limited dispute between the Attorney General and the Office of the
20 Governor" over the use of the bond proceeds to pay the \$25 million judgment. *Id.* at 3. Therefore,
21 the court approved the Lieutenant Governor's Amended Substitution only for the limited purpose
22 of allowing the Cabot Mantanona firm to represent the Government of Guam with regard to the
23 issues raised in the former landowners' Motion to Intervene. *See* May 16th Order at 4, ECF
24 No. 1064. The court ordered that "for all other purposes, the Attorney General shall remain counsel
25 of record for the Government of Guam." *Id.*

26 On May 28, 2013, the Lieutenant Governor filed a Motion for Reconsideration of the
27 May 16th Order. *See* ECF No. 1075. Following full briefing, the court denied the Motion for
28 Reconsideration, concluding that the Lieutenant Governor failed to meet his heavy burden of
showing any grounds for reconsideration. *See* Order re Mot. for Recons., Aug. 13, 2013, ECF No.
1157.

29 The Government of Guam subsequently appealed the denials of the Amended Substitution
30 and the Motion for Reconsideration to the United States Court of Appeals for the Ninth Circuit. *See*
31 ECF No. 1202.

32 Despite the court's rulings on the Amended Substitution and the Motion for Reconsideration,
33 the Lieutenant Governor continued to ask the court to disqualify the Attorney General and filed
34 several motions seeking to stay the Receiver's awarding of the contract to close the Ordot Dump.
35 On September 13, 2013, the Lieutenant Governor filed a Motion to Stay. *See* ECF No. 1177. On
36 September 20, 2013, the Lieutenant Governor filed an Emergency Motion for an Order Granting a
37 Temporary Stay of Procurement While the Government's Motion to Stay and for Further Relief is
38 Pending. *See* ECF No. 1191. On September 25, 2013, the Lieutenant Governor filed an Emergency
Motion for a Stay Pending Appellate Review (the "Emergency Motion"). *See* ECF No. 1203. The
court denied the Emergency Motion on October 11, 2013, finding that the Lieutenant Governor

1 Attorney General, but on October 29, 2013, the court granted the Lieutenant Governor's request to
2 fully substitute the Attorney General with the Cabot Mantanona law firm based on a breakdown in
3 the attorney-client relationship. *See* Order re Motion to Stay and for Further Relief ("Substitution
4 of Counsel Order") at 10, ECF NO. 1243.

5 E. November 20, 2013 Quarterly Status Hearing

6 At the last Quarterly Status Hearing, the Receiver reported that four lots and a portion of a
7 fifth lot were required for the proper closure of the Ordot Dump and to provide the required buffer
8 zone to adjacent properties. Four of the lots had been acquired with the assistance of the Attorney
9 General, but the acquisition of a portion of the fifth lot was still pending. In light of the court's
10 recent decision to fully substitute counsel for the Government of Guam, the court ordered "the
11 Government of Guam (through Sandra C. Miller, the Chief Legal Counsel for the Office of the
12 Governor of Guam) [to] work closely with the Receiver to determine who will assist the Receiver
13 in completing the acquisition of this last lot." Order re November 20, 2013 Quarterly Status Hearing
14 at 4, Nov. 22, 2013, ECF No. 1271.

15 Additionally, the Receiver reiterated its earlier position that while it had sufficient funds
16 remaining from the bond proceeds to finance the Consent Decree projects, it did not have the
17 resources available under the current bond issue to complete the additional projects¹⁰ which the
18 Government of Guam asked for but were not otherwise specifically required under the Consent
19 Decree. The court stated that it was "important for the Government of Guam and the Receiver to
20 begin discussions about developing a plan for additional financing or funding to pay for said
21 projects, if the Government of Guam determine[d] said projects to be a priority." *Id.* at 6. Therefore,
22 the court ordered "the Receiver and the Government of Guam [to] meet and work cooperatively
23 toward this goal." *Id.*

24 F. Lagu's Request for a Status Hearing to Modify Settlement Agreement

25 _____
26 failed to meet his burden of showing that the circumstances warranted the extraordinary remedy of
27 a stay pending appeal. *See* ECF No. 1230.

28 ¹⁰ These projects include the upgrades to the residential transfer stations, Route 4 safety
enhancements, Dero Road upgrades and possible improvements to the waste water treatment plant.

1 On November 20, 2013, HCP, Inc. d.b.a. Lagu Sanitation (“Lagu”) filed a request to set this
2 matter for a status hearing to address issues concerning the Settlement Agreement entered into by
3 Lagu, the Government of Guam, and GSWA.¹¹ *See* ECF No. 1268. Lagu proposed to amend certain
4 terms of the Settlement Agreement, however, Lagu’s attorney (Peter Perez) was unable to determine
5 which counsel – Rawlen Mantanona or the Attorney General – would be handling this matter on
6 behalf of the Government of Guam and the GSWA. *Id.*

7 On January 10, 2014, the court ordered “Rawlen Mantanona and David Manning to meet
8 with counsel for Lagu in a good faith attempt to resolve Lagu’s concerns without further need for
9 court intervention.” *See* Order at 2, ECF No. 1288.

10 **II. DISCUSSION**

11 On January 29, 2014, the Receiver filed the instant Special Report before the court. *See* ECF
12 No. 1295. Therein, the Receiver stated that since the Attorney General was replaced with Rawlen
13 Mantanona as counsel for the Government of Guam, it has made every reasonable effort to work
14 with new counsel and the Lieutenant Governor’s Office. Yet, despite such efforts, the Receiver was
15 not successful in receiving the assistance it needed and thus sought guidance from the court as to
16 how it should proceed in the following five areas:

17 A. Acquisition of Land Needed for Ordot Dump Closure

18 On November 5, 2013, the Receiver wrote to Ms. Miller to request that the Office of the
19 Governor approve the Attorney General’s continued work in three limited areas: the formal
20 acquisition of land needed to close the Ordot Dump, review of the RFP for legal counsel for the
21 GSWA Board, and GSWA personnel issues as they may arise. *See* Attachment A to Special Report,
22 ECF No. 1295. The Receiver made this request to build on the work already done by the Attorney
23 General prior to the substitution by Mr. Mantanona and in order to save the cost of outside counsel.
24 *See* Special Report at 2.

25
26 ¹¹ The Settlement Agreement had been signed by Cheol Park, as President and the duly
27 authorized representative of Lagu and David Manning, in his capacity as Receiver over GSWA. *See*
28 ECF No. 908. The Settlement Agreement was also signed by Assistant Attorney General J. Basil
O’Mallan III, and Lieutenant Governor Raymond S. Tenorio to indicate their approval “as to legality
and content.” *Id.*

1 More than one month later, Ms. Miller finally responded to the Receiver in a letter dated
2 December 10, 2013, wherein she stated that “the Office of the Governor is unable to agree to your
3 request.” *Id.* at Attachment B. Ms. Miller reiterated the Government of Guam’s position that “the
4 Attorney General’s decision to treat GBB as its client (whether or not in its capacity as the receiver
5 of GSWA) in violation of its ethical duties to the Government of Guam . . . disqualifies the Attorney
6 General from having any further involvement in related matters involving GBB or the Consent
7 Decree[.]” *Id.* Nevertheless, Ms. Miller stated that before the Office of the Governor could
8 consider consenting to the Receiver’s request, the Attorney General must provide it with
9 “information necessary to satisfy the ‘informed consent’ requirement of Rule 1.7(b)(4).” *Id.* Such
10 information included a summary of the Attorney General’s “duties and obligations to each affected
11 client and the conflicts and the risks that may be anticipated from the current representation of
12 adversely situated parties.” *Id.*

13 The Receiver responded the same day by letter and requested Ms. Miller suggest how the
14 Office of the Governor believed the issue should be handled since the Office of the Governor would
15 not agree to allow the Attorney General to continue to assist the Receiver. *Id.* at Attachment C.

16 Several weeks later, on January 2, 2014, Ms. Miller wrote back to the Receiver and stated
17 we believe that with regard to the condemnation of lands necessary for the closure
18 of Ordot Dump, the District Court’s jurisdiction to substitute out the Attorney
19 General was strictly limited to CV02-00022. The District Court did not, and does
20 not, have authority or jurisdiction over matters pending before the Superior Court of
21 Guam, even if those matters happen to affect CV02-00022. As for matters related to
22 the daily administration of GSWA, including adverse actions and the procurement
of legal counsel for the GSWA Board of Directors, these are likewise matters not
related to CV02-00022. Even if they were, the GSWA is an autonomous agency with
the authority to hire its own in-house legal counsel to address these issues. In any
event, under 5 G.C.A. Section 5121(b), the Attorney General is required to review
all contracts for legal services, including the contract proposed.

23 *Id.* at Attachment D.¹²

24 The Receiver then wrote to Deputy Attorney General Patrick Mason on January 2, 2014,
25 requesting further clarification from him with regard to the assertions in the Miller January 2nd
26 Letter (*i.e.*, that the court’s Substitution of Counsel Order did not preclude the Attorney General
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28 ¹² This letter shall hereinafter be referred to as the “Miller January 2nd Letter.”

1 from assisting the Receiver with the land acquisition need for the Ordot Dump closure, reviewing
2 the legal services RFP and GSWA personnel issues). *See* Attachment E to Special Report. The
3 Receiver did not get a response from the Attorney General, and thus the Receiver concluded that the
4 Attorney General did not believe they could even respond to the request for clarification in this
5 matter. *See* Special Report at 3, ECF No. 1295.

6 Left without a clear answer as to who would bring the condemnation action for the land
7 needed for the Ordot Dump closure, the Receiver then sought guidance from the court.

8 The Government of Guam's current position as stated in its response to the Special Report
9 is quite different from its prior position as stated in the Miller January 2nd Letter. The Government
10 of Guam now asserts that the Attorney General, "while still the attorney of record in the Superior
11 Court of Guam condemnation cases, has a present conflict of interest resulting from its decision to
12 take orders from the Receiver." Government of Guam Resp. at 3, ECF No. 1302. The Government
13 of Guam continues to maintain that without its informed written consent, the Attorney General
14 should not have represented either the Receiver or GSWA. Because of the Attorney General's
15 alleged conflict of interest, the Government of Guam contends that the Attorney General has "to
16 appoint special attorneys general to act as legal counsel" and handle these condemnation
17 proceedings. *Id.* at 4. The Government of Guam further states that the Cabot Mantanona firm
18 cannot simultaneously represent the Government of Guam and be required to also represent or assist
19 the Receiver or GSWA. The Government of Guam contends that "to force Cabot Mantanona . . .
20 to do so would extend beyond the limits of the jurisdictional reach of this [c]ourt, which does not
21 extend to the Superior Court of Guam." *Id.*

22 The United States presents two options for the court in its response. First, the United States
23 asserts that if the Government of Guam's position is that reflected in the Miller January 2nd Letter,
24 then the Office of the Governor should have no valid reason to object to the Attorney General
25 representing GSWA as permitted by Guam law, specifically 10 GUAMCODE ANN. § 51A110(c). *See*
26 United States' Resp. at 4, ECF No. 1305. In such case, the United States requests the court to rule
27 that its Substitution of Counsel Order does not apply to the condemnation actions regarding the
28 Ordot land, which would then permit the Attorney General to continue to assist GSWA with the

1 condemnation actions. *Id.*

2 The court is disinclined to accept the United States' first option. Although the Miller January
3 2nd Letter takes the position that the Attorney General can continue to assist the Receiver with the
4 Ordot land condemnation actions, this is no longer the position taken by the Government of Guam
5 in its latest filing with the court and arguments presented at the hearing on this matter. In fact, when
6 asked to clarify what she meant in her letter, Ms. Miller stated that although the Attorney General
7 is still counsel of record in the condemnation actions pending before the Superior Court of Guam,
8 the Superior Court of Guam must address whether such representation can continue if the Attorney
9 General's alleged conflict of interest is raised in that court.

10 The second option presented by the United States is to require the Cabot Mantanona firm to
11 step into the shoes of the Attorney General and assist the Receiver with these condemnation actions.
12 *Id.* at 5. The United States notes that Guam law requires the Attorney General to "represent [GSWA]
13 in litigation concerning the affairs of [GSWA.]" 10 GUAMCODE ANN. § 51A110(c). However, after
14 the court specifically granted the Lieutenant Governor's request to have the Attorney General fully
15 substituted with the Cabot Mantanona law firm, the United States contends that the Cabot
16 Mantanona firm should fill the role that the Attorney General once held and be required to represent
17 GSWA in the Ordot condemnation actions.

18 The court notes that the Government of Guam fought feverishly to have the Attorney General
19 replaced by the Cabot Mantanona firm. The Government of Guam represented that in seeking such
20 substitution of counsel, it was "requesting no continuances, postponement or delay in this matter."
21 *See Amended Substitution of Counsel at 9, ECF No. 1052.* Despite such assertions, it appears that
22 the Government of Guam is now backing away from having its legal counsel do much of the work
23 the Attorney General once did and was required to do, whether by court order or by Guam law. The
24 substitution of counsel has resulted in delay specifically with regard to the acquisition of the last
25 property needed for the proper closure of the Ordot Dump. The Government of Guam, through its
26 current legal counsel, does not appear to be using its "best efforts to assist the Receiver in the
27 performance of its duties." *Order re Appointment of Receiver at 18, ECF 239.* The United States
28 brought this action against the Government of Guam, not the Receiver. The Government of Guam

1 – not the Receiver – agreed to close the Ordot Dump in a timely manner. Part of this closure
2 includes acquiring the land needed for the environmental closure and compensating landowners for
3 property taken by the Government of Guam. Thus, the court would not be “extending its
4 jurisdictional reach” by requiring the Government of Guam to assist the Receiver with the land
5 acquisition needed for the Ordot Dump closure.

6 At the hearing held on February 27, 2014, Mr. Mantanona stated that the Government of
7 Guam did not disagree with the Receiver's position that these Ordot landowners should be
8 compensated for the taking of their property by the Government of Guam. At the same time, the
9 Government of Guam continues to posit that assisting the Receiver with the land acquisitions would
10 create a conflict of interest for the Cabot Mantanona firm. While the Government of Guam's
11 rationale for its position is unclear, what is obvious to the court is that further delay in this process
12 can not be tolerated.

13 When the court appointed the Receiver, it authorized the Receiver to hire counsel if it
14 deemed it necessary in the performance of its duties. *See* Order Re: Appointment of Receiver at 16,
15 ECF No. 239. The work previously performed by the Attorney General saved the Government of
16 Guam hundreds of thousands of dollars in legal expenses, but now that new counsel for the
17 Government of Guam refuses to extend similar cooperation to the Receiver, the court is left with no
18 other option but to direct the Receiver to exercise its authority to hire private counsel to complete
19 the Ordot land acquisition on behalf of GSWA and the Government of Guam. The court hereby
20 authorizes the Receiver to hire private counsel to assist in the performance of its duties to complete
21 the work that was required of the Government of Guam under the Consent Decree. Further, the
22 Receiver is hereby authorized to pay for these legal fees from GSWA's revenues.

23 The court recalls that the Receiver previously estimated the capital needed to achieve
24 compliance with the Consent Decree was approximately \$159.7 million, of which approximately \$40
25 million would be required for the closure of the Ordot Dump. *See* Quarterly Report at 13, Oct. 22,
26 2008, ECF No. 269-1. The Receiver recommended the Consent Decree projects be funded through
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1 a revenue bond issue guaranteed by Section 30 funds received by the Government of Guam.¹³ *Id.*
2 at 21. Instead, the Government of Guam financed the Consent Decree projects through the sale of
3 approximately \$202.4 million in Limited Obligation (Section 30) Bonds, Series 2009A (the “Consent
4 Decree Bonds”). *See* Guam Economic Development Authority Bi-Weekly Progress Report at 3,
5 June 23, 2009, ECF No. 455. This meant that the Government of Guam made a commitment to use
6 its Section 30 revenue – not the revenue generated through the solid waste system – to pay for the
7 debt service on the Consent Decree Bonds. As the Receiver notes in its Reply Brief, GSWA
8 currently reimburses the Government of Guam about \$4.5 million annually for debt service.¹⁴ *See*
9 ECF 1307 at 3. The negative financial impact of the Government of Guam’s refusal to assist the
10

11 ¹³ Section 30 funds are derived primarily from the federal income taxes collected by the
12 federal government and paid by military personnel and other federal employees working in Guam.

13 ¹⁴ When the Government of Guam issued the Consent Decree Bonds, it anticipated that fees
14 collected from solid waste customers would allow GSWA to reimburse the Government of Guam
15 approximately 75% of the Section 30 money used to pay the debt service. *See* Quarterly Report at
16 Tab 6 (Aug. 16, 2010 letter from GEDA Administrator to Receiver), Dec. 9, 2010, ECF No. 646-6
17 and Quarterly Report at 40, July 18, 2012, ECF No. 972-1. No debt service was due in 2009, the
18 year the funds were borrowed. In 2010, almost \$8.2 million in debt service was paid from
19 capitalized interest funds that were also borrowed, so Section 30 revenue was not needed to make
20 the payment. In 2011, debt service of approximately \$8.6 million was paid, with about \$4.1 million
21 coming from capitalized interest and the balance – approximately \$4.5 million – came from Section
22 30 revenue. In 2012, the debt service amount was about the same. The Receiver used GSWA
23 revenues to fully reimburse the Government of Guam the \$4.5 million it spent in Section 30 funds
24 to pay the debt service.

20 However, as noted in the Receiver’s July 2012 Quarterly Report, beginning in 2013 and
21 succeeding years, full debt service payments would begin since there was no more capitalized
22 interest remaining. *Id.* The Government of Guam’s annual debt service would thus increase to about
23 \$12 million. *Id.* The Receiver explained that a significant increase in tipping fees and residential
24 trash collection fees would be required if the Government of Guam wished to be reimbursed for the
25 full \$12 million in Section 30 revenue that it would be required to pay each year for the debt service.

24 The Receiver further stressed that the rates it was then charging were adequate to provide for
25 the operations and reserves of GSWA through 2015 and also to pay the \$4.5 million annually toward
26 the debt service on the Consent Decree Bonds. *Id.* If the Government of Guam wanted full
27 reimbursement, however, then the rates would have to increase. The Receiver believed that the
28 decision about how to pay for the debt service was an internal Government of Guam decision, and
accordingly, the Receiver took no position with regard to the rate options it presented to the Public
Utilities Commission (“PUC”). *Id.* The Receiver stated it was prepared to implement whatever the
Government of Guam decided, but to date, Guam’s elected officials have not initiated a rate increase
with the PUC.

1 Receiver with the Ordot land condemnation actions and its persistence that the Receiver hire private
2 counsel to do this work will ultimately be borne by the Government of Guam. In other words,
3 because the Receiver must now use GSWA revenues it collects to pay for legal fees, GSWA's ability
4 to reimburse the Government of Guam \$4.5 million annually for the debt service will inevitably be
5 hampered.

6 B. RFP for Legal Services for GSWA Board

7 In June 2013, the GSWA Board expressed a desire to retain a law firm to assist the Board
8 with the drafting of rules and regulations governing the Board's operations and as needed during the
9 transition period. In response, the court held a status hearing on June 26, 2013, and thereafter
10 ordered the Receiver and the Attorney General to "jointly assist the Board in obtaining the services
11 of a law firm to provide such services as are statutorily authorized. Until such time as the services
12 of a law firm are obtained, the Office of the Attorney General shall provide needed legal support to
13 the Board." Order re Transition from Court-Appointed Receiver to the GSWA Board at 3, July 1,
14 2013, ECF No. 1132.

15 As noted above, after Mr. Mantanona was permitted to fully substitute as counsel for the
16 Government of Guam in place of the Attorney General, the Receiver wrote to Ms. Miller to request
17 that the Office of the Governor approve the Attorney General's continued work in reviewing the RFP
18 for legal counsel for the GSWA Board. The Government of Guam denied the request and also
19 refused to permit either Mr. Mantanona or Ms. Miller to review the RFP prior to its issuance.

20 The Government of Guam contends that there is no need to issue an RFP for legal services
21 since GSWA is statutorily authorized to retain in-house counsel. However, the issue here is not
22 whether GSWA has the authority to hire in-house counsel without going through the RFP process.
23 In fact, the Receiver has determined that there is no need to hire a full-time in-house lawyer at this
24 time. The Receiver, however, has agreed to solicit legal services to assist the GSWA Board, and
25 the GSWA Board had no general objection to contracting with a law firm or attorney. *See* Decl.
26 Joseph W. Duenas at ¶¶7-8, ECF No. 1122. Thus, the issue is whether the Government of Guam
27 should assist the Receiver by reviewing the RFP prior to its issuance.

28 It would appear reasonable to require Mr. Mantanona to step into the shoes of the Attorney

1 General and assist the Receiver in reviewing the RFP to obtain these legal services for the Board.
2 But the Government of Guam refuses to provide this assistance to the Receiver and instead insists
3 the Receiver does not need assistance from counsel to review the RFP since an RFP can be prepared
4 by the Chief Procurement Officer of the General Services Agency or anyone designated in the
5 organization with similar capacity. Government of Guam Response at 5, ECF No. 1302. The
6 Government of Guam states that if the Receiver needs legal assistance with the RFP, then it should
7 request the Attorney General to appoint a special assistant attorney general to help the Receiver in
8 this regard. *Id.* at 6.

9 The court questions the reasonableness of the Government of Guam's refusal to assist the
10 GSWA Board and the Receiver with regard to this matter. The Office of the Governor selected and
11 nominated these individuals to serve on the GSWA Board, and these board members have now
12 requested the court approve the retention of a law firm to assist the Board in the drafting of rules and
13 regulations and as needed during this transition period. The retention of such legal services,
14 however, can not occur without an RFP, yet the Government of Guam (and the Office of the
15 Governor, the GSWA Board's appointing authority) refuses to assist the Receiver with the RFP
16 process.¹⁵

17 Mr. Mantanona maintains that he is counsel for the Government of Guam – not the GSWA
18 Board – and any assistance he or Ms. Miller provides to the GSWA Board would create a conflict
19 of interest. It is not clear to the court how such assistance would result in a conflict of interest,
20 especially because the record herein demonstrates that both Mr. Mantanona and Ms. Miller have
21 taken active steps to provide legal assistance to the GSWA Board. On June 24, 2013, the
22 Government of Guam, through Ms. Miller, filed a response to the court's order setting a status
23 hearing to address concerns by the GSWA Board. *See* Government of Guam Resp., ECF No. 1121.
24 This response generally supported the Board's desires to obtain further control over GSWA. But
25 Ms. Miller went further by filing the declaration of board member Joseph W. Duenas with the court.

26
27 ¹⁵ If the Government of Guam and the Board desire to see a transition of authority occur
28 much sooner than the Receiver envisioned, then the Government of Guam should make every effort
to ensure that the Board receives the legal assistance it needs.

1 See Decl. Joseph W. Duenas, ECF No. 1122. These legal pleadings filed by Ms. Miller clearly
2 demonstrate the Office of the Governor's willingness to allow its Chief Legal Counsel to assist the
3 GSWA Board when it is convenient. Additionally, at the status hearing held on June 26, 2013, Mr.
4 Mantanona repeatedly tried to address the court about the GSWA Board's concerns, and the court
5 had to repeatedly remind Mr. Mantanona that he did not represent the Board and therefore could not
6 speak on its behalf. Both Mr. Mantanona and Ms. Miller saw no conflict of interest back in June
7 2013 when they assisted the GSWA Board with having the court address its concerns, but now that
8 the Receiver has requested their assistance, the Government of Guam refuses claiming that it would
9 create a conflict of interest.

10 The court ordered the parties to use their best efforts to assist the Receiver in the performance
11 of its duties, but here, again, is another example of the lack of cooperation by the Government of
12 Guam that will lead to the expenditure of more funds to hire legal counsel to assist the Receiver. If
13 the Government of Guam believes that reviewing the RFP would create a conflict for Mr. Mantanona
14 and Ms. Miller, then the court has no other option than to authorize the Receiver to hire counsel of
15 his choosing (as permitted in the Order re Appointment of Receiver at 16, ECF No. 239) and pay for
16 said legal services from the funds it would otherwise use to reimburse the Government of Guam for
17 debt service.

18 C. GSWA Personnel Issues

19 The Receiver requests the assistance of legal counsel to handle personnel matters that may
20 arise from time to time with regard to the employees of the GSWA. When the Attorney General was
21 still involved in this case, the Attorney General would provide the Receiver with guidance on how
22 to handle such matters involving GSWA personnel.

23 The Government of Guam believes that such personnel matters are best handled by GSWA
24 administratively. The Government of Guam contends that if GSWA believes it needs legal
25 assistance in this matter, then the Receiver should either hire in-house counsel for GSWA or ask the
26 Attorney General to appoint a special assistant attorney general to assist in these matters.

27 Similar to the issues addressed above, if the Government of Guam continues to insist that
28 Mr. Mantanona can not assist the Receiver, then the Receiver is authorized to hire counsel of his

1 choosing and pay for said legal services from the funds it would otherwise use to reimburse the
2 Government of Guam for debt service.

3 D. Development of Plan for Financing Additional Projects

4 After the last Quarterly Status Hearing, the court ordered the Government of Guam to meet
5 with the Receiver to begin discussions about developing a plan for additional financing or funding
6 to pay for the additional projects. *See* Order re November 20, 2013 Quarterly Status Hearing at 6,
7 ECF No. 1271. The Receiver then sent an email to Ms. Miller and Mr. Mantanona to follow up on
8 issues addressed at said hearing, *see* Attachment F to Special Report, ECF No. 1295, including the
9 development of a plan for financing the additional projects which were not required by the Consent
10 Decree but imposed by the Government of Guam itself. *See* Quarterly Report at 33-34, May 21,
11 2013, ECF No. 1067-1. The Receiver never received a response from either Ms. Miller or Mr.
12 Mantanona on this matter. *See* Special Report at 3, ECF No. 1295. The court also notes that the
13 Government of Guam's response to the Special Report fails to address why it failed to meet with the
14 Receiver as directed.

15 The Government of Guam's position is that the plans for financing and funding these
16 additional projects do not need approval from legal counsel, but instead "GSWA must seek approval
17 from the Guam Legislature of all appropriations for additional projects. If the Receiver needs more
18 money, then the appropriate governmental body to engage is the Guam legislature, not the AGO or
19 the Office of the Governor." Government of Guam Response at 6, ECF No. 1302. The Government
20 of Guam acknowledges that the Office of the Governor worked closely with the Receiver to obtain
21 the Consent Decree bonds because SWMD was once a division of DPW, a line agency with the
22 Government of Guam. "The Office of the Governor works closely with line agencies on formulating
23 and submitting their annual budget and appropriation requests to the Legislature." *Id.* at 7. Since
24 GSWA is now an autonomous agency, the Government of Guam contends that GSWA must seek
25 its own financing and independently formulate its budget as part of operations as an autonomous
26 entity." *Id.* *See also* 10 Guam Code Ann. § 51A116 ("the term annual budget means a balanced
27 budget for expenditures of the Guam Solid Waste Authority for a fiscal year to be funded by the
28 anticipated revenues and other funds to be received and expended for the same fiscal year, submitted

1 by the Authority to *ILiheslaturan Guåhan* (the Guam Legislature) and approved by Law for the next
2 fiscal year.”)

3 In its response, the United States notes the apparent inconsistency in the Government of
4 Guam’s position. While the Government of Guam now appears to take a *laissez faire* approach by
5 asserting that GSWA needs to handle this financial issue on its own without assistance from the
6 Office of the Governor, the Government of Guam previously argued the opposite. When it sought
7 to stay this action, the Government of Guam stated “[t]he Governor . . . signed the Consent Decree
8 on behalf of the Government of Guam and is ultimately responsible for the Government’s
9 compliance with the Consent Decree.” Emergency Motion for a Stay Pending Appellate Review
10 at 4-5, ECF No. 1203. The Government of Guam further stated with regard to the irreparable injury
11 it claimed it would sustain:

12 in mere days, the Receiver intends to saddle the Government with contracts that will
13 ultimately cost the Government tens of millions of dollars over and above the
14 Receiver’s previous cost estimate for the project. Neither the Receiver nor the Court
15 has given the Government any estimate of: (a) how much the Government will need
16 to raise in addition to the more than \$160 million already provided to the Receiver;
17 (b) when the amounts will become due; or (c) when the Receiver’s existing funds
18 will run out. The Government cannot possibly fulfill its other critical obligations –
19 including payroll for Government employees, education for Guam children,
20 healthcare for the indigent, police and fire departments, and the Guam court system
21 – without the information necessary to prepare a budget that includes any necessary
22 provisions for the contracts the Receiver intends to award.

18 *Id.* at 8 (emphasis in original deleted).

19 The United States further notes that the Government of Guam’s opening brief in the
20 consolidated appeals before the Ninth Circuit states that “[a]lthough the GSWA is in receivership,
21 funding for its capital projects remains a general obligation of the Government of Guam.” United
22 States Response at 6, ECF No. 1305.

23 The court agrees with the United States that the Government of Guam has taken conflicting
24 positions on this issue. The court recalls that during the months-long efforts to disqualify the
25 Attorney General in this case, the Government of Guam argued that it needed to have its voice heard
26 and represented by non-conflicted counsel. After full substitution was granted, the Government of
27 Guam repeatedly asked the court to stay these proceedings and the awarding of contracts for the
28 Ordot Dump closure construction project because the Government of Guam did not have a full

1 opportunity to have its voice heard with regard to how the Receiver was managing the funds
2 entrusted to it. Now that the court has ordered the Government of Guam and Receiver to work
3 cooperatively toward developing a plan for additional financing to pay for the unfunded projects,
4 the Government of Guam refuses to come to the table and have its voice heard.

5 Even if the development of a financing plan for these additional projects did not require the
6 assistance of legal counsel, the Government of Guam has failed to provide a satisfactory explanation
7 – let alone any explanation in its briefs – as to why it failed to comply with the court's Order
8 directing it to meet with the Receiver to discuss whether these additional projects are really a priority
9 for the government. Again, the Government of Guam is not using its "best efforts" and has failed
10 to "cooperate with, and assist the Receiver to the extent necessary and appropriate to permit the
11 Receiver to carry out its responsibilities." Order re Appointment of Receiver at 19, ECF No. 239.

12 At the hearing held on February 27, 2014, both Mr. Mantanona and Ms. Miller stated they
13 were reluctant to speak with the Receiver about these issues unless he was represented by counsel.
14 Mr. Mantanona even stated that he could not speak directly to the Receiver because if he did so, he
15 would be violating the ethical rules which prohibit counsel from directly communicating with a
16 person the lawyer knows to be represented by counsel. Mr. Mantanona contends that whether the
17 court agrees with him or not, the Receiver was represented by the Attorney General in this matter
18 and he is therefore prohibited from speaking directly to the Receiver.

19 The court believes the rule Mr. Mantanona is referring to is Rule 4.2 of the Guam Rules of
20 Professional Conduct. According to this rule, "[i]n representing a client, a lawyer shall not
21 communicate about the subject of the representation with a person the lawyer knows to be
22 represented by another lawyer in the matter, *unless* the lawyer has the consent of the other lawyer
23 or is *authorized to do so by law or a court order.*" Guam R. Prof. Cond. 4.2 (emphasis added).
24 Contrary to Mr. Mantanona's assertion, Rule 4.2 does not provide the Government of Guam with
25 an excuse for not meeting with the Receiver as directed by the court. The court will assume for the
26 sake of argument that the Government of Guam is correct in its assertion that the Receiver had been
27 represented by the Attorney General. Once the court granted the Government of Guam's substitution
28 of counsel request, the Government of Guam can not hide behind the shield of Rule 4.2 because the

1 Attorney General was no longer involved in the case and the Receiver was no longer “represented”
2 by the Attorney General. Again, assuming *arguendo* that the Attorney General had represented the
3 Receiver, Rule 4.2 specifically permits Mr. Mantanona and Ms. Miller to speak with the Receiver
4 if authorized to do so by court order. Here, such a court order exists since the court specifically
5 directed the Government of Guam to meet and work with the Receiver about developing a plan for
6 additional financing to pay for these unfunded projects. Order re November 20, 2013 Quarterly
7 Status Hearing at 4, Nov. 22, 2013, ECF No. 1271.

8 The court simply finds no merit in the claim that counsel for the Government of Guam would
9 be committing an ethical violation if he or she were to communicate directly with the Receiver. The
10 court notes that none of the government’s prior legal counsel ever expressed such a concern. The
11 Receiver has spoken directly with both Shannon Taitano and Ray Haddock, legal counsel to the prior
12 administration, and also to James Canto, prior Chief Legal Counsel to Governor Calvo. Moreover,
13 both Mr. Mantanona and Ms. Miller have directly exchanged letters and emails with the Receiver
14 as demonstrated in the exhibits attached to the Special Report.

15 As noted by the Receiver in its Reply Brief, the Government of Guam has two options with
16 regard to these additional projects: either fund them or remove the requirement. “[A] refusal to do
17 either places the Receiver in the position of being unable to complete its responsibilities.”
18 Receiver’s Reply Brief, at 3, ECF No. 1307. Since these projects remain a Government of Guam
19 imposed requirement, the only source of funds available to the Receiver to pay for these projects is
20 the revenue GSWA generates through the solid waste system. The Receiver proposes to halt
21 reimbursement payments to the Government of Guam and apply those sums to the completion of the
22 unfunded projects. These projects are estimated to cost an additional \$19.9 million. The Receiver’s
23 proposal would not jeopardize the repayment of the bonds since the bonds are paid directly from
24 Section 30 funds. This proposal would, however, have a direct impact on the Government of
25 Guam’s General Fund, which will not be receiving the \$4.5 million annually. Funding these projects
26 in this manner will also add two to three years to the Transition Timeline adopted by the court. As
27 the Receiver notes, the Government of Guam can eliminate this issue by simply withdrawing the
28 requirement for these projects or working with the Receiver to fund the projects in a different way.

1 The court concurs with the Receiver's assessment with regard to these additional projects.
2 The Government of Guam must either fund them or remove the requirement. Since these projects
3 remain a Government of Guam imposed requirement, the Receiver must complete these projects
4 using the funds it currently has at its disposal, which includes the \$4.5 million it annually reimburses
5 to the Government of Guam's General Fund.

6 E. Lagu Sanitation Settlement

7 As stated previously, on January 10, 2014, the court ordered "Rawlen Mantanona and David
8 Manning to meet with counsel for Lagu in a good faith attempt to resolve Lagu's concerns without
9 further need for court intervention." See Order at 2, ECF No. 1288. In response to the Order, the
10 Receiver emailed Mr. Mantanona and asked that he contact Lagu's counsel and schedule a meeting
11 as directed by the court. See Attachment G to Special Report, ECF No. 1295. Mr. Mantanona
12 replied the following day that he was off island and would review the court's Order when he returned
13 to the office on January 21, 2014. When he returned, Mr. Mantanona stated that his firm represented
14 the Government of Guam and not GBB, GSWA or the GSWA Board. Mr. Mantanona also stated
15 that the government would be raising this issue with the court soon. *Id.*

16 On January 29, 2014, shortly after the Receiver had filed its Special Report, the Government
17 of Guam filed a Motion for Clarification. See ECF No. 1297. Therein, the Government of Guam
18 sought clarification of the court's Order directing it to meet with the Receiver and counsel for Lagu.
19 The Government of Guam asserted two reasons for the clarification. First, the Government of Guam
20 wanted the court to clarify why Mr. Mantanona was being ordered to participate in such a meeting.
21 It contended that "[s]ince [the Government of Guam] has no interest in the settlement agreement or
22 the underlying dispute, there does not appear to be any reason on the face of the Order for Attorney
23 Mantanona to participate in a meeting with Lagu on its behalf." *Id.* at 2. Second, the Government
24 of Guam wanted to know whether the court was ordering Mr. Mantanona to represent or provide
25 legal advice to either GSWA or the Receiver. The Government of Guam believed that Mr.
26 Mantanona could not provide any legal assistance to GSWA or the Receiver because (1) such work
27 was not included in the scope of services the Cabot Mantanona firm agreed to perform under its
28 retainer agreement and (2) such work would create an impermissible conflict of interest.

1 The court finds it curious that the Government of Guam would claim that it has no interest
2 in the settlement agreement or the underlying dispute with Lagu. The debt owed by Lagu is a debt
3 owed to the Government of Guam. This debt existed before the creation of GSWA, so it is
4 surprising that the Government of Guam now asserts that it has no interest in the hundreds of
5 thousands of dollars owed by Lagu. Although it is an autonomous agency, GSWA is still a part of
6 the Government of Guam, so any monies owed to GSWA is a debt owed to the Government of
7 Guam.

8 The court did not expect Mr. Mantanona to provide legal advice to either the Receiver or
9 GSWA with regard to this issue since he does not represent them. Nevertheless, the Government
10 of Guam has not fully explained how an “impermissible conflict” would arise simply by having Mr.
11 Mantanona – as the counsel for the Government of Guam – meet with the Receiver and counsel for
12 Lagu in an attempt to address the modifications sought by Lagu to the settlement agreement. One
13 would think that the Government of Guam’s interest would be aligned with the interests of GSWA
14 in seeking repayment from Lagu.

15 The court has already authorized the Receiver to retain counsel of its choosing to assist the
16 Receiver with matters, such as Ordot land condemnation proceedings and the RFP review. The court
17 also authorizes the Receiver’s legal counsel to meet with Lagu’s counsel in an attempt to resolve this
18 issue. Since the Government of Guam refuses to meet with the Receiver and Lagu’s counsel as
19 directed, then it should not complain in the future if the Receiver and Lagu reach a modified
20 settlement that is not acceptable to the Government of Guam.¹⁶ Payment for counsel’s services shall
21 come from the monies the Receiver would otherwise use to reimburse the Government of Guam for
22 the debt service.

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28 ¹⁶ In light of the court’s decision, the Government of Guam’s Motion for Clarification (ECF
No. 1297) is hereby moot.

1 **CONCLUSION**

2 The decision to appoint a Receiver was not lightly made by this court. The Government of
3 Guam had not lived up to its obligations under the Consent Decree, but more importantly, the
4 Government of Guam had failed the people of Guam with regard to its poor solid waste management
5 operations. Shortly after its appointment, the Receiver performed an assessment of the SWMD
6 operations. *See* Quarterly Report at 3, July 10, 2008, ECF No. 250-1. Although the Receiver found
7 a dedicated staff of front line workers, the state of solid waste operations and working conditions for
8 the employees were deplorable. *Id.* The court recalls that the Government of Guam only had *one*
9 operable government-owned garbage truck servicing the entire island, and the Receiver reported that
10 almost all of the Government-owned equipment was in a severe state of disrepair. *Id.* As a result,
11 the Government of Guam rented additional trucks and equipment from private enterprises, which
12 averaged approximately *\$11,000 per day* or about \$4 million annually. *Id.* In an effort to keep
13 rental expenses down, the Government of Guam implemented a three-shift schedule for garbage
14 collection, which left no time for regular or preventive maintenance on the trucks. *Id.* This resulted
15 in extremely inconsistent and unreliable residential trash collection. Another example of
16 mismanagement involved the rental of an excavator for use at the Ordot Dump. The government-
17 owned excavator had broken down and needed a fan belt replaced at a cost of \$118. Rather than
18 replace the fan belt, the Government of Guam rented an excavator at the cost of approximately
19 \$260,000 per year. There was a lack of proper daily cover for the waste disposed of at the Ordot
20 Dump. When the Government of Guam managed to provide daily cover, there was no sprinkler
21 service to control dust for the workers and long time and suffering residents who lived near the Ordot
22 Dump. The Ordot Dump was quickly running out of space for waste. Additionally, the SWMD's
23 billing and collection practices were just as atrocious. Commercial waste haulers owed hundreds of
24 thousands of dollars to the Government of Guam, and thousands of Guam residents were not paying
25 for trash collection services they received.¹⁷ Finally, operations at the Ordot Dump threatened the
26

27 ¹⁷ While many Guam residents were conscientiously paying the monthly collection fees, the
28 mismanagement by the Government of Guam resulted in approximately 4,000 residents receiving
free trash pick-up service.

1 environment through the discharge of leachate into the surrounding lands and waters and also created
2 serious health concerns for Guam's residents because of the vector issues (*i.e.*, flies, rodents, and
3 other pests), odor problems, and fire hazard. This court experienced the nauseating odor of the
4 leachate and the huge flies surrounding the mountain of trash at the Ordot Dump when it endured
5 the site visits at the dump site.

6 The Receiver resolved most of these issues. Working conditions for the employees have
7 improved, residential waste collections have been consistent, garbage trucks and equipment are
8 properly serviced and maintained, billings and collections have improved and stabilized, resulting
9 in increased operational revenues, the Ordot Dump has ceased operations and a new landfill has been
10 opened. The Receiver's success is attributed in great part to the dedicated staff of the SWMD (and
11 now GSWA). Additionally, the Receiver's work could not have been accomplished without the
12 assistance and cooperation of countless government officials, such as Governor Felix P. Camacho
13 and his administration (including the Bureau of Budget Management and Research, the Department
14 of Administration and the Guam Environmental Protection Agency) and the Attorney General's legal
15 team.

16 With the opening of the Layon Landfill completed and the environmental closure of the
17 Ordot Dump in progress, the court can not over-emphasize that the *finish line is in sight*. The
18 Government of Guam will soon be in complete compliance with the Consent Decree. Thus, the
19 court finds the actions (or lack thereof) taken by the legal team of the Government of Guam,
20 Ms. Miller and Mr. Mantanona, to be unacceptable. Instead of moving forward in this process, their
21 actions appear to obstruct, delay and thwart the Receiver's efforts and the efforts of the new GSWA
22 Board to complete the tasks the Government of Guam was required to do under the Consent Decree.
23 Counsels' refusal to assist the Receiver, whether it be with the Ordot land condemnation actions or
24 the RFP review, or to even meet with the Receiver to discuss the Lagu settlement or the development
25 of a plan for financing four additional projects is a disservice to the Government of Guam, the
26 GSWA Board and most especially, the people of Guam. Despite the court finally granting full
27 substitution of counsel, Mr. Mantanona resists doing much of the work the Attorney General once
28 performed. Mr. Mantanona attempts to use the rules of professional conduct to shield himself from

1 cooperatively working with the Receiver. However, the court would not direct counsel to cooperate
2 with and assist the Receiver in the performance of its duties, if to do so would expose counsel to
3 ethical charges.¹⁸

4 The Government of Guam reassured the court that Mr. Mantanona's substitution would not
5 result in any postponement or delay. Clearly, this has not been the case. Now, there has been a three-
6 month delay with regard to the acquisition of the last property needed for the proper closure of the
7 Ordot Dump and a delay in issuing the RFP for legal services for the GSWA Board. Aside from this
8 delay, the Transition Timeline approved by the court may have to be lengthened. Since the Miller
9 Mantanona team representing the Lt. Governor of Guam and the Government of Guam refuses to
10 meet with the Receiver to discuss ways to fund the additional projects through other means or
11 remove the requirement for such projects, the Receiver may be left with no other option but to fund
12 these projects using the \$4.5 million it annually reimburses to the Government of Guam for debt
13 service. Funding these projects in this manner may add another two to three years to the Transition
14 Timeline adopted by the court – a timeline the GSWA Board has requested be shortened.¹⁹

15 Because the Government of Guam and the Office of the Lt. Governor, through its counsels,
16 Mr. Mantanona and Ms. Miller, refuse to use their best efforts to cooperate with and assist the
17 Receiver in the performance of its duties, the court hereby orders the following:

- 18 • The Receiver is authorized to retain counsel of its own choosing to assist the
19 Receiver in completing the work that was required of the Government of Guam under
20 the Consent Decree.
- 21 • The Receiver's counsel shall work with the Receiver to resolve the above-discussed
22 issues, and more particularly to expedite the acquisition of the last Ordot property

24 ¹⁸ The court will not tolerate the unprofessional tone and tenor of the language used in the
25 letters and pleadings written by counsels for the Government of Guam. While the court recognizes
26 this is an adversarial system, attorneys must still demonstrate respect for the law, and the court
27 expects counsel to treat each other with a high degree of civility and respect. Counsel must not lower
their professionalism by making unsupported accusations of unethical conduct by prior counsel.

28 ¹⁹ The GSWA Board's concerns will be addressed in a separate order, since briefing on this
matter is ongoing and a hearing will be held at a later date.

1 and review and issue the RFP for legal services for the GSWA Board.

- 2 • The Receiver is further authorized to pay for these legal fees from GSWA's revenues,
3 even if the expenditure of the funds will negatively impact GSWA's annual
4 reimbursement of \$4.5 million to the Government of Guam.

5 IT IS SO ORDERED.



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Mar 17, 2014