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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

This matter came before the court on December 9, 2010, for a quarterly status hearing. At that time, the Receiver, Gershman, Brickner & Bratton, Inc. (“GBB”) provided an update on the progress of Consent Decree projects and on the operations of the Solid Waste Management Division (“SWMD”). See Docket No. 646.

It is clear that there has been much progress on the Consent Decree projects and that the opening of the Layon landfill is only months away. The court is particularly impressed by the following achievements:

- **Operation Cost Savings.** Throughout the tenure of GBB, to date, there has been significant cost savings in the operations of SWMD of approximately \$3,133,935. Prior to the receivership, SWMD’s operating expenses were escalating rapidly, primarily because equipment rental had increased to about \$11,000 per day. Because of the hard work of GBB and SWMD’s employees,

1 operations have been streamlined and services improved. Customers can now  
2 count on a dependable, weekly schedule of curbside trash collection.

- 3 • **Capital Savings.** There have been capital cost savings of \$21.2 million for the  
4 Layon landfill and its related projects. And, it is expected that these savings will  
5 increase to an even larger amount as the Layon Landfill and its associated  
6 projects are completed next year.
- 7 • **Increase in SWMD revenues.** With the implementation of the interim rates,  
8 new customer billing system and great efficiencies in operations SWMD's  
9 revenues increased significantly.
- 10 • **Curbside Recycling Pilot Project.** The SWMD has completed the  
11 implementation of the pilot curbside recycling program in the northern area of  
12 the island and is expanding the program to the central region of the island. The  
13 SWMD also is conducting waste characterization surveys of the trash generated  
14 by recycling pilot program participants.
- 15 • **Construction Milestones.** The installation of the liner material in Cell 1 is  
16 completed, and more than 80 percent of the liner for Cell 2 is completed. In  
17 addition, the administration building at Layon has been completed.
- 18 • **Contract Management.** A Request for Proposals for an operator of the Layon  
19 landfill has been issued.
- 20 • **Ordot Dump Closure.** The scope of work has been finalized for the closure of  
21 the dump. Request for Proposals for consulting services associated with the  
22 closure has been issued, and the process to secure a consultant is underway.

23 Pursuant to the concerns raised at the Hearing and in the Report, the following items are

24 **ORDERED.**

- 25 • **Tire Removal.** At the hearing, Attorney Pat Mason represented that the removal  
26 cost of tires from the Department of Public Works ("DPW") compound is  
27 \$22.00 per tire. The court finds this cost excessive. Accordingly, the court  
28 temporarily suspends its prior order to remove all tires from the compound. The

1 court hereby **ORDERS** the Attorney General's office to work with the Receiver  
2 to find a more cost effective solution. The Attorney General shall file a report  
3 by February 9, 2011 indicating what remedial action DPW intends to take.

- 4 • **SWMD Bank Accounts.** In the past years, the Treasurer of Guam has  
5 withdrawn funds from the SWMD bank accounts. Before the interim rates and  
6 new billing system were in place, this was not a problem because SWMD's  
7 expenses approximately equaled SWMD income. However, SWMD's revenue  
8 has significantly increased—outpacing expenses by a 2 to 1 ratio.<sup>1</sup> Given the  
9 chronic cash shortage the Government of Guam continues to experience, solid  
10 waste funds, specifically the cash in the SWMD bank accounts, must be  
11 reserved exclusively for the use of the SWMD. The reserves required to sustain  
12 SWMD operations going forward, are essential to compliance with the Consent  
13 Decree and must be backed by the cash balances to make them meaningful.  
14 Accordingly, the request to reserve the cash in the **SWMD** bank accounts for the  
15 use of SWMD is hereby **APPROVED**. While there may be circumstances that  
16 may warrant cash transfers in excess of the actual expenditures, such transfers  
17 should be supported by documentation of the justification for the transfer. And,  
18 the transferral of any SWMD funds shall occur only after the Receiver has been  
19 informed of the need for the transfer and consents to the request or upon court  
20 approval. SWMD must be able to rely upon its revenue in order to meet debt  
21 service requirements and to provide for the future needs of the solid waste  
22 system.

- 23 • **Withdrawal in Excess of Expenses.** The court notes that for FY 2010, SWMD  
24 incurred expenses in the amount of \$3,951,166.74, however, the Treasurer of  
25 Guam withdrew \$7,649,663.53 from the SWMD bank accounts, an excess  
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27 <sup>1</sup> For FY 2010, SWMD had deposits totaling \$7,934,384.09 and expenses of  
28 \$3,951,166.74.

1 amount of \$3,698,166.74. The Treasurer of Guam is ordered to provide the  
2 proper documentation supporting the withdrawal to the Receiver by January 14,  
3 2011. If there is no supporting documentation, the Treasurer of Guam is  
4 **ORDERED** to redeposit \$3,698,166.74 in SWMD's bank account or provide  
5 SWMD credit for future expenditures.<sup>2</sup>

- 6 • ***Electrical Service of SWMD Offices.*** It is important that SWMD operations are  
7 not disrupted with the loss of electrical service due to unpaid electric bills by  
8 DPW. To ensure there is no such disruption, Guam Power Authority is  
9 **ORDERED** to separate the services of SWMD from those of DPW. To that  
10 end, the Receiver is hereby authorized to pay any reasonable cost associated  
11 with the separation of services.
- 12 • ***Capital Funding Requirements.*** To ensure the necessary financing is in place,  
13 any capital savings shall be retained until the full cost of closure and post-  
14 closure care for the Ordot Dump is determined. GBB is **ORDERED** to work  
15 with the incoming Governor-Elect and administration to determine whether the  
16 Government of Guam intends to give up any claim to use any capital funding  
17 not required for compliance with the Consent Decree. GBB shall report to the  
18 court at the next Quarterly Hearing the outcome of such discussions.
- 19 • ***New Accounting and Bank Account Structure.*** The plan to establish a new  
20 accounting and bank account structure, as described on pages 30 through 33 of  
21 the Receiver's Quarterly Report (Docket No. 646), is hereby **APPROVED**.<sup>3</sup> It

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22  
23 <sup>2</sup> The Treasurer of Guam may be able to provide documentation as to an amount less  
24 than the full amount of \$3,698,166.74. Provided the Receiver approves of the documentation,  
25 the Treasurer of Guam shall redeposit into SWMD's bank account or provide credit for the  
26 balance for which there is no supporting documentation.

27 <sup>3</sup> The bank accounts referenced in this Order are listed in Figure 7 of the Receiver's  
28 Quarterly Status Report dated December 9, 2010. Disbursements from the Citibank accounts  
are governed by the amended disbursement procedures previously approved by this court  
(see Docket Nos. 376 and 475). The new accounts at Citibank to be established pursuant to

1 is further **ORDERED** that funds shall only be withdrawn from these accounts  
2 and all existing bank accounts of the SWMD by or with the written approval of  
3 the Receiver, for the purpose outlined in the Receiver's December 9, 2010  
4 Quarterly Report, the Supplemental Bond Indenture, or as ordered by this court.

5 The next hearing in this matter shall be at 9:00 a.m. on April 13, 2011.<sup>4</sup> In addition, the  
6 following individuals are ordered to be in attendance to present their respective reports  
7 concerning the progress of the various Consent Decree Projects:

- 8 • Elisabeth T. Cruz, Administrator of Guam Environmental Protection Agency<sup>5</sup>;
- 9 • Joaquin Blaz, Acting Highway Administrator of the Department of Public  
10 Works and Gene Niemasz of Parsons Transportation Group, to discuss the status  
11 of bridges, road widening and snail mitigation;
- 12 • Tor Gudmundsen, President of TG Engineers, P.C.;
- 13 • Paul Baron, Sr. Project Manager of Winzler and Kelly;
- 14 • Ho Eun, President of Core Tech International (or designee that is familiar with  
15 its project);

16 \_\_\_\_\_  
17 this Order are:

- 18 1. System Operations and Maintenance Fund.
- 19 2. Equipment Replacement Account.
- 20 3. New Cell Development Account.
- 21 4. Cell Closure Account.
- 22 5. Post-closure Care Account.
- 23 6. System Surplus Account.

24 The Receiver is authorized to transfer funds among the accounts listed in Figure 7 of the  
25 Receivers December 9, 2010 Quarterly Report (Docket No. 646) to achieve the allocation of  
26 funds among the accounts outlined in the Report and required by the Supplemental Bond  
27 Resolution. In managing all of the accounts at the Bank of Guam, Bank Pacific and ANZ  
28 Bank, the Receiver shall act by and through GBB Special Principal Associate David L.  
Manning or GBB President, Mr. Harvey W. Gershman,

<sup>4</sup> This hearing will concern two quarters— October, 2010 through December, 2010 and  
January, 2011 through March, 2011.

<sup>5</sup> In the event the Governor-Elect does not retain Ms. Cruz in her current position, her  
successor shall appear.

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- Thomas Anderson, Executive Vice President of Black Construction Corporation (or designee that is familiar with its project); and
- A designee from Smithbridge that is familiar with its project.

The court reiterates its previous order requiring the Governor of Guam, and the Speaker of the Legislature, to be in attendance for the hearing. Again, however, if the Governor is unable to attend, he may designate the Lieutenant Governor to attend. If the Speaker is unable to attend, she may designate the Vice Speaker to attend.

**SO ORDERED.**



**/s/ Frances M. Tydingco-Gatewood**  
**Chief Judge**  
**Dated: Dec 10, 2010**