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IN THE UNITED STATES DISTRICT COURT
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 7, 2011, for a quarterly status hearing. At that time, the Receiver, Gershman, Brickner & Bratton, Inc. (“the Receiver”), provided an update on the progress of the Consent Decree projects and on the operations of the Guam Solid Waste Authority (“GSWA”). *See* Quarterly Report of the Receiver, ECF No. 859.

The Receiver reported on the significant accomplishments achieved in the last quarter. Particularly notable accomplishments include—

- ***Ordot Dump Closure Progress.*** Much of the investigation work that needs to be performed to complete the closure of the Ordot Dump is on land not owned by the Government of Guam. In order to access the non-Government land, the Receiver needs to obtain a Right-of-Entry (“ROE”) agreement with the respective landowners. The Receiver reported that six ROE agreements have been obtained, and that they will continue to work on procuring the remaining agreements.

As for the work on Government land, the Receiver reported that, among other achievements, the topographic survey of Dero Road and on-site Dump areas was

1 completed, the Quality Assurance Project Plan was developed and is under review
2 by the Guam Environmental Protection Agency (“GEPA”) and the United States
3 Environmental Protection Agency (“EPA”), the Wetland delineation was completed
4 and submitted to the United States Army Corps of Engineers for a permit, and the
5 interim cap design was prepared.

- 6 • ***Layon Landfill, Access Road and Leachate Management.*** Remaining
7 construction items were completed, and the Receiver received finalized
8 construction documentation, which was provided to regulatory agencies in
9 compliance with permit requirements. The contractor, Core Tech International,
10 worked to complete all construction finishing work and project wrap-up on the
11 utilities, traffic control and appurtenances for the access road. Initial improvements
12 at the Inarajan Wastewater Treatment Plant were completed, which will allow for
13 accurate collection of influent and effluent wastewater characteristics and flow
14 monitoring, as well as improved performance in the aeration basins and
15 significantly greater operational control and flexibility provided to Guam
16 Waterworks Authority (“GWA”). The design work for future improvements to the
17 plant have also been completed and submitted, and they are now available to be
18 implemented in a shorter time period than with conventional procurement
19 timelines.
- 20 • ***GSWA Trash Collection.*** The customer base at GSWA has remained stable at
21 about 17,000 households. Collections continue to be consistent, with an on-time
22 collection rate of 99.7%.
- 23 • ***Curbside Recycling Pilot Program.*** The GSWA has now completed three full
24 quarters of the Curbside Recycling Pilot Program. The program, which was fully
25 implemented in January 2011, services 1,000 customers who have been given
26 recycling carts. During the three quarters of the program, a total of 272,461 pounds
27 of material was collected, with 251,581 pounds of the total comprising recyclables
28 and the remaining 20,880 pounds comprising contaminates.

- 1 • ***Metallic and Bulky Waste Collection Program.*** In September 2011, the GSWA
2 launched its Metallic and Bulky Waste Collection Program. The program provides
3 two free collections a year by appointment to customers in good standing, with
4 additional collection service for \$25.00 per pickup. In September, the GSWA
5 collected 56 items from 23 customers. In October, 476 items were collected from
6 182 customers. The collected items are recycled to the extent practical.
- 7 • ***Operating Expenditures.*** The GSWA operating expenditures for fiscal year 2011
8 (October 1, 2010 to September 30, 2011) was 26% below its approved budget.
9 However, this figure does not consider the operating expenses of the new Layon
10 Landfill and Hauler-Only Transfer Station.

11 Pursuant to the issues raised at the Hearing and in the Quarterly Report, the court hereby

12 **ORDERS** the following:

- 13 • ***Guam Solid Waste Authority Act.*** The Receiver reported that the Office of the
14 Attorney General of Guam has yet to fully respond to its issues with and questions
15 about the Guam Solid Waste Authority Act. The court finds that a response from
16 the Office of the Attorney General is necessary for the Receiver to understand its
17 role and authority at GSWA. Accordingly, the Office of the Attorney General shall
18 respond to the Receiver's remaining questions and issues by January 9, 2012.
- 19 • ***Transfer of Assets.*** The Receiver reported that almost all assets have been
20 transferred to the appropriate utility. The only remaining asset that needs to be
21 transferred is the street light account with the Guam Power Authority. The account
22 is currently under the contractor, Core Tech International, and needs to be
23 transferred to the Department of Public Works ("DPW"). The court hereby orders
24 DPW to accept the transfer of the street light account by January 9, 2012.
- 25 • ***Leachate Treatment Rate.*** The Receiver reported that it has only collected 9.3%
26 of its Government billings. This low percentage is driven primarily by an
27 agreement with GWA, which allows GWA to accumulate charges for disposal of
28 biosolids. GWA has been allowed to accumulate these charges with the intent that

1 the accumulated balance will be applied to fees associated with treatment of
2 leachate from the Layon Landfill. The balance owed by GWA as of September 30,
3 2011, was \$599,643.99, and additional charges are accumulating at a rate in excess
4 of \$20,000 per month. To accurately weigh the feasibility of the agreement with
5 GWA, the Receiver needs to know the rate of leachate treatment. Accordingly, the
6 Public Utilities Commission is hereby ordered to set the rate for the treatment of
7 leachate from the Layon Landfill and address any rate issues that need to be
8 addressed to enable GWA to pay its obligations for waste disposal .

- 9 • **Access Road.** The Receiver reported that the final pavement of the access road to
10 the Layon Landfill has yet to be completed. The road will remain uncompleted
11 pending a decision from DPW and the Federal Highway Administration on the
12 quality of the asphaltic paving material. The Receiver is concerned that the utility
13 covers in the road will experience unnecessary stress and damage over time as a
14 result of the uneven pavement surfaces at each structure. The court finds that this
15 delay creates a potential safety hazard, and if it persists it will be costly to GSWA.
16 Accordingly, the court hereby orders DPW to resolve the issues of testing and
17 acceptance as soon as possible. DPW is ordered to include the status of this matter
18 in its weekly reports.
- 19 • **Route 4 Safety.** The Receiver reported that DPW is in receipt of Winzler & Kelly's
20 assessment of the safety issues on Route 4, but has yet to respond to the assessment.
21 As a matter of public safety, the Route 4 hazards need to be resolved immediately.
22 Accordingly, DPW shall review the assessment and provide a response to the
23 Receiver by January 9, 2012.
- 24 • **Delinquent Commercial Haulers.** The Government of Guam shall continue to
25 work with Trashco and Lagu to resolve the delinquent billing issues. The
26 Government of Guam or the Receiver shall submit a report to the court if it appears
27 that negotiations will not be successful. If the court receives such a report, it will
28 issue a scheduling order for further briefing on the motions to stay and intervene.

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- **Military.** The court orders that the volume of waste delivered on behalf of the military shall be monitored for several months, so the Receiver and the military can determine any necessary changes to the existing contract.

The next quarterly hearing is scheduled for April 11, 2012 at 9:00 a.m. It is ordered that the following individuals be in attendance to present their respective reports concerning the progress of the Consent Decree projects:

- Joanne Brown, Director of the Department of Public Works;
- Gene Niemasz or designee familiar with the projects, Parsons Transportation Group;
- Ivan Quinata, Administrator of Guam Environmental Protection Agency;
- Paul Baron, Sr. Project Manager of Winzler and Kelly; and
- A designee from Brown and Caldwell who is familiar with the projects.

The court reiterates its previous order requiring the Governor of Guam, and the Speaker of the Legislature, to be in attendance. 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. The court encourages members of the 31st Guam Legislature to attend as well.

SO ORDERED.



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Dec 08, 2011