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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 October 2015 Status Hearing and
Presentation of Receiver's Report

This matter came before the court on October 21, 2015, for the presentation of the Receiver's report. The Receiver provided an update on the progress of the Consent Decree projects and on the operations of the Guam Solid Waste Authority ("GSWA") for the period from January 1, 2015 to June 30, 2015. *See* Quarterly Report (Oct. 21, 2015), ECF No. 1634. Notable accomplishments achieved during this time frame include the following:

- **Ordot Dump Closure Progress.** Despite challenging weather events during the reporting period, the Receiver continued its work to environmentally close the Ordot Dump. The court notes that the Ordot Dump closure construction has two phases. Phase I is the construction of the cover system over the eastern half of the dump, to include the construction of the Dero Road sewer line system, while Phase II is the construction of the remaining cover system over the western half of the dump. The Receiver estimates that through June 2015, Phase I work is more than 90% complete. The Receiver anticipates Phase II will be completed in mid- to late December, assuming there are no other delays (such as inclement weather) beyond the contractor's control. Since January 30, 2015, the

1 new sewer line system has captured more than 2.5 million gallons of leachate from the
2 eastern side of the dump and diverted it to be treated at the Hagatna Wastewater
3 Treatment Plant. Quarterly monitoring of the leachate quality and quantity indicates that
4 the leachate quality is well within discharge parameters. When the Phase II collection
5 system is complete, the sewer line will deliver all leachate from the entire Ordot Dump
6 to the treatment plant for proper disposal, thus ensuring that the Ordot Dump is no longer
7 a source of future pollution. Additionally, installation of the gas extraction wells and
8 collection piping continued during the reporting period. The Receiver stated that the gas
9 collection system has since been completed. The Receiver estimates the gas collection
10 system will prevent about 490 metric tons of carbon dioxide equivalent of greenhouse
11 gases from being emitted into the environment. Finally, the Receiver developed a post-
12 closure plan in compliance with federal and local requirements. The plan is still under
13 review by the regulatory agencies¹ and approval is pending.

- 14 • **Layon Landfill, Environmental Monitoring and Compliance.** The Receiver
15 continued to oversee operations at the Layon Landfill. The Receiver continued to
16 advance environmental compliance coordination with the EPA and GEPA by holding
17 bi-weekly meetings and by regularly reporting data and results of environmental testing
18 and monitoring. The Receiver also ensured ongoing compliance with all permit
19 conditions and reported that the landfill continues to meet all applicable environmental
20 standards and regulations. During the reporting period, the Layon Landfill received
21 45,208 tons of municipal solid waste, which is slightly lower than the same period of
22 time in 2014. Finally, the Receiver reported that GGH Guam – the contracted landfill
23 operator – recently purchased and installed odor control misters in an effort to dissipate
24 some or all of the odors associated with the landfill.² The Receiver shall continue

26 ¹ These regulatory agencies are the U.S. Environmental Protection Agency (“EPA”) and the
27 Guam Environmental Protection Agency (“GEPA”).

28 ² The noxious odors are primarily attributable to the disposal of biosolids from the
wastewater treatment plants operated by the Guam Waterworks Authority (“GWA”). It was reported

1 discussing the matter with GWA Interim General Manager Mark Miller so that a
2 reasonable solution to this recurring complaint may be achieved with all possible haste.

- 3 • **GSWA Operations.** GSWA crews performed approximately 442,717 residential trash
4 collections, of which 99.79% were made on time, and collected 9,941.02 tons of trash
5 from residential customers over the six-month reporting period. Crews also collected
6 2,285 metallic and bulky items during 825 appointments made by GSWA customers.
7 The customer base increased to 17,558, and the number of customers registering for
8 online services increased 15.7% to 8,514 during the reporting period, with 3,787
9 customers paying their bills online and 3,272 choosing paperless billing. Additionally,
10 cash collections from residential customers were 102% of billed charges during the
11 reporting period.

12 At the hearing, the Receiver, the Attorney General and the EPA's counsel praised the
13 hard work of the GSWA staff. The court, too, commends the GSWA staff for their
14 outstanding work. Because of their dedicated service, residential trash collections are
15 consistently made on time and residential delinquency rates remain very low
16 (approximately 2.1%). The court notes that before the Receivership, the quality of the
17 service was extremely poor and more than 4,000 customers received services without
18 paying while others paid sporadically. The customer service staff, under the guidance
19 of the Receiver and the leadership of Alicia Fejeran, have contributed to the success of
20 GSWA operations, and the court appreciates their impressive collection efforts. The low
21 delinquency rates clearly demonstrate sound management practices and quality service.

- 22 • **Financial Issues and Capital Funding.** Under the Receiver's management, GSWA
23 remained financially strong during the first half of FY2015. Total expenses were almost
24 2% below the approved budget, and revenue exceeded the budget estimate by 4%.
25 GSWA's cash position also remained strong during the reporting period, and the
26

27 that GWA's facilities do not currently employ the best available process to manage their biosolids
28 prior to disposal. Drying the biosolids before transport and disposal would greatly reduce the stench
and also minimize the volume of waste by as much as 30%.

1 Receiver estimates that GSWA's fund balance increased approximately \$268,908
2 through March 31, 2015. The Receiver is on target to complete the original Consent
3 Decree projects under budget. In 2008, the Receiver estimated these projects would cost
4 about \$159.7 million. The Receiver's revised estimate for these projects is
5 approximately \$158.9 million, with expenditures to date about \$137.5 million.

6 The court compliments the Receiver's continued efforts to ensure GSWA remains
7 financially sound. The Receiver's strong fiscal management will assure successful
8 completion of the Consent Decree projects.

9 In addition to these achievements, other concerns were raised at the hearing and in the
10 Receiver's report. Accordingly, the following items are ORDERED:

11 **1. Disposal of Asbestos Containing Material at Layon Landfill**

12 The original permit issued on November 23, 2009, for the Layon Landfill by GEPA
13 prohibited the disposal of asbestos containing material ("ACM") at the landfill. More than five years
14 later, when the permit was renewed on January 28, 2015, GEPA included a special condition that
15 a plan be developed to begin accepting ACM at the landfill.³ There are a number of unanswered
16 questions about GEPA's proposal. How much waste will likely be put in the landfill if ACM is to
17 be accepted? How much landfill space will it consume? What, if any, health hazards are posed by
18 accepting ACM at the Layon Landfill? Have the southern mayors and residents been consulted or
19 briefed, given their concerns about possible environmental contamination? These questions were
20 raised by the court at the March 5, 2015 hearing, but GEPA has failed to answer all of these
21 questions. Since GEPA is proposing the disposal of ACM at the landfill, GEPA bears the
22 responsibility of producing a plan to the Receiver and seeking a special rate from the Public Utilities
23 Commission ("PUC") for the ACM disposal, if the plan is approved.

24 **2. Route 4 Safety Enhancements**

25 On June 29, 2015, the court issued an Order that removed the Route 4 safety enhancements
26 from the Receiver's scope of work. *See* Order, ECF No. 1592. Thereafter the parties filed an

27 ³ Without deciding the matter, the court questions whether GEPA, as the regulating agency,
28 has the legal authority to require GSWA to accept asbestos for disposal at the landfill.

1 Amended Stipulation and requested the court terminate the requirement that the Government of
2 Guam file weekly reports on the progress of road and bridge projects leading to the Layon Landfill
3 and also terminate the requirement that GEPA file biweekly status reports on the dump sites. *See*
4 ECF No. 1607. In light of the court's prior ruling, the work of the Receiver to monitor these projects
5 is at an end, and thus the court approves the Amended Stipulation. The Government of Guam and
6 its agencies are no longer required to file these reports with the court.

7 Additionally, the Receiver sought clarification of the court's Order concerning payment for
8 work authorized and performed prior to the June 29th Order. The court authorizes the Receiver to
9 pay such expenses, provided that any problems identified by the Receiver in the work is addressed
10 and corrected.

11 3. GSWA Budget for 2016

12 The Receiver proposed a Fiscal Year 2016 operating budget for the court's consideration.
13 *See* Quarterly Status Report (Oct. 21, 2015) at Tab 21, ECF No. 1634. The FY2016 operating
14 budget proposal is as follows:

15 Personnel Expenses	\$3,090,000.00
16 Travel	\$5,000.00
17 Layon Landfill Operation	\$3,708,000.00
18 Hauler-Only Transfer Station	\$2,884,000.00
19 Other Contractual Services	\$2,832,912.00
20 Supplies and Materials	\$566,500.00
21 Equipment	\$10,300.00
22 Utilities	\$123,600.00
23 Communications	\$12,360.00
24 Miscellaneous	\$123,600.00
25 Required Reserve Contributions (Including Equipment Replacement, Cell Closure, Post Closure Care, Future Cell Development, and Reserve for Unfunded Expenses)	\$5,398,197.00
26 GRAND TOTAL	\$18,754,469.00

27
28 The court finds that the proposed budget is reasonable and hereby approves the FY2016

1 operating budget as presented.

2 **4. Financial Plan for Additional Projects and Post-Closure Care**

3 As directed by the court, the Receiver submitted a revised transition timeline that will allow
4 it to complete the additional projects which the court determined are required by the Consent
5 Decree,⁴ and the Receiver has proposed a funding plan for post-closure care of the Ordot Dump. *See*
6 Quarterly Status Report (Oct. 21, 2015) at 47-55, ECF No. 1634. The Receiver estimates it will need
7 about \$9,442,900 for the additional projects, and, taking into account various factors, the Receiver
8 believes it is reasonable to anticipate that two dry seasons will be needed to complete this work.⁵
9 The estimated net present value of the 30-year post-closure care costs is approximately
10 \$15.7 million.⁶ Because the Government of Guam stated it did not have the funds to pay for the
11 additional projects or the post-closure care costs, the Receiver's recommended financial plan
12 envisions the use of the \$4.5 million in annual revenue that was previously used to reimburse the
13 Government of Guam for debt service.⁷ *Id.* at 49.

14 It is important to keep in mind that in 2008, the Receiver identified various financing options
15 for the Government of Guam's consideration for funding the Consent Decree projects. *See* Quarterly
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17 ⁴ These projects include the clean up and upgrade of the Agat & Malojloj Residential
18 Transfer Stations, the environmental clean up and closure of the Dededo Residential Transfer
19 Station, and the Dero Road upgrades. The upgrades of the transfer stations were required by GEPA
20 as a special condition to the Layon Landfill Facility Permit issued on November 23, 2009, and the
renewed permit issued on January 28, 2015.

21 ⁵ The Receiver states that the additional projects will be completed over calendar years 2016
and 2017.

22 ⁶ This estimate does not include the compensation of the trustee the Receiver proposes the
23 court appoint when the Receivership ends to manage the funds in the Ordot Dump Post-Closure Care
24 Reserve. Additionally, the estimate does not include the compensation for the independent engineer
25 the trustee will have to retain to inspect and certify that the post-closure care operator is performing
all of the work necessary for the proper care of the environmental closure of the Ordot Dump.

26 ⁷ The Receiver's financial plan would not only pay for the additional projects and the Ordot
27 Dump post-closure care but would also set aside funds required to open a new cell(s) and properly
28 close existing cells at the Layon Landfill – projects that may occur after the Receivership ends. *Id.*
at 48-49. The Receiver believes that a responsible financial plan must include funding for these
projects to ensure that the cells are ready when needed.

1 Report (Oct. 22, 2008) at 15-20, ECF No. 269-1. The Receiver recommended the Consent Decree
2 projects be funded through a *revenue bond* issue guaranteed by Section 30 funds received by the
3 Government of Guam. *Id.* at 21. The Government of Guam, in its discretion, opted to instead
4 finance the Consent Decree projects through the sale of *limited obligation bonds* secured by the
5 limited obligation of the Section 30 funds received by the Government of Guam. Although the
6 Government of Guam insists that the Receiver was required to charge a user rate that would ensure
7 the Government of Guam was fully reimbursed for the debt service paid on the solid waste bonds,
8 the Government of Guam's own bond counsel disagrees with this position. According to past
9 statements made by bond counsel Stanley J. Dirks,

10 **The Indenture does not contain a System rate covenant requiring the**
11 **maintenance of any particular level of System Revenues.** For example, there is
12 no covenant of the customary type to maintain rates, fees and charges for System
13 services at a level that would produce System Revenues sufficient to pay system
expenses and bond debt service and to provide an additional specified level of
"coverage" (often an amount equal to 25% or more of bond debt service.

14 *See* Ex. A (Feb. 24, 2011 Letter from Bond Counsel) at 3, ECF No. 681 (emphasis added).

15 The Receiver continues to maintain that the current rates are sufficient to allow it to fully
16 implement the Consent Decree and fulfill its fiduciary duty. While these rates were sufficient for
17 a time to partially reimburse the Government of Guam for debt service it paid, the Government of
18 Guam has yet to provide additional financing for the unfunded capital projects as well as the post-
19 closure expense of the Ordot Dump. The Receiver is thus requesting this court accept its proposed
20 financial plan and apply all of GSWA's current revenue to these purposes.

21 The Government of Guam requested the court give it an opportunity to respond to the
22 Receiver's proposed revised timeline and financing plan. Finding the request to be reasonable, the
23 court granted the Government of Guam an opportunity to file a written response. Accordingly, the
24 Government of Guam shall file comments to the Receiver's financial plan (and its own proposed
25 alternative plan if it has one) no later than November 12, 2015. The United States and the Receiver
26 shall each file a response thereto no later than December 1, 2015. The Government of Guam shall
27 file its reply no later than December 9, 2015. Additionally, the Government of Guam shall file a
28 proposed alternative transition timeline no later than December 21, 2015. Both the United States

1 and the Receiver shall file a response thereto no later than December 29, 2015, and the Government
2 of Guam shall file its reply no later than January 5, 2016. The court expects any alternative financial
3 plan and/or timeline proposed by the Government of Guam to contain specific details and cost
4 analysis that will enable the court, the Receiver and the United States to adequately make a
5 comparison between the options proposed.

6 In conclusion, the court acknowledges that much work has been accomplished over the last
7 two quarters. The construction work to environmentally close the Ordot Dump is anticipated to be
8 completed by the end of the year, and the Ordot Dump will no longer discharge harmful leachate into
9 Guam's waters. The support from and hard work of the GSWA staff continues to complement the
10 work performed by the Receiver's team. Additionally, with the recent re-entry and participation of
11 the Attorney General's Office, there appears to be a renewed spirit of collaboration between the
12 parties and the Receiver. The court orders the parties and all their departments and agencies to
13 continue to cooperate with the Receiver's efforts to responsibly and expeditiously complete the
14 Consent Decree projects.

15 IT IS SO ORDERED.



16 /s/ Frances M. Tydingco-Gatewood
17 Chief Judge
18 Dated: Oct 26, 2015