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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 January 14, 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. 538.

GBB was pleased to report the significant milestones that had been achieved in the last quarter. For example, all of the contracts required to complete the Layon Landfill have been executed. And, the Guam Environmental Protection Agency (“GEPA”) has approved the Solid Waste Facility Permit and Air Pollution Control Permit.<sup>1</sup>

In addition, the Trash Cart Rollout Plan has been implemented and is proving to be highly successful. Thus far, there has been a 53% increase in new customers registered.

At the hearing, GBB asked for the court’s guidance concerning whether it should set the

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<sup>1</sup> The court understands that GEPA and the United States Environmental Protection Agency were instrumental in achieving this goal.

1 rate charged to Guam Waterworks Authority (“GWA”) for the disposal of biosolids. At this  
2 time, the court finds that the rate setting for the treatment of GWA’s biosolids is more  
3 appropriately a function of the Public Utilities Commission (“PUC”) and should be left to the  
4 PUC to determine.

5 GBB requested guidance concerning another GWA condition requiring the SWMD to  
6 assist GWA in “every way possible to ensure that GWA’s biosolids can be reused in  
7 accordance with applicable environmental regulations for uses such as farming, landfill topsoil  
8 and compost.” *See* Docket No. 538, p. 2. Without commenting on the importance of this issue,  
9 the court finds that this condition is not relevant to the Government of Guam’s compliance with  
10 the Consent Decree, and as such, neither the SWMD nor the Receiver are required to comply  
11 with this condition.<sup>2</sup>

12 GBB also requested an extension of the deadline in which it is to petition the PUC to set  
13 the commercial and residential rates. The court had previously ordered GBB to present to the  
14 PUC its proposed rates by the end of December 2009. However, after discussions with legal  
15 counsel of the PUC, it was determined that GBB should approach the PUC after there has been  
16 a year of data collected on the new scale at the Ordot Dump. The court finds the request  
17 reasonable and will extend the deadline to the end of September 2010. GBB is ordered to keep  
18 the court apprised of the situation and to report on the status in its next quarterly report. The  
19 court expects GBB to petition the PUC earlier than the September date if it is possible.

20 Additionally, GBB outlined various financial issues for the court’s consideration.  
21 Specifically, GBB discussed its understanding of the status of the Government of Guam’s  
22 pending USDA<sup>3</sup> loan/grant. GBB requested that, before the Government of Guam is permitted  
23 to substitute that loan/grant funding for the Section 30-backed Bond proceeds currently pledged  
24 for Consent Decree projects, the court require all of the issues outlined in the Receiver’s  
25 Quarterly Report of October 21, 2009 (*see* Docket No. 505) and the Quarterly Report of  
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27 <sup>2</sup> Of course, this does not preclude SWMD or the Receiver from cooperating with  
28 GWA on projects that would further bring the Government of Guam into compliance with the  
Consent Decree.

<sup>3</sup> USDA is the acronym for the United States Department of Agriculture.

1 January 14, 2010, be addressed. The court agrees with GBB. Therefore, before the court will  
2 consider any action on a request to substitute the USDA funding for the bond proceeds, the  
3 Government of Guam must address the concerns raised in the October Quarterly Report (*see*  
4 Docket No. 505), to the court's satisfaction.<sup>4</sup> In addition, the Attorney General and USDA will  
5 be required to certify to the following:

- 6 • The loan/grant funding from USDA is approved and funds are available to  
7 disburse to pay for Consent Decree projects;
- 8 • All documents and representations required by the USDA loan/grant have been  
9 reviewed and the Government of Guam is in full compliance with all of the  
10 terms and conditions of the loan/grant;
- 11 • The procedures for disbursing funds by the Receiver are substantially the same  
12 as those already approved for the Section 30-backed bonds; and
- 13 • There are no other issues that would detrimentally affect the use of the USDA  
14 loan/grant by the Receiver to complete the Consent Decree projects in  
15 accordance with the court approved construction schedule.

16 It is imperative that adequate funding remains in place to ensure that the closure of the Ordot  
17 Dump and the opening of the Layon landfill are in accordance with the court-ordered schedule.  
18 To that end, the court finds GBB's requests are intended to ensure for such compliance and are  
19 reasonable.

20 The court is also concerned about the hazardous conditions found at the Department of  
21 Public Works ("DPW") facility. The court is impressed with the SWMD employees; they are  
22 hard working and are an integral component to the success of the Receiver. They should not be  
23 made to work in unsafe conditions. Neither should members of the public, who visit the  
24 facility be exposed to such conditions. Accordingly, the court orders DPW to clean up the  
25 grounds and to properly dispose of all the tires, drums, and abandoned vehicles by the next  
26 quarterly hearing scheduled for April 8, 2010.<sup>5</sup> The Attorney General is charged with ensuring

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27 <sup>4</sup> GBB is to continue providing assistance to the Guam Economic Development  
28 Authority and the Government of Guam concerning the USDA funding.

<sup>5</sup> DPW should turn to GEPA to use monies from the Recycling Revolving Fund to assist  
in this endeavor. It was reported at the hearing that GEPA currently has \$1.8 million of  
undedicated funds. The court finds it indeed surprising that GEPA is seemingly not utilizing  
these funds for the purposes in which these funds were allocated.

1 that DPW takes the appropriate actions in this regard.

2 Lastly, the Government of Guam is ordered to work expeditiously with the military to  
3 finalize a long-term agreement for the use of the Layon landfill by the next quarterly hearing.  
4 GBB is to continue its work to facilitate a successful agreement.

5 As noted the next quarterly hearing is scheduled for April 8, 2010 at 9:00 a.m. It is  
6 ordered that the following individuals be in attendance to present their respective reports  
7 concerning the progress of various Consent Decree projects:

- 8 • Lorilee Crisostomo, Administrator of the Guam Environmental Protection  
9 Agency;
- 10 • Joaquin Blaz, Acting Highway Administrator of the Department of Public  
11 Works and Gene Niemasz of Parsons Transportation Group, to discuss the status of bridges,  
12 road widening and snail mitigation;
- 13 • Tom Nielsen, President of Maeda Pacific Construction;
- 14 • Tor Gudmundsen, President of TG Engineers, P.C.;
- 15 • Ho Eun, President of Core Tech International; and
- 16 • Thomas Anderson, Executive Vice President of Black Construction  
17 Corporation.

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

22 In addition, the court hereby schedules a site visit to Layon on April 8, 2010 at 2:00  
23 p.m. All the individuals mentioned above are required to attend and the court encourages the  
24 members of the 30th Guam Legislature to attend as well.

25 **SO ORDERED.**



26 /s/ Frances M. Tydingco-Gatewood  
27 Chief Judge  
28 Dated: Jan 15, 2010