

42

30-09-0463

Office of the Speaker
Judith T. Won Pat, Ekl. D.

Date 4/16/09
Time 11
Received by [Signature]

2009 APR 16 PM 2:17 MC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA,
Plaintiff,
vs.
GOVERNMENT OF GUAM,
Defendant.

Civil Case No. 02-00022

**ORDER RE: EX PARTE APPLICATION
FOR ORDER SUSPENDING
WEEKLY PAYMENTS**

This matter came before the court on April 14, 2009, for oral argument on the Government of Guam's (the "Government") "Ex Parte Application for an Order to Suspend Weekly Payments." See Docket No. 400; see also Docket Nos. 401-02 (supporting papers). The Government moved the court, "to relieve [it] of the obligation to make the weekly payments required by the Court's February 13, 2009 Order," so as "to allow [it] to seek and obtain revenue bonds to finance the Consent Decree projects as authorized by Public Law 30-1 as amended by Public Law 30-7." Docket No. 400 at 1:22-2:2.

After hearing assessments from various financial experts employed by the parties as well as the Receiver, Gershman, Brickner & Bratton, Inc. (the "Receiver") regarding the law's viability as a financing mechanism, the court **HEREBY CONDITIONALLY GRANTS** the Government's application. The weekly payments are suspended with the following conditions:

- The Guam Economic Development Authority ("GEDA") shall submit progress reports to the court on a biweekly basis outlining the progress in selling the bonds. The first progress report shall be due by 12:00 noon on Tuesday April 28,

470

1 2009 and shall continue every two weeks thereafter. However, should events
2 occur that affect the success of the Government's efforts to sell the bonds in a
3 timely manner, GEDA shall immediately notify the court, without regard to this
4 timetable;

- 5 • Consistent with the court's order appointing the Receiver (*see* Docket No. 239),
6 GEDA shall fully cooperate with the Receiver in providing timely access to all
7 draft and final financing documents;
- 8 • The trustee appointed by the Government in connection with the bonds to finance
9 the Consent Decree projects shall work cooperatively with Citibank, N.A. in its
10 role as Trustee for the Receiver throughout the period of construction; and
- 11 • The Receiver is authorized to seek a fair market value opinion from a third-party
12 independent of the underwriter to evaluate whether the Government's Solid
13 Waste Management Division has obtained a fair market price on the bonds to
14 fund the Consent Decree projects.

15 Additionally, the court orders the Receiver, the United States Environmental Protection
16 Agency, and any other appropriate federal or local governmental agency, to provide expedited
17 assistance to the Government in securing the United States Department of Agriculture loan for
18 the Consent Decree projects.

19 In the event the Government fails to obtain and make available at least \$120 million of
20 bond funding¹ for the Consent Decree projects by June 30, 2009, the weekly payments shall
21 automatically be reinstated and the Government shall deposit the full amount of cash that would
22 have been deposited had the weekly payments not been suspended.²

24 ¹ The court will *not* require the remaining \$40 million in construction proceeds be in place
25 by June 30, 2009 and will permit the Government to acquire the balance in a phased approach no
26 later than June 30, 2010.

26 ² By June 30, 2009, the total amount would have been a payment \$10,930,700 (representing
27 the 11 weekly payments – that would have been paid had payments not been suspended). In the
28 event such a payment is necessary it shall be made no later than 12:00 noon on July 6, 2009, in

1 The court issues this Order in reliance upon Governor Felix P. Camacho and bond
2 counsel's representations that: (1) the Section 30 pledge is reserved for the bonds to fund the
3 Consent Decree projects, and will not to be used in connection with the issuance of the general
4 obligation deficit bonds; and (2) the Government will move in a timely manner to sell any
5 remaining debt to finance the closure of the Ordot Dump prior to June 30, 2010. Should these
6 representations change for any reason, the Government must immediately notify the court.

7 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Apr 14, 2009

26 _____
27 addition to the weekly payment due for that week in the amount of \$893,700. *See* Docket No. 359.
28 The Layon landfill is the only option that satisfies the provisions of the Consent Decree. The court
will not excuse any delay in its opening because of a lack of funding.