



Speaker Won Pat <speaker@judiwonpat.com>

USA v. GovGuam 02-00022

Speaker Won Pat <speaker@judiwonpat.com>
To: Guam Legislature Clerks Office <clerks@guamlegislature.org>

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Civil Case No. 02-00022; Order re Financing
Upgrades to Residential Transfer Stations

33-15-0358

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Ufisinan I Etmás Ge'he'o'Gi Lihestaturan Guáhan
Office of Speaker Judith T. Won Pat, Ed.D.
Kumiten Idukasion Tinakhelo', Kottura, Laibirihan Pubbleko siha yan Asunton Famalao'an
155 Hesler Place, Suite 201, Hagatna, Guam 96910
Tel: (671) 472-3586 Fax: (671) 472-3589
www.guamlegislature.com / speaker@judiwonpat.com

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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 Financing Upgrades to Residential
Transfer Stations

On September 30, 2014, the Government of Guam filed a Financing Plan and priority list (hereinafter, the “Financing Plan”) pursuant to the terms of the parties’ Joint Report (ECF No. 1391). *See* ECF No. 1416. The Financing Plan addressed the financing of various projects, including (1) upgrades to the residential transfer stations, (2) Route 4 safety enhancements, (3) Dero Road upgrades and (4) post-closure care for the Ordot Dump. Having read the parties’ briefs and heard oral argument on the matter, the court now issues the following Order.¹

BACKGROUND

On February 11, 2004, the court approved the Consent Decree entered into by the parties. *See* Consent Decree, ECF No. 55. Among other things, the Consent Decree established a schedule for the closure of the Ordot Dump and the construction and operation of a new conforming municipal solid waste landfill. *Id.* at ¶¶8-9. The Consent Decree mandated operations at the new landfill to begin by September 23, 2007, with operations at the Ordot Dump to cease by October 23, 2007. *Id.* at ¶¶8(i) and 9(i).

¹ The court will issue separate orders to address the financing of each of the projects.

1 When the parties entered into the Consent Decree, they acknowledged that “the total amount
2 of funding needed to complete the projects required under [the] Consent Decree is not currently
3 available.” *Id.* at ¶10(a). The Consent Decree thus required the Government of Guam, within
4 120 days after entry of the Consent Decree, to submit a financial plan which identified “the funding
5 source or sources and a schedule to secure funds for the capital and operating costs necessary” to pay
6 for the various compliance measures required under the Consent Decree. *Id.*

7 Following the entry of the Consent Decree, the Government of Guam failed to meet critical
8 deadlines. Concerned over the Government of Guam’s lack of progress and failure to raise the
9 financial resources necessary to complete the Consent Decree projects, on December 6, 2006 the
10 United States petitioned the court to hold a status hearing and then later moved to enforce the
11 Consent Decree. *See* ECF Nos. 56 and 68-69.

12 After conducting monthly status hearings and site visits, the court appointed a Receiver with
13 “full power and authority to enforce the terms of the Consent Decree, and assume all of the
14 responsibilities, functions, duties, powers and authority of the Solid Waste Management Division
15 of the Department of Public Works, and any and all departments, or other divisions of the
16 Department of Public Works insofar as they affect the Government of Guam's compliance with the
17 Consent Decree.”² Order Re: Appointment of Receiver (Mar. 17, 2008) at 15-16, ECF No. 239.
18 Among other things, the court authorized the Receiver to “facilitat[e] the financing and/or borrowing
19 of such funds necessary to carry out the duties relating to the Consent Decree as set forth in the
20 Government of Guam’s Revised Financial Plan.” *Id.* at 16. The court further ordered that “[i]f, in
21 the best judgment of the Receiver, the Revised Financial Plan fail[ed] to provide the means or
22 methods of financing necessary or would unreasonably delay the progress in meeting the mandates
23 of the Consent Decree, the Receiver [was] authorized to modify the Plan to provide for alternative

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25 ² Under Guam law, the Solid Waste Management Division (“SWMD”) was “a sub-entity”
26 of the Guam Department of Public Works (“DPW”). 10 GUAM CODE ANN. § 51A103. Upon
27 enactment of Guam Public Law 31-020, the SWMD is now known as the Guam Solid Waste
28 Authority (“GSWA”), an autonomous, public corporation of the Government of Guam. *Id.*
Following said enactment, the court vested the Receiver with “full power and authority over GSWA,
to the full extent of its previously granted authority over SWMD.” Order (Sept. 2, 2011) at 9, ECF
No. 798.

1 means or methods of debt financing it deem[ed] appropriate.” *Id.*

2 In its October 22, 2008 Quarterly Report, the Receiver estimated the capital needed to
3 achieve compliance with the Consent Decree was approximately \$159.7 million, of which
4 approximately \$40 million would be required for the closure of the Ordot Dump. See ECF
5 No. 269-1 at 13.³ The Quarterly Report cautioned that these estimates were “subject to change as
6 the competitive bidding process provides the final measure of the cost for [the Consent Decree]
7 projects.” ECF No. 269-1 at 13. Furthermore, the “estimates related to the Ordot Dump’s closure”
8 would “require a full reexamination” as the time for the project to actually begin drew near because
9 there was “a significant amount of remedial investigation that remain[ed] to be accomplished . . . to
10 determine the extent of environmental damage that has occurred [at the Ordot Dump] and devise
11 acceptable plans to mitigate the damage identified.” *Id.* at 14.

12 The Government of Guam deposited an initial amount of \$20 million⁴ with a trustee
13 designated by the Receiver and approved by the court. Eventually, the Government of Guam opted
14 to finance the Consent Decree projects through the sale of approximately \$202.4 million in Limited
15 Obligation (Section 30) Bonds, Series 2009A (the “Limited Obligation Bonds”). See ECF No. 455
16 at 3. Of this amount, approximately \$139.7 million was allocated for deposit to the Project
17 Construction Fund. See ECF No. 455-1 at 16.

18 On August 31, 2011, the Ordot Dump stopped receiving trash for disposal, and on
19 September 1, 2011, the Layon Landfill began operating as Guam's new conforming municipal solid
20 waste landfill. As a condition to the permitting of the new Layon Landfill, the Guam Environmental
21 Protection Agency (“GEPA”) required the Receiver to permit the residential transfer stations.⁵

23 ³ The internal page numbers of the October 2008 Quarterly Report are different from the
24 page numbers imprinted on the ECF footer. All citations to pleadings filed in this case and referred
25 to in this Order are to the internal page number of the documents.

26 ⁴ The Government of Guam obtained the \$20 million through a loan with the Bank of Guam.

27 ⁵ GSWA then had three residential transfer stations located in the villages of Dededo,
28 Malojloj and Agat. The upgrades to these facilities were not included in the Receiver’s initial
estimates in 2008 since GEPA’s requirement to permit each transfer station only materialized in
2011.

1 On May 21, 2013, because the cost for the Ordot Dump closure increased from the original
2 2008 estimates, the Receiver warned that “it is likely that there will not be enough money from the
3 [Limited Obligation] Bonds to cover all of the projects” related to the Consent Decree.⁶ *See*
4 Quarterly Report (May 21, 2013) at 33, ECF No. 1067-1. Among these unfunded projects was the
5 upgrades to the residential transfer stations which were necessary if the transfer stations were to be
6 permitted as required by GEPA.

7 The court directed the Receiver and the Government of Guam to meet and discuss the
8 development of a plan for additional financing or funding to pay for the unfunded projects. The
9 Receiver and the Government of Guam did not reach an agreement with regard to the financing of
10 these projects, and thus on September 30, 2014, the Government of Guam filed its Financing Plan.

11 DISCUSSION

12 The parties do not dispute that Guam’s residential transfer stations have never been permitted
13 as required by Guam law. GEPA is requiring that these facilities be permitted as a condition of the
14 Solid Waste Facility Permit for the Layon Landfill.⁷ The Receiver has maintained that upgrades to
15 these facilities are necessary to meet permitting standards.

16 The Receiver estimated that the upgrades to the residential transfer stations would cost about
17 \$7.3 million. *See* Joint Report at 14, ECF No. 1391. The Receiver cautioned that this estimate did
18 not include the cost of cleanup for the Dededo and Agat Transfer stations.⁸ *Id.* at 14, n.9. According
19 to the Receiver, “all three of the facilities have other waste on the sites that must also be removed

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21 ⁶ The Receiver stated it would only complete the additional projects “[t]o the extent that
22 funds remain available, or the Government of Guam makes additional funds available.” *Id.* at 34.

23 ⁷ Special Condition II of the permit renewed on January 28, 2015, required GSWA to “obtain
24 a permit to operate transfer stations that meets Guam’s regulatory agencies requirements.”

25 ⁸ The court conducted several site visits to the transfer stations and notes that the Dededo
26 and Agat Residential Transfer Stations have been the victims of illegal dumping over the years. *See*
27 *also* Quarterly Report (Apr. 11, 2012) at 10-11, ECF No. 931-1, Quarterly Report (July 18, 2012)
28 at 13, ECF No. 972-1 and Special Report of Receiver re Detection of Certain Hazardous Waste Near
Dededo Residential Transfer Station at 2, ECF No. 1321. More significantly, the Receiver reported
on March 19, 2014, that an environmental site assessment on property adjacent to and north of the
Dededo Residential Transfer Station detected significant hazardous waste, including the presence
of PCBs and lead, which will require costly mitigation. *Id.* at 2-4.

1 and properly disposed.” *Id.*

2 The Government of Guam has elected to permanently close the Dededo Residential Transfer
3 Station. *See* Financing Plan at 5, ECF No. 1416. The Government of Guam states that it, along with
4 GEPA, will be responsible for cleaning up the contamination at the site and pursuing those
5 responsible for the illegal dumping activities. *Id.* Closure of the Dededo Residential Transfer
6 Station would reduce the residential transfer stations’ upgrade expense by \$3 million. *See* Joint
7 Report at 9, ECF No. 1391.

8 The parties agree that the Government of Guam has the discretion to close the Dededo
9 Residential Transfer Station, although the Receiver has not recommended that this facility close
10 since it is the most heavily used of the current facilities and northern residents will have to travel to
11 the new Harmon Residential Transfer Station and Household Hazardous Waste Facility (the
12 “Harmon Facility”)⁹ for trash disposal and recycling services. The court notes that during a site visit
13 to the Dededo Residential Transfer Station, GSWA employee Bob Manibusan commented that many
14 customers who utilize the facility expressed disappointment that the Government of Guam has
15 decided to close the Dededo transfer station.

16 The United States does not oppose the closure of the Dededo station subject to the condition
17 that the Government of Guam “be required to fund – and the Receiver should implement – proper
18 closure measures for the transfer station[.]” USA Response at 3, ECF No. 1431.

19 The court in January and February 2015 held a series of hearings with the parties to discuss
20 the Government of Guam’s Financing Plan. On January 21, 2015, the Mayor of Dededo, Melissa B.
21 Savares, informed the court that she consulted with the Rudy M. Matanane, the Mayor of Yigo, and
22 also canvassed the neighborhoods that surround the Dededo transfer station. Mayor Savares stated
23 the northern villages concurred with the Government of Guam’s decision to close the Dededo
24 facility.

25 The upgrades to the residential transfer stations were not specifically required in the Consent
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27 ⁹ The Harmon Facility is a permitted facility and was intended to replace the previous
28 residential transfer station centrally located in the village of Ordot. The Ordot facility was closed
when the Ordot Dump ceased operations in August 2011.

1 Decree, however, this project has since become a mandatory requirement of the Consent Decree
2 since GEPA – an agency of the Government of Guam – requires that these facilities be permitted as
3 a condition of the Solid Waste Facility Permit for the Layon Landfill. The court acknowledges that
4 the decision to close the Dededo Residential Transfer Station may not be popular with some of
5 Guam’s northern residents, but the court believes this is a policy decision to be made by Guam’s
6 elected leaders. The Government of Guam has the discretion to close the facility, and it has decided
7 to do so. This will reduce the cost of the upgrades from \$7.3 million to about \$4.3 million, but, as
8 noted by the Receiver, this estimate *does not include* the cost to clean up the transfer stations, *nor*
9 does it include the cost of preparing and implementing a closure plan for the Dededo facility as
10 required by applicable laws and regulations.

11 The court accepts the decision of the Government of Guam to close the Dededo Residential
12 Transfer Station and orders the Receiver to close the Dededo facility no later than June 30, 2015.
13 The Receiver shall develop a plan for the proper environmental closure of the Dededo Residential
14 Transfer Station. Additionally, the Receiver shall proceed with the work necessary to permit the
15 transfers stations at Agat and Malojloj. The court orders the Government of Guam to fund this
16 Consent Decree project. The Government of Guam stated that it currently does not have the funds
17 needed to pay for this project. Based on this representation, the court will instead order the Receiver
18 to utilize the funds it currently is holding in the special account¹⁰ to pay for these expenses rather
19 than require the Government of Guam to borrow more funds to finance the environmental closure
20 of the Dededo facility and the upgrades to the Agat and Malojloj transfer stations.¹¹

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22 ¹⁰ Beginning in May 2014, the Receiver began withholding the debt service reimbursements
23 to the Government of Guam in order to begin accumulating funds for the additional unfunded
24 projects. *See* Quarterly Report (June 25, 2014) at 36, ECF No. 1369-1. The court approved the
25 establishment of a separate account under the Trust Agreement with the Bank of Guam. *See* Order
26 (Sept. 12, 2014) at 2, ECF No. 1405. The Receiver was authorized to deposit the debt service
reimbursements into this special account for purposes of paying legal expenses, future capital
requirements and the post-closure care of the Ordot Dump. *Id.*

27 ¹¹ This funding scheme is consistent with the Government of Guam’s Financing Plan. *See*
28 Financing Plan at 11, ECF No. 1416 (“The Government of Guam hereby requests that the [c]ourt
order the Receiver to use . . . debt service reimbursement . . . to cover the costs of ‘additional’
projects that are allegedly lacking funds[.]”)

1 comply with all applicable Guam and federal regulations. The Receiver shall include an estimated
2 cost of implementing the closure plan for the Dededo Transfer Station.¹³ Finally, the court orders
3 the Government of Guam to fund this project, which has become a mandatory requirement of the
4 Consent Decree since GEPA is requiring that these facilities be permitted as a condition of the Solid
5 Waste Facility Permit for the Layon Landfill. The Receiver shall utilize the debt service
6 reimbursements accumulating in the special account to pay for the expenses associated with this
7 project.

8 IT IS SO ORDERED.



9 /s/ Frances M. Tydingco-Gatewood
10 Chief Judge
11 Dated: Apr 20, 2015

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¹³ The Receiver is not responsible for the environmental clean up of the hazardous waste located on property adjacent to and north of the Dededo Residential Transfer Station.