

I want to turn now to the legal, economic, and social impacts of the Wildlife Refuge or critical habitat designation.

III. LEGAL, ECONOMIC, AND SOCIAL IMPACTS OF PRESERVATION

A. Legal Impacts

In this portion of the presentation I would like to explore some of the legal authorities given to the U.S. Fish and Wildlife Service when it exercises its authority under the Fish and Wildlife Coordination Act (16 U.S.C. §661 et seq.), the Wildlife Restoration Act (16 U.S.C. §669 et seq.), and the Refuge Recreation Act (16 U.S.C. 460k-460k4). First, I will address how the Department of Interior is able to exercise control over these lands in the first place.

As you know, the public lands of Guam consisted mostly of Crown Lands obtained from Spain in the Treaty of Paris. Up until 1950, when Guam's Organic Act was passed, the U.S. Navy had been the Federal agency tasked with administering the island. Once the Crown lands were transferred to the Government of Guam, questions arose between the military and the new government as to which lands transferred and which did not. Some lands were reserved by the President and some lands appeared to be transferred by lack of any action by the United States.

When the right of quasi-self government was granted to Guam in the 1960's, there still remained significant questions concerning the status of certain lands. There is apparently to this day a question about which government controls the submerged lands. These unresolved questions will continue to have a profound

impact on the relationship of Guam to the United States and is an area which is ripe for a legislative solution.

All through this turmoil, one group of federal agencies has maintained a strong hold on large parts of Guam's land -- the United States Military. During and after World War II large tracts of land were gobbled up for military purposes, first to support the war effort in the Pacific and later to secure America's military power. The People of Guam, through their fervent patriotic spirit, supported and endured the buildup by the American military. The U.S. Congress sought to restore land to the People of Guam when the Congress passed Public Law 225 in November of 1945. This act, though not always cogently worded in expressing its purpose, gave authority to the naval government of Guam to resettle and restore property to landowners who had their land taken for military purposes. The expectation at the time was that property owners on Guam would have their land returned to them or other land exchanged of equal value if the military had no further use for it. That expectation, quite frankly, continues to this day. I believe that the authorities given to the Secretary of the Navy in Public Law 225 still exist, though the purpose for which the law was enacted has not yet been fulfilled. I also believe Public Law 225 created a property right with a future property interest for the benefit of landowners whose lands were taken by condemnation for military purposes.

In the 1960's there was another large buildup by the military as portions of Northwest Guam were condemned for military purposes. The families I represent own or have claims to land in this portion of Guam. With the downsizing of the military on the island, the military has decided it no longer needs these lands for

military purposes. Yet there has been no consideration to return the land to those unfortunate owners who were forced to give up their property. Instead, entering the picture is the U.S. Fish and Wildlife Service, which now claims this land for "critical habitat" and a wildlife refuge because of an accident of history.

How is it the Fish and Wildlife Service can do this? The answer lies in the Federal Property and Administrative Services Act of 1949. That act gives authority to the General Services Administration (GSA) to transfer or sell certain lands which are excess to the needs of federal agencies. In the case of Northwest Guam, the military has declared this land excess and GSA now has control of it. The act states that if no other federal agency needs the land to carry out its mission, then the land is first offered to state or local government, which would include the Government of Guam and then offered to private parties. In the case of Northwest Guam, the first step was never passed.

The accident of history I referred to is the occupation by the military of large tracts of land which turned out to be good habitat for Guam's purportedly threatened and endangered species. The lack of intensive human activity in these areas has created a haven in which these species have thrived over the years. The introduction of the brown tree snake has contributed to this accident by forcing more of the species to seek refuge on the military lands as the snake was pressured out of other areas of Guam. This has provided the justification the Fish and Wildlife Service needed to claim these lands for wildlife protection purposes. I want to examine the authority of the Fish and Wildlife Service and its potential impacts on the use of these lands.

The first thing the Secretary of the Interior is required to do when it administers public land is to classify land by the most beneficial use that may be made of that land. Section 666g of Title 16, United States Code, requires the Secretary to conduct such a review in cooperation with the States and public and private agencies and organizations, including in this case the Government of Guam. I question whether there has been any such classification of lands associated with the excess actions by the military. I also question whether any of these actions have been taken in cooperation with the Government of Guam, given the opposition voiced by the leaders of Guam to some of the proposals by the Secretary, opposition which has gone unheeded. The Secretary is, in fact, required to review lands to determine if they are best used for development of wildlife conservation, agricultural, recreational, residential or industrial or related purposes. If the lands are chiefly valuable for industrial purposes then the Secretary shall lease them and share the revenues from such a lease with the Government of Guam.

Of course the Secretary cannot exercise jurisdiction over lands under military control until the military no longer needs them. Even if the military declares them excess, the Secretary of Interior may administer such lands but only under such terms and conditions as are dictated by the Secretary of Defense to assure their continued availability for war production and other military purposes. It is clear from these laws that the U.S. military will continue to play a significant role in the use of any lands which have been excessed on Guam.

There is an interesting provision in the Fish and Wildlife Coordination Act. This provision is so interesting and relevant, that one must wonder why it has

never come into play during the present controversy. That is Section 667b of Title 16, United States Code. This provision states that there is authority for the Government of Guam, upon request, to have land which is no longer required by a federal agency transferred at no cost to the Government of Guam where the land can be used for wildlife conservation. Only where the management of the land has value in carrying out the Migratory Bird Management Program will the Secretary of the Interior have authority to retain control of such land. There are plenty of examples in the Mainland where States are administering lands for wildlife conservation even where U.S. listed threatened and endangered species are present. One must question why this was not an option explored in the U.S. Fish and Wildlife environmental assessment on the establishment of the wildlife refuge on Guam. There are many proposals in the mainland where military bases are closing to transfer control of a portion of the bases to the State for wildlife conservation purposes. If there is concern about preserving military uses in the future, Section 667b states that title will revert to the United States in the event the land is needed in the future for national defense purposes.

Since the GSA is not proposing to transfer the excess military land to the Government of Guam, we must explore what will happen to such land if the Fish and Wildlife Service goes through with its proposal to establish the wildlife refuge. Section 668dd of Title 16, United States Code, sets out the authorities of the Secretary of Interior with regard to the National Wildlife Refuge System. When one analyzes these authorities, one should view them from the perspective, as I do, of the loss of control by the Government of Guam and the potential

impacts on private landowners due to the existence in proximity of their lands of such a refuge.

First, all lands, waters and interests administered by the Secretary of Interior for conservation of fish and wildlife are in the National Wildlife Refuge System. This includes National Parks, Wilderness Areas, and Wildlife Refuges. Under the authority of federal law, no person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the U.S. including natural growth within the refuge system. This means there can be no fishing, no raising of livestock, no agriculture, no family barbecues, no coconut husking or construction of affordable homes. This also means the death of a beautiful and unique culture.

The Secretary may permit use of the area within the system for any purpose including fishing, hunting, public recreation, public accommodation, and access but only when such uses are compatible with the purposes of the refuge. This means that only the Secretary can permit uses and it is solely within the Secretary's discretion as to whether a use is compatible. The Government and People of Guam will, if the refuge is established, have no voice in determining the destiny of the 28,000 acres in the wildlife refuge.

Moreover, access or easements across such refuge lands may not be granted unless the grantee pays to the Secretary, in lump sum, the fair market value of such easement or annually, in advance, the fair market rental value of the easement. The Secretary may elect to receive such compensation by other means agreeable to the Secretary by land swaps, personnel or equipment. In other words, if the Government of Guam or a private individual, such as a

landowner, wishes to gain access to its or his or her own land across the refuge, it, or he or she, must pay the Secretary for such a right. I know, for instance, that the Federal government is now taking the position that private landowners, in order to gain access across Federal land to the private property of such owners, must pay fair market value for such right of access, or provide concessions in the use of their land in lieu of such compensation. And this is for the right to cross to land where the right of access was reserved to the landowners in the original condemnation action. I question the fairness and certainly the legality of such demands.

The question then arises concerning the access of the People of Guam across the refuge area to the public recreation area which has been proposed by the Governor of Guam. The Secretary has the authority under the Refuge Recreation Act, Section 460k of Title 16, United States Code, to provide recreational opportunities in the Refuge System. This authority can only be exercised to the extent practicable and cannot be inconsistent with other previously authorized Federal operations or with the primary objectives of the Refuge. The Secretary has the authority to curtail public use when necessary and there can be no use which interferes with the primary purpose of the Refuge. In addition, funds must be available for the development, operation and maintenance of the recreation areas before the Secretary may allow such a use. The Secretary may even charge reasonable fees and issue permits for such uses. Does this mean that the Government of Guam and its People must pay the Secretary for the use of the recreational areas at Ritidian? Does it mean the Government of Guam must pay for the right to cross the refuge to get to the

recreation area or perhaps provide other Government of Guam land to the Secretary in return for the right of the People of Guam to get to the recreation areas? How much recreational use will the Secretary allow if the primary purpose of the Refuge is to protect endangered species from disturbing human activity? These are all questions which must be asked before the Secretary is authorized to create the wildlife refuge. The People of Guam deserve answers to these questions and others; they should not have to negotiate their rights after the refuge is created.

What happens to the uses of the land in and adjacent to the wildlife refuge? That is an open question but it is clear from past litigation in this area that there is a significant list of impacts which can occur. Let us look at some of these impacts.

The Secretary has the right to control the diversion and use of water in the refuge area. I understand that large water bearing reservoirs are located in Northwest Guam. How will the Secretary allow the use of that water for people when the primary purpose of the refuge area is to protect the endangered species? Does this mean that private landowners who use or divert water on their lands will be prosecuted by the Secretary because their activities interfere with water in the refuge area? Past history tells us the Secretary is quite capable of taking such an action.

What if private landowners wish to use their land for agricultural purposes? Can the Secretary control the use of pesticides and herbicides necessary for the cultivation of crops? Again history tells us that the Secretary will exercise his

authority to halt the use of such products where he feels the refuge area is threatened.

What about the reconciliation of water laws with the purpose of the refuge? Will the Government of Guam still have some rights over water? What about the private landowners, will they have the right to use their own water unfettered by interference by the Secretary? The question has arisen in the past with significant questions of how much water is reserved for wildlife and plant recovery and how much can be used by the landowners.

In the area of recreation, we have already seen the Secretary can curtail the use of land for recreation. What other impacts will the refuge area have? With the submerged lands in the refuge area, can the Secretary limit the horsepower of boat motors to protect the refuge? In one case, an environmental group sued the Secretary to force him to do this and won in Federal court.

What about the rights of environmental groups to exercise control over certain operations within the refuge area. Because the primary purpose of the refuge is established by law, the environmental groups will have the right to sue in Federal court every time they do not agree with a use the Secretary approves, even if the use benefits the People of Guam. Is this the destiny of these lands to be manipulated in and held hostage to squabbles between the Secretary and the Preservationists?

What about the rights of the Government of Guam to engage in activities which might affect the refuge area? There is authority which says that local officials are subject to enforcement provisions of the law if their actions interfere or threaten the refuge area. Such enforcement provisions apply to private

landowners adjacent to the refuge area and to ordinary citizens who cross the area and disturb a plant. Enforcement provisions are not limited to activities only within the refuge. The punishment in the act is listed as imprisonment for up to one year. This does not even take into account the punishments under the Endangered Species act which are \$25,000 for each violation and the potential of criminal sanctions of \$50,000 and imprisonment for up to one year for each violation.

I am sure there are many other impacts which have not been explored yet. The significant loss of local control which occurs when the wildlife refuge is established is too important an issue to leave for resolution after the area is established. The severe curtailments and economic deprivations of the refuge area on private landowners must be explored now before private landowners are subjected to the enforcement provisions of the law.

B. Economic Effects

In proposals to set aside and regulate large tracts of land for a limited purpose such as a wildlife refuge, there are clearly some short and long term economic effects which will occur. The loss of productive lands such as these potentially means the Island of Guam must become more dependent than it already is on offshore imports. This translates into higher costs for goods.

The loss of productive land means that development will be curtailed, taking away the ability of the island's economy to grow and provide new jobs and new economic activity and to derive tax revenues from those lands. The preservation of the area also translates into the loss of water resources which

might be needed to support the population and commercial enterprises, now forced to go elsewhere because they lack the basic resources to make a profit on the island.

If there is a need for expanded agricultural production, then these areas will not be available. This means potentially higher production costs on existing lands or the necessity of increasing food imports, which equates to greater costs at the grocery store.

Finally, as noted briefly already, there will be a significant effect on the tax revenues generated on the island because this land will not contribute to the tax base. The shrinking of the tax base as the need for governmental and social services increases can have a severe and debilitating effect on the ability of the government to function, particularly since the federal government constantly imposes mandatory programs on state and territorial governments for which it provides no funding. This loss of revenue will have an effect on the entire economy but will mostly affect schools, hospitals, transportation and other important governmental services. Few communities can afford to give up such areas when tax dollars and what they buy continue to contract.

In return, the Wildlife Refuge Revenue Sharing Act (16 U.S.C. §715s) provides that some of the monies generated from the refuge will go back to the local economy. The act provides, however, that only a small percentage of such monies will be returned to offset the loss of the tax base. This could mean that as little as 75 cents per acre or some \$24,000.00 per fiscal year would be returned to the Government of Guam. Surely 28,000 acres of land would provide much more than this in tax revenues and other productive uses such as agricultural and

commercial enterprises. The loss of one job per year would not even equal the \$24,000.00 gained from the Wildlife Refuge Revenue Sharing Act. Worse, assuming that Guam and its citizens would be allowed to actually set foot in the refuge for any purpose, the minuscule revenues derived from the federal government would be paid right back to that government in access and use fees.

Clearly, the establishment of the wildlife refuge will have significant impacts on Guam's economy. These impacts, however, are not analyzed fully or properly in the Fish and Wildlife Environmental Assessment on the Refuge.

C. Social Effects

I do not purport to be an expert on the social effects of an establishment of a wildlife refuge on an island with substantially less land area compared to mainland states and a population base of approximately 140,000 people. Nonetheless, my colleagues Attorney Pollot and Attorney Van's experience of litigating over the regulation of land uses by the Federal Government on the mainland, such issues arise because they were not studied properly under the environmental impact study process. It seems obvious that such social effects will occur, however, when fully one fifth of the land mass of an island is set aside for preservation in perpetuity, for a single purpose such as a wildlife refuge. The identity of the land is with its people. There has been a considerable amount of study on the "green effect" or the need for humans to experience open green spaces, such as forests and meadows. There has also been much analysis of the need for biodiversity on the planet for plants and wildlife. But does that mean that Guam can afford to limit 21 percent of its land to a refuge area? And there

has been no study by the United States on the effects of wresting land from the people in a place where the people identify so closely with their land as they do here in Guam.

The People of Guam and the private landowners affected by this decision deserve to have all the alternatives explored. I must ask what are the long term social consequences of the wildlife refuge. One might predict there will be an increase in exports from the island to the mainland. But in this case the export will be of Guam's most precious resource, its people. Already there is considerable emigration from Guam to the mainland because of lack of certain opportunities here. The lack of available land to own and live on can only contribute to an increase in this emigration. Young, bright, productive people will be forced to leave this island because of the shortage of available land used to make a living. The exclusive control of so much land will no doubt have an impact on job creation, reduced opportunities for commercial enterprise, crowded conditions in the villages, friction among families forced to live in small compounds, and the possible deterioration of what we recognize as polite society.

In other areas of the world where land is limited, such a situation can cause or contribute to unsettling social effects, such as school problems, the disintegration of families, increased crime, poverty and health issues. You only have to look at the Island of Ebeye in the Republic of the Marshall Islands to learn the potential consequences of the lack of available land on the people.

IV. CONCLUSIONS AND RECOMMENDATIONS

We can agree that Guam needs to conserve its land resources and needs to reasonably control growth and development. We can agree that, to the extent reasonably possible, Guam should try to protect and to preserve its native species. This is not an issue of goals, however, but of means and degree. The central question is at what cost these goals should be achieved -- economic and social blight, loss of jobs and brain drain, loss of human dignity? I think not.

The native species of Guam are now protected under the Endangered Species Act. The difference between the current protections and the wildlife refuge or critical habitat is the current listing protects the species where they currently exist. The proposal is to set aside large tracts of land to provide for protection of species in places where the species have never before existed. In order to preserve a potential habitat, these lands will be excluded from society's productive uses. This means that there will be no development in the area even if it means preserving the area for a species which exists only in captivity, and whose reintroduction into the wild is highly questionable given the predatory nature of the brown tree snake, the disturbance of the habitat by wild boars and deer and the existence of hazardous waste landfills in northern Guam.


There should be no hurry to establish the wildlife refuge. As the Fish and Wildlife Service has pointed out, protections for the species already exist under the Endangered Species Act. There is no immediate threat to the species for which the act does not already provide a protection.

The plans developed by the Government of Guam should establish a "multiple use sustained yield" policy for the use of these lands which will neither

inhibit productive use nor infringe upon the rights of private property owners to use their land, as is their right under the U.S. Constitution. The plans should also provide for the return of the excess land to private property owners who had their land taken by the military. The land is rightfully theirs and the Government of Guam should support them in their efforts to regain title to their ancestral lands both because it is to the benefit of Guam and because there is a moral and legal obligation on the Government of Guam to do so. GEDA should provide the necessary funding for litigating at a minimum the litigation seeking an injunction to designate lands as a refuge and critical habitat and for the next litigation involving land takings of access rights.

Thank you for allowing me this opportunity to address these issues on behalf of my clients.

PETER R. SGRO, JR. P.C.
Guam Counsel to the
Ritidian Point Families and
Certain Jinapsan Area Families



by Peter R. Sgro, Jr.

James P. Castro

P.O. Box 20731, GMF, GU 96921

February 28, 1991

Honorable Carl T.C. Gutierrez
Chairman, Committee on Ways and Means
Twenty-Second Guam Legislature
155 Hesler Street
Agana, Guam 96910

RE: Bill No. 845, "An act to provide for a special litigator to represent the people of Guam in gaining access to properties in northern Guam"

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE AND TO ALL WHOSE PRESENCE THESE LETTERS SHALL COME . . . a warm Hafa Adai.

For the record, I am James P. Castro, I am here to represent my father (Jesus D. Castro) and his brothers and sisters, the former owners of Lots Nos. 9990, 9991, situated in Ritidian, and owners Lot No. 9997 in Jinapsan. I am here to voice our concern on a subject and issue which has lingered and festered for all too many years. Once again we appear before this committee to plead our case and support legislation which would provide for a special litigator to represent the people of Guam in gaining access to landlocked properties located in northern Guam.

The access we are now given is restricted and restrictive. It does not permit the full use of the land and beach on which our forefathers toiled and which they protected for their progeny and is subjected to international political uncertainties of not only the Pacific region but the world. Simply stated, we are asking that the Federal government honor its commitment to provide unfettered access, ingress and egress, to the property of the families and heirs of Jinapsan. As islanders, the value of the land, the beach and its waters, as a holistic whole, each part, each facet

critical and integral to the other and to the whole, to us as a family can never be understated.

That the Federal government through its bureaucracy would deny the most beneficial uses by the rightful owners of their private property is contrary to the tenants and principles of American Democracy. American Democracy today survives because of the unwavering belief of the American people that private property rights are sacred and inviolate. That the Federal government through its military establishment has unjustly denied these very foundations of American Democracy is incomprehensible and unconscionable -- no different than the denial of private property rights practiced by the totalitarian governments of the Communist bloc countries.

Furthermore, the shift and change in the international attitude and posture of the great powers -- from confrontational to peaceful accord -- indicates that these unjust policies of denial and exclusion are archaic and have no place in the modern world. Since 1962, the Federal government has deprived the Castro family the full benefits of unfettered use of prime beachfront property, or prime shore waters, and of prime hinterland to these shores. We have been denied the full potential of our inheritance and heritage.

On June 15, 1962, the United States filed a Complaint in Condemnation in the United States District Court of Guam. This action was brought by the Secretary of the Army exercising the power of eminent domain in order to take the property despite the fact that Jinapsan Beach would not be utilized, then as it is now, for any vital national security function. Paragraph 4 of the Complaint states:

"The interest in the property to be acquired is an estate in fee simple subject to existing easements for public roads and highways, public utilities, railroads and pipelines, reserving, however, to the owners respectively, of Parcel Nos. 8 and 9, their heirs, executors, administrators, successors, and assigns, a right of ingress and egress over and across Parcel Nos. 8 and 9." [Emphasis added]

This same clause was also contained in the "Declaration of Taking" filed on June 15, 1962, by Elvis J. Stahr, Jr., Secretary of the Army. More importantly, when the "Judgement" was filed, District Court Judge Paul Shriver reiterated that "there is reserved, to the owners of Parcel Nos. 8 and 9, their heirs, executors, administrators, successors and assigns, a right of ingress and egress over and across Parcel Nos. 8 and 9." [Emphasis added]

For many years now, we have had access to our property only through Andersen Air Force Base. This access is made possible only through property passes issued by the Air Force and which may be revoked faster than they are issued. Thus, we are at the mercy of the Air Force. Should there be any reason for a closure of the base to civilian traffic, we would not be able to access the property. Already when the Tarague gates are closed, we are denied access.

We are required to enter the property only at such times as the gate is opened and if we are at Jinapsan Beach when the gates are closed, we would not be able to exit the area. This is not the intent of Paragraph 4 of the aforementioned Complaint in Condemnation, nor is it the intent of the ruling and mandate of the Federal District Court. More seriously, we are not able to extend basic utilities such as water and power to our property and it is difficult to bring adequate quantities of building materials into the property to even build decent living quarters or for that matter picnic and barbeque facilities. All we are asking is permanent and unfettered access via Ritidian Point, which at one time belonged to the Castro Family.

Such a right-of-way would by-pass the Naval Facility at Ritidian thereby eliminating the need for ingress and egress through Andersen Air Force Base and its Tarague beach gate. Such a right-of-way would be permanent in nature and would be viable and totally satisfactory to the Castro Family as a means of ingress and egress.

In the name of justice, we are requesting your assistance to secure an unrestricted and unfettered permanent access to Jinapsan Beach through Ritidian Point. We ask this because we know that the military, and other Federal agencies, will be resistive to the granting of such access.

Honorable Carl T.C. Gutierrez

Re: Bill No. 845

February 28, 1994

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In the late 1940's, into the 1950's and 1960's, there was massive condemnation of private land holdings in northern Guam by the military. After the passage of the Organic Act in 1950, those interests of the United States not reserved by the U.S. were transferred from the U.S. to the either the Department of Interior or to the government of Guam. As we have stated earlier, the continued denial to grant access to Jinapsan is contrary to the tenants and principles of American Democracy; "that a man's right to full use of his private property is sacred."

All we ask is that our sacred right to full use of our property be respected. More importantly, notwithstanding any Federal law, rule or regulation, we ask that the 1962 Federal Court Judgement be implemented to provide permanent and unfettered access to our Family.

The denial of our request can be summed up with these words:

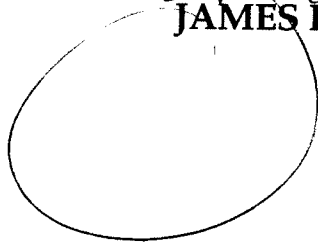
"TAOTAO TANO,
ENDANGERED SPECIES!"

Thank you, and Si Yu'us Ma'ase for your attention and consideration.

Sincerely,



JAMES P. CASTRO



COMMENTS OF THE GUAM ECONOMIC DEVELOPMENT AUTHORITY

RE: BILL NO. 845

FEBRUARY 28, 1994

RE: AN ACT TO PROVIDE FOR SPECIAL LITIGATOR TO REPRESENT THE PEOPLE OF GUAM GAINING ACCESS TO GOVERNMENT OF GUAM LAND LOCATED IN NORTHERN GUAM AT FALCONA

TO: SENATOR CARL T.C. GUTIERREZ

Good morning and thank you for the opportunity to comment upon Bill No. 845 which proposes to amend the Northwest Territories Act of Guam. The Bill clarifies that the Government of Guam, as the real property in interest, would litigate to obtain the return of public and private land and obtain rights-of-way to public and private land which have been taken or blocked by the Federal Government. The Act directs GEDA to hire a special litigator for that purpose and would appropriate \$1.6 million. However, even as amended the Act would not clearly allow GEDA to either loan or grant appropriated funds to private litigants or their attorneys in order to fund litigation to recover private property interests, as individual claimants have requested. This ambiguity should be clarified.

Although both myself and the Board of Directors of GEDA strongly support the objectives of the Bill and want to make every effort possible to free public and private lands from Federal control and restrictions, GEDA is opposed to Bill No. 845 in its

present form. GEDA believes that the appropriation of \$1.6 million at this time is unnecessary and the money would benefit the people of Guam if spent in other ways. Similarly, we oppose the mandatory direction that GEDA hire a special litigator as the attorneys retained by GEDA and by the Attorney General's office do not believe that the ^{probability of} success of litigation would justify its expense. We believe that working with Congress is the most productive course of action for obtaining this important objective.

At this time, GEDA has, in its Landowner Recovery Fund, just over \$800,000.00. The Legislature has directed that the money only be used for purposes set forth in the Act which are to obtain an economic impact appraisal of the restrictions on civilian access to public and private lands (§2942), to obtain, with GEPA's assistance, an environmental impact assessment of the dumping of hazardous waste (§2941), and to recover land, damages and public rights of way (§2943 and §2944). The present funds within the Landowner Recovery Fund are sufficient for GEDA to initiate these projects. Should we conclude that additional funds are necessary for a successful result, then we would come back to the Legislature with that request. At the present time, however, additional funds are not necessary.

As I said, GEDA hired attorneys to investigate claims under the Northwest Territories Act. Also, attorneys with the Attorney General's office have made a thorough and complete review of

potential claims which could be brought. The results have been discouraging. All the attorneys working for the Government have agreed that there are serious problems with claims to recover effective rights-of-way or private lands in the northwest part of the island. These problems are better addressed by dealing with the specific types of claims.

Generally, there are three types of claims which could be brought. The first and most publicized, would be the claims of owners, such as the former owners of Ritidian Point, that they have continuing private property rights in the land which was taken by the United States and that they can recover this land from the United States by court action. There are many problems with these claims. The first is that the land was taken by a formal and direct condemnation, but which was inequitable and unfair. The inequity was subsequently addressed by Congress in the 1977 Omnibus Territories Act which created the land claims litigation. Most of the owners of Ritidian Point participated in the litigation and received compensation which was supposedly intended to satisfy any inequities in the original taking.

However, my attorneys tell me that this land claims litigation might be res ~~and~~judicata and a bar to new litigation challenging the original takings. Similarly, the takings were many years ago and may be barred by the Federal statute of limitations. Finally, my attorneys tell me that the former owners simply do not really have

a present cognizable real property interest in the Ritidian Point land. They do, of course, have a strong moral claim to the property.

At this point, I must add that the attorneys for the former owners of Ritidian Point have not provided GEDA with a clear and written summary of their claim and legal theories. The Board believes such a report is a pre-condition to financing of any legal action. At this time, the Ritidian Point families have withdrawn their request for money and no request is pending.

A second type of claim is held by those private landowners who have fee simple title to land but whose access is restricted by the Federal Government. My attorneys tell me that a developing area of the law may provide relief if they wish to use it. Their claim would be one that property has been taken by the Federal Government by regulation, i.e., a regulatory taking justifying compensation. The problem with this claim is that if it is successful and the United States chooses to pay rather than lift the restrictions, then the private landowners would have to give up their land, something many of them do not want to do. Secondly, many of these landowners have adopted a negotiation procedure with the United States and do not want to litigate or have someone litigate for them.

Finally, there are the claims by the Government that Route 3A north of Ritidian Point was transferred to the Government of Guam

in the creation of the Organic Act. My attorneys tell me that these claims are not good and that the roadway was properly taken by the United States and that the bar of the statute of limitations will be difficult to overcome.

It is possible that the Government of Guam, for its own lands and perhaps on a theory of general economic detriment, could assert its own claims to lift the restrictions on access to public and private lands. At this time, GEDA has funds sufficient to investigate these theories and determine if litigation, and its necessary expense, would be justified. We would not suggest that GEDA be required to hire a litigator for this purpose. If GEDA determines that a litigator would be productive, it already has the authority to hire one. It is GEDA's concern that requiring it to hire a litigator will result in the Government spending millions of dollars unnecessarily and unproductively. It is our suggestion that GEDA continue to investigate possible legal claims and then determine whether litigation is appropriate.

This hearing is also an opportunity for me to address technical problems which exist in both the present law and Bill No. 845. The problem is that the law, even as proposed to be amended, does not clearly state how GEDA can use the money to hire attorneys. The issue is whether or not GEDA can hire attorneys who will only represent the claims of private landowners to recover property or damages. In other words, can GEDA simply give the

money to the landowners or their attorneys without exercising control over how the money is used and how the litigation with progress. Existing law and the proposed amendment appear to authorize GEDA to represent, in its own name, the interest of the private landowners but not to simply give them the money. Assuming that the private landowners consented to the Government of Guam asserting their claims in court, my attorneys tell me that the representative capacity of the Government would create a significant issue in court proceedings. The issue would be: Does the Government of Guam have standing to assert the real property claims of individuals?

We propose that this ambiguity be resolved by your proposed amendment of the Northwest Territories Act. If GEDA is being directed to give money to private landowners so that they can hire attorneys without it screening the claims and legal theories or otherwise controlling the litigation, then we suggest that the Legislature simply make a direct appropriation to them. If GEDA is to make loans or grants and it is to use its discretion to supervise and control the use of the funds, then the law should be clarified to show that intent. Finally, if GEDA is to attempt to represent private landowners, with their consent, then that should be reaffirmed.

In summary, we support the objectives of the Northwest Territories Act and GEDA wants to recover as much land, access and

damages from the United States as is possible. However, our investigation shows that the most effective use of public money would be to support lobbying efforts before Congress. In any event, GEDA has funds sufficient to move this matter forward and to initiate litigation should it be shown to be effective.

Sincerely,

GUAM ECONOMIC DEVELOPMENT AUTHORITY

Charles P. Crisostomo
Administrator

CPC/DMC:esp F#gd204
geda:nw-leg

FEB 14 '94

TWENTY-SECOND GUAM LEGISLATURE
1994 (SECOND) Regular Session

Bill No. 845 (LS)

Introduced by:


C. T. C. Gutierrez

AN ACT TO PROVIDE FOR A SPECIAL LITIGATOR TO REPRESENT THE PEOPLE OF GUAM IN GAINING ACCESS TO GOVERNMENT OF GUAM LAND LOCATED IN NORTHERN GUAM AT FALCONA.

1 BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM:

2 Section 1. Legislative Intent. The Legislature finds that the government of
3 Guam is the representative of the people of Guam, and therefore has the
4 responsibility of protecting and furthering the interests of the people of
5 Guam in their unequal struggle to gain access to both public and private
6 land and return of public and private land in Guam which has been either
7 in the possession of, or has access blocked by, agencies of the government
8 of the United States. Large tracts of land in Guam has been in the hands of
9 the United States military since the end of World War II. Much of this land
10 is still in the hands of the military, other land is in the hands of the United
11 States Fish and Wildlife Service of the Department of the Interior, and still
12 other land is in private hands with public access either blocked or limited
13 by the federal agencies. In their struggle to gain access to their land, our
14 citizens have mortgaged their homes and livelihood to hire professional
15 legal and other services to redress the issue. It is an unconscionable
16 situation to let continue, without government of Guam action. Although
17 there is activity taking place within the political process, through the Office
18 of Guam's Delegate to Congress, Robert Underwood, a parallel process can
19 also take place in the legal arena. The people of Guam, individually, will

1 never have the resources to undertake legal action against federal agencies.
2 For this reason, the resources of the government of Guam must be placed in
3 the service of the people in their quest to control the resources of their
4 island.

5 Section 2. §2944 of Title 12, Guam Code Annotated, is amended to read:

6 "§2944. Professional Services. The Authority is directed to
7 represent the government of Guam as the real party in interest to maintain
8 any appropriate cause of action for claims for return of public rights-of-
9 way, for damages, or injunctive or any other cause of action or appropriate
10 relief in connection with military dumpsites in ~~{northwest}~~ Guam, for
11 return of public and private land and to obtain rights-of-way to public and
12 private land which is either in the hands of agencies of the federal
13 government or has access to which is blocked or limited by agencies of the
14 federal government, and is directed to retain special legal counsel and
15 appraisal, economic evaluation, land survey, engineering and
16 environmental consultants, if and as required, to accomplish the purposes
17 of this Article. The Attorney General of Guam, the Director of Land
18 Management and the Administrator of the Guam Environmental Protection
19 Agency shall provide the Authority their full cooperation in the
20 implementation of the provisions of §§2936 through ~~[2944]~~ 2947 of this
21 Article.

22 Section 3. A new §2946 is added to Title 12, Guam Code Annotated, to
23 read:

24 "§2946. Special Litigator. The Authority shall hire or retain an
25 attorney or law firm specifically to prosecute legal action on behalf of the
26 people of Guam as specified in §2944 of this Chapter. The attorney or law
27 firm retained by the Authority may hire, within the level of appropriation

1 made available for the Office of Special Litigator, an additional attorney,
2 attorneys, or a law firm, to assist in the furtherance of the legal action
3 authorized by §2944 of this Chapter. The Special Litigator shall be hired or
4 retained by the Board of Directors of the Guam Economic Authority within
5 six (6) months of the enactment of this Section."

6 Section 4. A new §2947 is added to Title 12, Guam Code Annotated, to
7 read:

8 "§2947. Appropriation for Special Litigator. One Million Six
9 Hundred Thousand Dollars (\$1,600,000) are appropriated from the General
10 Fund to the Authority for use of the Special Litigator to cover the costs of
11 the prosecuting legal action in furtherance of the provisions of §2944 of
12 this Article."