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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 Transition From Court-Appointed
Receiver to the GSWA Board

This action came before the court on June 26, 2013, for a hearing to address concerns raised by the Guam Solid Waste Authority (“GSWA”) Board of Directors (the “Board”). Among its concerns were the following issues: First, whether the court will adopt the Receiver’s transition timeline as presented in its recently filed Quarterly Report. Second, whether the transition of authority and control over SWMD, from Receiver to Board, will occur gradually and in phases over time, or whether such transition will occur at one time and on a date certain. Third, whether the Board may hire its own technical experts or support staff to assist in understanding the consent decree project and related issues. Fourth, whether the Board may hire its own legal counsel.

1. The Receiver’s Recommended Timeline. A question raised by the Board concerned the Receiver’s transition timeline as presented in its Quarterly Report dated May 21, 2013. See ECF No. 1067 at 43. The Board inquired whether the court agreed with the Receiver’s timeline. The court stated that it was formally accepting the timeline submitted by the Receiver and through this Order confirms its adoption of the Receiver’s timeline for the transition. However, if, after further

1 consultation, the Board and Receiver agree that another timeline would be more realistic, they shall
2 submit a joint amended timeline for the court's consideration.

3 2. Transition. A second question raised by the Board concerned the nature of the transition
4 of control and authority over SWMD, from the Receiver to the Board. That is, will control be
5 handed over to the Board completely and at a date certain, or will it be handed over gradually and
6 in phases over time. While the court is encouraged that the Board wishes to be actively involved
7 in discussions and decisions concerning Ordot Dump and the Layon Landfill, the fact remains that
8 matters concerning both the Dump and Landfill remain Consent Decree project matters, under the
9 purview of the Receiver, by order this court. *See* ECF No. 239. With that said, the Receiver has,
10 and will retain, the same authority and control over such areas until such time as the court orders
11 otherwise. In other words, complete turnover of control and authority of SWMD, when the time is
12 right, will occur at a date ordered by this court. Thus, the Board should recognize that an extensive
13 amount of transition preparation work must be performed before any final turnover of authority can
14 be considered. The court highly encourages the Board to utilize this time within the transition
15 period to become proficient in its knowledge about the system so there can be an orderly handoff
16 when court orders it. The Board should read the Consent Decree (ECF No. 55), the Order appointing
17 the Receiver (ECF 239), and all 16 Quarterly Reports prepared by the Receiver. Additionally, the
18 court believes the Board should also be knowledgeable about the financial status of GSWA and the
19 supplemental bond indenture in connection with the 2009 Section 30 bonds. Therefore, the Board
20 should read all Orders related to how these bond monies were obtained and how they are to be
21 disbursed, including all previous audit reports of the solid waste system since the Consent Decree
22 was entered.

23 To assist the Board, Alicia Fejeran shall serve as the staff support for the Board during the
24 transition, in addition to her regular duties. The Receiver, through Alicia Fejeran as the point of
25 contact with the Board, shall work cooperatively with the Board to ensure they have access to these
26 reports and Orders, many of which can be found on the Receiver's website.¹

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¹ <http://www.guamsolidwastereceiver.org/>.

1 Finally, the court believes it is important for each Board member, if they have not already
2 done so, to visit the GSWA facility in Harmon, the Ordot Dump, the three residential transfer
3 stations and the hauler-only transfer station, the Layon Landfill, and the road and bridge projects
4 leading to Layon. By visiting these sites and speaking with the employees and landowners near the
5 Ordot Dump, the Board should get a better picture of how GSWA operations impact the community.

6 3. Technical expertise. With regard to the Board's request for the assistance of technical
7 experts and dedicated staff, the court does not believe it is necessary to expend additional resources
8 at this time for technical experts already available through the Receiver and for staff resources that
9 can be provided through existing staff resources. If, after first consulting with the Receiver, the
10 Board does not believe that the Receiver can provide it with the technical information or expertise
11 it seeks or the support it needs, then the Board shall file a written request to be heard by the court.

12 4. Legal Counsel. The Receiver and the Office of the Attorney General shall jointly assist
13 the Board in obtaining the services of a law firm to provide such services as are statutorily
14 authorized. Until such time as the services of a law firm are obtained, the Office of the Attorney
15 General shall provide needed legal support to the Board.

16 While the opening of the Layon Landfill was an accomplishment for the Receiver and the
17 island, the Consent Decree still has not been satisfied because the Ordot Dump has not been
18 environmentally closed. The Receiver, along with U.S. EPA and GEPA, are working diligently to
19 complete this project. In order to prevent any further delay, the Receiver and the Attorney General
20 of Guam are ordered to proceed with the acquisition of property needed for the closure of the Ordot
21 Dump.

22 The court is as concerned as the Board that a smooth and orderly transition of authority
23 occurs. This can only be accomplished through a cooperative working relationship between the
24 Board and the Receiver. The Receiver has lived up to the fiduciary duty entrusted to it by this court
25 and the people of Guam. With time and experience, the court hopes the Board will become equally
26 capable of managing Guam's solid waste system, exercising the high standard of care required by
27 a fiduciary. However, at this critical time, the court expects the Receiver to accomplish its mission

1 of ensuring complete compliance with the Consent Decree. The Receiver shall continue, status quo,
2 in their day-to-day operations of GSWA and the Consent Decree projects.

3 IT IS SO ORDERED.



4 /s/ Frances M. Tydingco-Gatewood
5 Chief Judge
6 Dated: Jul 01, 2013
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