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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 December 10, 2008, for an expedited status hearing. At that time, Gershman, Brickner & Bratton, Inc. (“Receiver”) addressed its concerns as to (1) the need for adherence to the timetable previously adopted by this court in its October 22, 2008 Order, and (2) the Government of Guam’s Financing Plan filed on December 1, 2008. *See* Docket No. 293.

1. Timetable Concerns

As to the timetable, the Receiver expressed concern regarding Guam Environmental Protection Agency’s (“GEPA”) utilization of the “phased approach” to the permitting process for the Layon site. As a result of meetings with GEPA and United States Environmental Protection Agency (“USEPA”), the Receiver understood that GEPA would be able to proceed in such a manner. However, GEPA very recently indicated to the Receiver that it would no longer implement this phased approach.

1 During the hearing, GEPA Administrator Lorilee Crisostomo indicated her concern
2 that the phased approach would violate certain GEPA Rules, and stated that there were issues
3 with the type of work indicated on the permit submitted to begin work in accordance with the
4 court-approved timetable. Testimony adduced at the hearing from USEPA, however, clarified
5 that the phased approach envisioned by the Receiver was completely acceptable.

6 As noted this court adopted the timetable recommended by the Receiver. In meeting
7 the adopted schedules it is imperative that GEPA expedite its permitting process. This court
8 has repeatedly emphasized that time is of the essence.

9 **THEREFORE** to allow the *Receiver and the Government of Guam* to achieve
10 compliance with the Consent Decree and this court's order of October 22, 2008, the court
11 hereby **ORDERS** the following:

12 1. GEPA and all other reviewing agencies shall expeditiously process and review the
13 permit application for Cells 1 and 2 as it pertains to the Earthwork (mass grading) in
14 accordance with GEPA and USEPA regulations, notwithstanding that the design permit for the
15 solid waste management facility permit at Layon has not yet been issued;

16 2. TG Engineers, PC shall submit a sufficient number of copies of any necessary
17 documentation relative to the permit application to the Department of Public Works to allow all
18 reviewing agencies to conduct simultaneous review. The Department of Public Works shall
19 advise TG Engineers, PC of the number of copies considered sufficient;

20 3. Guam Department of Public Works and all other reviewing agencies shall begin
21 processing and reviewing the permit application immediately; and

22 4. All Government of Guam agencies reviewing the permit application shall complete
23 the review process and shall provide a response to the Department of Public Works in sufficient
24 time for the Department of Public Works to complete the final processing on or before January
25 8, 2009. The Department of Public Works may set reasonable deadlines to receive responses
26 from the reviewing agencies, and the reviewing agencies shall observe those deadlines.

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1 **2. Financial Plan**

2 The Receiver also addressed its concerns about the viability of the Financial Plan filed
3 by the Government of Guam. The Receiver had recommended that the Consent Decree
4 projects be funded through a revenue bond issue guaranteed by Section 30 funds received by
5 the Government of Guam from the U.S. government. Although the Government of Guam’s
6 Financial Plan includes proposed legislation that essentially adopts the Receiver’s
7 recommendation, the Receiver expressed its doubts that the Legislature would actually approve
8 such proposed legislation, given the Legislature’s history of the Legislature in impeding
9 progress toward the development and construction of Layon landfill.

10 The testimony and evidence received by this court indicates that there is a consensus
11 that the financial plan recommended in the Receiver’s October Status Report should be
12 implemented. Specifically, the expert retained by the United States, Jonathan Shefftz; Bureau
13 of Budget Management and Research (“BBMR”) Director, Bertha Duenas; Government of
14 Guam’s Bond Counsel, Stanley J. Dirks; Acting Guam Economic Development Authority, Rita
15 Nauta; Public Finance Management, Inc.; and the Governor all agree that the Receiver’s debt
16 financing recommendation is the preferable option.¹ The court, too, believes it is best for the
17 people of Guam, and the only feasible way to finance these projects that are vital to the health
18 and economic well-being of her people. Financing these projects with Section 30-backed
19 revenue bonds is clearly the least painful option available to the people of Guam without
20 endangering any other operating expenditure of the Government.

21 The court has made it clear that it will not tolerate further delay. The court finds that
22 by failing to present a unified and workable financing plan by December 1, 2008, the
23 Government of Guam, has, in effect, decided to pay for the Consent Decree projects from the
24 General Fund of the Government.² This does not preclude the Government of Guam from

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26 ¹ The Legislature, as indicated by its actions thus far, does not apparently agree.

27 ² The Government of Guam leaders should also bear in mind that stipulated penalties
28 continue to accrue on a daily basis.

1 subsequently implementing a viable financing plan. In fact, after hearing from Speaker Judith
2 Won Pat and Governor Felix P. Camacho it remains the hope of this court that Guam's leaders
3 will join together in adopting a plan for the benefit of the people.

4 In light of the circumstances, it is important for the court to be informed about the
5 amount of cash the Government of Guam actually has in its possession. **THEREFORE**, it is
6 **ORDERED** that the Government of Guam (through BBMR Director Bertha Duenas) provide the
7 court no later than 12:00 noon on December 19, 2008 the following information as it pertains to
8 the General Fund and as it pertains to the Total Government of Guam Funds:

9 1. The cash availability of the Government of Guam for the years FY 2003 through FY
10 2007, as reflected in audited financial statements, in the following categories: (a) Unrestricted
11 Cash and Cash Equivalents; (b) Short Term Investments; (c) Time Certificates of Deposit; and
12 (d) Net Receivables.

13 2. An Estimated Average Monthly Cash Flow of the Government of Guam.

14 3. The cash availability of the Government of Guam (as of September 30, 2008) in the
15 following categories: (a) Unrestricted Cash and Cash Equivalents; (b) Short Term Investments;
16 (c) Time Certificates of Deposit; (d) Net Receivables; and (e) Estimated Average Monthly
17 Cash Flow. The court realizes that these numbers will be unaudited but is confident that the
18 government can provide accurate numbers; and

19 4. The cash availability of the Government of Guam, in the following categories: (a)
20 Unrestricted Cash and Cash Equivalents; (b) Short Term Investments; (c) Time Certificates of
21 Deposit; and (d) Net Receivables for each day starting with October 1, 2008, and ending
22 November 30, 2008. Again the court realizes that the numbers will be unaudited.

23 **SO ORDERED.**



/s/ **Frances M. Tydingco-Gatewood**
Chief Judge

Dated: Dec 10, 2008