



February 7, 2013

The Honorable Ray S. Tenorio
Lt. Governor of Guam
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910

Dear Lt. Governor Tenorio:

Thank you for providing me with a copy of your letter to the Attorney General of Guam expressing your concerns about the judgment in Superior Court of Guam Civil Case No. CV0084-08 relative to the valuation of the property upon which the Layon Landfill is located. I would like to take this opportunity to clarify the position of the Federal Receiver and clarify some incorrect information you have apparently received.

As Federal Receiver it is our responsibility to fully implement the Consent Decree. When we were appointed as Receiver, it was with the understanding that the site for the Layon Landfill had already been acquired by the Government of Guam and that it had been purchased with federal grant funds. Two payments were, in fact, made using federal funds that were available to the Government of Guam for this purpose. Our research documented that the first payment was made on January 24, 2008 to the Clerk of the Superior Court of Guam in the amount of \$1,200,000. The second payment was made on June 24, 2008 to the Clerk of the Superior Court of Guam in the amount of \$2,190,000. We had no information upon which to base any estimate for additional land cost. The following excerpt from our October 22, 2008 report to the District Court documents our understanding that the land owners had been "fully compensated" (see third bullet).

Issue 1. Continuing Cloud over the Ownership of the Land for the New Landfill

- A comprehensive process was undertaken to identify the best site for the new landfill;
- The Layon site was chosen and approved by all parties in this matter;
- The Government of Guam took appropriate steps to acquire the land by condemnation;
- Funds to fully compensate the owners of the land have been deposited with the Superior Court of Guam;

- Litigation has been pending for some time challenging the validity of the condemnation in this matter.

Conclusion: Revenue bonds are based on the capacity of the revenue generating facility they are financing to produce sufficient revenue to pay for both its operation and the debt service on the bonds. The land upon which these revenue producing facilities would be located is of critical importance to potential bondholders. Unless this matter is resolved very soon, the Government of Guam will be unable to proceed with the revenue bonds recommended in this Report.

Your letter also uses the above excerpt from our report to indicate that we advised the Court that failure to clear the title to the property would be a barrier to obtaining financing. The financing to which we referred, however, was “revenue bonds”. The bonds finally sold by the Government of Guam were not revenue bonds. Instead, the Government of Guam issued Limited Obligation Section 30 Bonds, thus eliminating any effect the land issue had on the Government’s financing ability.

This is not to suggest the land was not a vital element of the Government’s ability to comply with the Consent Decree. Indeed it was and remains vital. Land acquisition for the Layon Landfill was not, however, a part of the estimated cost when the Limited Obligation (Section 30) Bonds, Series 2009A were issued to finance the Consent Decree projects. We know this because we worked closely with the Government’s financing team to develop the bond issue and the amount of construction funds included in the bond issue was taken from our October 22, 2008 Report to the District Court (see Table 9 in the 10/22/08 Report).

In your letter you cite the Section 30 Bond Indenture as evidence of the purposes for which the bonds were issued. The Bond Indenture you cite, however, is the general indenture relating to all Government of Guam Limited Obligation (Section 30) Bonds to be issued subsequent to the date of the indenture. Such documents are intentionally broad in their language to accommodate the differing objectives of potential future bond issues. The more precise indenture language with respect to the Series 2009(A) Bonds, described in your letter as the Consent Decree Bonds, is found in the document titled “SUPPLEMENTAL INDENTURE Dated as of June 1, 2009 Relating to \$202,425,000 Government of Guam Limited Obligation (Section 30) Bonds, Series 2009A.” This document defines the project as follows:

“Series 2009A Project” means: (1) the acquisition, construction, improving, equipping and insurance of that portion of the System constituting a new municipal solid waste disposal facility to be located in the Layon area of Guam, near the Village of Inarajan, including but not limited to construction of the first two cells of the facility, expansion of the on-site wastewater treatment plant and pretreatment facilities, construction of a transfer station and a household hazardous waste facility; (2) the design, acquisition and construction of the closure of that portion of the System constituting the Ordot Dump, including but not limited to remedial investigation and remedial action; (3) the acquisition and installation of related System operating equipment; (4) the design and

construction of related System infrastructure and roadway improvements; and (5) wetlands mitigation necessary in connection with such System improvements.

You will note that, when the entire definition is included, there is no mention of land acquisition because it was not contemplated as a part of the project.

This is not to suggest that it would be improper to use these bonds for land acquisition. It is indeed a permissible use and will likely be required, to some extent, in connection with the final closure of the Ordot Dump. But it is clear that the acquisition of the landfill site was not “one of the primary purposes” of these bonds and that there is no requirement in the Indenture or the Supplemental Indenture that the bonds be used to pay any judgment in connection with the acquisition of the site for the Layon Landfill . In fact, no funds were included in the bond issue for that purpose.

I would also like to take this opportunity to address another error in your letter. While the Receiver has indicated that we would allocate \$22,500,000 for future cell construction if it is not needed for the closure of the Ordot Dump, we have no plans for construction of additional cells in the near future and we have not authorized any letter seeking “expressions of interest” in building new cells. The information you have received is incorrect.

In addition, your letter states that “improvements to the Layon Landfill site have already cost the Government of Guam over \$150 million.” This is also incorrect. Table 13 from our July 18, 2012 Report to the District Court outlined near final cost as follows:

Estimated Capital Savings			
Layon Landfill and Associated Projects			
30-Jun-12			
Capital Budget Item	Original Budget Amount	Near Final Cost	Estimated Savings
Layon Landfill	\$ 57,040,900	\$ 36,011,268	\$ 21,029,632
Landfill Access Road and Sewer System	\$ 23,981,400	\$ 28,369,411	\$ (4,388,011)
Construction Management - Layon	\$ 7,316,400	\$ 9,712,764	\$ (2,396,364)
Landfill Equipment	\$ 6,380,000	\$ -	\$ 6,380,000
WWTP Expansion & Leachate Pre-Treatment - Layon	\$ 11,025,000	\$ 4,926,935	\$ 6,098,065
Transfer Station/HHWF	\$ 5,505,000	Pending	\$ -
Transfer Station Equipment	\$ 2,440,000	\$ -	\$ 2,440,000
Operating Equipment	\$ 5,941,400	\$ 4,585,446	\$ 1,355,954
Total New Construction/Equipment	\$ 119,630,100	\$ 83,605,825	\$ 30,519,275

As is illustrated by the table above, the entire budget for the Layon Landfill and its associated projects is \$119,630,100 and, as we outlined to the Court, we expect significant savings in this part of the work. In fact, the costs of improvements to the Layon Landfill site are not near \$150 million.

We expect most or all of the savings to be required for the final phase of the work to achieve compliance with the Consent Decree and we have consistently recommended to the Court that the savings be reserved for the closure of the Ordot Dump. The estimate for closure of the Ordot Dump was preliminarily established at \$40,112,100 more than four years ago. This estimate was based on the best information available at the time but, as we said to the Court, the information was incomplete. Our October 22, 2008 Report to the Court states:

It should also be noted that the project requirement to properly close the Ordot Dump cannot begin until the new landfill is completed and operating. There is also a significant amount of remedial investigation that remains to be accomplished at Ordot Dump to determine the extent of environmental damage that has occurred there and devise acceptable plans to mitigate the damage identified. The estimates related to the Ordot Dump's closure will, therefore, require a full reexamination as we near the time for the project to actually begin and the remedial investigations are completed.

It now appears likely that the cost of closure will be significantly higher than the preliminary 2008 estimate. Funds must also be set aside for the post-closure care of the Ordot Dump.

In an Order dated November 3, 2011 responding to an earlier request by the Government of Guam for funds from the Series 2009(A) Bonds, the Court agreed with the Receiver and the United States that the bonds be reserved for the closure of the Ordot Dump, stating "it is imperative that the bond proceeds remain available for the final closure." The full Order is attached for your convenience.

In addition, there are several other areas of additional cost that will be required to complete full implementation of the requirements of the Consent Decree. These include:

- The cost of implementing the Household Hazardous Waste Program, required by the Consent Decree;
- The cost of mitigating safety issues on Route 4 – currently estimated at a cost of \$4.5 million under an MOA between DPW and the Receiver as authorized by the Court and approved by the Attorney General and Lt. Governor;
- The cost of upgrades to the current residential transfer stations and the new residential transfer station to be located at the GSWA building on the DPW compound. This is a condition of the permit of the Layon Landfill and thus a requirement of the Consent Decree with anticipated cost totaling between \$7.5 and \$9 million; and
- The results of the Curbside Recycling Pilot Program and whether this program is extended to all residential customers.

Given these requirements, the most significant of which will be the actual closure of the Ordot Dump, it is likely that most or all of the identified savings will be required to meet these obligations.

We believe that the remaining bond proceeds must be preserved for the issues outlined above and the final closure of the Ordot Dump. We believe that this the only position that we can take given our responsibilities under the Court's Orders and the Consent Decree. Indeed, as already noted above, reserving these funds for the final closure of the Ordot Dump is explicitly required by the Court's Order of November 3, 2011. Accordingly, the Receiver is not in a position to agree to your request that the funds be used to satisfy the judgment payable to the former land owners.

We are not, however, saying that the judgment should not be paid. While your letter seems to suggest that use of the funds from the Series 2009(A) Bonds is the only way to pay the judgment, the Government of Guam clearly has all of its taxing and borrowing authority available to it to satisfy the judgment. Indeed, the Government has successfully issued additional bonds on several occasions since the 2009 (A) Section 30 Bonds.

We will be pleased to work with your office and others you may designate, to develop and execute a plan for additional financing that can be made available to pay the judgment pursuant to Civil Case No. CV0084-08. We worked successfully with the prior Administration in connection with the 2009 financing and we would be pleased to work with your office as well. Please call on us if you wish to discuss.

Thank you.

Sincerely,



David L. Manning
Receiver Representative

Attachment

c.c. The Honorable Leonardo M. Rapadas, Attorney General
Deputy Attorney General Patrick Mason
Robert Mullaney, U.S. Department of Justice

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOVERNMENT OF GUAM,

Defendant.

Civil Case No. 02-00022

**ORDER RE: MOTION FOR
ORDER AUTHORIZING
RECEIVER TO PAY CAPITAL
COST EXPENSES**

1 Before the court is a Motion for Order Authorizing Receiver to Pay Capital Cost Expenses
2 From Bond Proceeds (“the Motion”) filed by the Government of Guam (“the Government”). ECF
3 No. 790. The Government moves the court to authorize Gershman, Brickner & Bratton, Inc. (“the
4 Receiver”) to reimburse the Government for expenses that are assertedly associated with projects
5 for the Layon Landfill and Ordodot Dump. *See id.* at 1. Specifically, the Government requests that
6 the court authorize the Receiver to reimburse the Government in the amount of \$4,082,677.93. *See*
7 Govt. of Guam’s Reply to Oppositions at 6, ECF No. 822. The United States and the Receiver
8 oppose the Motion. *See* ECF Nos. 812, 816.

9 The parties agree that under the bond indenture, bond proceeds may be used to pay for
10 capital costs of the Layon Landfill and Ordodot Dump if the Receiver approves such payment. *See*
11 ECF Nos. 790 at 3–4; 812 at 7; 816 at 3. In this instance, the Receiver agrees that although these
12 expenses are allowable under the bond indenture, the Government’s request to pay the expenses has
13 not been approved. *See* Special Report of the Receiver at 3, ECF No. 816.

14 Moreover, both the United States and the Receiver assert that the bond proceeds should be
15 reserved for the costs associated with the final closure of the Ordodot Dump. The Receiver also notes

1 that the additional cost, if approved, will add additional cost that will increase the rates paid by
2 customers of the system. *See* U.S. Opp'n at 8, ECF No. 812; Special Report of the Receiver at 2,
3 ECF No. 816.

4 While the court agrees with the Receiver that all costs need to be carefully considered to
5 avoid any unnecessary increase in the rates paid by customers, the court must base its decision on
6 issues that affect compliance with the Consent Decree. On this point, the court agrees with the
7 United States and the Receiver. The costs of the final closure of the Ordot Dump are still uncertain;
8 therefore, it is imperative that the bond proceeds remain available for the final closure.

9 If the court is able to determine to its satisfaction, based on final construction cost for the
10 closure of the Ordot Dump and an approved post-closure plan, that funds are available to pay all of
11 the costs for the proper closure of the Ordot Dump and the post-closure maintenance of the Ordot
12 Dump, the court would be willing to give further consideration to this matter. If the court is satisfied
13 at such time that there are sufficient funds to reimburse the Government, the court will authorize the
14 Receiver to pay the capital cost expenses from bond proceeds. However, at this time, for the reasons
15 stated in the foregoing, the court hereby **DENIES** the Government's Motion for Order Authorizing
16 Receiver to Pay Capital Cost Expenses From Bond Proceeds.

17 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Nov 03, 2011