



April 10, 2013

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

Dear Lt. Governor Tenorio:

This letter will respond to your letter dated March 27, 2013. We are unable to reconsider our position as you have requested for the reasons set out in our earlier correspondence. We will, however, comment on certain statements included in your letter.

It is not accurate to say that the Consent Decree "...charges the Receiver with the construction and operation of the new landfill..." The Consent Decree does not charge the Receiver with any responsibility; it charges the Government of Guam with these responsibilities. The responsibilities of the Receiver are defined by the Orders of the District Court of Guam.

It is clear that the Government of Guam Limited Obligation (Section 30) Bonds issued in 2009 did not include funds to pay for the acquisition of the site for the Layon Landfill. While there are savings within the funds originally estimated to be required for construction of the Layon Landfill, we currently estimate that these savings will be required to complete the closure of the Ordot Dump.

We believe that the District Court's Order of November 3, 2011 clearly reserves these funds for the closure of the Ordot Dump. In making our recommendation to the Court, adopted in its Order, we were mindful of the difficulty and many barriers that confronted the effort to secure this funding for the Consent Decree. Given your description of the Government's current funding situation as "dire", we are not encouraged to believe that the funds currently available for the closure of the Ordot Dump will be replaced without an equally difficult struggle if they are depleted to pay the judgment of the local court.

The decision of the District Court, subsequent to its Order of November 3, 2011, to approve the allocation of some limited funding to address safety issues on the highway traveled by the trucks transporting waste to the Layon Landfill, does not invalidate the earlier Order of the Court. It is

also important to point out that these safety issues would not exist if the Government of Guam had addressed these problems, as it should have, prior to the opening of the Layon Landfill. I would also note that the funding approved by the District Court was based on a request was from Guam's Department of Public Works and was approved by your Office.

It is a fact that the full appraised price of the land upon which the landfill was built had been paid in full by the Government of Guam prior to the time the estimates used by the Government of Guam in sizing its Limited Obligation (Section 30) Bonds were made by the Receiver. The appraisal, dated April 17, 2008, was conducted by a Guam based appraisal firm selected by the Government of Guam. While we did recognize that it was possible that the Courts of Guam might subsequently determine that the land had a higher value, there was no basis for estimating what the local courts would do more than four years later. It is simply not true that the Receiver failed to adequately budget for the additional land cost; it was impossible for the Receiver or anyone else to have accurately estimated such a cost.

Neither has the Receiver contended that the bonds could not be used to pay these expenses because they were "unexpected". It is our position that the funds from the 2009 Bond Issue are reserved for the closure of the Ordot Dump. Your statement that "closing the Ordot Dump is not due immediately" is not correct. Under the original schedule in the Consent Decree, construction on the final closure is now more than three years overdue. It was the Government of Guam's failure to keep its commitment to the Consent Decree schedule that resulted in the Receivership.

Finally, contrary to the assertion contained in your letter, no default on the bonds can be created by the situation you described in your letter. The letter of the Government's own Bond Counsel, dated February 27, 2013 makes this very clear.

As you correctly note, with respect to the closure of the Ordot Dump and the land acquisition cost for the Layon Landfill "...the Government cannot avoid paying for both of these obligations..." In our judgment, it is very unlikely that the funds from the 2009 Section 30 Bonds will be adequate to pay for both obligations and other Consent Decree requirements. If any funds are available after the closure of the Ordot Dump is complete and all other Consent Decree requirements are met, any remaining funds may be used to cover the additional land cost. However, if it is the Government's determination that payment of the judgment cannot wait until the closure of the Ordot Dump is complete and all other Consent Decree requirements are met, the only reasonable course of action for the Government of Guam is to raise additional capital funding to pay the judgment of the local court in this matter.

It is, and will remain, the position of the Receiver, unless otherwise directed by the District Court of Guam, that all of the funds from the 2009 Section 30 Bonds must be reserved for the closure of the Ordot Dump. Any decision, as suggested in your letter, by the Government of Guam to attempt to block the Receiver's access to those funds would require that the Receiver ask the District Court for an Order assuring continuing access to the funds necessary to complete our work for the District Court.

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As we stated in our earlier correspondence, 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.

Please contact us if we may be of assistance.

Sincerely,

A handwritten signature in brown ink that reads "David L. Manning". The signature is written in a cursive style with a large, looping initial "D".

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