



May 13, 2014

Mr. Arthur Clark  
Chief Policy Advisor  
Office of the Governor of Guam  
Ricardo J. Bordallo Governor's Complex  
Adelup, Guam 96910

Dear Mr. Clark:

Thank you for your letter dated May 5, 2014. We agree that all parties should be concerned with providing the people of Guam with an efficient solid waste collection and disposal system at a reasonable and affordable cost that meets all of the requirements of the Consent Decree. With the environmental closure of the Ordot Dump, this will have been accomplished.

You indicate a desire to include other costs in any financing package. We agree that it would be appropriate to include the estimated cost of the closure of cells one and two and construction of a new cell at Layon, along with the estimate for the cost of post-closure care for the Ordot Dump. While the closure of cells and construction of new cells at Layon are not Consent Decree requirements, they are essential to an efficient and environmentally sound solid waste system and must be funded. All of this can be funded without a rate increase by simply using the funds now available to the system currently used to reimburse the Government for debt service. However, we remain open to other alternatives that the Government believes will better serve its needs.

With respect to your "deficit" claim, we disagree. The Government of Guam has been on notice since 2012 that if it wished to be reimbursed for the debt service, it needed to take the necessary steps to increase GSWA rates. Notice was formally given to the Government in the rate options submitted by the Receiver to the Public Utilities Commission on June 18, 2012. Copies were provided to the Governor, Lt. Governor and the Guam Legislature. Notice was again given at the Hearing before the District Court held on July 18, 2012, after which I met with Governor Calvo to personally brief him on the rate issue. We also published an article in the *Pacific Daily News* describing the steps the Government of Guam would need to take if it wanted to be fully reimbursed for the debt service it pays from its Section 30 tax revenue.

The Government has taken no action to increase the rates needed to reimburse itself for the debt service payments it makes from its Section 30 tax revenue. Instead, it has included in its annual budget an "IOU" for the money that would have been paid had the Government actually increased the GSWA rates needed to fund this reimbursement. This may serve the political interests of the Governor, but does nothing to actually address very real financial issues.

To claim that this IOU, created for political expediency, must now be paid by GSWA is at odds with the reality of the situation. The bond indenture clearly says that GSWA operations must come first,

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and only when operations are fully funded can tipping fees be used to reimburse the general fund for the debt service payments it makes. The Consent Decree itself makes the Solid Waste Operations Fund the primary source of funding for the Consent Decree projects. While the Government is permitted by the Consent Decree to obtain funding from other sources in addition to the tipping fees that are the exclusive source of funding for the Solid Waste Operations Fund, it has not done so with respect to the additional projects at issue here.

As Receiver, we have raised rates when needed to properly run the system and achieve compliance with the Consent Decree. The revenue you are apparently seeking through the “substantial” rate increase you describe in your letter is for the explicit purpose of replacing the Section 30 tax revenue presently used for debt service in order to pay for budget items that are unrelated to solid waste. We recognize that it is the prerogative of the Governor to raise revenue when he believes it is needed for the Government of Guam. Raising tipping fees is one way to increase the revenue received by the General Fund. It is, however, also the Governor’s responsibility to take the actions needed to actually raise the revenue and, while he has been on notice for almost two years, he has done nothing in this regard other than create an IOU. The decision to raise GSWA rates to replace the Section 30 tax revenue presently used for debt service is a political decision for Guam’s elected leaders, not something a Receiver can do for you.

With respect to the debt ceiling, we are aware, based on the recent report by the Office of the Public Auditor that Guam’s public debt has increased significantly in recent years. Given your description of the debt ceiling together with the Public Auditor’s recent report on Guam’s debt, there appears to be no basis for a determination that we are making meaningful progress to provide funds for the additional projects. Without a firm commitment to fund these projects or a decision to withdraw them, we have no choice but to use the funds now used to reimburse the general fund for the debt service it pays on the 2009 bonds to pay for these projects. In order to begin accumulating the funds needed for the projects, we will begin transferring the funds previously used to reimburse the general fund for the debt service it pays, into a separate account to be used for this purpose. Should the Government provide additional capital to fund these requirements or formally withdraw them, we will be prepared to release these funds to the Government. To be very clear, with respect to the safety related projects, when we say formally withdraw them, we mean withdraw them from the Consent Decree and for the Government to fund them directly. These safety projects should be completed as soon as possible.

The Order of March 17, 2014 clearly states that the Court concurs with the Receiver’s use of the funds previously used for debt service reimbursement to fund these additional projects unless the Government otherwise funds or withdraws the projects: The Order states this on page 21, lines 1 through 5, as follows:

“The court concurs with the Receiver’s assessment with regard to these additional projects. The Government of Guam must either fund them or remove the requirement. Since these projects remain a Government of Guam imposed requirement, the Receiver must complete these projects using the funds it currently has at its disposal, which includes the \$4.5 million it annually reimburses to the Government of Guam’s General Fund.”

Mr. Arthur Clark  
May 13, 2014  
Page 3 of 3

We take compliance with the Court's Orders very seriously and believe that the approach we are pursuing is consistent with those Orders. Unless the Court directs otherwise, this is the course we intend to follow.

We are also, however, willing to continue discussions with you and your colleagues in the Governor's Office to fund these requirements in a different manner that may better serve the Government's objectives in other areas. Please let us know if you wish to continue these discussions.

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

c.c. Ms Sandra Miller  
Mr. Rawlen M.T. Mantanona  
Ms. Joyce Tang