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IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

UNITED STATES OF AMERICA,)	CIVIL CASE NO. 02-00022
)	
Plaintiff,)	
)	SIXTH JOINT REPORT
v.)	
)	
GOVERNMENT OF GUAM,)	
)	
Defendant.)	
_____)	

1 This Joint Report is submitted pursuant to the Court's May 18, 2023 "Post-May 10, 2023,
2 Status Hearing Order" ("5/18/23 Order"), ECF 1992. The parties have complied with the 5/18/23
3 Order requiring the parties to continue to meet and confer. This report will provide an update on
4 the topics covered in the 5/18/23 Order, including the Guam Waterworks Authority ("GWA")
5 Petition for leachate treatment rate adjustment, the seeps and leachate investigations, the Ordot
6 Post-Closure Trust Account, the Ordot Post-Closure Care Costs, and Termination of the
7 Receivership.

8
9 **I. UPDATE REGARDING GWA PETITION FOR LEACHATE DISPOSAL RATE
ADJUSTMENT**

10 The 5/18/23 Order directed the Receiver to take the lead on seeking an adjustment of the
11 GWA leachate disposal rate. The Receiver and his counsel met with Miguel Bordallo (GWA
12 General Manager) and Theresa Rojas (GWA counsel) on July 6, 2023, by video conference.
13 Irvin Slike and Heather Zona also participated.

14 During the July 6th conference, Mr. Bordallo informed the parties that GWA had been
15 actively pursuing a stand-alone re-classification rate that would result in a reduction of the
16 leachate disposal rate and had prepared a Leachate Disposal Rate Adjustment Petition ("Rate
17 Adjustment Petition") seeking to change the Commercial 3 Facility Rate from the current rate of
18 \$28.92 per thousand gallons to a leachate specific rate of \$14.72 per thousand gallons, a
19 reduction of 49.1%. Both the Receiver and GSWA supported this change and requested that
20 GWA ask PUC to make the new rate effective July 31, 2023, which was agreed upon by counsel
21 for the Receiver, GWA and Guam Solid Waste Authority ("GSWA"), and in the July 14, 2023,
22 Stipulation in Support of GWA's July 6, 2023 Petition. On July 6, 2023, GWA filed the Rate
23 Adjustment Petition with the Public Utilities Commission ("PUC"). See (ECF 1996-1, *Leachate*
24 *Disposal Rate Adjustment Petition* filed 7/18/23).

25 //

26 //

1 A hearing on the Rate Adjustment Petition was held on August 31, 2023, before the PUC,
2 at which the re-classification rate was approved with an effective date of August 1, 2023.¹

3 Separately, the Receiver requested from GWA a lump sum payment in the amount of
4 \$2,650,222 for excess costs incurred due to the leaks in the GWA Dero Road waterlines. *See*
5 **Exhibit A** (8/16/2023 Ltr. to Miguel Bordallo). GWA declined the Receiver's request to settle
6 claims with a lump sum payment. *See Exhibit B* (9/5/2023 date Ltr. to Harvey Gershman). The
7 Receiver is considering its next steps regarding this issue in consultation with GSWA.

8 GWA informed the Receiver on September 20, 2023, that on June 1, 2023, it filed an
9 Annual True-Up Submission Projection, and Request for Fiscal Year 2024 Rates petition with
10 the PUC, for an increase of twenty-seven percent (27%) of all GWA rates in 2024. It is not clear
11 whether any such increase will impact the Leachate Disposal Rate. The Receiver will be
12 responding to this petition.

14 **II. UPDATE REGARDING LEACHATE FLOW AND SEEP INVESTIGATIONS**

15 **A. Phase I - Investigation of Leachate Flows (volumes) and Seeps**

16 The Receiver has continued to conduct Phase I investigations with special attention
17 related to tracking the decrease in leachate flows relative to the GWA repair of water main leaks
18 along Dero Road, seasonal rainfall-related fluctuations in leachate flows, and seeps identified in
19 the reconnaissance effort of November 2022. The investigations include collection of data that
20 are plotted to facilitate review. Technical meetings are held on the ongoing investigations, as
21 well as on the level of effort and data collection needed to support conclusions. Phase I data
22 collection includes:

- 23 • Precipitation
- 24 • Leachate flow volumes
 - 25 ○ Monthly

26
27 ¹ With the lower GWA rate for leachate disposal being effective August 1, 2023, the Receiver currently estimates
28 that the annual costs to operate the Ordot Dump post-closure facility will be reduced from approximately \$2.74
million in 2021 and \$2.47 million in 2022 to approximately \$1.15 million in 2023.

- Instantaneous²
- Groundwater elevations
- Seeps sampling and weekly assessment of seep conditions
- Surface emissions monitoring of cover system (completed)

B. Technical Memorandum Prepared by Brown and Caldwell, Dated July 21, 2023

Technical Memorandum (the “Technical Memorandum”)³ provides an update of the Receiver’s ongoing leachate flow and seep investigations and was shared with the Technical Representatives on July 24, 2023, and was presented and discussed at an August 9, 2023, technical meeting. The data are collected to develop a better understanding of the relationship among the seasonal changes to leachate flows, groundwater elevations, and rainfall, and include leachate flow measurements and leachate flow estimates in the landfill collection and removal system “LCRS,” and manual measurements and automatic transducer measurements of groundwater elevations from wells at various locations on the site. The Technical Memorandum also provides analytical results of samples taken during the December 4, 2022, seep sampling event, and furthers the Receiver’s analysis of the data that continues to be collected to evaluate the leachate flows. Separately, a letter report dated April 12, 2023 (Brown and Caldwell), presents the results of a surface emissions monitoring assessment of the cover system conducted in March 2023. The emissions monitoring was performed to evaluate if the cover system, at the time of the assessment, provided a rainfall/stormwater pathway that contributes to excess leachate flows. According to the April 12th letter, results indicated that the stormwater management system and the cover system were intact and functioning as intended at the time of the assessment.

The Technical Representatives continue to meet to discuss the preliminary findings in the Technical Memorandum, and confer on continued data collection needs, schedules, and path forward at this time.

² Real time status of tank level and pump conditions is not possible since late May because the internet provider Docomo Pacific’s system was damaged during Typhoon Mawar which rendered the site’s SCADA (Supervisory Control and Data Acquisition) system inoperable. The Receiver has been working with a different provider to get internet service that will be less vulnerable to extreme weather events.

³ Technical Memorandum [No. 2] on “Leachate Flow and Seep Investigation Update,” prepared by Brown and Caldwell and submitted to the Receiver, dated July 21, 2023.

1 **C. Installation of Leachate Flow Meter**

2 At the time of the drafting of this joint report, the Receiver caused a flow meter to be
3 installed on the leachate force main to serve as a calibration check with the GWA meter currently
4 in place that is used for leachate flow measurement. It is now wired for operation and awaiting
5 calibration to be scheduled to put the meter in operation. Currently, there are many demands
6 related to recovery from Typhoon Mawar on the subcontractor that the Receiver and GWA use
7 to perform meter calibration and other system work. That subcontractor has postponed
8 calibration until such time as it can be scheduled for both GWA's and the Receiver's site
9 operations teams to be in attendance. We will keep the Court updated on this effort.

10 **D. Additional Data Collection Through 2023**

11 The Receiver will continue to collect data in the categories described under the Phase I
12 investigation. Data will be collected, at a minimum, through December 2023, and used to update
13 the leachate and seeps investigations.

14 **E. April 6, 2023, Heavy Precipitation Event**

15 On April 6, 2023, the Ordot dump received 2.67 inches of rainfall within a 6-hour period.
16 This provided an opportunity to observe the effects of an isolated rainfall event on groundwater
17 elevations and leachate flows.

18 Groundwater elevation, rainfall, and leachate flow data were collected during and after
19 the April 6 precipitation event to update and extend previous time-series plots. The updated time-
20 series plots show that groundwater elevations for this event responded relatively rapidly. The
21 largest groundwater elevation rise thus far was in response to the 2.67 inches of rainfall that
22 occurred during the 6-hour period on April 6, 2023.⁴

23 The overall pattern of groundwater elevation increases in response to rain events suggest
24 that rapid, local groundwater recharge is occurring. This recharge results in short-term spikes in
25 groundwater elevations that are higher in elevation than the Perimeter Leachate Collection
26 Trench ("PLCT"), which likely allow groundwater to enter into the LCRS and contribute to

27 _____
28 ⁴ Excludes data from the May 2023 Typhoon Mawar, which will be included in a future update.

1 excess leachate flows. These short-term spikes generally correspond to increases in leachate flow
2 along the eastern portion of the PLCT. Increases in groundwater elevations could also be
3 contributing to increased flow within the Western Leachate Interceptor Trench (“WLIT”) in
4 response to rain events. Leachate flows in both the PLCT and the WLIT showed a short-term
5 increase in response to the isolated April 6 rain event. However, it should be noted that leachate
6 flow dropped to normal dry season flow within a few days of the rain event.

7 Groundwater elevations, precipitation, and PLCT and WLIT leachate flows will continue
8 to be monitored to confirm these patterns.

9 **F. Phase II (Mitigation Remedies)**

10 As data is gathered in Phase I, the Technical Representatives continue to discuss the
11 schedule for initiating Phase II mitigation measures or remedies, if and as appropriate.

12 **III. ORDOT DUMP POST CLOSURE TRUST ACCOUNT**

13 **A. Bank of Guam Trust Account**

14 As of September 15, 2023, the balance in the Bank of Guam Trust Account was
15 approximately \$5.9 million. The GSWA, as directed by the Court, made its first of two
16 payments for inflation adjustments to the Ordot Dump Post Closure cost estimate on July 31,
17 2023, in the amount of \$1,694,933.98. GSWA has stated that it plans to make the second
18 inflation payment in the amount of \$1,886,800.23, on or before December 31, 2023, as ordered
19 by the Court. GSWA continues to make its monthly payments in the amount of \$166,667.00 into
20 the Trust Account in a timely manner. In efforts to increase the amount of interest income this
21 Trust Account accrues, the Receiver is in the process of opening a new account with the Bank of
22 Guam that invests the deposited funds into various Federally insured and/or U.S. Government
23 debt obligations. The Receiver will be including the GSWA Controller in setting up and
24 administering this new account for the current Bank of Guam Trust Account.

25 **IV. ORDOT DUMP POST CLOSURE CARE COSTS**

26 **A. Post-Closure Care Funding**

27 The current Post-Closure Financing Plan was approved by the Court on May 6, 2016 and
28 the New Trust Agreement was drafted in 2019. *See* ECF 1668 and 1879. It required GSWA to

1 make monthly payments totaling \$2 million per year through August 2026. At that time, the
2 Receiver, while administering all GSWA under the Receivership, had set aside funds in the
3 amount of \$7,166,667 for Ordot Dump post-closure costs. In 2019, the Ordot Post Closure cost
4 estimate was \$21,685,359, although a final cost estimate associated with the post-closure plan
5 was expected by the parties. This financing plan required GSWA, after the termination of the
6 Receivership of GSWA administration, to continue to make monthly deposits totaling \$2 million
7 per year that would result in an ending balance of \$21,833,334, *i.e.*, slightly more than the cost
8 estimate, in August 2026. However, the financial projections did not include deductions for
9 actual costs that would be incurred for operating the post-closure facility and drawn from the
10 account. As has been reported to the Court, annual costs for operating the post-closure facility
11 have been higher than estimated, but those costs may be reduced to a level more in line with the
12 estimate because of the reduction in GWA's leachate disposal rates and volumes of leachate to
13 treat since the water leaks have been fixed.

14 As part of the post-closure permit application in 2021, the Receiver prepared a post-
15 closure care estimate of \$27,740,327 (2021\$). GEPA approved this estimate in the post-closure
16 care permit issued in January 2022. This is the only post-closure cost estimate that has been
17 approved under the permit.

18 The updated projections the Receiver shared with the parties in 2022 had revised cost
19 estimates ranging from \$56 million to as high as \$87 million. The primary reasons these
20 estimates were so much greater than the Receiver's 2021 estimate was because (1) increasing
21 leachate quantities year over year since at least 2018; (2) the then high rate charged for leachate
22 treatment, and (3) the high escalation rate assumption on future rate increases for leachate
23 treatment. Since that time the GWA leaks have been fixed (late December 2022), the leachate
24 treatment volumes continue to be substantially lower than the treatment volumes in 2022 and the
25 PUC has approved the lower stand-alone leachate treatment rate. With this new information,
26 the Receiver estimates that the cost of post-closure (through 2046) to be closer to the Receiver's
27 2021 estimate of \$28 million. The parties recognize that after sufficient information is obtained
28 from the seeps and leachate investigation and mitigation measures, if required, the cost estimate

1 should be updated and used in calculating both the inflation payments GSWA would be required
2 to make annually and the balloon payment that GSWA would be required to satisfy in 2026.

3 The regulations and permit require that GSWA continue making annual inflation
4 payments on the estimate that is approved in the permit using the previous year's GNP-Deflator
5 index.⁵ Guam EPA issued a letter on April 20, 2023, instructing how the cost estimate is to be
6 inflated and the amount of the inflation payment, following the approach the U.S. EPA issued in
7 a letter on March 31, 2023. The parties propose that when the current funding plan ends in
8 August 2026, that any unpaid amount stated in that estimate be due as a balloon payment
9 following the end of the agreed upon initial 8.5 year pay-in period that had expected the trust
10 fund to be fully funded. Current projections by the Receiver put the balloon payment in the
11 vicinity of over \$19 million in August 2026, based on estimates of the future deflator index, and
12 not including any leak credit compensation that GWA may pay.

13 GSWA's GEPA permit also requires that the post-closure cost estimate be updated every
14 five years. The five-year clock for adjusting the post-closure cost estimate started in 2021.
15 Thus, the closure cost estimate must be updated per permit condition, and at which time, the
16 balloon payment could be recalculated.

17 GSWA acknowledges it is obligated to comply with payment as required under the
18 permit and RCRA, and is committed to drawing on its resources and borrowing capacity to meet
19 any payment requirements. In fact, GSWA has been making such payments in accordance with
20 the Court-ordered payment plan, and also made the first inflation payment as calculated by
21 GEPA. Presently, GovGuam has Section 30 capacity and has the ability to use available funds to
22 back GSWA bonding for the balloon payment for the amount estimated above, should it decide
23 to do so. The Government of Guam also brought a CERCLA cost recovery case against the
24 United States Department of the Navy regarding the Ordot Dump. The case has been trifurcated
25 into three phases. Future costs have not yet been resolved in that case; however, should the case
26

27
28 ⁵ The GEPA Solid Waste Disposal Regulations ("GEPASWDR") state that the "owner or operator must annually
adjust the post-closure cost estimate for inflation." (Sec. 23703(2)). *See also* 40 C.F.R. 258.72(a)(2).

1 result in compensation to GovGuam for future costs, that may also be a source of funding. To
2 date the parties have reached resolution as to *past costs* expended by GovGuam and expect to
3 seek court approval of a Partial Consent Decree as to those past costs shortly. *See Government of*
4 *Guam v. United States Department of Navy*, 1:17-cv-2487-JMC (D.D.C.).

5 **B. Renewal of Brown and Caldwell Contract**

6 Brown and Caldwell (“BC”) is the operator of the Ordot Dump Post-Closure Facility and
7 performs pursuant to the contract dated May 8, 2018 (“BC Contract”). The initial term of the
8 BC Contract was for seven (7) years and will expire in 2025. In the coming months, as
9 recommended by Irvin Slike of GSWA, the Receiver will work with GSWA to review the
10 operating costs of the Ordot Dump Post-Closure Facility to explore areas where cost reductions
11 can be implemented under the BC Contract for the remaining term of the contract if the contract
12 is renewed. The Receiver agrees with GSWA that it would be premature to extend the BC
13 Contract beyond the initial term and if sufficient cost savings cannot be negotiated with BC, then
14 the Ordot Dump operations contract will be re-procured. The Receiver will work with GSWA to
15 initiate the procurement process as well.

16
17 **C. New Trust Agreement for Post-Closure Care Cost after Receivership**
18 **Termination**

19 In December 2018, Receiver issued a Request for Proposal (“RFP”) for the selection of a
20 Trustee to provide services for the Ordot Dump Closure Facility (RFP Number: RECEIVER-
21 RFP002-19). As a result of that process, the Bank of Guam was selected and approved by the
22 Court order on June 23, 2021. *See* ECF 1931 (Order Approving Request to Issue Notice of
23 Award). The RFP included a draft of the new trust agreement based on, *i.e.*, a form as prescribed
24 by RCRA and approved by EPA (“New Trust Agreement”). *See* 40 C.F.R. § 264.151(a)(1). The
25 Bank of Guam accepted the form of the New Trust Agreement in its proposal responding to the
26 RFP. In the coming months, Receiver, GSWA, and the other parties will work together to
27 update the schedules to the New Trust Agreement and incorporate the funding and financing plan
28 requirements. The funding and financing plan requirements include payment of the required

inflation payment and balloon payment due in 2026, and the cost of operating the Ordot Dump Post-Closure Facility as required by the post-closure permit and applicable regulations.

V. TERMINATION OF RECEIVERSHIP

A. SEP Certification

The Court ordered the Receiver to submit to U.S. EPA and Guam EPA by June 30, 2023: (1) the portion of the SEP Completion Report related to the construction of the household hazardous waste facility, and (2) the certification that the Ordot Dump no longer receives municipal solid wastes. On June 30, the Receiver complied with the Court's order and filed its portion of the SEP completion report and the certification regarding Ordot Dump.⁶ See ECF 1955. GEPA is consulting with EPA and GSWA regarding GEPA's portion of the SEP Completion Report.

B. Cessation Certification

GSWA/GovGuam is amenable to taking on this responsibility, and now has the technical expertise and personnel to do so.⁷ The Parties are in agreement to develop a transition plan to fully end the Receivership in a manner that transfers operational control to GSWA and have confidence that GSWA can manage the Ordot Dump post-closure facility properly.

VI. NEXT STEPS

The parties propose that the next joint status report be filed to update the Court regarding the implementation of the GWA rate adjustment and discussions with GWA regarding the Receiver's unresolved request for compensation for increased costs resulting from the Dero Road leak, progress in setting up the new Bank of Guam account, progress in finalizing the schedules for the New Trust Agreement, progress regarding the funding methodology for the balloon payment, the progress of Phase 1 of the investigation of the seeps and source of increased

⁶ On September 19, 2023, the Receiver sent a letter to U.S. EPA and Guam EPA correcting Section 1.2 Background of the Receiver's portion of the SEP Completion Report. Specifically, the clause "which has existed since World War II" at page 8 of the report was removed due to an objection raised by DOJ. A copy of the letter was filed with the Court on September 19, 2023. See ECF 2000.

⁷ The parties recognize that implementing this transition may complicate the process for issuing the certification of cessation of discharges to the waters of the US required by Section 8(i) of the Consent Decree. The parties are committed to working together to achieve a resolution of any issues regarding the certification.

1 leachate, a method of transfer of Ordot Dump post-closure Facility operations to GSWA, and a
2 timetable for termination of the receivership under Section V above.

3 Submitted this 20th day of September, 2023.

4
5 **UNITED STATES DEPARTMENT**
6 **OF JUSTICE**

7 */s/ Valerie K. Mann*

8 Dated: September 20, 2023

9 By: _____

10 **VALERIE K. MANN**

11 *Environmental Enforcement Section*

12 **CIVILLE & TANG, PLLC**

13 */s/ Joyce C.H. Tang*

14 Dated: September 20, 2023

15 By: _____

16 **JOYCE C.H. TANG**

17 *Attorneys for Gershman, Brickner & Bratton, Inc.*
18 *as Federal Receiver for the Guam Solid Waste*
19 *Authority*

20 **OFFICE OF THE ATTORNEY GENERAL**
21 **Chief Deputy Attorney General**

22 *Not available*

23 Dated: _____

24 By: _____

25 **HEATHER M. ZONA**

26 *Attorneys for Government of Guam*
27
28

EXHIBIT A

August 16, 2023 – via email

Mr. Miguel C. Bordallo, P.E.

General Manager

Guam Waterworks Authority

Gloria B. Nelson Public Service Building

688 Route 15, Suite 200

Mangilao, GU 96913-6203

RE: Compensation to Receiver for Dero Road Waterline Leaks

Dear Mr. Bordallo:

I am writing you pursuant to the U.S. District Court for the Territory of Guam's (Court) Post-May 10, 2023 Status Hearing Order (Doc. 1992 filed 05/18/2023) that directed the Receiver for the Guam Solid Waste Authority (GSWA) to take the lead on discussions with the Guam Waterworks Authority (GWA) related to 1) a rate reduction for leachate treatment, and 2) compensation for excess costs that resulted from leaks in the GWA Dero Road waterlines.

We appreciate the GWA's efforts in working with the Guam Public Utility Commission in setting a reduced rate for leachate treatment as directed by the Court. We expect and look forward to getting this rate set and implemented later this month and for it to be effective July 1, 2023, as we have discussed.

The leaks from the Dero Road watermain caused significant increases in leachate volumes requiring treatment by GWA beginning in 2018 through the completion of repairs to the waterlines in late December 2022. Below are a graph and table prepared by the Receiver's technical consultant (Brown & Caldwell) demonstrating the volume and costs incurred for treating the excess leachate flows. We have determined that 99,406,234 gallons of additional leachate volumes for treatment can be attributed to the waterline leaks. When applying the applicable rates to this flow, the total cost paid by the Receiver from the GSWA Ordod Dump Post-Closure Trust Fund was approximately \$2,650,222.



Innovative, Sustainable Solutions
for Solid Waste Management



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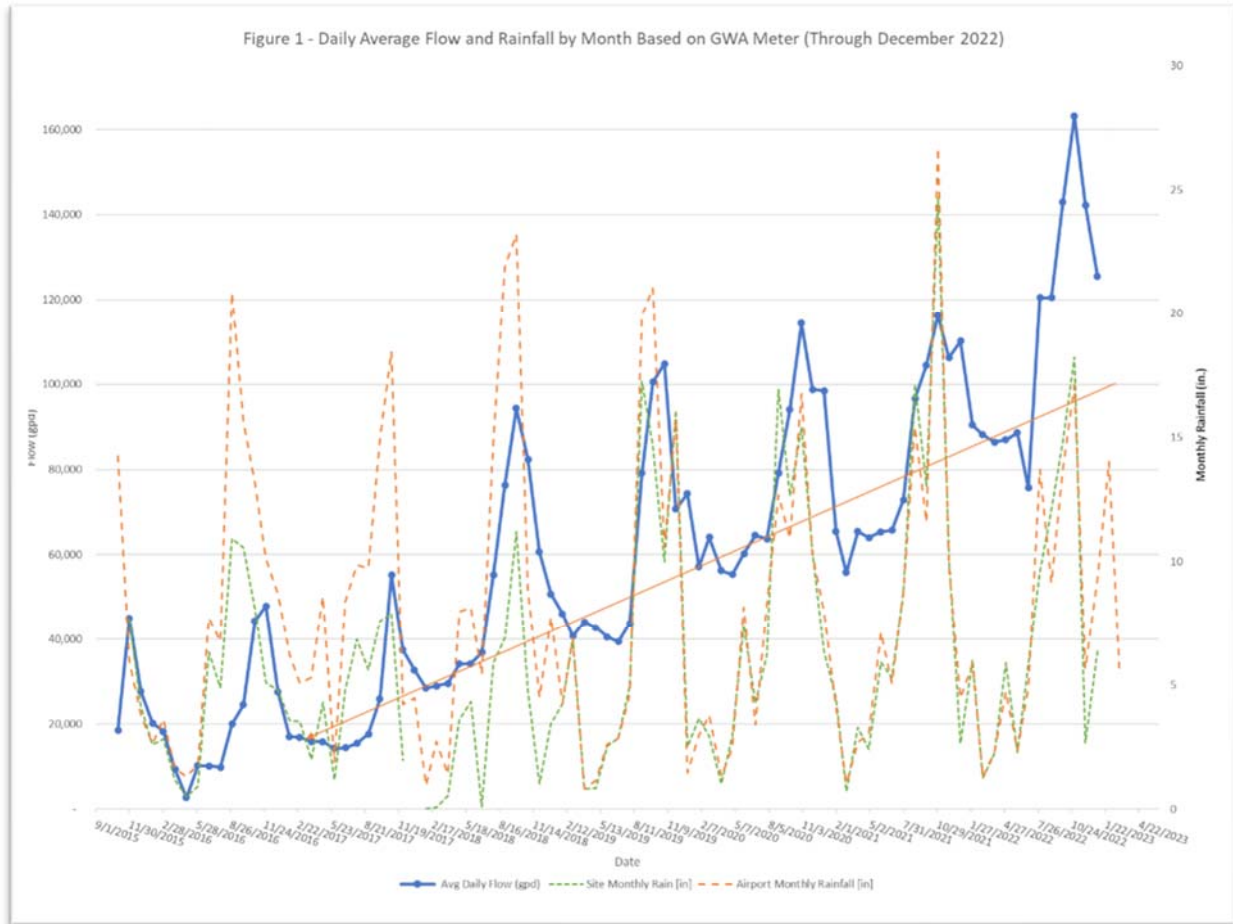


Table 1 - Projected Leachate Flows and Flow Rates Allocated to the Dero Road Water-line Leak Adjusted for Rainfall Contribution							
Date	Total Annual Leachate Flow	Annual Total Rainfall ^(a)	Annual Leachate Flow per Inch of Rainfall	Annual Average Leachate Flow Rate	Estimated Annual Leachate Flow Based on Total Rainfall ^(b)	Estimated Annual Leachate Flow Potentially Attributable to the GWA Line Leak ^(c)	Estimated Annual Average Leachate Flow Rate Potentially Attributable to the GWA Line Leak
	Gal/year	in/year	gal/year/inch	GPM	gal/year/inch	Gal/year	GPM
12/31/2016	7,397,019	93.94	78,742	14.1	-	-	-
12/31/2017	8,518,884 ^(d)	97.17	87,670	16.2	-	-	-
12/31/2018	18,658,285	107.69	173,259	35.5	9,441,171	9,217,114	17.5
12/31/2019	23,952,805	91.96	260,470	45.6	8,062,124	15,890,681	30.2
12/31/2020	27,748,045	89.12	311,356	52.8	7,813,143	19,934,904	37.9
12/31/2021	30,040,379	99.89	300,725	57.2	8,757,346	21,283,033	40.5
12/31/2022	40,976,930	90.07	454,945	78.0	7,896,428	33,080,502	62.9
Subtotals:	157,292,347				41,970,210	99,406,234	

Estimated GWA Treatment Credit		
Estimated Annual Leachate Flow Potentially Attributable to the GWA Line Leak ^(e)	GWA Rate Charged ^(f)	Total Annual Treatment cost for Flow Potentially Attributable to GWA Line Leak
Gal/year	\$/gal	\$
-	23.30	-
-	24.15	-
9,217,114	24.87	\$229,230
15,890,681	24.87	\$395,201
19,934,904	26.23	\$522,889
21,283,033	27.42	\$583,496
33,080,502	27.79	\$919,406
99,406,234		\$2,650,222

Rate Period	Rate
Jan 2015 - Sep 2015	20.33
Oct 2015 - Sep 2016	23.1
Oct 2016 - Sep 2017	23.91
Oct 2017 - Feb 2020	24.87
Mar 2020 - Sept 2020	26.11
Oct 2020 - Sept 2022	27.416
Oct 2022 - July 2023	28.924

(a) - 2017 assumed to represent base leachate flow year
(b) - Annual Rainfall based on Guam International Airport Data
(c) - Annual Rainfall multiplied by 87.670 gal/year/inch based on 2017
(d) - Total annual leachate flow minus the estimated annual leachate flow based on total rainfall
(e) - Formulas used to determine weighted avg rate per month for year.



The Receiver requests this amount (\$2,650,222) be paid immediately since it has already incurred and paid for the treatment of these additional flows into the Ordot Dump's leachate treatment system which pumped those excess flows back to GWA for treatment.

Please note that as a good faith gesture to promote rapid resolution of and payment for these issues, we are not applying any interest nor consequential damages to the compensation calculation. Our offer is based on the new leachate rate being effective July 1, 2023. However, the Receiver is reserving all rights with respect to this matter.

Please feel free to contact me to discuss this matter at your earliest convenience.

Sincerely,

Gershman, Brickner & Bratton, Inc.

Harvey W. Gershman, Founder Associate
Gershman, Brickner & Bratton, Inc.
Federal Receiver Representative for the Guam Solid Waste GWA
United States District Court for the Territory of Guam
8300 Boone Boulevard, Suite 500
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www.guamsolidwastereceiver.org
Cell/Text: 301-807-2688
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hgershman@gbbinc.com

cc: Andrew Gale and Irvin Slike, GSWA
Heather Martinez Zona, Office of Attorney General, Government of Guam
Christopher Lund, P.E. Receiver Representative (GBB)
Joyce C.H. Tang, Civile & Tang, PLLC, Counsel for Receiver
Andrew E. Mishkin, Culhane Meadows, Counsel for Receiver

EXHIBIT B



"Better Water. Better Lives."

Gloria B. Nelson Public Service Building | 688 Route 15, Mangilao, Guam 96913
P.O. Box 3010, Hagatna, Guam 96932
Tel. No. (671) 300-6846 Fax. No. (671) 648-3290

September 5, 2023

Harvey W. Gershman
Gershman, Brickner & Bratton, Inc.
8300 Boone Boulevard, Suite 500
Vienna, WA 22182

Reference: August 16, 2023 Compensation Demand

Mr. Gershman:

In response to the referenced demand for payment, the Guam Waterworks Authority respectfully declines your demand and finds your inference to interest and consequential damages premature and in bad faith. GWA has been working in good faith with the Guam Solid Waste Authority for several months prior to the May 2023 hearing and order to address both the leachate volumes at the Ordot closure facility and the leachate rate reduction. You were made aware of this in your introductory July 6th videoconference with myself, GSWA, GBB and our respective counsels. As stated in that meeting, GWA and GSWA had already coordinated with the Public Utilities Commission (PUC) Administrative Law Judge two months prior, and GWA finalized a petition for a reduced leachate rate to the PUC, which GWA submitted that same day on July 6th (the PUC granted GWA's petition on August 31st). Also in the July 6th meeting, GWA stated that it was open to the possibility of a credit to the account, based on an analysis on sufficient data and analysis to support, and justify a reasonable agreed upon credit.

In fact, in that discussion, GWA made clear that it had already requested such relevant data from Mr. Chris Lund of GBB as cited in his December 12, 2022 letter to GWA regarding water leaks (see GWA's December 15, 2022 response to Mr. Lund). You indicated in the July 6th meeting that you would follow up and get that data to GWA. To date, we have not received the information requested. In contrast, GWA addressed the GBB concern about water leaks within 19 days of Mr. Lund's letter.

Further, in the July 6th meeting, GWA indicated that as the leachate volumes from the Ordot facility continued to show an influence from rainfall and stormwater/groundwater even after the GWA leaks were repaired, it would be necessary to obtain at least a year's worth of data before a credible analysis could be made. I note that GBB did not object to this approach and GSWA concurred with GWA's course of action. Yet, and as of August 16, GBB now requests payment of approx. \$2.6M in "good faith" to "promote rapid resolution." GBB's "good faith" offer was not preceded by any follow-up meeting, letter, or other communication on this topic since the July 6 meeting and worse, no discussion or opportunity to review and vet GBB's data and conclusions, as presented in the August 16 letter, were afforded GWA prior to the \$2.6M demand for payment.

The issue of confirmed rainfall/stormwater influence on the leachate volumes also raises two other issues which will have a bearing on any determination of a credit by GWA.

First, on January 28, 2013 GBB issued a letter to confirm GWA's acceptance of leachate discharge into the system and stated that GBB confirmed discussion with GWA's Compliance & Safety Divisions on its requirements for acceptance. Specifically, GBB's David Manning clearly stated that "Stormwater is prevented from contact with the leachate by an impervious cover system and managed by a stormwater collection system on the Ordot Dump." On March 15, 2013, GWA's General Manager formally confirmed acceptance of the leachate on certain conditions, the relevant condition being "5. *All storm water shall be prevented from contact with the leachate by an impervious cover system and managed by a storm water collection system on the Ordot Dump site.*" Clearly, the data confirms that this condition is not being met, and it appears that it may have never been met, in violation of the conditions placed upon GWA's acceptance of the leachate.

Second, GSWA's General Manager has indicated that based on a review of existing documentation, the design and/or construction of the original closure system, leachate collection and storm water management systems do not appear to have been constructed in such a manner to prevent stormwater from entering the leachate collection system, citing over-excavation of waste adjacent to a known source of stormwater/groundwater and the placement of fill material that was not impervious, thereby allowing for stormwater/groundwater to enter into the leachate collection system at the edge of the closure system in this location. Further, according to the GSWA General Manager, information obtained from the manager of a similarly closed facility (unlined dump with an impervious cover system) in a similar climate regarding performance with respect to stormwater indicates that leachate volumes at that (properly closed) facility are unaffected by rainfall.

For the reasons outlined above, and for other reasons not stated, given (1) that there exists a continuing stormwater influence on leachate volumes at the Ordot facility; (2) assurances and acceptance of the conditions of service by GBB that "stormwater is prevented from contact with the leachate"; and (3) the failure of the Ordot facility to meet this condition appears to be because of defect in the design and/or construction of the landfill closure for which GBB was and is responsible, GWA will not provide any payment or accept any liability inferred in your August 16, 2023 demand. GWA will continue to work to collect sufficient data as previously stated to conduct its analysis for determination of a reasonable credit, and await further resolution on the issue of a potentially faulty closure system which continues to allow stormwater to affect leachate volumes before we finally resolve this matter.

Regards,



MIGUEL C. BORDALLO, P.E.
General Manager

Attachments

Cc: Therese G. Rojas, GWA
 Andrew Gayle, GSWA
 Irv Slike, GSWA
 Heather Zona, OAG