

Special Report of the Receiver

Regarding Whether the Receivership Should be Extended Beyond
December 31, 2017

Civil Case No. 02-00022
United States of America v. Government of Guam
Guam Solid Waste Management Division

Prepared for:



U.S. District Court of Guam

Submitted by:



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Guam Solid Waste Authority

In its Order dated November 24, 2017, this Court stated its concerns about the Guam Solid Waste Authority's (GSWA) Board of Directors' readiness to assume responsibility for operations of GSWA on January 1, 2018. The Court directed that the parties come to the hearing scheduled for November 28, 2017 prepared to discuss "whether the Receivership should be extended beyond the December 31, 2017 deadline."

The Receiver did not plan to file a written Status Report since the Court's Order did not indicate that written reports were required, instead we prepared to discuss the issues as outlined in the Court's Order. However, given the report filed by the GSWA Board of Directors on November 27, 2017, we believe it is appropriate that we file this response.

In its status report, the Board ascribes its lack of readiness on the issues addressed in the Court's Order of November 24, 2017 to the Receiver for not properly supporting the Board and to the Court for not allowing the Board to hire its own staff many months earlier. Both excuses are without merit.

In this Special Report we will briefly describe the status of the concerns addressed in the Court's Order and present our understanding of the reasons these situations persist.

Transition of Contract Employees and Hiring a Comptroller

The Receiver continues to believe the legal advice provided by Deputy Attorney General Pat Mason is correct, however, we understand the Court's decision not to take a position in this matter. As we understand it, the result is that it will now be the Board's responsibility to enter into its own contracts with Pacific Human Resource Services for the continued services of the temporary workers presently employed by the Receiver pursuant to the Receiver's contract with the company. This would also be the case for the current employee employed by direct contract with the Receiver. Based on the time it took for the Receiver to put these contract arrangements in place for the original contracts, it is unlikely in our opinion that these matters will be completely resolved by December 31, 2017.

With respect to the hiring of a Comptroller, it is the Receiver's understanding that an offer has been made but we are not clear that an agreement with the individual to whom the

offer was made has been reached. Assuming the Board's Status Report is correct and the offer is accepted and the new controller is on island by mid-December, we do not believe that this allows sufficient time to properly train and orient the new comptroller to his duties. When the current timeline was set for transition the Government of Guam stated that there should be at least a six (6) month transition overlap between the hiring of new management and transition¹. It is clear that such an amount of time is not now available prior to December 31, 2017.

Fiscal Year ("FY") 2018 Budget

The Board ascribes the budget problem with respect to the FY 2018 Budget as one that was created by the Receiver's failure to bring the matter to the Board's attention before the Government of Guam's 2018 Fiscal Year began. The facts are, however, that the Receiver brought this matter to the attention of the Board almost three months before the transition date was to occur. As we noted in our prior status reports on this matter, we prepared a budget for the Court's consideration prior to the beginning of the new fiscal year on October 1, 2017. Since it was basically a budget at the same levels as the previous year's budget approved by the Court, we did not formally present it to the Court until November 6, 2017 for the reasons set forth in our previous report to the Court. All of this is interesting background but is not relevant to the Board's obligation to comply with the requirements of Guam Law prior to the date transition would occur.

The Board excuses itself for this omission by claiming it was the Receiver's responsibility to bring this to the Board's attention. While it is a fact that we did bring it to the Board's attention in plenty of time for it to act, the Board suggests that they would have acted sooner if only the Court had allowed it to hire a General Manager earlier². The fact is that the Court permitted the Board to hire dedicated legal counsel more than three years ago but now contends it was the Receiver's job to inform them of the basic legal requirements that they must meet when the Board assumes full responsibility for GSWA.

The Board at its last meeting approved, without discussion, the FY 2018 Budget presented by the Receiver to this Court as its own. We assume it was then properly transmitted to the Legislature for approval. The legislation presented by Senator Ada approves this budget by increasing the amount previously enacted by the Legislature to the level needed. If this legislation is subsequently enacted into law by the Governor's signature or further legislative action, it should successfully resolve this issue.

¹ See Order dated May 2, 2016.

² It should also be noted that the Board was apparently unaware that the Guam Legislature had already enacted a grossly inadequate budget for GSWA as recommended by the Governor, until this was brought to their attention by the Receiver. The Government of Guam was well aware of the amounts needed to operate GSWA from the several audits conducted for the Office of Public Accountability, yet it had enacted a budget providing for less than half the amount needed.

Operating Rules of GSWA

The Board indicates in its Status Report filed yesterday that it has been held up in its work on this matter awaiting the Receiver's response to a request from the Board for input from the Receiver. We have now provided that response but there was no reason the Board should have waited so long in the first place to begin this important task.

In our Quarterly Report dated October 21, 2015 we stated the following:

“Another area the Board should address is the solid waste rules and regulations. The Board has now adopted rules governing its own deliberations and actions. There are, however, operational rules and regulations that should be updated to reflect the way the system operates today as compared to its operation prior to the Receivership. These rules are entitled “Solid Waste Collection, Disposal, Processing and Recycling” and are found in Title 29 of the Guam Administrative Rules and Regulations under the Department of Public Works.”

The above comments were a part of our presentation to the Court recommending the transition timeline that the Court subsequently adopted. The Board notes in its current status report that this matter has been on its agenda since “at least as far back as May 24, 2017.” According to the timeline approved by this Court, it should have been on the agenda since September 2016. The Receiver has been available throughout this entire time to answer any questions the Board or its legal counsel might have to facilitate their work on these important issues.

This is primarily a legal matter to be addressed by the Board and its attorney who has been on board for over three years. The Board itself has been in place and meeting on a regular basis for more than four years with its sole responsibility being to gain an understanding of the operations of GSWA and prepare itself for the day when it will take charge of GSWA. It has had dedicated legal counsel for most of that time. Despite these facts, the Board took no steps to address this important issue until May of this year. In our opinion it is doubtful that this process can now be completed by December 31, 2017.

Trustee, Independent Engineer and Post-Closure Operator

The Receiver will accept the input of the Board on these procurement issues as indicated in the Court's Order. We believe the schedule for selecting the Trustee and Independent Engineer should coincide with schedule for completing the work to resolve the landfill gas migration problem and will adjust the procurement schedule accordingly.

Negotiations are underway with two proposers on the Post-Closure Operator for the Ordot Dump Closure Facility and we expect to conclude a contract by the end of December. We will keep the Court informed.

Approval of the Post-Closure Plan for the Ordot Dump

As noted by the Court, this matter is still pending with the U.S. Environmental Protection Agency (EPA) and the Guam Environmental Protection Agency (GEPA). We continue to work with both agencies toward final approval at the earliest possible date.

We thank the Court for its consideration of our views in this matter.

I declare under penalty of perjury under the laws of Guam and the United States that the foregoing is true and correct.

Dated this 28th day of November 2017.

A handwritten signature in cursive script, reading "David L. Manning". The signature is written in dark ink and is positioned above a horizontal line.

David L. Manning
Receiver Representative