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DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA,
Plaintiff,
vs.
GOVERNMENT OF GUAM,
Defendant.

CIVIL CASE NO. 02-00022
ORDER
re Extension of Receivership

On December 1, 2017, the court issued an Order extending the federal receivership until at least June 30, 2018. *See* Order re Extension of Federal Receivership at 10, ECF No. 1776. The reasons for said extension were (1) to complete the work associated with the methane gas mitigation plan and the Post-Closure Plan for the Ordot Dump, (2) insufficient time to train the new comptroller and (3) the failure of Board of Directors (the “Board”) to properly promulgate rules and regulations for the Guam Solid Waste Authority (“GSWA”). *Id.* at 2, 4-6 and 10.

In anticipation of the June 30th transition date, the court ordered the Receiver to prepare a report addressing the new management team’s readiness to take over operations. *See* Order re Status Hearing, ECF No. 1799. On May 10, 2018, the Receiver filed a Special Report Regarding the Readiness of the New GSWA Management Team to [A]ssume Full Responsibility for GSWA and Certain Other Matters Relevant to the Transition (the “Readiness Report”).¹ *See* ECF No. 1806. On

¹ The court ordered the Readiness Report be filed under seal based on the court’s finding that the Readiness Report and its exhibits contained discussion of sensitive personnel matters, that release of said information may adversely affect potential litigation, and there was no alternative to sealing that would adequately protect this compelling interest. *See* Order re Motion for Leave to File Under Seal and for Related Relief, ECF No. 1805.

1 May 18, 2018, the Government of Guam filed a response to the Readiness Report, and the United
2 States filed its response on May 22, 2018.² See ECF Nos. 1809 and 1811. On June 13, 2018, the
3 Receiver filed a Supplemental Readiness Report. See ECF No. 1814.

4 Additionally, on June 8, 2018, the court ordered the parties to file status reports addressing
5 various issues that may impact the transition over the operations and management of GSWA. See
6 Order, ECF No. 1813. On June 14, 2018, the Receiver filed its status report. See ECF No. 1815.
7 The United States, the Board and the Government of Guam filed their status reports on June 15,
8 2018. See ECF Nos. 1816-1819. On June 26, 2018, the Board filed a Supplemental/Update to Status
9 Report. See ECF No. 1820.

10 Having reviewed the Readiness Report, the responses thereto, the Receiver's Supplemental
11 Readiness Report, along with the various status reports filed by the parties, the court finds that it
12 would not be appropriate to terminate the federal Receivership at this time. The Consent Decree
13 entered into by the parties on February 11, 2004, required the Government of Guam cease operations
14 at the Ordot Dump and to submit a post-closure care and monitoring plan. Consent Decree at ¶¶
15 8(b)(i) and (i), ECF No. 55. The post-closure plan is still not approved since the Ordot Dump
16 landfill gas mitigation project is still not completed. According to the Receiver's status report, "[t]he
17 anticipated completion of construction work by the contractor is July 20, 2018[,]” which will be
18 followed by a “two-week period of performance testing” with “results . . . to be submitted to U.S.
19 EPA for review and acceptance as part of the overall Post-Closure Plan acceptance criteria.”
20 Receiver's Status Report at 3, ECF No. 1815. The Receiver anticipates that this can be completed
21 within 90 days. *Id.* Once the Receiver submits additional documents relating to the performance
22 testing of the Soil Vapor Extraction system, an updated cost estimate, and standard operating
23 procedures for operation and maintenance, the U.S. EPA anticipates it will take 60 to 90 days for it
24 to complete its review. United States' Status Report at 1, ECF No. 1816. However, the timing of
25 the final approval of the Post-Closure Plan remains unknown at this time because U.S. EPA can not
26 predict whether any of the Post-Closure Plan documents will require additional revision and
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28 ² The court permitted both of these responses to be filed under seal.

1 resubmittal. *Id.* The United States renewed its request that the Receiver complete these tasks before
2 the Receiver’s responsibilities are fully terminated.³ *Id.* at 1-2. The court continues to believe that
3 the Receiver is the most prepared to deal with this serious public health issue in the most efficient
4 manner and should remain to complete this task.

5 Aside from the unfinished work related to the post-closure of the Ordot Dump, there are other
6 unresolved issues that lead the court to conclude that transition from Receivership to Board
7 management over GSWA cannot occur as contemplated on June 30, 2018. As noted by the Board’s
8 report, GSWA’s rules and regulations still have not been approved and promulgated, although the
9 Board anticipates that this will occur on July 2, 2018. *See* Board’s Status Report at 1, ECF
10 No. 1817. The Revised Status Report prepared by the new management team stated that “[r]evisions
11 were recommended by Senators Tom Ada and Telena Nelson. Management revised the GSWA
12 Rules and Regulations accordingly.” Revised Status Report at 4, n.4, ECF No. 1800. A copy of the
13 revised proposed rules and regulations were never furnished to the court, however, the court has had
14 an opportunity to review the revised version on the Guam Legislature’s website.⁴ Section 6105⁵ of
15 these revised rules refers to a “‘Schedule of Rates and Charges’ form” that “shall be considered as
16 an appendix to these Rules,” however, there is no such schedule appended to the revised proposed
17 rules and regulations. The last version of the fee schedule provided to the court reflected that Guam
18 mayors would be charged \$0 to dispose of waste. The Receiver noted that under its current practice,
19 Guam “Mayors receive one free load per day but must pay the Government of Guam Agency fee for
20 any loads in excess of one load each day.” *See* Receiver’s Comments to Limited Quarterly Report
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23 ³ When the United States initially requested that the Receiver be permitted to finish
24 implementing the remediation plan for explosive gases and complete the preparation of the Post-
25 Closure Plan for the Ordot Dump, neither the Board nor the Government of Guam objected to said
26 request. *See* Order re Extension of Federal Receivership at 2, ECF No. 1776.

27 ⁴ The revised propose rules and regulations were viewed at the following:
28 [http://www.guamlegislature.com/Bills_Introduced_34th/Bill%20No.%20273-34%20\(COR\).pdf](http://www.guamlegislature.com/Bills_Introduced_34th/Bill%20No.%20273-34%20(COR).pdf) (last
visited June 25, 2018).

⁵ The court notes that there are two separate provisions designated as “§ 6105” in the revised
proposed rules and regulations. In this discussion, the court is referencing the second § 6105.

1 of the GSWA Management Team at 4, ECF No. 1795-1. Mr. Martin assured the court that it was
2 still his intent to limit the mayors to one free haul a day, and that he wanted to “standardize” the
3 amounts for the mayors. It is unknown whether the new management team has made revisions to
4 the fee schedule, but this is an important issue because the Receiver has reported that many mayors’
5 offices and Government of Guam agencies are not up to date on their payments, yet at the last
6 hearing, Mr. Martin did not know which government agencies had outstanding balances owed to
7 GSWA. Mr. Martin told the court he would provide the information, but to date he has not provided
8 any further information to the court.

9 Furthermore, on May 9, 2018, the Receiver filed a report stating that it believed certain
10 contracts it had entered into were believed to be “critical” and that GSWA would need to continue
11 said contracts post-Receivership. *See* Receiver’s Supplemental Status Report re: Transition Issues
12 at 4, ECF No. 1803. The Receiver believed that “the contracts should be formally assigned and in
13 some cases renegotiations may be needed to reach agreement with the various contractors to
14 continue.” *Id.* The court ordered the Board to describe “what specific steps the Board has taken to
15 renegotiate or have formally reassigned the agreements with various contractors.” Order at 2, ECF
16 No. 1813. In response to the court’s Order, the Board filed the declaration of its General Manager,
17 Donald Greg Martin. *See* Martin Decl., ECF No. 1818. According to Mr. Martin, he personally
18 contacted these contractors and most confirmed that their companies would consent to continuing
19 their contracts post-Receivership. *Id.* at ¶¶5-7. Mr. Martin did not state when he reached out to
20 these contractors, but it appears that communication with the contractors did not occur until some
21 time after the court had issued its June 8th Order and more than one month after the Receiver first
22 raised the issue. Although these contractors expressed consent to continuation of their contracts,
23 further Board action is still necessary to continue with the services provided by these contractors.⁶
24 Additionally, the Revised Status Report prepared by the new management team states that
25 “[m]anagement is not planning any significant changes in GSWA’s organizational structure [and]
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27 ⁶ The form letter sent to the various contractors stated that the “Board’s legal counsel will
28 contact” the contractors “at a later date to determine if any formal agreement is necessary to
effectuate . . . consent.” Exs. A-H to Martin Decl. ECF No. 1818.

1 . . . will continue with status quo.” Revised Status Report at 3, ECF No. 1800. Yet, the declaration
2 of Mr. Martin fails to address what specific steps the Board has taken to enter into a formal contract
3 with Pacific Human Resources Services, Inc. (“PHRS”) to ensure that the critical services provided
4 by the dedicated contract employees continues post-Receivership, especially since the Receiver has
5 stated it will not assign its contract with PHRS, in accordance with legal advice received from former
6 Deputy Attorney General Pat Mason.

7 Finally, the Receiver calls into question the Board’s willingness to take prompt and decisive
8 action to address pending personnel matters that affect the operations and management of GSWA.
9 The United States shares the Receiver’s concerns. The Government of Guam also acknowledges that
10 the personnel issues are “ nonethless important in the perception of whether the [G]overnment of
11 Guam is ready to assume full control of the management of Guam’s solid waste system.”
12 Government of Guam Response to Readiness Report at 2, ECF No. 1809.

13 To be clear, there appears to be two particular concerns here related to the preparedness of
14 both the Board and the new management to assume control over GSWA. The first concern involves
15 the merits of the sealed personnel matters that remain pending. The second concern is the inaction
16 by the Board relative to the same personnel matters. Regarding the former, the court declines to
17 address the particular merits of the personnel matters and grants the Board’s request for an
18 independent investigation.⁷ The court further orders the Receiver to pay for the reasonable costs
19 associated with the independent investigation the Board asserts it needs in order to make a decision
20 on the matter.⁸ As to the second concern, the court orders the Board to resolve this matter in its
21 entirety no later than August 31, 2018, and to thereafter file a report with the court no later than
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23 ⁷ The court grants such request in the interest of assisting the Board come to a prompt
24 resolution of the pending personnel matters, despite the evidence in the record that the initial
25 investigation was “fair and followed acceptable procedures” and that “it is not necessary to conduct
26 a second investigation.” Ex. 14 to Receiver Readiness Report, ECF No. 1806-3. The court makes
no findings as to the fairness or reasonableness of any prior investigation conducted in these
personnel matters.

27 ⁸ In giving the Board the opportunity to resolve this matter, the court will not reverse any
28 action the Receiver has taken thus far to ensure a safe and productive working environment at the
GSWA compound.

1 September 14, 2018,⁹ and will set a hearing thereafter. The Board’s report shall discuss how it has
2 addressed or resolved *all* the issues raised in the Receiver’s Readiness Report¹⁰ and shall address
3 whether the Board believes its management team is ready to assume full control over the operations
4 of GSWA.¹¹ Regarding the inaction by the Board to resolve these personnel matters to date, the
5 court finds that the pendency of these personnel matters affects the preparedness of both the Board
6 and the new management team to assume full control of the management and operations of GSWA
7 at this time.

8 Based on the United States’ estimate of when the Ordot Dump Post-Closure Plan can be
9 approved and the other issues discussed above, the court orders that the Receivership be extended
10 until at least December 31, 2018. While the Receiver, the United States and the Government of
11 Guam complete the important work involving the gas mitigation project and the final approval of
12 the Post-Closure Plan, the Receiver shall continue to exercise full power and authority over all
13 GSWA functions, duties and responsibilities, to include any hiring needed and the execution of
14 personnel actions during the remainder of the Receivership. The Board’s management team shall

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21 ⁹ The Government of Guam concedes that “[t]o some extent the [c]ourt . . . could require
22 the Board to resolve this matter in its entirety now or after transition.” Government of Guam
23 Response to Readiness Report at 2, ECF No. 1809. The court expects a resolution before a transition
24 occurs.

25 ¹⁰ The Board may request that its report be filed under seal if the Board believes such sealing
26 is necessary to protect sensitive personnel matters.

27 ¹¹ The Government of Guam claims that the “Board was taken by surprise” by the Receiver’s
28 “failure . . . to inform the Board of [certain] issues prior to submission of the Readiness Report[.]”

Government of Guam Response to Readiness Report at 5-6, ECF No. 1809. To avoid future
surprises, the Receiver is ordered to keep the Board regularly apprised of any concerns it has with
regard the management team’s proficiency and responsiveness to administrative duties and tasks
assigned to them to ensure the new managers are ready to lead the agency post-Receivership.

1 continue to work closely with the Receiver on all operational and financial issues to ensure a smooth
2 transition eventually occurs.¹² Additionally, the court orders the Receiver to pursue the selection of
3 the trustee and independent engineer to coincide with the termination of the Receivership.

4 IT IS SO ORDERED.



5 /s/ Frances M. Tydingco-Gatewood
6 Chief Judge
7 Dated: Jun 28, 2018

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26 ¹² Although the management team is ultimately answerable to the Board, the Receiver has
27 been vested with “the authority required or necessary for the complete management and control of
28 the Consent Decree projects, including but not limited to . . . [t]he supervision of all of Government
of Guam’s employees associated with the Consent Decree projects[.]” Order re: Appointment of
Receiver at 16, ECF No. 239.