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22 IN THE UNITED STATES DISTRICT COURT
23 FOR THE TERRITORY OF GUAM

24 UNITED STATES OF AMERICA,) CIVIL CASE NO. 02-00022
25)
26 Plaintiff,)
27)
28 v.) SEVENTH REPORT ~~OF THE~~
RECEIVER GOVERNMENT OF GUAM
AND)
29) UNITED STATES OF AMERICA
30 GOVERNMENT OF GUAM,)
31)
32 Defendant.)
33 _____)

1 This ~~Seventh~~ Report is submitted ~~by the Receiver~~ pursuant to the Court’s November 22,
2 2023 “Post-October 17, 2023, Status Hearing Order” (“the Order”). Dkt. No. 2019. ~~The~~
3 ~~Receiver has attempted in good faith to work with U.S. EPA and Government of Guam~~
4 ~~(“GovGuam”), and the parties were unable to resolve certain differences in language and~~
5 ~~descriptions in the Seventh Joint Report.~~

6 The parties have complied with the Order requiring the parties to continue to meet and
7 confer. This report will provide an update on the topics covered in the Order, including the seeps
8 and leachate investigations; the Supplemental Environmental Project Completion Report
9 (“SEP”) and U.S. EPA’s determination on the bifurcation of the Receiver’s tasks from GEPA’s
10 tasks; the certification of cessation of solid waste disposal at Ordot dump; and the Termination of
11 the Receivership, including Chace Anderson’s review of GSWA operations; GSWA funding of
12 post-closure; ~~Receiver update of the annual Ordot Dump Post Closure Cost Estimate,~~ and the
13 Trust Agreement. This report also provides an update on the operations and maintenance
14 contracting, the Receiver’s claim against GWA, the status of the funds held by the Receiver for
15 post-closure expenses, ~~Receiver update of the annual Ordot Dump Post Closure Cost Estimate,~~
16 and the subpoena to Gershman, Brickner & Bratton, Inc. from the Government of Guam counsel
17 Kelley Drye & Warren LLP in connection with the CERCLA litigation.

18 **I. UPDATE REGARDING GWA CLAIM**

19 In the Sixth Joint Report, the Receiver reported that it offered a lump sum settlement in
20 the amount of \$2.65 million for excess costs incurred due to the Dero Road waterline leaks
21 (“Dero Road Leaks”). Sixth Joint Report at p. 3, Sept. 20, 2023, Dkt. No. 2001. In this section of
22 the Seventh Joint Report, the Receiver reports as follows:

23 GWA declined the Receiver’s settlement offer. *Id.* To further investigate the claim, the
24 Receiver submitted a Sunshine Act Request on March 20, 2024 to GWA relating to Dero Road
25 Leaks. GWA provided its response to the Sunshine Act Request on April 19, 2024. The Receiver
26 Team is reviewing those documents and has initially identified an important document which
27 sheds light on Dero Road Leaks and the impact to the increase in leachate flow. The document is

1 an internal GWA Memorandum dated May 16, 2023 regarding the Dero Road Leaks (~~“GWA~~
2 ~~Memo”~~) confirming, among other things, that the:

3
4 ... initial [Dero Road Leak] ... (not on the leak map) was found near the Ordot
Landfill at the end of 2022 and was fixed at the beginning of 2023.

5
6 Before the leak was fixed, there was a difference of 197 to 224 gpm between the
outflow reading at Chaot and the reading at [Deep Well] A-12.... Taking
7 customer billing into account, ***there was still 181 to 208 gpm unaccounted for,***
8 ***with an average flowrate of 196 gpm unaccounted for between the dates***
12/13/2022 – 12/29/2022. It should be noted that the meters were read once a day
9 at various times during the day.

10 ***After the Leak was fixed, there was a difference of 103 to 126 gpm***
unaccounted for between the dates 1/3/2023 – 1/18/2023, with an average
11 ***flowrate of 116 gpm unaccounted for.*** Although this drop in unaccounted water
12 shows that the leak was substantial, it should be noted that the meters were read
once a day at various times during the day.

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15 The amount of water unaccounted for has dropped significantly over the
16 last several months; however there is still a large amount of unaccounted water
lost within the distribution line. Once the last two leaks are repaired, we should
17 see the amount of unaccounted water lost decrease again.

18 **Exhibit A** (May 16, 2023 GWA Internal Memorandum, “GWA Memo”).

19 The Receiver has requested a copy of the Leak Map referenced in the GWA Memo,
20 which GWA recently provided ~~on April 25, 2024.~~ The Leak Map may will help the Receiver
21 team further understand and evaluate the impact of the multiple leaks around the Ordot Dump on
22 the increased leachate flow and its contribution to the additional leachate extraction costs
23 ~~experienced at the Ordot Dump incurred by GSWA.~~

24 The information reviewed to date indicates and confirms the Receiver’s earlier statement
25 that the Dero Road Leaks were the primary cause of the increase in leachate experienced from
26 about 2018 through January 2023, when the leaks were fixed. Consequently, the Receiver
27 believes that the effects of those leaks continued impacting leachate flows in 2023 and may still

1 be continuing to have an impact in 2024. The GWA Memo ~~also~~ confirms also that the leak had
2 an average flow rate of 80 gallons per minute in December 2022, just prior to repair of the major
3 leak. This equates to a daily flow of 115,200 gallons per day and is consistent with the increased
4 leachate collection data provided by Brown and Caldwell (“B&C”), the operator of the Ordot
5 Dump Facility. This information further supports the Receiver’s claim against GWA for the
6 costs incurred as a result of the excess leachate, which will be the basis for determining the
7 amount of damages ~~to which the GovGuam/~~GSWA is entitled.¹ The Receiver intends to seek
8 resolution of the claim by negotiating with GWA.

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

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

12 The Receiver has continued to conduct Phase I investigation with special attention related
13 to tracking the continued decrease in leachate flows through the end of 2023 and into the first
14 quarter of 2024 following the GWA repair of water main leaks along Dero Road, seasonal
15 rainfall-related fluctuations in groundwater elevations and leachate flows, and seeps identified in
16 the reconnaissance effort of November 2022. Phase I data collection and analysis include:

- 17 • Rainfall precipitation
- 18 • Leachate flow volumes
 - 19 ○ Monthly
 - 20 ○ Instantaneous
- 21 • Groundwater elevations
- 22 • Seeps sampling and weekly assessment of seep conditions
- 23 • Surface emissions monitoring assessment of cover system (completed)

25 ¹ Preliminary review of the GWA documents indicate that, although most of the leakage is the result of the Dero
26 Road Leaks that affected the Ordot Dump, they also indicate that there is additional lost volume unaccounted for,
27 and the Receiver intends to pursue its investigation into the unaccounted losses to determine whether they also
28 contributed to the increase in leachate at the Ordot Dump.

1 The data are collected to develop a better understanding of the relationship among the
2 seasonal changes to leachate flows, groundwater elevations, and rainfall. The data include
3 leachate flow measurements and leachate flow estimates in the leachate collection and removal
4 system (“LCRS”), and manual measurements and automatic transducer measurements of
5 groundwater elevations from wells at various locations on the site. The data are plotted as time
6 series to facilitate review.

7 Weekly updates of the Phase I data have been provided to the Technical Representatives²
8 through early April 2024, at which time the Receiver and U.S. EPA agreed that the technical
9 priority is revising the Receiver’s SEP Report. The weekly updates through the fourth week of
10 April ~~will soon be~~ were recently provided to the Technical Representatives, and the Receiver will
11 resume its routine weekly update distribution schedule after the SEP Report is completed.
12 Technical meetings are also held, as appropriate, on the ongoing investigations as well as on the
13 level of effort and data collection needed to support conclusions.

14 The Receiver continues to collect data on rainfall, leachate flow volumes, and
15 groundwater elevations, and data tables and time series plots are periodically updated to
16 incorporate the new information. Although the seeps are visually observed weekly, due to the
17 absence of observed flow since the last sampling event in October 2023, no recent sampling has
18 been completed at LEAS-2, LEAS-3 Upper and Lower, or at WSU-1a and 1b. Although flow
19 had been observed in the past at Seep Pipe East and Seep Pipe West, no flow was observed
20 during the past three sampling events, and sampling has not yet been performed at these two
21 locations. However, sampling supplies are at the site ready to take a sample should there be flow
22 observed. The Receiver is in the process of developing a final report based on data gathered
23 through December 2023 that will update preliminary findings in the July 2023 Technical
24 Memorandum 2 for discussion with the Technical Representatives. The update will include

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27 ² Technical Representatives include representatives of the Guam Environmental Protection Agency, United States
Environmental Protection Agency, Guam Solid Waste Authority and the Receiver.

1 recent data, and propose continued data collection needs, as appropriate, and schedules and path
2 forward.

3 The data collected since the filing of the Sixth Joint Status Report continues to show
4 decreasing trends in daily and average monthly leachate volumes while the site recorded one of
5 the heaviest rainfall years in over six (6) years. Sept. 20, 2023, Dkt. No. 2001. Total annual
6 precipitation in 2023 was 140.01 inches of rain, more than 46% increase over the prior seven (7)
7 -year average of 95.69 inches of rain. The leachate total annual flow dropped from 41,117,895
8 gallons in 2022 to just 16,268,579 gallons in 2023, a total reduction of 60.43%. Notably, the
9 leachate total annual flow in 2017, the year before the Dero Road Leaks are believed to have
10 started was 8,466,807 gallons, *i.e.* approximately 52% of the total annual flow in 2023, which
11 may be an indication that current leachate production is still impacted by the historical GWA
12 leaks.

13 The B&C ~~Report on Leachate Flow Evaluation and Cessation of Discharges to Waters~~
14 ~~of report regarding the United States groundwater impact on the leachate~~ will be completed on or
15 about May 7, 2024 (“B&C Groundwater Impact Report”) and will be shared with the
16 Government of Guam and the United States. ~~The Receiver B&C~~ will present ~~a brief summary of~~
17 the B&C Groundwater Impact Report to the Court at the May 8, 2024 status hearing.

18 II. GWA Pond 1 and 4 Dye Tests

19 As part of the information the GWA seeks regarding the pipeline leak, GWA, in
20 consultation with GSWA and supporting coordination by the Receiver, completed the Pond 1
21 dye test in December 2023. GSWA is currently awaiting the delivery of a fluorometer to better
22 determine the presence of dye in the LCRS. GWA informed the Receiver that it is ~~also~~
23 developing a plan for ~~conducting a the~~ dye test in Pond 4. The ~~plan has been submitted to the~~
24 Receiver ~~anticipates being provided the plan~~ for review ~~prior to the performance of the dye test.~~
25 A copy will be provided to U.S. EPA and GEPA ~~in the next few weeks.~~ GWA expects to
26 perform the Pond 4 dye test in the coming months in the presence of Brown and Caldwell.
27 GEPA, GSWA, and their contractors, as appropriate, will be invited to attend.

1 **III. SEP COMPLETION REPORT**

2 **A. U.S. EPA Position on Bifurcation**

3 Pursuant to the November 22, 2023 Order, U.S. EPA agreed that in this case, its review
4 of the Receiver's portion of the SEP report can be bifurcated from U.S. EPA's review of GEPA's
5 portion of the SEP report, which will allow U.S. EPA the ability to evaluate, and accept or reject,
6 each portion separately. Notice of U.S. EPA Acceptance of Receiver's Certification under
7 Consent Decree Section IV, Dec. 20, 2023, Dkt. No. 2020. The Receiver agreed to the
8 bifurcation, and agreed that GEPA's portion of the SEP is not part of the Receiver's
9 responsibilities and will be submitted for U.S. EPA's review separately.

10 **B. Status of Receiver's SEP Report**

11 On February 16, 2024, U.S. EPA provided notice to the Receiver of U.S. EPA's rejection
12 of the Receiver's SEP Completion Report. U.S. EPA identified its basis for rejection, including
13 that the Report lacked acceptable evidence of costs as required by Paragraph 26 of the Consent
14 Decree. The Receiver submitted a revised draft SEP report to U.S. EPA on March 20, 2024. The
15 Receiver, in consultation with U.S. EPA, has been working to further revise the draft SEP to
16 help ensure U.S. EPA's concerns are adequately addressed. A final revised Receiver SEP Report
17 is expected to be submitted to U.S. EPA on or before May 10, 2024.

18 The completion of the Receiver's portion of the SEP report is one of the conditions to the
19 termination of the Receivership.

20 **C. Status of GEPA's SEP Report**

21 On February 20, 2024, GEPA submitted its portion of the SEP Completion Report to U.S.
22 EPA. To focus on its work with the Receiver, U.S. EPA has not yet completed its review of the
23 GEPA SEP report. The content of the Receiver's final revised SEP report, in particular the cost
24 evidence, will help inform U.S. EPA's review decision of the GEPA SEP report.

25 **D. Motion for Reconsideration Concerning SEP**

26 On February 17, 2024, the United States filed a *Motion for Reconsideration of Court Order*
27 *Provision Inconsistent With Consent Decree Paragraph 24 Re SEP Completion Report*.

1 Paragraph 24 of the Consent Decree provides that U.S. EPA’s decision regarding deficiency of a
2 SEP Completion Report is final and binding, and not subject to the Dispute Resolution Process
3 under the Consent Decree, which would prohibit a motion to the Court for dispute resolution.
4 Mot. For Reconsideration, Feb. 17, 2024, Dkt. No. 2048. On March 7, the Court granted the
5 motion. Order Granting Mot. For Reconsideration, Feb. 17, 2024, Dkt. No. 2050.

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1 **IV. CERTIFICATION OF CESSATION OF SOLID WASTE ACCEPTANCE AT**
2 **ORDOT**

3 On June 29, 2023, the Receiver submitted to U.S. EPA a certification that “the Ordot
4 Dump no longer receives municipal solid waste for disposal,” as required by Section IV 8(h) of
5 the Consent Decree.³ After an exchange of communications seeking a clarification requested by
6 U.S. EPA and provided by the Receiver, U.S. EPA accepted the Receiver’s certification on
7 December 16, 2023. Notice of U.S. EPA Acceptance of Receiver’s Certification under Consent
8 Decree Section IV, Dec. 20, 2023, Dkt. No. 2020. Accordingly, the Consent Decree’s
9 requirement regarding that certification has been satisfied.

10 **V. TERMINATION OF RECEIVERSHIP**

11 **A. Concerns Raised by the Court**

12 As reflected in the Order, the Government of Guam and the GSWA Board “have requested
13 that the Receivership be terminated ~~prior to achieving compliance with the Consent Decree~~
14 because they believe that GSWA now has the technical expertise and personnel to complete any
15 remaining tasks assigned to the Receiver, including the submission of a certification that
16 discharges to waters of the United States from the Ordot Dump have ceased.” The Order, Nov.
17 17, 2023, Dkt. No. 2019. In response “the court expressed some skepticism that the GSWA
18 General Manager will be able to make the certification based on the specific language required
19 by the Consent Decree.” *Id.*

20 ~~The “Terms of Appointment” of the Receiver states that the appointment was for the~~
21 ~~period necessary to achieve compliance with the Consent Decree, unless certain conditions are~~
22 ~~met. — Order Re Appointment, March 17, 2008, Dkt. No. 239.~~

23 ~~The Order Re Appointment states that the early termination of the Receivership can occur~~
24 ~~under the following conditions: if the “Receiver recommends termination of this Order as no~~
25 ~~longer necessary, or modification thereof, and said termination or modification is accepted by~~

26 _____
27 ³ The ~~letter also noted that the~~ date of cessation of receipt of ~~municipal~~ solid waste for disposal was ~~September~~
28 ~~1~~ August 31, 2011.

1 ~~this court.... The Receiver requests to be relieved... [or] this Order is otherwise modified or~~
2 ~~terminated by this Court.” Id. Additionally, the Order Re Appointment does not provide for~~
3 ~~early termination initiated by GovGuam or GSWA.—~~

4 ~~If the Receiver determines there are reasonable grounds to recommend early termination,~~
5 ~~it will do so.— Such grounds would require assurance that GSWA, the successor to the Receiver,~~
6 ~~is capable of achieving compliance with the portions of the Consent Decree for which~~
7 ~~compliance has not been achieved, the most significant being the ability to certify to U.S. EPA~~
8 ~~that “discharges to the waters of the United States from the Ordot Dump have ceased.” The~~
9 ~~determination that this certification can be issued is no simple matter. The Receiver and U.S.~~
10 ~~EPA have been working together over a year to identify the specific conditions to be achieved~~
11 ~~and to resolve the relevant legal issues in order for the Receiver to issue that certification.~~

12
13 The Court was also concerned that a “revised financial plan for the post-closure care
14 costs of the Ordot Dump has not yet been approved.” The Order, Nov. 17, 2023, Dkt. No. 2019.
15 Regarding the finances of post-closure care costs, the Court and the parties discussed proposed
16 legislation SB 182-37. The Court stated its concern that “unless there is a funding source
17 identified, GSWA will have to rely on the funds it generates through its operations to pay for the
18 post-closure costs.” *Id.*

19 **B. GSWA Review by Chace Anderson**

20 To address the Court’s concerns regarding GSWA, the Court ordered Chace Anderson⁴ to
21 meet with and interview the GSWA Board, employees, and contractors; to tour operations at
22 GSWA facilities; to review GSWA’s revenue, expenses and balance sheets; and to write a report
23 “that summarizes his review . . . , including his assessment on GSWA’s plans to expand its
24 residential collection services island-wide, a determination of whether any change to the
25 agency’s organization is necessary to undertake and oversee the funding, operations and

26 _____
27 ⁴ Mr. Anderson oversaw the administration and operations of GSWA for the Receiver.

1 maintenance of the Ordot Dump post-closure facility, and any recommendation he may have that
2 would benefit GSWA’s performance.” The Order, Nov. 17, 2023, Dkt. No. 2019. A draft of the
3 report has been provided to the Receiver, and the Receiver and Mr. Anderson are resolving some
4 questions about the Report. -The Receiver expects the report to be in final form and ready for
5 filing with the Court and distribution to the parties on ~~or before~~ May 8, 2024. ~~Mr. Anderson will~~
6 ~~present a brief summary of his report at the Status Hearing on May 8, 2024.~~

7 **C. Guam Senate Bill 182-37 (P.L. 37-64)**

8 The Court also expressed concern that a revised financial plan for the post-closure care
9 costs of the Ordot Dump has not yet been approved, and that unless a funding source is
10 identified, GSWA will have to rely on the funds it generates through its operations to pay for the
11 post-closure costs ~~through deposits to the Receiver-managed Ordot Dump Post-Closure Trustee~~
12 ~~accounts (as described below).~~ SB Bill 182-37 was unanimously passed by the Guam
13 Legislature and signed into law (P.L. 37-64) by Governor Lou Leon Guerrero on February 9,
14 2024.

15 P.L. 37-64 created the “Ordot Dump Reserve Fund,” which is ~~to be~~ maintained separately
16 from other GovGuam funds, including the General Fund, and is not subject to the transfer
17 authority of the Governor Guam. -10 G.C.A. 51A §51A1002(a).- The Ordot Dump Reserve
18 Fund will be funded by, among other things, civil damages or other payments and any interest
19 received by GovGuam from the CERCLA lawsuit. -10 G.C.A. 51A §51A1002(a).- The Ordot
20 Dump Reserve Fund can only be expended to “reimburse Guam Solid Waste Authority for costs
21 associated with the closure and maintenance of the *Ordot* Dump and the opening and recent
22 expansion of the Layon landfill...” -10 G.C.A. 51A §51A1003.

23 GovGuam’s net settlement of approximately \$30 million is currently in an account
24 without any interest accruing ~~to the benefit of GovGuam or GSWA. The Receiver has proposed~~
25 ~~that the settlement be transferred to the Bank of Guam Trust Account held by the Receiver for~~
26 ~~the payment of expenses related to the Ordot Dump Post-Closure Facility. This request was~~
27 ~~rejected by GovGuam. GovGuam indicated that in developing Bill 182-37, the Senators made it~~

1 ~~clear that the funds are not to be managed by the Receiver.~~⁵ Accordingly, in response to the
2 ~~Court's financial plan and funding concerns,~~ GSWA requested that U.S. EPA/GEPA provide a
3 RCRA-compliant Trust Agreement to enable GSWA to open a trust fund for post-closure care
4 and safeguard the SB 182-37 monies. In January 2024, U.S. EPA provided a RCRA-compliant
5 Trust Agreement that is fully supported by GEPA. At the April 17-18, 2024, Meet and Confer
6 meeting, GSWA indicated that the U.S. EPA/GEPA Trust Agreement is acceptable to GSWA to
7 secure the SB 182-37 (P.L. 37-64) monies for post-closure.

8 **D. Bank of Guam Trust Accounts**

9 The Receiver maintains two (2) custodial accounts with the Bank of Guam (BOG)
10 holding funds for the payment of expenses related to the Ordot Dump Post-Closure Facility: (1)
11 a trust fund with very limited options for investment of the funds in the account ("Trust Account
12 #1"), and (2) a trust fund that allows a broader array of investments, subject to the limitations on
13 the type of investment in the RCRA statute and regulations ("Trust Account #2"). The existing
14 accounts at BOG are not required, while being managed by the Receiver, to be RCRA compliant,
15 and deviate from those requirements in certain respects, as insisted upon by BOG and agreed to
16 by the Receiver.

17 As of April 24, 2024, the balance of the funds in Trust Account #1 was \$647,563.26 and
18 the Trust Account #2 was \$7,175,875.13, totaling \$7,823,438.39. GSWA has continued to
19 consistently make its monthly payments in the amount of \$166,667 in accordance with the
20 agreed upon funding plan approved in 2019. Since January 1, 2024, the revenue received in the
21 Trust Account #1 account totaled \$666,701.47, and expenses paid out of Trust Account #1 was
22 \$556,899.60. ~~Trust Account #2 balances are currently earning interest income at the rate of~~
23 ~~approximately five percent (5%) per annum.~~ There have been no expenses paid from the

24
25 ⁵Public Law 37-64 states that "[t]he Guam Solid Waste Authority shall administer the Fund." Until the termination
26 of the Receivership, the Receiver, under the terms of the Order Re Appointment "shall have full power and authority
27 to enforce the terms of the Consent Decree, and assume all of the responsibilities, functions, duties, powers and
28 authority of the Solid Waste Management Division of the Department of Public Works... insofar as they affect the
Government of Guam's compliance with the Consent Decree." Order Re Appointment, March 17, 2008 at p. 15,
Dkt. No. 239.

1 investment ~~Trust Account #2. The Receiver is making investment decisions regarding Trust~~
2 ~~Account #2 with the review and consent of the GSWA Controller. account.~~

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5 **E. Post-Closure Funding Financial Plan, SB 182-37, and Use of a RCRA Trust**
6 **Fund to Dedicate a Portion of Those Funds**

7 The Receiver and U.S. EPA intend to present to BOG and explain that the Trust's terms
8 cannot deviate from the specific RCRA trust agreement language because that language is
9 codified in regulations and adopted by reference by GEPA. Accordingly, BOG's usual terms
10 and conditions cannot conflict with the required, codified language. The parties hope and plan
11 that this issue can be resolved without too much difficulty or delay.

12 ~~**F. Updated Estimate for Ordot Dump Post Closure Cost Estimate (PCCE)**~~

13 ~~The Receiver has sent GEPA a letter dated April 29, 2024 presenting its 2024 annual~~
14 ~~update to the Ordot Dump Post Closure Cost Estimate (PCCE) as required by the operating~~
15 ~~permit for the Ordot Dump. See **Exhibit B** (Receiver Letter to GEPA April 29, 2024). The~~
16 ~~letter presents two estimates and methodologies for determining the annual updated post-closure~~
17 ~~cost and inflation payment to be made by GSWA on or before December 31, 2024.—~~

18 ~~The first estimate methodology (“GEPA Method”) starts with using the 2023 cost~~
19 ~~estimate that GEPA directed the Receiver to use as the basis for calculating the annual inflation~~
20 ~~payment. The value calculated for the updated cost estimate resulted in an increase in the~~
21 ~~amount of financial assurance required to be provided under part (b) of Subsection 23703 as a~~
22 ~~result of using this methodology. The annual inflation increases the cost estimate from~~
23 ~~\$31,322,260⁶ to \$32,150,981.00 or by \$828,721, this latter value representing the 2024 inflation~~
24 ~~payment amount that GSWA would be required to make on or before December 31, 2024.—~~

25
26 ⁶The Receiver notes a slight discrepancy in the amount calculated in the GEPA Letter dated April 20, 2023, for the
27 inflation adjusted 2023 Post Closure Cost Estimate of \$31,322,061.21 and our calculated amount.—

1 ~~The second estimate methodology presented by the Receiver (“Receiver Method”) is~~
2 ~~calculated to take into account both the annual inflation increase and also important significant~~
3 ~~differences between the GEPA Method, and what we propose are more appropriate estimates that~~
4 ~~take into account changes to significantly lowered rates charged by GWA and the lower leachate~~
5 ~~generation quantities now being experienced post GWA repaired leaks.⁷ The 60% lower annual~~
6 ~~leachate generation rate for 2023 relative to 2022 more accurately reflects costs for 2024, and in~~
7 ~~addition, the remaining years of post-closure care are reduced by 1 year, i.e. 22.5 years~~
8 ~~remaining in Post-Closure Care. As a result, the updated 2024 PCCE is \$22,553,131.~~

9 ~~—In the event this second updated lower annual 2024 PCCE is accepted and fully funded by~~
10 ~~GSWA with funds from the CERCLA settlement, GSWA would not be required to make an~~
11 ~~annual inflation payment. Also, if GovGuam and GSWA decide to fully fund the Ordot Dump~~
12 ~~Post Closure Trust Account being managed by the Receiver, the monthly payments of \$166,667~~
13 ~~per month through August 2026 could end and no balloon payment would be required at that~~
14 ~~time either. Annual inflation payments would still need to be made nonetheless on the lower~~
15 ~~PCCE.~~

16 **G.F. Technical Assistance Contract to Assist GEPA**

17 We anticipate final review and procurement of a technical assistance contract to assist
18 GEPA within the next two months. This procurement will take approximately 3 months to
19 complete, and we anticipate GEPA will be positioned to select a consultant before the end of the
20 calendar year 2024.

21 **VI. ORDOT DUMP OPERATIONS AND MAINTENANCE CONTRACT**

22 B&C is the operator of the Ordot Dump Post-Closure Facility and performs pursuant to
23 the contract dated May 8, 2018 (“~~B&CBC~~ Contract”). The initial term of the ~~B&CBC~~ Contract
24

25 ⁷~~The sewer discharge fee was adjusted to reflect the change to \$14.72 per 1,000 gallons. The daily volume is the~~
26 ~~same (48,168 gpd) used in the PCCP application. (Please note that the daily volume in 2023 was 44,571 gpd and~~
27 ~~continues to decline so far in 2024.)~~

1 was for seven (7) years and will expire on May 31, 2025. The Receiver, in consultation with
2 GSWA, is negotiating an amendment to the ~~B&CBC~~ Contract to redefine the first renewal term
3 to be coterminous with the Layon Operating contract which is expected to end September 30,
4 2027. The amendment to the ~~B&CBC~~ Contract will revise the definition of “renewal term,” the
5 methodology for an annual adjustment factor, and will include two defined scopes of services
6 with pricing for existing Routine Services that may be contracted out to other service entities to
7 realize potential cost savings.

8 **VII. SUBPOENA TO GERSHMAN, BRICKNER & BRATTON, INC., FROM THE**
9 **GOVERNMENT OF GUAM LEGAL COUNSEL FOR THE CERCLA CASE**

10 The Receiver responded to GovGuam’s subpoena issued in the CERCLA case by
11 producing over 104,000 pages in January 2024 and on March 19, 2024, in response to Kelley
12 Drye attorneys’ requests. The Receiver has not received further comments nor additional
13 requests from Kelley Drye attorneys relating to the Subpoena.

14 **VIII. NEXT STEPS**

15 The parties propose that the next joint status report be filed to provide the Court with an
16 update regarding: ~~GSWA’s (the Receiver’s)GWA claim against GWA~~ for compensation for
17 increased costs resulting from the Dero Road leaks; the progress in transferring the SB 182-37
18 (P.L. 37-64) funds into an account that is acceptable to GSWA ~~and the Receiver; consideration~~
19 ~~of GovGuam/GSWA to use the Receiver’s Trust Fund #2 to fully fund the Ordot Dump PCCE~~
20 ~~and make investments in consultation with GSWA;~~ the progress in discussions with BOG
21 regarding the required RCRA trust agreement language; the progress in finalizing the schedule
22 for the New RCRA Trust Agreement, as appropriate; ~~GEPA response to the updated an update~~
23 post closure cost estimate for inflation and inflation payment; the progress of Phase 1
24 investigation of the seeps and source(s) of excess leachate volumes; ~~GSWA’s response to the~~
25 ~~Chace Anderson report and findings;~~ a method of transfer of Ordot Dump post-closure Facility
26 operations to GSWA; the plan for certification of cessation of discharges to waters of the U.S.;
27 and a timetable for termination of the ~~Receivership~~ receivership.

1 Respectfully submitted this 3rd day of May, 2024.

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5 **CIVILLE & TANG, PLLC**

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7 **UNITED STATES DEPARTMENT**
8 **OF JUSTICE**

9 Dated: May 5/3, /2024 By: /: s/ Joyce C.H. Tang Peter
10 Krzywicki

11 _____
12 **JOYCE C.H. TANGPETER**

13 **KRZYWICKI**

14 _____
15 *Environmental Enforcement Section*

16 _____
17 **OFFICE OF THE ATTORNEY GENERAL**
18 **Deputy Attorney General**

19 _____
20 Dated: 5/3/2024 By: s/ Graham Botha

21 _____
22 **GRAHAM BOTHA**

23 _____
24 *In re: Government of Guam*

25 _____
26 *Attorneys for Gershman, Brickner & Bratton,*