

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOVERNMENT OF GUAM,

Defendant.

CIVIL CASE NO. 02-00022

ORDER

re Partial End of Receivership

This case came before the court for a status hearing on April 24, 2019, during which the court and the parties discussed the financing for the construction of Cell 3 at the Layon Landfill, the revised financing plan to fund the estimated cost for the post-closure care of the Ordot Dump, and other issues related to the transition of management and control over the Guam Solid Waste Authority (“GSWA”) from the Receiver to the GSWA Board. After much discussion, the court ordered that GSWA’s day-to-day operations be turned over to the GSWA Board. The court issues the following Order to further clarify its decision to partially end the Receivership.

At the close of business on April 30, 2019, the GSWA Board shall have administrative and managerial responsibility over GSWA’s day-to-day operations, including control over the bank accounts related to said operations, with the exception of the Ordot Dump Post-Closure Reserve account. The GSWA Board shall also have control over and responsibility for the PayPal account set up by the Receiver for online payments. As part of the transfer of managerial responsibility, GSWA shall pay any lagging invoices from vendors for work, services or materials authorized by the Receiver prior to the close of business on April 30, 2019, upon certification by the Receiver that the work, services or materials was duly authorized prior to the close of business on April 30, 2019,

1 and that the invoices are reasonable and should be paid. Any dispute with respect to such invoices
2 that cannot be resolved by mutual agreement between the Receiver and GSWA shall be submitted
3 to the court for resolution.

4 At the hearing, the United States renewed its request that the Receiver continue its efforts
5 to complete the tasks associated with the Post-Closure Plan for the Ordot Dump. The technical
6 work that remains includes (1) fully implementing a remediation plan for potentially explosive
7 gases which complies with applicable federal regulations, (2) completing the development of a
8 groundwater monitoring program and (3) expanding the leachate monitoring program. This
9 technical work is necessary before the Post-Closure Plan can be approved. The parties agreed that
10 the Receiver is in the best position to complete this work. The GSWA Board and the Government
11 of Guam, however, requested that the Receiver complete this work as a contractor for GSWA
12 instead of in its current role as a Receiver. Because the parties are unable to agree on the role of
13 the Receiver in handling this matter, the court declines to take a position at this time. Instead, the
14 court encourages the GSWA Board and the Receiver to discuss this matter further to see whether
15 an agreement can be reached. In the interim, the court will continue the status quo and orders that
16 the Receiver complete these important tasks in its previously-appointed role. The Receiver shall
17 oversee and control all work associated with the post-closure of the Ordot Dump and shall remain
18 in place until further order of the court.

19 In May 2016, the court approved a financing plan to fund the post-closure care of the Ordot
20 Dump that included the use of a trust fund managed by an independent trustee. *See* Order (May 2,
21 2016), ECF No. 1668 at 13-16. That financing plan required monthly installment deposits which
22 totaled approximately \$2 million annually from GSWA funds collected from all commercial
23 haulers. *Id.* at 10.

24 In the latest report filed on April 24, 2019, the Government of Guam proposed a “hybrid
25 plan” that all parties “agreed to in principal.” *See* Gov’t Guam Am. Status Rep. at 3-5, ECF
26 No. 1879. The parties agreed that the updated cost estimate for post-closure care of the Ordot
27 Dump is approximately \$21.69 million. *Id.* at 4. The financing plan envisioned the continued
28 monthly deposits of \$166,667 totaling \$2 million annually into a trust fund account to be managed

1 by a bank escrow trustee who would ensure the funds are expended for the stated purpose, pursuant
2 to procedures agreed to by the parties. *Id.* at 4-5. The parties are continuing their cooperative
3 efforts to reach a final agreement with regard to financing the post-closure care costs of the Ordot
4 Dump. The parties, however, do not agree on whether the Receiver or the GSWA Board will
5 procure the bank escrow trustee. The parties have also not finalized the arrangements for the
6 independent engineer or the pending bid for the construction of cell 3 at the Layon Landfill. The
7 court agreed to give the parties an opportunity to resolve the remaining disputes. Accordingly, until
8 such time as a full resolution is reached and a bank escrow trustee is selected, the court orders
9 GSWA to continue the monthly set-aside of funds into the Ordot Dump Post-Closure Account and
10 further orders that the Receiver have full management authority over said account until such time
11 as a trustee is in place and the funds are transferred to the trustee.

12 Because a partial Receivership remains in place, the court orders that GSWA shall be
13 obligated to pay for the Receiver's bills, both lagging and future invoices, as approved by the court.
14 The funds the court uses to pay the Receiver were deposited into a Bank of Hawaii account. *See*
15 *Stipulated Order (May 4, 2009), ECF No. 438.* Whenever additional funds are required, GSWA
16 shall promptly replenish the account.¹

17 Finally, the GSWA Board and the new management team are ordered to cooperate with and
18 assist the Receiver to the extent necessary and appropriate to permit the Receiver to carry out its
19 responsibilities under this Order, including access to any and all staff, documents, books, records,
20 electronic databases and facilities.

21 The appointment of a Receiver was a difficult but necessary decision this court made after
22 much deliberation and consideration. The court is very proud of the work accomplished by the
23 Receiver over the last 11 years. The Ordot Dump has been closed, and the Receiver has installed
24 the necessary systems to protect Guam's waters from this environmental hazard that had plagued
25 the island for decades. The Receiver has built a modern solid waste system for the island which

26
27 ¹ A member of the court's financial staff shall contact the GSWA comptroller to transfer
28 funds to the court's Bank of Hawaii account in an amount equal to the last two invoices paid from
the account. *See Order (Mar. 3, 2011) at 2.*

1 includes a compliant solid waste landfill, a recycling program and a household hazardous waste
2 disposal center. While the Receiver will continue its technical work to finalize the Post-Closure
3 Plan for the Ordot Dump, the decision to return administrative and managerial responsibility over
4 GSWA's day-to-day operations to the Government of Guam is made without the trepidation that
5 accompanied the court's earlier decision to appoint a Receiver. The new administration has worked
6 cooperatively with the Receiver and the United States, and the Governor has assured this court that
7 the Government of Guam will maintain the solid waste system and support the important work of
8 protecting the environment. The court encourages the parties to continue their good faith efforts
9 to resolve any remaining issues.

10 IT IS SO ORDERED.



11 /s/ **Frances M. Tydingco-Gatewood**
12 **Chief Judge**
13 **Dated: Apr 29, 2019**