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T-A-B-L-E O-F C-O-N-T-E-N-T-S

GUAM WATERWORKS AUTHORITY:

Samuel Taylor 8/37

REGION IX:

Ann Nutt. 29

EXHIBITS

IDENTIFIED RECEIVED

AUTHORITY:

1 - Blumenfeld Letter 35 35

ADJOURN:

Kathie Stein, Judge 44

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P-R-O-C-E-E-D-I-N-G-S

4:01 p.m.

MS. DURR: The Environmental Appeals Board of the United States Environmental Protection Agency is now in session for a status conference in re: Guam Waterworks Authority's Northern District Sewer Treatment Plant and Guam Waterworks Authority's Agana Sewage Treatment Plant, Permit Nos. GU0020141 and GU0020087, NPDES Appeal Nos. 09-15 and 09-16.

The Honorable Judge Kathie Stein presiding. Please, proceed.

JUDGE STEIN: Good morning, counsel. Thank you for all of the help to get the logistics of this settled. And let me also introduce with me is Nivea Berrios, who is one of the Senior Counsel at the Board, who is assisting me in this matter and she is sitting up here with me on the dias.

And if each party could briefly state their names? Can we start with Region

1 IX? We have lost the region, at this point.
2 We'll get it back. Region IX?

3 MS. NUTT: Good. Yes, Your Honor,
4 this is Ann Nutt of the Office of Regional
5 Counsel. And I have with me Nancy Woo from
6 the Region IX Water Division.

7 JUDGE STEIN: Thank you.

8 MR. NELSON: We filed a
9 declaration signed by Ms. Woo.

10 JUDGE STEIN: Guam?

11 MR. TAYLOR: Yes, Your Honor, good
12 morning. My name is Sam Taylor. I'm
13 appearing on behalf of the Guam Waterworks
14 Authority.

15 JUDGE STEIN: Thank you. I think
16 I have read all of the papers, but I think I
17 would like to proceed by asking Mr. Taylor to
18 take just a few minutes, in particular, to let
19 us know what, if anything, he has to say in
20 response to the filing by Region IX that we
21 got late last week.

22 MR. TAYLOR: Thank you, Your

1 Honor. As a preliminary matter, we were not
2 afforded an opportunity to respond to the
3 declaration filed by Ms. Woo or the filing by
4 the U.S. EPA.

5 And there is a document, which I
6 believe is extremely relevant to this
7 particular proceeding. It is a letter from
8 Jared Blumenfeld, who is the head of Region
9 IX. And I was wondering if I was able to put
10 that up on the projector for the parties? I
11 did not have an opportunity to file it, given
12 the fact that I received it on the weekend and
13 also I was extremely busy yesterday with
14 preparing for the hearing tomorrow in the U.S.
15 District Court.

16 JUDGE STEIN: Yes, that would be
17 fine.

18 MR. TAYLOR: Thank you, Your
19 Honor. So I'll go through my presentation, if
20 I may?

21 JUDGE STEIN: And I'm happy to
22 have you display it on the projector. I'm not

1 necessarily, you know, admitting it, you know,
2 to this, you know, formally to this
3 proceeding, but I would be happy to have you
4 put it up on the projector.

5 And if Region IX has any
6 objection, you will have an opportunity to
7 object.

8 MR. TAYLOR: Thank you, Your
9 Honor. Let me see if this -- it may take a
10 minute here to see if we can get it up on the
11 screen. Wow, can it clear up any better?

12 JUDGE STEIN: Hold on. Let me do
13 this, why don't you just summarize. Well, let
14 me backtrack for a second.

15 Region IX, have you seen this
16 letter before?

17 MS. NUTT: I have not, Your Honor.
18 Nancy Woo has seen it and she has just asked
19 if someone could bring it up, because we can't
20 read what is on the screen.

21 JUDGE STEIN: Yes. Okay. Well,
22 while that is happening, Mr. Taylor, while we

1 are waiting for that letter to be brought up,
2 do you have anything else that you would like
3 to address until the letter is brought up? It
4 is difficult to see on the screen.

5 MR. TAYLOR: Yes, Your Honor, and
6 I can read from the letter, if necessary.

7 First, I will begin by pointing
8 out that in response to the EPA's assertion
9 relative to whether or not GWA had requested
10 a stay in this matter, I note that the EA
11 Board, the EAB, brought up the hearing on this
12 stay and the possibility of the stay sua
13 sponte. That was not something that was
14 raised by the Guam Waterworks Authority
15 initially, rather it was something that was
16 brought up by the Board itself.

17 And it asked in the order for the
18 parties to present its position on the
19 validity of a stay pending the Military
20 Buildup.

21 And also, I believe that
22 continuing with these proceedings is a waste

1 of resources for the EAB, when the outcome
2 will probably be decided by the Military
3 Buildup.

4 Obviously, the Military Buildup is
5 an essential theme relevant to the particular
6 proceedings and whether or not a stay is
7 appropriate. The Military Buildup, contrary
8 to what I think the EPA stated, is a little
9 bit more than just likely. The Okinawans have
10 wanted the Marines out of Okinawa for years
11 and the protests there have been getting
12 larger.

13 This issue is a hot topic for the
14 people of Japan and it has actually been
15 relevant in national politics and Japan.

16 JUDGE STEIN: Can I interrupt you
17 for a moment, Mr. Taylor?

18 MR. TAYLOR: Absolutely.

19 JUDGE STEIN: Because while I
20 understand that there may be changes down the
21 road with respect to whether or not the United
22 States moves some troops to Guam from Japan,

1 the central issue in this case, as I see it,
2 is whether or not Guam is entitled to a
3 variance under Section 3019 of 9(h) of the
4 Clean Water Act.

5 And that issue, it seems to me, is
6 not dependent on whether or not there is or is
7 not a Military Buildup on Guam. You have
8 current NPDES permits that don't provide --
9 that have allowed for a variance. The Agency
10 has made a decision at the regional level not
11 to continue that variance.

12 You have appealed that decision
13 and that's the decision that is pending before
14 the Board.

15 MR. TAYLOR: Yes.

16 JUDGE STEIN: So I'm having
17 difficulty figuring out why it is that the
18 Military Buildup is so central to this case.

19 MR. TAYLOR: The Military Buildup
20 is central to this case simply for the fact
21 that in conjunction with the buildup and with
22 the issuance of the Record of Decision by the

1 Department of Defense under the NEPA process,
2 the issue of secondary treatment and whether
3 or not it will be actually provided to the
4 Guam Waterworks Authority and whether or not
5 GWA, I'm sorry, the acronym is GWA, intends to
6 basically move to secondary treatment in
7 conjunction with the Military Buildup, thereby
8 rendering this particular case moot.

9 So the question becomes whether or
10 not if GWA does, in fact, receive money from
11 the Department of Defense through the
12 government of Japan or through other federal
13 sources to move to secondary treatment, and we
14 agree to actually move our plants to secondary
15 treatment, we would then, at that particular
16 juncture, render this particular proceeding
17 moot.

18 And the underlying purpose, I
19 believe, based on the order from the EAB, is,
20 that for this particular hearing anyway, to
21 check out and decide whether or not a stay is
22 appropriate pending the resolution of the

1 funding from the Military Buildup.

2 JUDGE STEIN: No, I actually think
3 that that's not quite an accurate
4 characterization of the Board's order or
5 certainly the Board's intent.

6 I believe that the Board's intent
7 was directed at figuring out whether there
8 were settlement discussions that had reached
9 a stage that a settlement was in it or highly
10 likely such that it would not make sense for
11 the Board to invest its resources in
12 resolution of this case, at this time.

13 But what I'm hearing from the
14 parties is that Guam thinks it makes sense,
15 because there is a possibility that secondary
16 treatment may be provided by the military, but
17 the Region disagrees with that position.

18 Are you in the absence of the
19 commitment on the part of DoD or the
20 government of Japan to provide for secondary
21 treatment? Is Guam still intending to pursue
22 its appeal of the Region's decision?

1 MR. TAYLOR: Yes, Your Honor. GWA
2 would be intent upon pursuing the decision of
3 the U.S. EPA and appealing that decision in
4 the event that funding is not provided in
5 conjunction with the Military Buildup.

6 I will also note for the record
7 that in the October 28, 2010 order requesting
8 Region's response in scheduled status
9 conference, I believe it was signed by you,
10 Your Honor, which basically stated to assist
11 the Board in determining whether or not a stay
12 in this matter were treated as an active case,
13 the Board hereby orders Region to file a
14 response addressing GWA's representation that
15 DoD, EPA and GWA are working together to solve
16 GWA's secondary treatment problems.

17 And is requesting to stay this
18 case until resolution of the solution is
19 outlined in the FEIS, the Final Environmental
20 Impact Statement.

21 JUDGE STEIN: All right. Which --

22 MR. TAYLOR: They actually asked

1 to --

2 JUDGE STEIN: I think we are
3 simply directing the Region to respond to your
4 assertion. I don't think the Board intended
5 any more or any less by its order than getting
6 a response from the Region.

7 MR. TAYLOR: Yes, that's correct,
8 but I believe the intent here is that if the
9 Guam Waterworks Authority and the U.S. EPA and
10 the Department of Defense have a potential
11 solution to the secondary treatment issue at
12 the Guam Waterworks Authority, I believe
13 that's central to the issue of whether or not
14 a stay in these particular proceedings,
15 pending the outcome, is relevant.

16 So what the military is going to
17 do, what the government of Japan is going to
18 do, I believe, is central to determining
19 whether or not these proceedings should be
20 stayed pending the resolution of the funding
21 issue and whether or not it will, in fact, be
22 provided to the Guam Waterworks Authority.

1 And if it is, then, again, this
2 appeal would be rendered moot by virtue of the
3 fact that the Guam Waterworks Authority is
4 voluntarily moving to secondary treatment at
5 its northern --

6 JUDGE STEIN: Right.

7 MR. TAYLOR: -- and again, the
8 waste water treatment plants.

9 JUDGE STEIN: Is there any time
10 frame that or any commitments that Guam is
11 prepared to make or has made for the
12 installation --

13 MR. TAYLOR: Absolutely.

14 JUDGE STEIN: -- for secondary
15 treatment?

16 MR. TAYLOR: Absolutely. We have
17 not made a formal statement as to the time
18 frame, but I will note that, for example, in
19 a recent settlement between the State of
20 Hawaii and the U.S. EPA, they were allowed to
21 move to secondary treatment over a period of
22 25 years.

1 We are not looking necessarily at
2 that period of time. We don't know what
3 period of time we are looking at. But I will
4 note that the funding availability from the
5 government of Japan to -- and the Department
6 of Defense to move to secondary treatment is
7 already underway.

8 We have been already provided
9 funding from the U.S. Department of Defense to
10 conduct a preliminary evaluation on our
11 Northern District Waste Water Treatment Plant
12 to bring it up to primary treatment. This is
13 relevant because that is the first step in the
14 process outlined by the Department of Defense
15 relative to moving towards secondary
16 treatment.

17 More specifically, Phase 1 of the
18 upgrade to permanent treatment, the U.S.
19 Department of Defense is seeking funding from
20 the government of Japan in the amount of \$6
21 million. To upgrade to secondary treatment
22 for northern in the amount of \$129 million is

1 also being sought from the government of
2 Japan.

3 The timing of the funding remains
4 at issue depending on the completion of Phase
5 1. However, we have through numerous
6 discussions and I would point out that, for
7 example, our general manager alone has had
8 over 100 meetings with the U.S. Department of
9 Defense on the issue.

10 Also, the U.S. EPA, including Ms.
11 Woo, has been involved in numerous meetings
12 with the Department of Defense relative to the
13 process of moving to secondary buildup or
14 secondary treatment at the northern plant and
15 also for secondary treatment for Agana.

16 In fact, the numbers we have
17 received from the U.S. Department of Defense
18 is that they are planning on providing \$150
19 million for an Agana Waste Water Treatment
20 Plant upgrade.

21 I know for a fact that right now,
22 based on statements made from the U.S.

1 Department of Defense, the Joint Guam Program
2 Office, which is leading the Military Buildup
3 move on Guam, they have been in active
4 negotiations with the government of Japan for
5 quite some time.

6 Also, we have received numerous
7 visits from Japan officials. Specifically,
8 just recently, Japan's Deputy Defense
9 Minister, Jun Azumi, visited Guam and two of
10 our facilities, including the Northern
11 District Treatment Plan. And after he toured
12 our facilities, he stated, apparently in
13 numerous reports, that it is likely that the
14 Japanese government will including funding in
15 its 2011 budget for at least a portion of the
16 \$730 million --

17 JUDGE STEIN: What are you reading
18 from, Mr. Taylor?

19 MR. TAYLOR: This is a news report
20 in Pacific Daily News.

21 JUDGE STEIN: Okay. I mean, I
22 don't doubt that there have been a number of

1 meetings back and forth, but absent some kind
2 of settlement agreement between the parties
3 or, you know, an imminent settlement agreement
4 between the parties, I think this Board is
5 fairly reluctant to stay its hand and complete
6 the Agency's decision making.

7 I mean, the Board is part of the
8 Environmental Protection Agency. If you want
9 to quickly summarize that letter, but then I
10 would like to turn it over to Region IX.

11 MR. TAYLOR: Okay. Just a quick
12 point, Your Honor. Relative to a settlement
13 agreement --

14 JUDGE STEIN: I'm sort of having
15 difficulty hearing you.

16 MR. TAYLOR: I'm sorry. Can you
17 hear me now?

18 JUDGE STEIN: If you could just
19 stand back a little bit from the microphone,
20 it may be a little clearly.

21 MR. TAYLOR: Oh. Okay. Can you
22 hear me now?

1 JUDGE STEIN: Yes.

2 MR. TAYLOR: Okay. Sorry. I will
3 note that recently it was just, I think it
4 was, June or even earlier, the U.S. EPA
5 submitted a proposed Consent Decree to Guam
6 Waterworks, which is a follow-up to the
7 stipulated order which GWA is currently
8 operating as of right now.

9 Included in that proposed
10 settlement was moving the secondary treatment
11 for both Agana and Northern District Waste
12 Water Treatment Plants. And our response, we
13 basically indicated to the U.S. EPA that, I
14 mean, if the funding would be provided, GWA
15 was willing to sign the Consent Decree, which
16 would indicate that we would then move to Guam
17 Waterworks Authority for Agana and Northern
18 District Waste Water Treatment Plants.

19 Now, I know that the U.S. EPA has
20 indicated that they did not want the terms of
21 this disclosed, however, I feel it is
22 extraordinarily relevant in light of what you

1 just stated in these particular proceedings
2 whether or not there is a document that would
3 embody GWA moving to secondary treatment.

4 We are awaiting a response to our
5 -- we filed a response to their proposal and
6 included in our response was secondary
7 treatment for Northern District and Agana
8 Waste Water Treatment Plants.

9 So the likelihood of this document
10 being signed in the near future, I believe is
11 pretty high. It's just a question of
12 agreement on the terms and conditions.

13 It is relevant to these
14 proceedings also, because we are actively
15 involved in negotiations on the subject. So
16 the question is if we sign a document in a
17 Consent Decree, which essentially states that
18 we will move forward with secondary treatment,
19 I think that satisfies your concern as to
20 whether or not GWA and the U.S. EPA and Region
21 IX are working this issue out. We are working
22 this issue out. We want to work this issue

1 out.

2 However, in the event that funding
3 does not become available for some reason, any
4 reason, the government of Japan or the U.S.
5 Department of Defense or the Federal
6 Government, for that matter, fails to provide
7 funding to move to secondary treatment, we
8 would then like to proceed with the appeals.

9 However, we believe it is relevant
10 to stay these proceedings pending that
11 particular issue. I'll also go to the letter
12 from Mr. Blumenfeld.

13 JUDGE STEIN: I think you are
14 going to have to summarize the letter, because
15 I think it is going to be a little difficult
16 for me. You can submit a copy to the clerk
17 afterwards and we will review it. But I think
18 it's going to be a little difficult to see on
19 the screen here.

20 MR. TAYLOR: I understand.
21 Specifically, in the September 3, 2010 letter
22 from Jared Blumenfeld, who is the head of

1 Region IX, to Jacqueline Feinsteld, who is the
2 Assistant Secretary of the Navy for Energy
3 Installations and Environment, the LCPA had
4 originally rated the draft Environmental
5 Impact Statement as environmentally
6 unsatisfactory.

7 According to the letter from Mr.
8 Blumenfeld, it states and I quote "EPA rated
9 the draft EIS as environmentally
10 unsatisfactory, inadequate information,
11 because the EIS (1) did not adequately address
12 the waste water system capacity limitations
13 and potential water supply shortfall resulting
14 from construction workers in induced
15 population growth." That's on page 1.

16 On the second page, EPA stated
17 that it finds "The DoD's EIS is adequate for
18 the purposes of NEPA, because it includes an
19 adequate discussion on environmental impacts
20 and proposed a mitigation plan." This is on
21 page 2.

22 Another statement it says

1 "Specifically, DoD commits to three major
2 mitigation measures that are critical in
3 avoiding unsatisfactory environmental
4 impacts." And it states "(1) To seek funding
5 for drinking water and waste water system
6 infrastructure."

7 And finally on page 2 it says
8 "First, as EIS stated, \$1.3 billion needs to
9 be secured for the drinking water and waste
10 water system improvements that are necessary
11 to accommodate the impact of the Military
12 Buildup over the next five years. DoD is
13 pursuing \$600 million in government of Japan
14 funding to cover a portion of that required
15 \$1.3 billion in funding."

16 For the record, part of the \$1.3
17 billion in funding includes moving to
18 secondary treatment for Agana and Northern.
19 So in this letter, the Region IX is
20 acknowledging that the Department of Defense
21 has actually presented a viable plan, in its
22 opinion, to allow GWA, the Agana and Northern

1 District Waste Water Treatment Plans to
2 secondary treatment.

3 Obviously, the issue is the timing
4 of the funding and whether or not that is
5 likely. But as I stated, we have received
6 numerous, numerous visits from Japan
7 officials, including from the Joint Bank --

8 JUDGE STEIN: Okay.

9 MR. TAYLOR: -- Japan Bank on
10 International Cooperation and we have also
11 received visits from Japanese legislature. We
12 have also received visits from --

13 JUDGE STEIN: I understand you
14 received visits. But do you have a date
15 certain by which you expect all of these
16 visits and negotiations to come to an end,
17 such that it would be reasonable for the Board
18 to stay its hand as opposed to complete the
19 Agency's decision making process?

20 MR. TAYLOR: Absolutely.
21 According to DoD officials whom we have spoke
22 with, including in the presence of Ms. Woo,

1 they have indicated that they are seeking
2 funding from the government of Japan for the--
3 to meet the April 1 fiscal year timing
4 relative to Japanese budget.

5 JUDGE STEIN: I'm sorry, I can't--

6 MR. TAYLOR: We understand that
7 those --

8 JUDGE STEIN: I'm having
9 difficulty hearing you again.

10 MR. TAYLOR: GWA, hello? Can you
11 hear me now?

12 JUDGE STEIN: Yes.

13 MR. TAYLOR: Yes, I'm sorry. I'm
14 probably too close to the microphone again.
15 We have been told by the Department of Defense
16 officials from the Joint Guam Program Office
17 that they are in active negotiations right now
18 with the government of Japan to provide
19 funding or at least initially for the perhaps
20 Phase 1 funding for moving to complete the
21 primary treatment, which is Phase 1.

22 And those funding are being sought

1 from the government of Japan right now to
2 coincide with their April 1, 2011 budget
3 cycle.

4 It is entirely possible, given
5 representations from the Department of Defense
6 that Japan, because it wants to appropriate
7 all the money all at once for this, there is
8 like \$740 million that they have, the
9 government of Japan, in the treaty with the
10 United States has agreed to provide relative
11 to utility upgrades.

12 The Department of Defense
13 recognizes that it cannot proceed with the
14 buildup until such time as GWA has the
15 capacity at its Northern District and Agana
16 Waste Water Treatment Plants to accommodate
17 the buildup.

18 Therefore, the military knows that
19 it needs to obtain the funding from the
20 government of Japan. It is actively doing so
21 right now to coincide with their April 1, 2011
22 budget cycle.

1 I do not know specifically, at
2 this juncture, whether or not just the initial
3 Phase 1 amount or the entire secondary
4 treatment amounts for Agana and Northern will
5 be provided.

6 However, I would say that at the
7 very least, a stay would be appropriate
8 pending the period of time between now and
9 when Japan ends their budget cycle to find out
10 whether or not the appropriation is, in fact,
11 made.

12 If the appropriation is made, then
13 it would seem logical or reasonable to
14 conclude that, yes, GWA would be moving to
15 secondary treatment, because we are
16 fulfilling, essentially, what the mandates are
17 as stated in the law.

18 JUDGE STEIN: Okay. Mr. Taylor, I
19 would like to hear from Region IX, at this
20 point.

21 MR. TAYLOR: Okay.

22 JUDGE STEIN: Thank you.

1 MR. TAYLOR: You're welcome, Your
2 Honor.

3 MS. NUTT: Thank you, Your Honor.
4 I don't know if you can hear us.

5 JUDGE STEIN: I can hear you just
6 fine.

7 MS. NUTT: We are getting a lot of
8 feedback. Okay. If the Guam link could be on
9 mute, I think it might be easier for us,
10 because we are getting a lot of feedback.

11 MR. TAYLOR: Okay. Hold on.

12 MS. NUTT: That's great. Thank
13 you. Yes, that's much better, thanks.

14 It all sounds very complicated and
15 there have been so many statements made and a
16 new letter introduced that appear to broaden
17 the discussion, but we think that it boils
18 down to, essentially, a couple of simple
19 facts.

20 And one is that there is presently
21 no commitment, enforceable commitment, for
22 these plants to be upgraded to secondary

1 treatment. And there is no requirement that
2 they be upgraded to secondary treatment.

3 I think there is a willingness on
4 GWA's part, and we don't question that, and
5 there is full support on EPA's side to upgrade
6 to secondary, but it is all contingent on the
7 funding. It all comes down to whether or not
8 there will be funding.

9 The discussions about the funding
10 are still in progress with the government of
11 Japan. The Japanese ROD must act on it and I
12 think it would be very hard to predict with
13 certainty how that vote will come out. And as
14 we stated in Ms. Woo's declaration, even if
15 funding is approved by the government of
16 Japan, there are going to continue to be
17 discussions about how the funding will be
18 provided.

19 Whether it would be provided
20 directly to GWA or to a special purpose entity
21 that would administer the funds, those are all
22 very important details which would be

1 discussed if funding were approved.

2 What originally led to the July
3 order, I believe, was a concern that there
4 were enforcement negotiations going on in this
5 case that would require or that would lead to
6 an agreement on GWA's part to a specific time
7 frame for upgrading the treatment plants to
8 secondary.

9 It is true that there is a pending
10 enforcement action with -- by EPA against GWA
11 and it does address those plants. There is
12 already a stipulated order in place between
13 the parties, but it does not address secondary
14 treatment. That is in the past.

15 We are now -- in July, we filed a
16 status report and said we were attempting to
17 undertake negotiations for a second stipulated
18 order, but negotiations weren't really
19 happening. Negotiations are beginning to get
20 underway now and secondary treatment is
21 something that EPA very much would like to
22 include in a second stipulated order.

1 And I think GWA is willing to go
2 that route. But there is a big if there and
3 that is if there is funding. And I heard Mr.
4 Taylor say that many times.

5 Regarding the letter, I don't know
6 that we would object to this letter being
7 entered into the record. I don't think it
8 changes anything. I did not have a chance to
9 see it. It's a six page document. It was
10 EPA's comments on the FEIS, I understand, the
11 Final Environmental Impact Statement, before
12 the Record of Decision came out.

13 And EPA continued to state its
14 request that the ROD would commit not only to
15 seek funding, but to commit to the actual
16 upgrades if funding were obtained. And the
17 ROD does that, in fact.

18 But at present, it commits to seek
19 the funding. It does not commit the
20 Department of Defense to provide funding.

21 My understanding is that the
22 funding situation is really complex, because

1 there are so many projects that are being
2 discussed in relation to the Military Buildup.
3 And part of what is being discussed for these
4 two treatment plants is upgrading them to
5 comply with primary treatment requirements
6 under their current permits.

7 And I understand that Department
8 of Defense is going to make funding available
9 for that upgrade, but that is not to be
10 confused with the further upgrade to secondary
11 treatment. And that is the portion of funding
12 that is uncertain. That is the portion of
13 funding that EPA and Department of Defense are
14 looking to Japan to provide.

15 So I think that pretty much sums
16 up our view of this matter.

17 JUDGE STEIN: I mean, I would --

18 MS. NUTT: Do you have any
19 questions?

20 JUDGE STEIN: -- say, at this
21 point, that the Board is leaning against
22 granting a stay, at this time. The Board is

1 balancing both the views and the interests of
2 the parties as well as the Board's docket and
3 other issues on its docket.

4 And I understand that I think we
5 have lost the picture parties.

6 I understand that there may be
7 difficult multi-party negotiations that are
8 ongoing. Assuming that the Board were to deny
9 the stay, that would be without prejudice to
10 the parties coming back to the Board, should
11 their negotiations reach a stage where there
12 is something more enforceable that is
13 imminent.

14 Obviously, the Board is not, you
15 know, interested in simply spending resources
16 resolving this case if it may be settled. On
17 the other hand, these petitions for -- I'm
18 somewhat now -- this will be my third Section
19 301(h) case that I have had an opportunity to
20 work on and I know that they are resource
21 intensive for the Region and they are resource
22 intensive for the parties and they are

1 resource intensive for the Board.

2 At the same time, because of the
3 importance of some of those issues, it is also
4 important to bring some of these matters to
5 resolution.

6 So what I am going to propose, at
7 this point, is that we admit the document,
8 that we enter it into the record. If, Mr.
9 Taylor, you can fax that to the Board, so that
10 we will have the benefit of it?

11 (Whereupon, the document was
12 marked for identification was
13 Authority Exhibit 1 and was
14 received in evidence.)

15 JUDGE STEIN: We will review this
16 transcript. We will review that document.
17 But more likely than not, I anticipate that
18 the Board is going to deny the stay.

19 Mr. Taylor, I'll give you a few
20 minutes for any last comments that you may
21 want to make in response to what the Region
22 has said.

1 But our inclination, at this
2 point, is that barring reaching a stage where
3 I think the prospects for settlement in the
4 short-term are more likely, I'm inclined to
5 have the Board proceed to begin resolving this
6 matter.

7 Frankly, I don't see the prejudice
8 to Guam if the Board resolves this matter,
9 because one of two things are going to happen.

10 Either the Board is going to agree
11 with Guam that the waiver should not have been
12 -- that the waiver should have been granted,
13 in which case you wouldn't have a legal
14 obligation to put on secondary treatment or
15 the Board is going to agree with the Region
16 that secondary treatment is required, in which
17 case you can still install secondary treatment
18 and you may, at that point, be further along
19 in the process.

20 But I don't see how the Board
21 deciding -- continuing to proceed to decide
22 this case prejudices Guam. It does involve an

1 investment of Board resources, at this point,
2 but the matter is, as I understand it at this
3 point, fully briefed.

4 Mr. Taylor, do you have anything
5 you would like to say in response?

6 MR. TAYLOR: Your Honor?

7 JUDGE STEIN: Yes?

8 MR. TAYLOR: Can you hear me now?

9 JUDGE STEIN: Yes.

10 MR. TAYLOR: Okay. There are
11 three issues that I think are critical to the
12 Board making a decision on this subject.

13 First, it's my understanding that
14 \$800 million has already been appropriated by
15 the government of Japan in the furtherance of
16 the Military Buildup. This is proof that the
17 government of Japan is serious in funding the
18 Military Buildup and included, as I stated,
19 the April 1, 2011 budget cycle, I think,
20 should produce sufficient evidence for the
21 Board at that particular juncture as to
22 whether or not the funding has been, in fact,

1 appropriated.

2 If it has been appropriated, then
3 two things flow from that. The first being is
4 that GWA would then be more likely than not to
5 enter into a Consent Decree. And if we had
6 to, we can perhaps just limit the Consent
7 Decree solely to the secondary treatment issue
8 or at least part of a Consent Decree on the
9 secondary treatment relative to the provision
10 of funding from the government of Japan.

11 It doesn't hurt, I believe, and as
12 you have stated, there is a lot of resources
13 that go into that from my side. I'm a one-man
14 shop over here. I don't have lots of
15 attorneys, you know, at my beck and call to
16 assist me with these cases. I mean, it's just
17 me, myself and I. And it doesn't appear to me
18 that there is any harm in waiting at least
19 until after the government of Japan has
20 basically made a decision on whether or not it
21 intends to provide funding.

22 If it does provide funding and the

1 appropriation is made, I think that is
2 sufficient proof for the Environmental Appeals
3 Board, as well as Region IX, as to legitimacy
4 and also the immanency of whether or not GWA
5 will, in fact, move to secondary treatment.

6 It doesn't appear to me to be any
7 harm whatsoever in waiting four months. I
8 mean, this matter has been going on for years.
9 You know, the stipulated order came out in
10 2003. It wasn't until 2009 in which the EPA
11 decided that it wanted to change course and
12 deny our existing primary permits.

13 Secondary treatment was not part
14 of the original stipulated order between --

15 JUDGE STEIN: Yes, I mean, I don't
16 want to get into the merits of the secondary
17 treatment appeal, because I understand that
18 that's one of your arguments in the appeal.

19 MR. TAYLOR: Yes, that's correct.
20 But we are just talking about timing here and
21 what's the reasonableness of waiting five or
22 six months?

1 JUDGE STEIN: Well, I just don't
2 understand how whether the government of Japan
3 appropriates money or not is really what is
4 dispositive. What is dispositive to me is
5 whether Guam either withdraws its appeal or
6 agrees that it is going to install secondary
7 treatment.

8 And I understand that there may be
9 some financial issues that bear on that
10 decision and, presumably, the Region is
11 prepared to exercise some flexibility over the
12 timing, as they have in other cases, as to the
13 installation of secondary treatment.

14 But barring a commitment on the
15 part of Guam to install secondary treatment or
16 to withdraw its appeal, I see this as a lot of
17 controversy.

18 MR. TAYLOR: Well, Your Honor,
19 relative to the appeal, it is, like I stated,
20 highly likely that in the event that the money
21 is provided from the government of Japan,
22 obviously, that's one of the major

1 considerations for GWA in terms of whether or
2 not secondary treatment is a viable option.

3 If somebody else provides the
4 funding, then I think the willingness of GWA
5 to move to secondary treatment and withdraws
6 proceedings before the Environmental Appeals
7 Board, I think, are highly likely.

8 However, in the event that funding
9 is not provided, then we would be forced to
10 proceed with the litigation before the
11 Environmental Appeals Board. Again, as I
12 stated, if we can just wait until say, for
13 example, May, I think we will have a lot more
14 information both on GWA's side, EPA's side in
15 terms of how we want to proceed, including
16 whether or not we are going to roll this into
17 a Consent Decree, split it out, there is a lot
18 more room here for negotiation.

19 As I stated, we had provided the
20 EPA with our proposed response to their
21 Consent Decree and our proposed terms. The
22 EPA indicated in its recent filing to the U.S.

1 District Court of Guam that it was intending
2 to provide response back to GWA in the near
3 future.

4 We don't know what those terms
5 are, because they have not provided them to
6 us, but I will state that my guess is that
7 secondary treatment is going to be included in
8 that document. The EPA, I'm sure, can speak
9 to that issue, but --

10 JUDGE STEIN: Mr. Taylor, let me
11 interrupt you for a second. Am I correct,
12 Region IX, that you would oppose the stay
13 until May or some other shorter period of
14 time?

15 MS. NUTT: Yes, that's correct.
16 We don't know for sure that the Japanese
17 government will vote in April and if they do,
18 we don't know that even a favorable vote on
19 the funding would lead to an immediate
20 solidification of positions that would result
21 in a withdrawal of the appeal or a negotiated
22 schedule for enforcement action.

1 JUDGE STEIN: Okay. Mr. Taylor,
2 any final comments?

3 MR. TAYLOR: Yes. While the
4 funding may be uncertain relative to the
5 government of Japan, I don't see how five or
6 six months is going to hurt anybody relative
7 to staying this process, at least until that
8 period of time.

9 JUDGE STEIN: Yes.

10 MR. TAYLOR: I think, again, EPA
11 will have much more definitive knowledge. We
12 will have more definitive knowledge. And I
13 think that our negotiations will be a lot more
14 firm relative to the Consent Decree or the
15 proposed Consent Decree on that particular
16 subject once the funding becomes available.

17 JUDGE STEIN: Okay. Well, I think
18 I understand your argument and the arguments
19 of the parties. And I think what I would like
20 to do now is to bring the status conference to
21 a close.

22 Mr. Taylor, I appreciate your

1 getting up at such an early hour in the
2 morning and it's not easy to schedule a status
3 conference in three different time zones that
4 span 15 hours. But if you could go ahead and
5 submit that exhibit, we will take it under
6 advisement and the Board will issue an order
7 in the near term letting you know our
8 decision.

9 And I thank everybody very much
10 for participating.

11 MR. TAYLOR: Thank you, Your
12 Honor.

13 JUDGE STEIN: Thank you.

14 MS. NUTT: Thank you, Your Honor.

15 MR. TAYLOR: Thank you.

16 MS. DURR: All rise. This session
17 of the Environmental Appeals Board now stands
18 adjourned.

19 (Whereupon, the Status Conference
20 was concluded at 4:43 p.m.)

21
22

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