

1 IGNACIA S. MORENO
Assistant Attorney General
2 Environment & Natural Resources Division
United States Department of Justice
3 ROBERT D. MULLANEY
Environmental Enforcement Section
4 Environment & Natural Resources Division
301 Howard Street, Suite 1050
5 San Francisco, CA 94105
Tel: (415) 744-6491
6 Fax: (415) 744-6476

7 MIKEL W. SCHWAB
Assistant U.S. Attorney
8 Suite 500, Sirena Plaza
108 Hernan Cortez
9 Hagatna, Guam 96910
Tel: (671) 472-7332
10 Fax: (671) 472-7215

11 Attorneys for the United States of America

12
13 UNITED STATES DISTRICT COURT
14 TERRITORY OF GUAM

15 UNITED STATES OF AMERICA,) Civil Case No. 02-00035
16)
Plaintiff,) UNITED STATES' STATUS REPORT
17)
v.)
18) Date: August 4, 2010
GUAM WATERWORKS AUTHORITY) Time: 9 a.m.
19 and the GOVERNMENT OF GUAM,) Chief Judge Tydingco-Gatewood
20)
Defendants.)
21)
22)
23)
24)
25)
26)
27)
28)

TABLE OF CONTENTS

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

I. BACKGROUND -1-

II. DEVELOPMENTS SINCE MARCH 2010 STATUS REPORT -2-

 A. Assessment of GWA Master Plan; Draft Settlement -2-

 B. Appeal from EPA’s Section 301(h) Determination under Clean Water Act ... -3-

 C. GWA’s Sanitary Sewer Overflows (“SSOs”) -3-

 D. GWA’s Compliance with NPDES Permit Limits -3-

 E. Proposed Younex Housing Project -4-

 F. Northern District WWTP: Interim Improvements Preliminary Design Study . -5-

 G. Agat-Santa Rita Wastewater Treatment Plant -6-

 H. Beach Closure -7-

 I. NPDES Permits -8-

III. GWA’S COMPLIANCE WITH THE STIPULATED ORDER -8-

 A. GWA’s Failure to Assess Drinking Water Supply Tanks (¶38.C) -8-

 B. Groundwater Chlorination System (¶12.C) -9-

 C. Water Meter Improvement Program (¶14) -9-

 D. Sinajana Water Transmission Line (¶38.B) -10-

 E. Operational Performance Evaluations (¶¶39, 42) -10-

 F. Ugum Surface Water Treatment Plant (¶41) -11-

 G. General Manager (¶3) -12-

 H. Sewer Hook-up Revolving Loan Fund (¶34) -12-

IV. NEXT STEPS -12-

1 After a quarterly status hearing on April 7, 2010, this Court issued Civil Minutes
2 regarding proceedings at the status hearing. Court Docket Number (“DN”) 107. As stated in the
3 Civil Minutes, the Court scheduled the next quarterly status hearing for August 4, 2010, and
4 ordered the United States to file its status report by July 16, 2010. Id. The United States submits
5 this status report pursuant to the schedule set out in the Civil Minutes.

6 The United States also submits this report in the context of the proposed military build-up
7 on Guam. The Department of Defense’s (“DoD”) Final Environmental Impact Statement for the
8 proposed military build-up is due to be made public on July 28, 2010. As described in more
9 detail in Section II.F., EPA intends to continue to work closely with DoD to ensure that any
10 future settlement agreement with GWA takes into account the requirements of the proposed
11 military build-up. The United States reiterates what we have stated previously: both GWA and
12 EPA view the military build-up as a potential opportunity to assist GWA in bringing its
13 wastewater and drinking water systems into full compliance with federal law.

14 **I. BACKGROUND**

15 The United States and Guam Waterworks Authority (“GWA”) filed joint status reports
16 on January 5, 2010, and March 30, 2010. DN 94, 104. The January and March 2010 status
17 reports described, among other things:

- 18 a. the history and status of GWA’s compliance with the Stipulated Order for
19 Preliminary Relief (“Stipulated Order”) entered on June 5, 2002, and amended on
20 October 25, 2006 (DN 94 at 2-17; DN 104 at 1-7);
- 21 b. uncertainties and planning obstacles affecting the negotiation of a new settlement
22 agreement between the United States and GWA (DN 94 at 17-22);
- 23 c. GWA’s report on planning issues and other improvements (DN 104 at 7-13); and
- 24 d. next steps planned by the United States and GWA (DN 94 at 22-23; DN 104 at
25 13).

1 **II. DEVELOPMENTS SINCE MARCH 2010 STATUS REPORT**

2 The United States reports that the following developments have occurred since the filing
3 of the March 2010 status report.

4 A. Assessment of GWA Master Plan; Draft Settlement

5 As we stated in the March status report, the U.S. Environmental Protection Agency
6 (“EPA”) provided to GWA a report entitled “Guam Waterworks Authority Master Planning
7 Technical Assessment” that was prepared by EPA’s consultant, PG Environmental, LLC
8 (hereafter, the “PG technical assessment”) on February 2, 2010. The PG technical assessment
9 analyzed GWA’s master plan activities, including the management of GWA’s planning
10 programs, its 2010–2014 Capital Improvement Project (“CIP”) plan, and its September 2009
11 “Needs Assessment for Anticipated Guam Military Build-Up.” In addition, the PG technical
12 assessment contained: (1) recommended changes to GWA’s program implementation, including
13 changes in operation and maintenance, planning, prioritization, construction management, and
14 costing of capital improvement projects; and (2) new strategies to address staffing shortages and
15 the financing of operations and capital improvement projects.

16 The United States incorporated many of these measures in the draft settlement document
17 provided to GWA on March 24, 2010. Based in part on the recommendations in the February
18 2010 PG technical assessment, the draft identifies projects that, in EPA’s estimation, will both
19 improve GWA’s compliance status during the next three to five years, and also establish a sound
20 footing for planning the compliance measures that will be needed thereafter. The United States
21 believes that the terms of a new settlement should incorporate these compliance and planning
22 measures together with unmet provisions of the Stipulated Order.

23 At the status hearing on April 7, 2010, GWA stated, in response to questions from the
24 Court, that it would provide a written response to the United States’ draft within two months.
25 Although GWA received the PG technical assessment in early February and the draft settlement
26 on March 25, 2010, the United States has not received any written response from GWA to date.

1 maximum flow in January and March 2010; and (ii) the monthly average effluent limit for
2 biochemical oxygen demand in January, February, and March 2010. Id. At the Agana WWTP,
3 GWA violated: (i) the monthly average effluent limit for total suspended solids in March 2010;
4 and (ii) the monthly average effluent limit for biochemical oxygen demand in January,
5 February, and March 2010. Id.

6 E. Proposed Younex Housing Project

7 According to news reports, on April 27, 2010, a company known as “Younex” and others
8 began construction of a project known variously as the Okkodu or Ukudu workforce village,
9 which would be built in 2,000 person increments and is expected to be located next to the
10 Northern District WWTP. The new village could house up to 18,000 people. At full build out,
11 this project could generate a wastewater flow of about 1 million gallons per day (“mgd”) to be
12 sent to the Northern District WWTP for treatment. Currently, GWA’s NPDES permit allows the
13 Northern District WWTP to discharge up to 6 mgd of effluent via an ocean outfall. Based on
14 discharge monitoring reports submitted by GWA, effluent flow from Northern District WWTP
15 frequently exceeds 6 mgd. For example, effluent flow exceeded 6 mgd in January and March
16 2010. See Exhibit 2. EPA is concerned that any additional flows to Northern District WWTP
17 will adversely impact effluent quality from the WWTP, which is already in ongoing violation of
18 its NPDES permit’s effluent limits. Id.

19 Moreover, the proposed housing would require both an increased supply of drinking
20 water and the construction of additional transmission lines. Based on currently available
21 information, EPA believes that: (1) GWA has very limited or no capacity to provide additional
22 drinking water at this time; and (2) GWA lacks transmission capacity to transport drinking water
23 even if it were available. Currently, GWA has only a single, low production drinking water well
24 that serves the Northern District WWTP adjacent to the proposed project. Using an average of
25 70 gallons per capita per day for worker housing water demand, GWA would need an additional
26 water supply of approximately 1.25 mgd for a worker camp population of 18,000. Furthermore,
27

1 to the best of EPA's knowledge, GWA does not have any transmission line connecting the
2 location of the proposed Younex housing project to other GWA water supply wells. Therefore,
3 GWA would need to construct approximately one mile of transmission line to bring in up to
4 1.25 mgd of supplemental drinking water for this project. In sum, EPA is concerned that an
5 additional water demand from the proposed Younex housing project -- without a concurrent
6 increase in both water supply (such as new or rehabilitated wells) and transmission capacity to
7 this area -- could result in water shortages and low water pressure in the surrounding water
8 service areas, including parts of Upper Tamuning, Upper and Lower Tumon, Dededo, Harmon,
9 and other areas.

10 F. Northern District WWTP: Interim Improvements Preliminary Design Study

11 Presently, Paragraph 39 of the Stipulated Order mandates that GWA restore primary
12 treatment operational capacity to the Northern District WWTP. DN 40, Exh. 1, ¶ 39; DN 41.
13 Although the Northern District WWTP's primary treatment infrastructure was originally
14 designed to treat an average daily wastewater flow of 12 mgd, the WWTP's current NPDES
15 permit allows a maximum daily flow of 6 mgd, which the WWTP periodically exceeds. See
16 Exhibit 2. GWA also routinely violates effluent limits at the Northern District WWTP. Id.
17 Unless GWA makes the necessary improvements required by Paragraph 39 of the Stipulated
18 Order at the Northern District WWTP, EPA is concerned that increased wastewater flows from
19 the proposed military build-up activities, including those associated with construction workforce
20 housing, would likely result in additional exceedances of the Northern District WWTP's current
21 NPDES permit limits.

22 Through the Environmental Impact Statement ("EIS") process for the proposed military
23 build-up, the Department of the Navy ("DoN"), in close coordination with GWA, has sought to
24 identify technical solutions for GWA to implement that would potentially allow for additional
25 flows to the Northern District WWTP without further degrading the quality of the effluent
26 discharged from the WWTP. As part of its analysis in the EIS, DoN has completed an
27

1 evaluation of plant capacity and permanent improvements that could be implemented by GWA
2 to address the wastewater treatment needs associated with the proposed military build-up actions
3 that could occur in the area serviced by the Northern District WWTP.

4 To assist in identification of interim steps that will be needed to improve the treatment
5 capability and effluent water quality of the Northern District WWTP pending implementation of
6 permanent improvements to primary and secondary treatment by GWA, DoN plans to initiate a
7 study that will analyze all treatment processes at the Northern District WWTP, including
8 pretreatment, flow equalization, primary clarifiers, and sludge handling, as well as process utility
9 support and monitoring. This study will provide a basis for the design of cost-effective, interim
10 improvements that could be quickly implemented by GWA to accommodate an increase in
11 wastewater flows from temporary workers and other proposed military build-up related growth.
12 DoN plans to initiate this study by late July 2010 and to complete it by the end of November
13 2010. DoN's twin goals are: (1) to identify interim measures that would allow GWA, subject to
14 EPA's approval, to treat up to 9 mgd of wastewater flows to meet primary treatment standards;
15 and (2) to have GWA implement these measures by September 2011.

16 G. Agat-Santa Rita Wastewater Treatment Plant

17 On March 12, 2010, EPA's contractor, PG Environmental, LLC, inspected the
18 Agat-Santa Rita WWTP to evaluate compliance with its NPDES permit. The inspector found a
19 number of violations of the NPDES permit, including evidence of improper solids management
20 and bypasses of wastewater at the WWTP. For example, the inspector observed that the
21 WWTP's drying beds were not being used to dry wastewater solids. Rather than separating
22 solids for drying and proper disposal, GWA is discharging wastewater solids to the ocean.^{1/}

23 In addition, the inspector observed equipment -- an on-site mobile pump and hoses -- set
24

25 ^{1/} GWA's annual biosolids report confirmed that biosolids were not processed at the Agat-Santa
26 Rita WWTP in 2009. However, a GWA quarterly discharge monitoring report indicated that
27 over 375 tons of biosolids were removed from the Agat-Santa Rita WWTP in 2009. EPA cannot
explain the inconsistency in the two GWA reports. See Exhibit 3 at 10.

1 up to perform a bypass of wastewater around the WWTP to the ocean outfall. Based on the
2 inspection, bypasses at the Agat-Santa Rita WWTP occur during storms when rainwater flows
3 into GWA's defective sewer pipes and overwhelms the WWTP's capacity. EPA's records show
4 that GWA began to routinely bypass wastewater at the Agat-Santa Rita WWTP in 2007. In the
5 inspection report, the inspector summarized three recent bypasses as follows:

- 6 a. On March 18, 2010, approximately 14,000 gallons were bypassed due to emergency
7 maintenance required at the WWTP. The emergency maintenance included clearing a
8 clogged line from a pump station.
- 9 b. On December 2, 2009, approximately 25,200 gallons of wastewater were bypassed. The
10 discharger reported the bypass: "Due to the weather, Agat wastewater treatment plant
11 operator found high water level in wet-pit area [December] 2, 2009."
- 12 c. Between August 4, 2009, and August 8, 2009, a bypass of 14.4 million gallons occurred.
13 The discharger reported the bypass was necessary during a heavy rain event to prevent
14 backflow from the lines overflowing manholes and "to assist the pumps in order to keep
15 up with the excessive incoming sewage water flow in the wet pit."

16 See Exhibit 3 at 11-12.

17 GWA has had sufficient time to implement measures to prevent such discharges but has
18 failed to do so. In addition, GWA has failed to notify EPA of each bypass, as required by the
19 NPDES permit.

20 H. Beach Closure

21 On June 25, 2010, the Guam Environmental Protection Agency released a Recreational
22 Waters Pollution Report that identified one beach closure due to discharges from the Agana
23 WWTP:

24 West Hagåtña Bay is currently closed due to the intended or continued use of the old
25 fractured outfall at the Hagåtña Sewage Treatment Plant as emergency and/or bypass
26 overflow. The area closed includes Hagåtña Boat Basin & Channel and the West
27

1 Hagåtña Beach Park.

2 See Exhibit 4.

3 I. NPDES Permits

4 On April 26, 2010, EPA issued an NPDES permit for GWA's Ugum Surface Water
5 Treatment Facility. On June 14, 2010, EPA issued a new NPDES permit to GWA for the
6 Agat-Santa Rita WWTP.

7 **III. GWA'S COMPLIANCE WITH THE STIPULATED ORDER**

8 A. GWA's Failure to Assess Drinking Water Supply Tanks (¶38.C)

9 Paragraph 38.C of the Stipulated Order requires GWA to complete a condition
10 assessment of water storage tanks and to develop and implement a work plan to monitor,
11 rehabilitate or replace tanks as necessary. In January 2010, the United States assessed a \$57,000
12 penalty against GWA for its failure to complete the tank assessment. The United States contends
13 that GWA remains in continuing violation of Paragraph 38.C.

14 The United States notes that GWA stated in its Notice of Noncompliance or Delay that it
15 would begin tank inspections in February 2010 and indicated that the issuance of a new bond
16 would be required to complete inspections of 29 tanks. DN 104, Exh. 4 at 4. During the April
17 2010 status hearing, GWA indicated that it intended to reprogram existing bond funding to move
18 forward with inspections and minor repairs on about 90 percent of the tanks. However, GWA
19 recently notified EPA that it began inspections of the first three water storage tanks on June 15,
20 2010. According to GWA, preliminary results indicate that major repairs may be required.

21 EPA has not received notification from GWA that the new bond is on schedule to be
22 issued in June or July 2010, as GWA estimated in the March 2010 status report (DN 104 at 6), or
23 that existing bond funding was reprogrammed for the inspections. It is unclear how much the
24 bond issuance will be delayed and what impact this may have on GWA's plans to complete this
25 project. The extent, cost, and scheduling of the repairs on the tanks are also unknown at this
26 time.

1 may have on GWA's plans to complete this project.

2 D. Sinajana Water Transmission Line (¶38.B)

3 Paragraph 38.B of the Stipulated Order required GWA to complete the Sinajana water
4 transmission line project by June 30, 2008. DN 40, Exh. 1, ¶38.B.; DN 41. In March 2010, the
5 United States assessed a penalty against GWA for its failure to complete the Sinajana water
6 transmission line. The United States contends that GWA remains in continuing violation of
7 Paragraph 38.B.

8 In the March 2010 status report, GWA explained that the recent construction projects
9 (Phase I and Phase IIA) and planned construction (Phase IIB) were essential to the
10 implementation of this project. DN 104 at 6-7. Apparently, GWA's original design did not
11 address the analysis of the distribution system after the transmission line would be put in service,
12 which means that some customers might not receive adequate water pressure. Id. at 7. The
13 identification of pressure deficiencies will require GWA to study the distribution system, which
14 may lead to a Sinajana Phase III project. Id. GWA stated that this project is fully funded
15 (except for Phase III, which will probably be funded out of 2010 bond proceeds), and Phases I
16 and II are expected to be complete by November 1, 2010. Id.

17 EPA has not received notification from GWA that the new bond is on schedule to be
18 issued in June or July 2010, as GWA estimated in the March 2010 status report. Id. at 6. It is
19 unclear how much the bond issuance will be delayed and what impact this may have on GWA's
20 plans to complete this project.

21 E. Operational Performance Evaluations (¶¶39, 42)

22 Paragraphs 39 and 42 of the Stipulated Order required GWA to rehabilitate its Agana and
23 Northern District WWTPs to restore primary treatment operational capacity by March 2, 2007,
24 and to also perform an operational performance evaluation by April 30, 2007 (Agana) and May
25 4, 2007 (Northern District) to determine whether advanced primary treatment is necessary to
26 bring the WWTPs into compliance with their NPDES permits. DN 40, Exh. 1, ¶¶ 39, 42; DN 41.

1 In September 2007, the United States assessed a \$40,000 penalty against GWA for its failure to
2 complete the operational performance evaluations. The United States contends that GWA
3 remains in continuing violation of Paragraphs 39 and 42.

4 GWA submitted to EPA its proposed operational performance evaluations on January
5 12, 2010. On April 23, 2010, EPA provided written comments to GWA on the proposed
6 evaluations and determined that: (i) GWA has not completed the corrective actions to restore the
7 Northern District WWTP's primary treatment operational capacity; (ii) GWA has not submitted
8 an operational performance evaluation meeting the requirements of Paragraph 39; (iii) GWA has
9 not completed the corrective actions to restore the Agana WWTP's primary treatment
10 operational capacity; and (iv) GWA has not submitted an operational performance evaluation
11 meeting the requirements of Paragraph 42. EPA directed GWA to respond to EPA's comments
12 and to develop a list of all projects that GWA proposes to implement to restore minimum
13 primary operational capacity to the Northern District and Agana WWTPs. GWA responded to
14 EPA on May 19, 2010, stating that it had completed the work that EPA approved. In its letter,
15 GWA did not dispute EPA's determination that GWA had failed to restore primary operational
16 capacity at the Northern District and Agana WWTPs.

17 F. Ugum Surface Water Treatment Plant (¶41)

18 Paragraph 41 of the Stipulated Order required GWA to complete construction on the
19 Ugum plant by January 5, 2008. DN 40, Exh. 1, ¶41; DN 41. In the March 2010 status report,
20 GWA stated that this project is fully funded and estimated that it would be completed by April
21 30, 2010. DN 104 at 7. However, GWA recently notified EPA that it has not completed the
22 project because it has not rehabilitated two flocculation-sedimentation basins. In addition, EPA
23 notes that GWA has not completed operations and maintenance manuals for this facility, which
24 are required by Paragraph 21 of the Stipulated Order.

25 The NPDES permit for the Ugum Surface Water Treatment Facility allows the discharge
26 of Clean-in-Place and Chemical Enhanced Backwash Wastewater. However, during a site visit
27

1 in April 2010, EPA staff observed that GWA was discharging filter backwash water from storage
2 tanks at the facility, which is not a permitted discharge under the NPDES permit.

3 G. General Manager (§3)

4 Pursuant to Paragraph 3 of the Stipulated Order, the Consolidated Commission on
5 Utilities (“CCU”) was required to use its best efforts to hire a General Manager for GWA within
6 90 days after entry. Paragraph 3 specified the qualifications required for this critical position.

7 On June 13, 2010, EPA received notice from Dr. Leonard Olive that he was resigning
8 from his position as GWA’s General Manager. The CCU has appointed John Benavente as the
9 Interim General Manager of GWA. Mr. Benavente also currently serves as the General
10 Manager, Consolidated Utility Services, and oversees both Guam Power Authority and GWA.
11 The United States would like assurance that the CCU will use its best efforts in the near term to
12 hire a full-time General Manager for GWA who meets the qualifications set out in Paragraph 3
13 of the Stipulated Order.

14 H. Sewer Hook-up Revolving Loan Fund (§34)

15 Paragraph 34 of the Stipulated Order required GWA to develop a program instituting a
16 fund for residents to connect to the wastewater collection system. GWA notified EPA on May
17 17, 2010, that it had issued a press release to announce the fund and completed this requirement.

18 **IV. NEXT STEPS**

19 In the March 2010 status report, the United States and GWA informed the Court that we
20 intended to negotiate a new settlement agreement for the Court’s approval. The United States
21 started this process by providing GWA with a copy of the PG technical assessment on February
22 2, 2010, and a copy of a draft settlement agreement on March 25, 2010. The parties have not
23 made any progress on settlement since March 2010 because GWA has failed to provide a written
24 response to the United States’ draft settlement agreement. Even if GWA believes that the
25 military build-up should alter the provisions of this proposed settlement agreement, GWA should
26 nonetheless provide a written response to United States’ draft settlement document in which
27

1 GWA suggests such changes.

2 EPA intends to continue its close coordination with the DoD to ensure that the settlement
3 agreement takes into account the requirements of the proposed military build-up. As stated in
4 the prior status reports, both GWA and EPA view the military build-up as a potential opportunity
5 to assist GWA's efforts to bring its wastewater and drinking water systems into full compliance
6 with federal law.

7 Respectfully submitted,

8

9 Dated: July 15, 2010

/s/ Robert D. Mullaney

10

ROBERT D. MULLANEY
Environmental Enforcement Section
Environment & Natural Resources Division
301 Howard Street, Suite 1050
San Francisco, CA 94105
Tel: (415) 744-6491
Fax: (415) 744-6476

11

12

13

14 OF COUNSEL:

15 GARY HESS
Assistant Regional Counsel
16 U.S. Environmental Protection Agency
75 Hawthorne Street
17 San Francisco, CA 94105

18

19

20

21

22

23

24

25

26

27

28