

Exhibit A

Declaration of Nancy Woo

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)
)
)
GUAM WATERWORKS AUTHORITY)
) NPDES Appeal Nos. 09-15 and 09-16
)
Northern District Sewage Treatment Plant)
Agana Sewage Treatment Plant)
)
NPDES Permit Nos. GU0020141 and GU0020087)
_____)

DECLARATION OF NANCY WOO

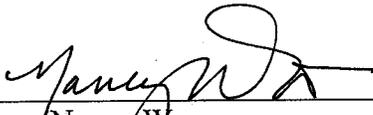
I, Nancy Woo, make the following declaration based on personal knowledge, information and belief:

1. I am an Associate Division Director of the Water Division, U.S. Environmental Protection Agency (“EPA”) Region 9 (“the Region”). I have served continuously in this position since 2003.
2. In the course of my duties, I have, since early 2009, been responsible for oversight of the Region’s water programs in the Outer Pacific Islands, including the issuance of the Region’s final decisions to deny Guam Waterworks Authority’s (“GWA’s”) applications for waivers from secondary treatment for its Northern District and Agana Wastewater Treatment Plants (“WWTPs”) that are the subject of these consolidated permit appeals. Since mid-2009, I have also been overseeing and coordinating the Water Division’s involvement in issues related to the planned military build-up in the Territory of Guam. In this capacity, I have been engaged in discussions with the U.S. Department of Defense (“DoD”) concerning funding to upgrade GWA’s Agana and Northern District WWTPs to secondary treatment.
3. On September 20, 2010, following issuance of its Final Environmental Impact Statement (“FEIS”), DoD, through the Department of Navy and the Department of the Army, signed its Record of Decision (“ROD”) on the Guam military relocation. Since the FEIS and ROD were issued, I have continued to engage in discussions with representatives of DoD relating to how and when there may be funding for a number of significant drinking water and wastewater infrastructure projects for which DOD has committed, in the ROD, to seek funding, including the upgrades of the Northern District and Agana WWTPs to secondary treatment. DoD itself has not committed to provide funding for these projects; therefore, all of the infrastructure projects that DoD has selected in the ROD are

contingent on obtaining adequate funding. To date, no final decisions about the sources or timing of funding have been made.

4. On September 15, 2002, the U.S. District Court for Guam entered a Stipulated Order for Preliminary Relief ("Stipulated Order") in an enforcement action brought by the United States, on behalf of EPA, against GWA for violations of the Clean Water Act and Safe Drinking Water Act. The Stipulated Order was amended October 25, 2006. None of the Clean Water Act violations addressed by the Stipulated Order is based on secondary treatment requirements; therefore, the Stipulated Order does not require the upgrades of Northern District and Agana WWTPs to secondary treatment. EPA will require these upgrades only if the Region's decisions denying GWA's applications for waivers from secondary treatment are made final.
5. I am informed, and I believe, that DoD has been engaged in discussions with the Government of Japan about Japan providing funding for infrastructure improvements of non-DoD facilities on Guam that are associated with the military build-up, including the upgrades of the Agana and Northern District WWTPs to secondary treatment. I am further informed and believe that these discussions have not resulted in any commitment by the Government of Japan as to whether it will provide funding, and that such commitment cannot be made without action by the Diet of Japan, Japan's legislative body. Finally, I am informed and believe that even if funding is approved by the Diet of Japan, DoD will continue to negotiate with the Government of Japan concerning the means and timing by which such funding will be made available for these projects.
6. It is my belief that all of the discussions described above will continue to occur for some period of time which cannot be predicted with any degree of certainty. I believe, however, that a decision by the Environmental Appeals Board of GWA's pending appeals would provide clarity for DoD and for the Government of Japan concerning the Environmental Protection Agency's final decision on GWA's applications for waivers from secondary treatment for the Agana and Northern District WWTPs, which, in turn, may assist in clarifying how soon GWA may be required to upgrade these WWTPs.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of November, 2010, in San Francisco, California.



Nancy Woo

Exhibit B

Record of Decision for Guam and CNMI Military relocation

Exhibit C

United States' Status Report
Civil Case No. 02-00035 (Dist. Ct. Guam)

Exhibit D

United States' Reply to GWA's Status Report
Civil Case No. 02-00035 (Dist. Ct. Guam)

RECORD OF DECISION

for

Guam and CNMI Military Relocation

including

Relocating Marines from Okinawa

Transient Nuclear Aircraft Carrier Berth

Air and Missile Defense Task Force

**Department of the Navy
and
Department of the Army**

September 2010

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DEPARTMENT OF DEFENSE

Department of the Navy

Department of the Army

Record of Decision (ROD) for the Guam and CNMI Military Relocation: Relocating Marines from Okinawa, Visiting Aircraft Carrier Berthing, and Air and Missile Defense Task Force

AGENCY: Department of the Navy, Department of Defense
Department of the Army, Department of Defense

ACTION: Notice of Record of Decision

SUMMARY: The Department of the Navy (DoN) and the Department of the Army (Army), after carefully weighing the environmental consequences of the proposed action, as well as considering operational and training requirements, strategic requirements, obligations under treaties and other international agreements, and cost, announce their decision to proceed with Guam and Commonwealth of Northern Mariana Islands (CNMI) Military Relocation.

As a result of redefining the United States (US) defense posture in the Pacific region and the US alliance with Japan, a portion of US Marine Corps forces currently located in Okinawa, Japan will be relocated to Guam. This relocation of Marine Corps forces will meet international agreement and treaty requirements and fulfill US national security policy requirements to provide mutual defense, deter aggression, and dissuade coercion in the Western Pacific Region in response to the evolving security environment in the Pacific region, as identified through the Integrated Global Presence and Basing Strategy and the Quadrennial Defense Review (QDR). The redefining of the US defense posture in the Pacific also calls for greater availability of aircraft carrier strike groups in the Pacific to support engagement, presence, and deterrence. Finally, in support of the proposed military relocation, the stationing of an Air and Missile Defense Task Force (AMDTF) is also being considered. A significant number of countries have ballistic missile capabilities which can deliver conventional, nuclear, biological, and chemical weapons. Other countries are working to establish these capabilities and missile systems. The effective strike range of defensive ballistic missile systems dictates that they must be located in the proximity of the protected assets. The need for the proposed AMDTF is to protect the territory of Guam, its citizens, U.S. and allied forces on Guam from the threat of harm from ballistic missile attacks from other countries and enemies of the US.

Implementing the military relocation analyzed in the Environmental Impact Statement (EIS) will be a multi-agency, multi-year effort undertaken by the DoN, Army, Department of

Transportation's Federal Highway Administration (FHWA), Guam utilities, Guam agencies, and various private entities. Implementation includes several components:

(1) *Marine Corps*: (a) Development and construction of facilities and infrastructure to support approximately 8,600 Marines and their 9,000 dependents being relocated from Okinawa to Guam. (b) Development and construction of facilities and infrastructure to support training and operations on Guam and Tinian;

DoN has elected to defer selection of a specific site for the construction and operation of a live fire training range complex in the Route 15 area on Guam pending completion of the Section 106 consultation process under the National Historic Preservation Act (NHPA). Likewise, a selection regarding implementation of a roadway improvement project calling for a realignment of Route 15 is hereby deferred pending selection of a specific site for the construction.

(2) *Navy*: Construction of a new deep-draft wharf with shoreside infrastructure improvements creating the capability in Apra Harbor, Guam to support a transient nuclear powered aircraft carrier;

DoN has elected to defer selection of a specific site for the construction and operation of a transient aircraft carrier berth within Apra Harbor for the near term. However, the analysis presented in the FEIS, including the marine resources impacts analysis, provides sufficient information to allow the DoN to fully consider the direct, indirect and cumulative environmental impacts of locating a transient aircraft carrier berth and make a programmatic decision to locate a transient aircraft carrier berth generally within Apra Harbor, which is the only deep draft harbor on the island of Guam that could support such a berth.

(3) *Army*: Development of facilities and infrastructure on Guam to support relocating approximately 600 military personnel and their 900 dependents to establish and operate an Air and Missile Defense Task Force (AMDTF).

As of the date of this ROD, the DoD has not decided to construct and operate an AMDTF on Guam. The decision on whether to assign this mission to the Army will be made pending the results of the ongoing regional and global Ballistic Missile Defense architectural and capability studies. It will also be based in part on the EIS for this proposed action with Guam as one site that is under consideration for an AMDTF mission. The FEIS was prepared noting that if the mission were assigned to Army, the alternatives presented in the FEIS represent how Army could implement the action on Guam. Army has selected the preferred alternatives described in Volume 5 of the FEIS as the appropriate manner to implement the proposed action if and when the mission is assigned.

(4) *Utilities*: Renovation and development of additional capacity for power, water, and wastewater systems, both on base and off base, to support the increased demand from the new

Marine Corps Base and associated growth in DoD and civilian population caused by the Relocation.

(5) *Off-base Roadways*: Improvements to off base roads, bridges, and intersections to support increased traffic and offset significant impacts caused by the Relocation.

Each of the major actions noted above encompasses several construction projects to provide required facilities and infrastructure. Most of the major actions and their supporting projects have alternative sites located throughout the island of Guam. This ROD will document and demonstrate why DoD has chosen to implement the preferred alternatives for each of the actions described in the FEIS except as noted above.

Because DoN and Army are preparing this ROD as a joint effort, both concur and support the decisions expressed within it. The ROD includes descriptions and discussions of the proposed actions and their impacts. It also includes descriptions and discussions of all related actions and their impacts. Combined, these two elements - proposed and related actions, with associated impacts - provide the context for consideration of the collective and cumulative impacts associated with all actions addressed in the FEIS.

While this ROD represents the decisions of DoN and Army regarding the proposed actions, federal agencies have greatly contributed to formulating and refining the approach to implementing actions and associated mitigation measures. Led by CEQ-facilitated discussions, DoD reached major agreements with various federal regulatory agencies regarding key issues, refined action alternatives for Guam's potable water and wastewater systems, committed to the use of force flow reduction and Adaptive Program Management (APM) as mitigation measures, and established a Civil-Military Coordination Council (CMCC) to implement APM. All of these actions are discussed with greater detail within the ROD. DoN would like to recognize the efforts of CEQ, the US Environmental Protection Agency, the Department of Interior, the National Oceanographic and Atmospheric Administration, and the Government of Guam Agencies and thank them for their participation and assistance in seeking resolution to the many challenges confronting DoD in the completion of the NEPA process for this proposed action. It is also recognized that as the military construction projects necessary to implement the actions move forward, each of these agencies will have a continuing role through either a regulatory, permitting, or advisory capacity and will continue to be partner in the implementation of the actions.

This ROD was prepared in accordance with Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA 40 CFR parts 1500 to 1508 and specifically, 40 CFR 1505.2 - Record of decision in cases requiring environmental impact statements.

During Terminal High Altitude Area Defense (THAAD) radar operations, there is a potential hazard to military and civilian aircraft; therefore, SUA would be associated with the weapons emplacement sites. The SUA would consist of a proposed restricted area (to be called R-7205) to accommodate hazards associated with THAAD radar operations. R-7205 would be from the surface up to 22,000 ft (6,700 m) above mean sea level (Flight Level 220) and would be activated based on FAA approved airspace periods required for system maintenance, training, certification, and contingency operations. Planned preventive maintenance would require a minimum continuous period of 45 minutes daily Monday-Friday. Training and certification periods would be processed to the FAA for approval to use the R-7205 airspace. The FAA would issue a Notice to Airmen prior to scheduled use of the airspace.

The environmentally preferred alternatives for establishment of an AMDTF are Alternative 1 for Headquarters/Housing, Munitions Storage Alternative 1, and Weapons Emplacement Alternative 4. All three environmentally preferred alternatives are also the operationally preferred alternatives. Alternative 1, constructing and operating headquarters and housing facilities with the Marine Corps at NCTS Finegayan would allow shared use of many administrative and support facilities, thereby eliminating the need to construct duplicate facilities at Navy Barrigada with associated environmental impacts. For munitions storage, although the overall Alternative 1 disturbance footprint is slightly larger than the other two alternatives, less limestone forest will be impacted (2.3 acres for Alternative 1 compared to 2.7 for Alternatives 2 and 3). The preferred Alternative 1 for munitions storage provides more space, makes greatest use of existing locations compatible with munitions storage, impacts the least amount of previously undisturbed areas, and is the location most compatible with current and planned military use, as coordinated with Army, Air Force, Marine Corps, and the Navy. With respect to weapons emplacement, Alternative 4 is the environmentally and operationally preferred alternative because it involves the least amount of construction in previously undisturbed areas, the least amount of vegetation removal in identified recovery habitat for threatened and endangered wildlife species, is compatible with proposed Marine Corps and existing Air Force activities, and has the least potential electromagnetic interference (Defense Information Systems Agency, Joint Spectrum Center 2009).

E. Utilities: The activities related to the Marine Corps relocation to Guam would increase demand on existing utilities infrastructure. In addition to Marine Corps personnel, family members and civilian support staff, there would be a temporary surge in construction personnel and construction activities.

The alternatives presented were either "basic" alternatives to meet both immediate and long-term needs; or "long-term" alternatives that will meet needs beyond the temporary surge of the proposed relocation. In addition, while basic alternatives were addressed with known or project-specific information, long-term alternatives were dealt with more generally. This approach anticipates that long-term alternatives may not be implemented in time to

accommodate the Marine Corps relocation schedule. However, basic alternatives will be initiated after signature of the ROD and completed in time to support the relocation.

It is anticipated that some utilities solutions will be implemented by Special Purpose Entities (SPEs), which would likely be private business entities formed to finance, operate, manage, upgrade, or develop utility plants and associated infrastructure such as collection or distribution systems. As envisioned, the SPEs will be private entities that will renovate, upgrade, operate and manage various utility systems under the direction of existing Guam utility providers. They will be structured to work with and provide services to existing Guam utility providers and will not compete with them to provide utility services to customers. It is expected that the underlying business arrangements between SPEs and existing Guam utilities would be similar to the Independent Power Provider (IPP) or management/operations agreements that GPA successfully uses to operate and manage several of its power generation facilities. Other utility solutions may be implemented by Guam utility providers themselves.

It is anticipated that, in accordance with the Realignment Roadmap, the SPEs would utilize \$740 million of GoJ financing for utilities infrastructure improvements to support the Marine Corps forces that would be realigning from Okinawa to Guam. Alternatively, GoJ financing could be provided directly to existing utility providers to conduct the upgrades. The scopes of the proposed specific utility improvement projects have been coordinated with Guam utilities, and US EPA. The precise manner in which these SPEs would operate is not known at this time. Except for a proposed water SPE, where Navy real estate and infrastructure are involved, the Navy will not exercise any authority or control over the SPEs. However, the Navy is committed to facilitating discussions between the GoJ, the SPEs, and GovGuam to focus SPE efforts on those utility impacts associated with the realignment, including short-term construction work force and long-term population growth. DoD would then likely purchase utility services from the SPE or Guam utility under a utilities service contract. Funds generated through rate structures established in the utilities service contracts could be used by the SPE or Guam utility to repay financing costs or a portion thereof. Any utilities service contract with a SPE or Guam utility would reflect a reasonable DoD rate structure. Given that these SPEs have yet to be formed, these business arrangements are not currently defined in detail. Therefore, they are presented as “conceptual” business arrangements.

The following presents the FEIS alternatives for utilities solutions:

1. Power:

a. Power Basic Alternative 1 (Preferred FEIS Alternative): Basic Alternative 1 would recondition up to five existing combustion turbines (CTs) for reliability and reserve power, and would also upgrade electrical transmission and distribution systems. This would not require construction of new baseload power generation facilities or enlargement of the existing footprint of the existing combustion turbine facilities. Reconditioning efforts would be limited to GPA’s existing permitted facilities at Marbo, Yigo, Dededo (two units), and

Macheche. These combustion turbines are not currently being operated at or near their permit limits, and reconditioning up to five CT's will provide sufficient peaking power and reserve capacity for consistent, reliable power. Transmission and distribution system upgrades would involve new and existing above ground and underground transmission lines. This alternative supports Main Cantonment Alternatives 1 and 2. Main Cantonment Alternatives 3 and 8 would require additional upgrades to the transmission and distribution system.

Other alternatives considered in the Draft EIS are no longer considered necessary due to revised information from GPA and DoD. With the reevaluation of increased power demands associated with the proposed DoD relocation (including induced civilian growth, normally expected civilian growth, and the construction workforce), revised power demand from transient ships, the revised approach to provide power to the transient CVN and the revised current demand on the GPA system (from GPA data), the current GPA electrical power generation resources have been shown to be adequate to meet the increased demand as well as required reserve capacity to ensure reliable service. Thus, Basic Alternative 1 was the only power solution evaluated in the FEIS.

As the only power alternative carried forward in the FEIS, Alternative 1 is the environmentally preferred alternative for power. Within this alternative, up to five existing GPA combustion turbines would be recondition to ensure adequate reserve power and reliability would be available and transmission and distribution system upgrades which would result in less than significant impacts to air quality because required power output would be within the Clean Air Act Title V permitted capacity for each existing combustion turbine. Since the affected GPA facilities have demonstrated compliance with their Title V permits, this alternative would have less than significant impacts.

2. Potable Water (PW):

a. PW Basic Alternative 1 (Preferred FEIS Alternative): Basic Alternative 1 would provide additional water capacity of 11.3 million gallons per day (MGd), which is anticipated to be met by an estimated 22 new wells at AAFB, rehabilitation of existing wells, interconnects with the GWA water system, and associated treatment, storage and transmission systems. Two new 2.5 million gallon (MG) (9.5 million liter [MI]) water storage tanks would be constructed at ground level at NCTS Finegayan. Up to two new elevated 1 MG (3.8 MI) water storage tanks would be constructed at NCTS Finegayan within the Main Cantonment footprint. This is preferred alternative because it allows for coordinated management of the Northern Guam Lens Aquifer and provides the greatest opportunity to interconnect with the GWA water transmission and distribution system and meet the needs of workforce housing and induced civilian growth.

b. PW Basic Alternative 2: Basic Alternative 2 would provide additional water capacity of 11.7 MGd, which is anticipated to be met by an estimated twenty new wells at Andersen AFB and eleven new wells at Navy Barrigada, rehabilitation of existing

wells, interconnect with the GWA water system, and associated treatment, storage and distribution systems. Two new 1.8 MG (6.8 MI) water storage tanks would be constructed at ground level at NCTS Finegayan and one 1 MG (3.8 MI) water storage tank would be construction at Air Force Base Barrigada. Up to two new elevated 1 MG (3.8 MI) water storage tanks would be constructed at NCTS Finegayan within the Main Cantonment footprint.

c. PW Long-Term Alternative 1: Long-term Alternative 1 would augment water supply by development of surface water resources in the south part of Guam, specifically the Lost River. A retention area would be dredged and water contained with sheetpile or other methods of damming to create an area to extract water via pumping. Excess water would be pumped either into Fena Reservoir for later use or directly to the pump house that pumps water from Fena Reservoir to the Navy water treatment plant.

d. PW Long-Term Alternative 2: Long-term Alternative 2 would augment the water supply by desalination of brackish water which requires the removal of salt water by reverse osmosis. This option would be implemented to meet projected DoD water demands in the event that the supply from freshwater wells is insufficient to meet DoD demand.

e. PW Long-Term Alternative 3: Long-term Alternative 3 is to dredge Fena Reservoir to restore the original design storage capacity. This would provide additional storage for use during the annual dry periods.

The environmentally preferred alternative for potable water is Basic Alternative 1. The projected potable water demand would not exceed the sustainable yield of the Northern Guam Lens Aquifer.

3. Wastewater (WW):

a. WW Basic Alternative 1a (Preferred FEIS Alternative) and 1b: Basic Alternative 1 (Basic Alternative 1a supports Main Cantonment Alternatives 1 & 2; & Basic Alternative 1b supports Main Cantonment Alternatives 3 & 8) combines upgrades to the existing primary treatment facilities and expansion to secondary treatment at the Northern District Wastewater Treatment Plant (NDWWTP). The difference between Basic Alternatives 1a & 1b is a requirement for a new sewer line from new proposed DoD housing at Barrigada to NDWWTP for Basic Alternative 1b.

b. WW Long-Term Alternative 1: Long-term Alternative 1 would build a new separate DoD secondary treatment plant at the NDWWTP site to treat the DoD loads only. This would support Marine Corps Relocation – Guam Alternatives 1 and 2 in their entirety, and the Finegayan development for Guam Alternatives 3 and 8. In addition to the above, a new separate DoD secondary treatment plant at the Hagåtña wastewater treatment plant (WWTP) site to treat the DoD loads only from Barrigada would be required to support Marine Corps Relocation – Guam Alternatives 3 and 8.

The environmentally preferred alternative for wastewater is Basic Alternative 1a. It would utilize the NDWWTP to treat wastewater generated by the increased DoD population associated with the military relocation and by the approximately two-thirds of the construction workforce that would be located in northern Guam during the construction phase of the military relocation. Under this alternative, the existing NDWWTP primary treatment facilities would be repaired and upgraded, and secondary treatment facilities would be constructed to address likely enforcement action requiring GWA to implement secondary treatment at both the NDWWTP and the Hagåtña WWTP. The effluent from the upgraded plants would result in improved effluent quality at the plant discharges. Further, proposed sewage collection system upgrades would lead to less sewage spills and more sewage receiving treatment.

4. Solid Waste (SW): SW Basic Alternative 1 (Preferred FEIS Alternative):

Basic Alternative 1 would be to continue to use the Navy landfill at Apra Harbor for municipal solid waste (MSW) until the new GovGuam Layon Landfill at Dandan is available for use. Disposal of other waste streams excluded from Layon Landfill would continue at the Navy landfill. C&D debris would continue to be disposed at the Navy landfill.

The environmentally preferred alternative for solid waste is Basic Alternative 1 as it is the only alternative.

F. Guam Roadway Network (GRN) Improvements: The activities related to the military relocation to Guam increase demand on existing roadway infrastructure. In addition to military personnel, family members and civilian support staff, there would be a temporary surge in construction personnel and construction activities.

The proposed action would improve roadway connectivity, capacity, and pavement strength for military construction and operational requirements, as well as accommodate the significant increase in traffic associated with the relocated Marines, DoD civilians, their dependents, and induced population growth caused by the relocation. Logistical routes for construction-related transport would connect the Port of Guam with Navy and Air Force bases, the Finegayan area, the Naval Munitions Site, concrete batch plants, rock quarries, and pre-cast concrete panel fabrication sites associated with the military relocation on the island.

Fifty-eight individual projects were identified in the EIS from recent transportation and traffic studies on the island of Guam. These consist of forty-three GRN (off-base) projects and fifteen intersection improvement projects at military access points (MAPs) (i.e., gates). The forty-three GRN (off-base) projects are composed of six types of roadway improvements:

- Intersection improvement projects
- Bridge replacement projects (involving eight bridges)
- Pavement strengthening (combined with roadway widening at some locations)
- Roadway relocation (Route 15)

bridges and in between bridge girders or use other methods of screening utilities on bridges to improve views.

L. Marine Transportation: The FEIS concluded that movement of military and commercial vessels into and out of the port will have less than significant impacts. The FEIS assessed impacts based upon a targeted 2014 completion date for the Marine Corps relocation effort. DoD commits to implementing APM, which will likely have a mitigative effect in slowing the construction pace and the movement of military construction material through the port, further reducing impacts to commercial port resources.

The recently enacted Supplemental Appropriations Act of 2010 Public Law 111-212, includes a provision authorizing DoD to transfer \$50 million to the Maritime Administration (MARAD) to carry out Port of Guam Improvement Enterprise Program planning, design, and construction of projects to improve facilities, relieve port congestion, and provide greater access to port facilities at the Port of Guam.

No other marine transportation or port related mitigation measures are anticipated for funding by DoD.

M. Utilities: The utilities impacts analysis in the FEIS are island-wide and based on the total proposed population increase on Guam associated with the Marine Corps, Navy and Army preferred alternatives, including associated construction workforce and induced population growth. The FEIS identified the impacts on utilities based upon the targeted 2014 completion of construction for the Marine Corps relocation. Utility infrastructure impacts include direct impacts from increased DoD personnel that would live and work at the new military relocation facilities and the indirect impacts from the off-base construction workforce and induced civilian population growth.

The following presents the discussion on utilities impacts associated with the military relocation effort in the context of implementation of the FEIS preferred alternative solutions for each utility.

1. Power (Guam): The FEIS concluded that existing power systems have the capacity to adequately support the preferred alternatives of the military relocation. However, there will be deficiencies associated with the reliability of power. To address reliability issues the preferred Basic Alternative 1 power solution will recondition up to five existing GPA owned CTs for reliability/reserve power and upgrade transmission and distribution systems. This will result in adequate power in the Island Wide Power System (IWPS) in all years, including the peak year of 2014. Thus impacts would be less than significant. It is anticipated that needed power upgrades would be implemented by an SPE, which would finance, upgrade, operate, and manage these systems under business arrangements with GPA. DoD is seeking financing for the necessary upgrades from GoJ. Alternatively, GPA may elect to finance, implement necessary upgrades, and retain the direct operation of these facilities.

If DoD should fail to secure necessary financing from the GoJ and the required upgrades do not occur, the resulting impacts could be occasional power brownouts or blackouts during times of peak power demand. As mitigation for this scenario, DoD will implement APM, which will reduce impacts to the power utility to less than significant by lowering peak population levels during construction, thus also lowering peak power demand.

2. Potable Water (Guam): The FEIS concluded that direct impacts to DoD potable water systems on Guam from the military relocation preferred alternatives will be less than significant. This conclusion was reached because under FEIS preferred Basic Alternative 1 for potable water solution, DoD will provide additional water capacity of 11.3 million gallons per day (MGd), which is anticipated to be met by an estimated 22 new wells at AAFB, rehabilitation of existing wells, interconnects with the GWA water system, and associated treatment, storage and transmission systems. DoD is seeking financing from GoJ for the installation of the new water system.

The FEIS further concluded that there will be significant but mitigable indirect off-base impacts to the water supply in GWA water system. Specifically, the FEIS concluded that significant impacts would occur because GWA does not have adequate water supply to meet the projected off-base demands from the induced population growth (construction workers and civilians) that may result from the proposed DoD relocation. However, the significant indirect off-base impacts will be mitigated to less than significant because DoD has agreed to transfer water to meet the off-base needs of GWA. DoD will install wells planned as part of preferred Basic Alternative 1 for potable water earlier than needed for DoD and make the excess water available for transfer to GWA. It is estimated that up to 4.7 MGd (17.8 MLd) will be required from the Marine Corps Base water system. The Navy will continue the transfer of up to four MGd (15 MLd) to GWA from Fena Reservoir under the current MOU. The Air Force will likewise transfer up to 1.7 MGd (6.4 MLd) to GWA under an agreement to be negotiated.

The FEIS concluded that there will be significant but mitigable indirect off-base impacts to the water transmission in the GWA water system. The significant impacts would occur because the GWA water system does not have adequate transmission capability to meet the projected off-base demands from the induced population growth (construction workers and civilians) resulting from the proposed DoD relocation. However, the significant indirect off-base impacts will be mitigated partially by the upgrade of DoD's existing transmission loop and interconnects in northern Guam to deliver bulk water to the GWA system where demands are greatest. Improvements will allow GWA to interconnect with this transmission system and thus provide increased capability and reliability to better serve all residents of northern Guam. The FEIS concluded that new housing developments and new workforce camps would provide their own distribution systems, which could connect to the transmission system; thereby, mitigating adverse impacts to existing distribution systems and minimizing Unaccounted for Water and pressure losses in existing systems.

The FEIS concluded that there will be significant indirect impacts associated with GWA's distribution system and that some customers may experience inadequate water service during the construction phase. Currently, GWA potable water system is in non-compliance for the Safe Drinking Water Act (SDWA) and the Clean Water Act (CWA) and its infrastructure does not meet the basic flow and pressure requirements for all customers and does not consistently comply with regulatory requirements. The unreliable drinking-water distribution system has historically resulted in frequent bacterial contamination from sewage spills, causing "boil water" notices to be sent to residents. The United States Department of Justice (DOJ) filed a civil suit against GWA and GovGuam in December 2002 and there have been two Stipulated Orders (SO), with the last one in 2006. There have been some improvements to the potable water system as a result of the SO and in recent years, boil water notices have declined and water quality has improved. Still, the GWA potable water system continues to suffer from decades of deferred maintenance and minimal capital improvements due to a severe lack of funding, and from limits set by the Guam Consolidated Commission on Utilities (CCU) on the amount of user fees that can be charged to GWA customers. These indirect impacts cannot be mitigated by DoD because it is outside its authority and some customers may experience inadequate water service during the construction phase.

The FEIS concluded that if the DoD should fail to secure necessary financing from the GoJ significant environmental impacts on the GWA system noted above will continue to occur. These impacts may include water supply shortage for both DoD and Guam's civilian population, low water pressure, and loss of reliable water service to portions of the island. As mitigation for this scenario DoD will implement APM which will reduce impacts to the GWA potable water system by lowering peak population levels during construction, thus also lowering peak water demand.

The FEIS also concluded that direct and indirect impacts to the Northern Guam Lens Aquifer would be less than significant as the sustainable yield of the aquifer is sufficient to support the DoD, construction workforce, and induced population growth.

3. Wastewater (Guam): The FEIS concluded that there will be significant but mitigable direct impacts to the GWA owned and operated NDWWTP from the increased wastewater flows from the DoD population associated with the preferred military relocation alternatives and indirect impacts associated with workforce housing and induced civilian population growth. These impacts will occur because the plant does not currently meet the primary treatment standards and lacks sufficient capacity or treatment capability as GWA's wastewater infrastructure (treatment plants, collection piping, and pump stations) have a legacy of deferred maintenance and minimal capital improvements that have caused the systems to slowly deteriorate over the years. This deterioration, coupled with natural disasters, such as typhoons and flooding, has resulted in frequent sewage spills at pump stations and collection piping, collapse of collection piping, and failure of treatment plant equipment. As a result, GWA has experienced frequent violations of its National Pollutant Discharge Elimination System

(NPDES) permit conditions, including inability to adequately treat wastewater and exceedance of the allowed pollutant levels in plant discharges. GWA now must replace much of its infrastructure to meet current demands and address its CWA violations. On September 30, 2009 USEPA Region 9 issued a final decision to deny the variance on secondary treatment for NDWWTP, effectively requiring GWA to install full secondary treatment at the NDWWTP. The decision is also applicable to the Hagåtña WWTP.

To mitigate the significant impacts from the DoD population associated with the preferred military relocation alternatives, implementation of the preferred Basic Alternative 1a for wastewater solution will initially repair and upgrade the existing primary treatment capability at the NDWWTP, then expand the plant to secondary treatment capability. This will result in improved water quality and long-term beneficial impacts.

The FEIS also concluded that there will be significant impacts from the increased wastewater flows resulting from the construction workforce and induced populations from the military relocation to the GWA owned and operated Hagåtña WWTP. This plant currently violates permit effluent limits due to septage discharge to the plant from septage haulers. The proposed improvements at NDWWTP include septage receiving stations that could allow GWA to eliminate the septage discharges at Hagåtña WWTP. The Hagåtña wastewater treatment capacity is also currently impacted by the excessive amount of heavy fats, oils and grease in the current influent to the plant. This results in periodic effluent permit violations which would be more frequent with increased flows. Although improvements to the Hagåtña WWTP are not part of the FEIS preferred alternative solution for waste water system improvements, DoD is seeking funding from GoJ to make repairs and upgrades to this plant and its collection system.

GWA's wastewater collection infrastructure (collection piping, force mains and pump stations) has a legacy of deferred maintenance and minimal capital improvements that have caused the systems to slowly deteriorate over the years. This deterioration, coupled with natural disasters, such as typhoons and flooding, has resulted in frequent sewage spills at pump stations and collapse of collection piping. Many segments of the northern district collection system, which flows into the NDWWTP, and central district collection system, which flows into the Hagåtña WWTP, are inadequate to handle the flows they receive today. In these areas there could be significant indirect impacts to GWA wastewater collection systems from increased wastewater from the construction workforce and induced populations. Although improvements to the GWA wastewater collections systems are not part of the FEIS preferred alternative solution for wastewater system improvements, to mitigate these impacts DoD is seeking financing from GoJ to make improvements to the wastewater collection systems in the northern and central districts. The FEIS concluded that there will be less than significant indirect impacts to other GWA owned and operated WWTPs and collection systems, mainly located in southern Guam from the construction workforce and induced populations,. This is because the relative increase in flow to these plants would be negligible.

In summary, to address these issues DoD is seeking approximately \$600M in financing from the GoJ for water and waste water system upgrades necessary to support the realignment of Marine Corps forces to Guam. Specifically, DoD is seeking GoJ funding for refurbishment and improvement to the primary treatment capacity of the NDWWTP, upgrades of the NDWWTP and the Hagåtña WWTP to required secondary treatment standards, and improvements to central and northern district collection systems and lift stations to reliably convey the increased demands associated with the Marine Corps relocation. The proposed collection system projects for which DoD is seeking GoJ funding cover only critical trunkline collection systems. Since a system-wide study of the GWA wastewater collection system is needed to determine the most cost effective means to identify and address existing contributory and neighborhood related collection system deficiencies and to execute the effort to connect septic systems to the collection system, projects will need to be planned, funded and executed over a period of time beyond the near-term, five year period. With respect to new growth of wastewater demands, GWA has the ability to utilize system development charges to require developers to fund the costs associated with wastewater connections and associated collection system impacts resulting from the specific project. DoD strongly supports GWA's use of its system development charge program to minimize impacts to existing customers and to avoid collection system degradation associated off-base growth.

The FEIS concluded that if the required upgrades do not occur, both DoD and civilian population will be impacted. The impacts will include increased flows to an already noncompliant primary treatment plant, resulting in further impacts to receiving waters due to poorly treated wastewater, and adverse impacts to fishing and recreational use of these waters. It would also result in failure to meet an impending enforcement order regarding secondary treatment requirements for the NDWWTP and Hagåtña WWTP. As mitigation for this scenario, DoD will implement APM which will reduce impacts to the GWA waste water system by lowering peak population levels during construction, thus also lowering peak waste water loading. Finally, the FEIS concluded that use of the existing Navy Apra Harbor WWTP will result in less than significant direct impacts because the plant has sufficient capacity to treat the increased wastewater flows from the DoD population associated with the preferred military relocation alternatives in the Naval Base Guam Apra Harbor area.

4. Solid Waste (Guam): The FEIS concluded that there will be less than significant direct and indirect impacts from the preferred alternatives because under preferred Basic Alternative 1 for solid waste, DoD will use the Navy landfill at Apra Harbor for municipal solid waste (MSW) until the new Gov Guam Layon Landfill is available for use. The FEIS also identified that pursuant to EO 13514 and its target of a solid waste diversion rate of 50% by 2015, the Navy is developing a C&D Waste Management Plan for the construction associated with the Marine Corps relocation. Any C&D waste that is not diverted will be disposed of at the existing Navy landfill. Additionally, the FEIS identified that DoD is preparing an Integrated Solid Waste Management Plan (ISWMP), which will reflect how solid wastes will be managed

3. Infrastructure Funding: Agencies agree that a total of \$1.3B is required for necessary water and waste water utility system improvements that must be accomplished in the near term five year period to support the military realignment. Given its commitment in the Roadmap Agreement to provide funding for necessary utility systems improvements necessary to support the realignment of Marine Corps forces from Okinawa to Guam, DoD is appropriately seeking approximately \$600M in financing from GoJ for required water and wastewater improvements on Guam. As noted earlier, CEQ and EAC led inter-agency process are addressing possible sources of funding for the remaining \$700M of water and waste water improvements. DoD is taking an active leadership role in the EAC process.

4. Adaptive Program Management: In the DEIS, DoD introduced the concept of APM as a mitigation measure to deal with the impacts associated with workforce housing and induced civilian population growth upon the environment of Guam and its utility infrastructure. APM provides a means to affect the pace or sequencing of military relocation construction to avoid significant environmental impacts and to prevent exceeding the infrastructure capabilities on Guam. Agencies voiced concerns because adaptive management has historically been used to manage proposed actions that have natural resource related impacts. Furthermore, agencies were uncertain that this was an appropriate mitigation measure. Subsequent CEQ facilitated discussions allowed resource agencies to better outline their concerns and allowed DoD to better develop the APM process.

Members of the IPC agreed that APM offered an acceptable way to mitigate impacts to resources associated with population growth related to the military relocation, control the rate of demand for utilities services associated with the military relocation and impacts to the current utility system infrastructure on Guam, and, in some cases, the growing capacity of various resources and utility infrastructure that will occur through the water and waste water utility system improvements proposed by DoD and for which DoD is seeking GoJ funding. The APM concept was further developed by DoD and a more thorough description of how DoD will implement APM was included in the FEIS. The FEIS also included a notional example of how the implementation of APM might adjust the population growth rate associated with the proposed action. The IPC also agreed that implementation of APM will require some type of multi-agency involvement and DoD suggested the creation and implementation of a CMCC. Because implementation of a CMCC occurred late in the FEIS process, the FEIS was only able to introduce the concept of CMCC with a commitment to develop a charter as an attachment to the ROD. As such, a draft CMCC Initial Operating Charter is included as Attachment 1. DoD commits to cooperate in the development of the Final Operating Charter. See the discussion in the Mitigation Measures section of this ROD and Attachment 1 for more information regarding the CMCC.

5. BTS Interdiction efforts: In response to concerns raised in the DEIS, various agencies within the Department of Interior (DoI) expressed concern regarding the adequacy of BTS interdiction efforts associated with the relocation of Marine Corps forces to

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13 UNITED STATES DISTRICT COURT

14 TERRITORY OF GUAM

15 UNITED STATES OF AMERICA,)

16 Plaintiff,)

17 v.)

18 GUAM WATERWORKS AUTHORITY)
19 and the GOVERNMENT OF GUAM,)

20 Defendants.)
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Civil Case No. 02-00035

UNITED STATES' STATUS
REPORT

Date: November 10, 2010

Time: 9:00 a.m.

Chief Judge Tydingco-Gatewood

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IV. NEXT STEPS 17

1 After a quarterly status hearing on August 4, 2010, this Court issued an Order regarding
2 the status hearing. Court Docket Number (“DN”) 114. In the Order, the Court scheduled the
3 next quarterly status hearing for November 10, 2010, and directed the United States to file its
4 status report by October 13, 2010. *Id.* The United States submits this status report pursuant to
5 the schedule set out in the Order.

6 **I. BACKGROUND**

7 Beginning on January 13, 2010, this Court has conducted quarterly status hearings in this
8 case. The United States and Guam Waterworks Authority (“GWA”) filed joint status reports on
9 January 5 and March 30, 2010, which provide the relevant statutory and case-specific
10 background for this case. DN 94, 104. To conserve the Court’s resources, we will not recount
11 that background in full here. Rather, we will address relevant background information below as
12 it applies to new developments since the United States’ July 2010 status report (Section II) and
13 GWA’s compliance with the Stipulated Order (Section III).

14 **II. DEVELOPMENTS SINCE JULY 2010 STATUS REPORT**

15 The United States reports that the following developments have occurred since the filing
16 of the July 2010 status report and reply.

17 **A. Draft Settlement**

18 As stated in previous status reports, the U.S. Environmental Protection Agency (“EPA”)
19 provided to GWA a February 2010 report entitled “Guam Waterworks Authority Master
20 Planning Technical Assessment” that was prepared by EPA’s consultant, PG Environmental,
21 LLC (hereafter, the “PG technical assessment”). The PG technical assessment analyzed GWA's
22 master plan activities and contained: (1) recommended changes to GWA's program
23 implementation, including changes in operation and maintenance, planning, prioritization,
24 construction management, and costing of capital improvement projects; and (2) new strategies to
25 address staffing shortages and the financing of operations and capital improvement projects.

26 The United States incorporated many of these measures in a draft settlement document
27

1 provided to GWA on March 24, 2010. GWA provided a written response to the United States'
2 draft settlement document on August 4, 2010. EPA is currently reviewing GWA's response and
3 preparing a revision of the draft settlement document.

4 B. Record of Decision Signed

5 On September 20, 2010, Department of the Navy ("DoN") and the Department of the
6 Army signed a Record of Decision ("ROD") on the Guam and CNMI Military Relocation,
7 announcing their decision to proceed with the relocation. Notably, regarding potable water
8 requirements, DoN selected a solution in the ROD that involves providing an additional drinking
9 water capacity of 11.3 million gallons per day ("mgd") through the establishment of an estimated
10 22 new water wells at Andersen Air Force Base, rehabilitation of existing wells, interconnects
11 with the GWA water system, and construction of associated treatment, storage, and transmission
12 systems. DoN indicated in the ROD that a Special Purpose Entity ("SPE") will likely be
13 established to implement this solution. In addition, with respect to wastewater issues, DoN
14 selected a solution in the ROD that includes: (1) repairs and upgrades to primary treatment
15 capabilities at GWA's Northern District wastewater treatment plant ("WWTP"),
16 (2) improvements to the Northern District WWTP to achieve secondary treatment standards,
17 (3) expansion of the Northern District WWTP beyond the current design capacity of 12 mgd,
18 (4) improvements to GWA's Northern and Central wastewater collection systems, and
19 (5) improvements to GWA's Agana WWTP to achieve secondary treatment standards. DoN
20 indicated in the ROD that either an SPE or GWA will likely implement this solution. EPA
21 intends to work closely with DoN and GWA to integrate this projected work with GWA's
22 ongoing compliance efforts.

23 C. Northern District WWTP: Interim Improvements Preliminary Design Study

24 Presently, Paragraph 39 of the Stipulated Order mandates that GWA restore primary
25 treatment operational capacity to the Northern District WWTP. DN 40, Exh. 1, ¶39; DN 41.
26 Although the Northern District WWTP's primary treatment infrastructure was originally
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1 the right to seek to enjoin further construction of the Younex project or to object to sewer
2 connections and drinking water hook-ups to the Younex project if GovGuam and GWA fail to
3 demonstrate both that: (1) sufficient capacity exists to transport and treat the effluent from the
4 project to meet the requirements of the NPDES permit for the Northern District WWTP; and
5 (2) sufficient water supply and transmission capacity exists to provide drinking water for the
6 additional population from this project without resulting in water shortages and low water
7 pressure in surrounding service areas. We reiterate that position. The United States will seek to
8 discuss the Younex project at the November 10th status conference before the Court.
9 Furthermore, the United States incorporates by reference the relief requested in its Reply Brief,
10 which set out measures that GovGuam and GWA should be required to take to ensure that
11 sufficient water and wastewater capacity is available for the Younex project so that the project
12 does not result in increased CWA violations at the Northern District WWTP and does not cause
13 water shortages in surrounding service areas. DN 124 at 7-9.

14 E. Appeal from EPA Region 9's Section 301(h) Determination

15 GWA's Northern District and Agana WWTPs are currently operating under NPDES
16 permits that EPA issued in 1986, which have been administratively extended since their
17 expiration in 1991. Those permits contained a variance, under section 301(h) of the Clean Water
18 Act ("CWA"), allowing for less than secondary treatment of the effluent discharges from the
19 WWTPs. 33 U.S.C. § 1311(h). On September 30, 2009, EPA Region 9's Regional
20 Administrator issued a determination that GWA did not meet the criteria in section 301 for an
21 extension of those variances. GWA filed a petition with EPA's Environmental Appeals Board
22 ("EAB") to seek review of that determination. In re Guam Waterworks Authority, NPDES
23 Appeal Nos. 09-15 and 09-16. On March 12, 2010, EPA Region 9 filed its response to GWA's
24 petition for review, contending that the EAB should deny GWA's petition.

25 The EAB issued an order dated July 14, 2010, requesting information from EPA and
26 GWA regarding the likelihood of settlement of this enforcement action against GWA. EPA
27

1 indicated in its report to the EAB that a settlement did not appear imminent and that EPA
2 considered GWA's section 301(h) waiver appeal to be an active matter requiring resolution.
3 GWA stated that a stay of the EAB appeal would be appropriate because there is a possibility of
4 settlement, although it is "entirely dependent upon GWA receiving adequate federal funding
5 from the United States Government to upgrade the plants to secondary treatment." GWA Status
6 Report at 2. In an amended status report, GWA reiterated that a stay would be appropriate,
7 citing portions of the final EIS regarding potential funding for upgrades at the Agana and
8 Northern District WWTPs.

9 F. EPA's Administrative Order for Force Main Leak

10 On September 17, 2010, EPA observed a large excavation in the road near the Southern
11 Link Lift Station, at the bottom of which was an exposed 36-inch diameter force main
12 surrounded by a thrust block. EPA observed a significant amount of raw sewage spilling from
13 visible cracks in the block and force main. According to EPA, this force main conveys more
14 than half of the 6 mgd of wastewater treated at the Northern District WWTP.

15 GWA formally notified EPA about the force main leak on September 20, 2010, reporting
16 that the leak had started on September 14, 2010. EPA expressed its concerns to GWA on
17 September 23, 2010, stating that GWA: (i) had failed to adequately describe the spill; (ii) did
18 not discuss GWA's plans to eliminate and prevent the recurrence of a leak; (iii) had not complied
19 with its NPDES permit regarding the timing of its spill report; and (iv) did not certify its report.
20 See Exhibit 2. Finally, although GWA had taken some interim steps to reduce the volume of the
21 leak, EPA was concerned about the ongoing nature of the leak and GWA's plan for repairs. Id.
22 GWA stated in its report that "repair will require a 48 hour outage to complete repairs."
23 However, a 48-hour outage of the Southern Link Lift Station and force main could result in the
24 discharge of millions of gallons of raw sewage.

25 During a site visit on September 25, 2010, EPA observed that the previously excavated
26 area had been filled in with soil. However, sewage was seeping to the surface and spilling into
27

1 manuals for this facility, which are required by Paragraph 21 of the Stipulated Order. EPA will
2 provide comments to GWA on this requirement. In addition, the NPDES permit for the Ugum
3 plant allows the discharge of Clean-in-Place and Chemical Enhanced Backwash Wastewater.
4 However, during a site visit in April 2010, EPA staff observed that GWA was discharging filter
5 backwash water from storage tanks at the facility, which is not a permitted discharge under the
6 NPDES permit.

7 G. General Manager (¶3)

8 Pursuant to Paragraph 3 of the Stipulated Order, the Consolidated Commission on
9 Utilities (“CCU”) was required to use its best efforts to hire a General Manager for GWA within
10 90 days after entry. DN 40, Exh. 1, ¶3; DN 41. Paragraph 3 specified the qualifications required
11 for this critical position. After David Craddick left, the CCU appointed Dr. Leonard Olive to
12 this position.

13 On June 13, 2010, EPA received notice from Dr. Olive that he was resigning from his
14 position as GWA’s General Manager. The CCU appointed John Benavente to serve part-time as
15 the Interim General Manager of GWA; he also serves as the General Manager of Consolidated
16 Utility Services, which oversees both Guam Power Authority and GWA. EPA has not received
17 an update on the CCU’s efforts to hire a full-time General Manager for GWA who meets the
18 qualifications set out in Paragraph 3 of the Stipulated Order.

19 **IV. NEXT STEPS**

20 Both EPA and GWA view the military build-up as a potential opportunity to assist
21 GWA’s efforts to bring its wastewater and drinking water systems into full compliance with
22 federal law. At this point, the Department of the Navy and the Department of the Army have
23 issued a ROD for the Guam and CNMI military relocation. However, the amount, source, and
24 timing of funding is still uncertain. EPA intends to work closely with DoN and GWA to
25 integrate this projected work with GWA’s ongoing compliance efforts.

26 As this status report shows, however, GWA continues to violate both the Stipulated
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1 Order and federal law on an ongoing basis. Regarding the Stipulated Order, many of GWA's
2 violations have continued for years and it is uncertain when GWA will have the funds to fix
3 these problems. At this status hearing, we would like additional information from GWA
4 regarding the timing and amount of the 2010 bond funds. In addition, we need an enforceable
5 commitment from GWA: (1) to complete projects required by the Stipulated Order on an
6 expedited basis; and (2) to address its continuing violations of effluent limits of its NPDES
7 permits and its continuing pattern of SSOs from its collection system.

8 Finally, as exemplified by the Younex project, the Southern Link force main leak, and the
9 Agat-Santa Rita WWTP, the United States has continuing concerns about GWA's inability to
10 adequately manage daily operations and maintenance issues at its facilities, and to provide
11 adequate review and direction for new developments. In addition, GWA's failure to timely
12 implement and properly manage the Sinajana Water Transmission Line Project, the Water
13 Reservoirs Condition Assessment, and the Ugum Surface Water Treatment Plant Project, as
14 required by the Stipulated Order, illustrates its inability to oversee important capital
15 improvement projects. We also have grave concerns about DPW's apparent decision to issue
16 building permits for major projects such as Younex with little or no consideration of GWA's
17 wastewater or drinking water capacity. Accordingly, we have asked the Court to closely
18 monitor permitting decisions by DPW, GWA, and Guam EPA for both the Younex project and
19 any other project described in a building application as involving drinking water or wastewater
20 issues that could impact GWA's water supply or wastewater treatment capacity. We requested
21 specific relief regarding the Younex project in our reply brief and incorporate that request here

1 by reference. See DN 124 at 7-9.

2 Respectfully submitted,

3 Dated: October 12, 2010

/s/ Robert D. Mullaney

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15 UNITED STATES OF AMERICA,)
16)
Plaintiff,)
17)
v.)
18)
GUAM WATERWORKS AUTHORITY)
19 and the GOVERNMENT OF GUAM,)
20)
Defendants.)

Civil Case No. 02-00035
UNITED STATES' REPLY TO GWA'S
STATUS REPORT
Date: November 17, 2010
Time: 9:00 a.m.
Chief Judge Tydingco-Gatewood

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III. CONCLUSION 14

1 Pursuant to the Court's Order (Court Docket Number ("DN") 114), the United States
2 submits this reply to respond to issues raised in Guam Waterworks Authority's ("GWA") status
3 report (DN 132) and the Government of Guam ("GovGuam") response (DN 131). In particular,
4 we highlight the following issues in this reply:

- 5 ● GWA remains in violation of its obligations under the Stipulated Order. These violations
6 have continued for years and need to be addressed by GWA.
- 7 ● In its Record of Decision ("ROD"), the Department of Defense ("DoD") selected
8 solutions for certain identified wastewater problems on Guam such as the operation of the
9 Northern District wastewater treatment plant ("WWTP") and the Agana WWTP.
10 However, GWA's compliance problems at these two WWTPs -- as well as at GWA's
11 three other WWTPs and its wastewater collection system -- have existed for years and
12 were not caused by the proposed military build-up. Accordingly, GWA needs to address
13 its current compliance issues and not seek to defer needed work until some indefinite
14 time in the future.
- 15 ● GWA states that it is slated to receive \$1.3 billion in capital assistance from DoD. DN
16 132 at 5. GWA's representation is not well founded; the timing, amount, and mechanism
17 for implementing any assistance with GWA's capital improvement projects remains
18 uncertain.
- 19 ● GovGuam would like the Court to direct the parties not to address the Younex project in
20 this status hearing. DN 131. The United States strongly disagrees with GovGuam's
21 position. Unless the permitting is done properly for any future sewer and drinking water
22 connections to the Younex project, the project will further degrade the quality of effluent
23 discharged to the Philippine Sea and impact the distribution of drinking water. This
24 project directly affects GWA's ability to comply with the Clean Water Act and the
25 Stipulated Order and is an important issue at the status hearing.
- 26 ● The United States is committed to drafting a new settlement document to include
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1 enforceable deadlines for near-term priority projects and to incorporate funding options
2 that may be available for GWA. However, we remain concerned about GWA's inability
3 to adequately manage daily operations and maintenance issues at its facilities and GWA's
4 failure to properly plan and implement critical capital improvement projects.

5 **I. GWA's VIOLATIONS OF THE STIPULATED ORDER**

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

7 Water storage tanks are a major and critical component of GWA's public water systems.
8 DN 94 at 14-15. Paragraph 38.C of the Stipulated Order required GWA to complete a condition
9 assessment of its water storage tanks and to develop and implement a work plan to monitor,
10 rehabilitate or replace tanks as necessary. DN 40, Exh. 1, ¶38.C; DN 41. GWA was required to
11 assess high priority tanks by December 31, 2008, and all other tanks by December 31, 2009. DN
12 104, Exh. 3.

13 GWA indicates that only three of its 29 tanks have been assessed. DN 132 at 23.
14 Notably, all three tanks are in "extremely deteriorated condition" and remain out of service. *Id.*
15 GWA fails to address several important aspects of this problem. First, GWA has not even set a
16 schedule to repair or replace these three tanks. *Id.* at 24. Second, the fact that these tanks are out
17 of service and not scheduled to be replaced on an expedited basis has a cascading effect on
18 GWA's vulnerable water system. For example, GWA identifies two of those tanks, the Agana
19 Heights and Chaot tanks, as critical for the successful completion of the Sinajana water
20 transmission line, another project required by the Stipulated Order. *Id.* at 27. Finally, GWA's
21 consultant has ranked nine other tanks to have a "severe need." DN 104, Exh. 4 at 7. Pursuant
22 to Paragraph 38.C, EPA approved a work plan submitted by GWA that required these "high
23 priority" tanks to be assessed by December 31, 2008. DN 104, Exhibit 3. However, GWA has
24 not yet set a date to inspect all of these nine high priority tanks and has failed to provide to EPA
25 a plan to address *all* of its remaining 26 tanks. As demonstrated by the Barrigada tank, severely
26 deteriorated tanks have the potential to fail catastrophically and collapse. Thus, these high
27 priority tanks present a major safety concern for nearby communities. The nine remaining tanks

1 problems in this partially renovated plant that have delayed completion of the project such as a
2 cracked weld and cracked grout. DN 132 at 29. EPA is concerned that these problems may
3 result in further delays. Therefore, the United States requests that the Court require GWA to
4 submit to EPA, for its review and approval, (1) the repair plan prepared by GWA's contractor
5 and designer (DN 132 at 29); and (2) a proposed plan for the expedited completion of
6 construction at the Ugum plant.

7 EPA is reviewing the standard operating procedures submitted by GWA, which are
8 required by Paragraph 21 of the Stipulated Order, and will be providing formal comments.
9 EPA's preliminary review indicates that the procedures are not adequate to properly operate and
10 maintain the plant and will need extensive revision.

11 G. General Manager (§3)

12 Paragraph 3 of the Stipulated Order required the Consolidated Commission on Utilities
13 ("CCU") to use its best efforts to hire a General Manager for GWA within 90 days after entry,
14 and specified the qualifications required for this critical position. DN 40, Exh. 1, ¶3; DN 41.
15 GWA reported on its efforts to comply with this provision. DN 132 at 22-23. GWA needs to
16 keep these efforts on the front burner. EPA remains concerned that John Benavente is serving
17 part-time as GWA's Interim General Manager; he also manages the Consolidated Utility
18 Services. Given the numerous challenges that GWA faces, EPA strongly believes that GWA
19 needs to have a *full-time* qualified, experienced person in this position.

20 **II. DEVELOPMENTS SINCE JULY 2010 STATUS REPORT**

21 A. Record of Decision

22 In the ROD issued on September 20, 2010, the Department of the Navy ("DoN") and the
23 Department of the Army announced their decision to proceed with the Guam and CNMI Military
24 Relocation.² The United States believes that GWA has misstated some important aspects

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26 ² A copy of the ROD is available at: <http://www.guambuildupeis.us/record-of-decision>.
27 Selected pages of the ROD are attached as Exhibit 1.

1 regarding DoD's commitment to assist GWA in resolving its water and waste water issues.

2 GWA asserts, without any support, that "GWA is slated to receive \$1.3 billion in capital
3 assistance from the DoD." DN 132 at 5. This is simply untrue. First, DoD will not provide any
4 "capital assistance" to GWA. According to the Roadmap Agreement between the Government
5 of Japan ("GoJ" or Japan) and the United States, up to \$740 million in loans will be made
6 available by Japan to Special Purpose Entities ("SPEs") to provide for utility system upgrades
7 necessary to support the relocation of Marine Corps forces from Okinawa to Guam. Exhibit 1 at
8 27.^{3j} The ROD further notes that Japan's financing may be provided to Guam utilities (including
9 both GWA and GPA) for necessary improvements. Id. Thus, any financing associated with GoJ
10 will either go to SPEs that will improve GWA systems or to GWA itself. The financing will not
11 come from DoD.

12 Second, DoD has not committed this GoJ funding. In the ROD, DoD has committed only
13 to "facilitating discussions between GoJ, the SPEs and GovGuam to focus SPE efforts on those
14 utility impacts associated with the realignment, including short-term construction work force and
15 long-term population growth." Id.

16 Third, in seeking GoJ funding for an SPE or GWA, DoD has identified various projects
17 that may be eligible for GoJ funding. These projects, which were developed with input from
18 both EPA and GWA, are either directly related to the military build-up because of their on-base
19 impact or stem from indirect impacts associated with the induced population growth and
20 workforce housing. These projects include the Northern District and Agana WWTPs, the
21 Northern water system, and the central wastewater collection system (listed by GWA as items 2
22 through 4 on page 5 of its status report). DN 132 at 5.^{4j} Significantly, GoJ funding has **not** been

24 ^{3j} Of the \$740 million, approximately \$580 million are targeted for water and wastewater
25 infrastructure necessary to support the military expansion and \$160 million for Guam Power
26 Authority ("GPA") projects.

26 ^{4j} The Northern water system (GWA's item number 3, DN 132 at 5) is not an improvement to
27 the GWA water system. Instead, it involves the construction of a water system owned by DoD

1 secured for the additional \$720 million in GWA water and wastewater upgrades identified as
2 item number 1 at page 5 of GWA's status report. Id. Furthermore, to date, there has been no
3 identified funding from the United States, much less DoD "capital assistance," for this remaining
4 set of \$720 million of necessary water and waste water improvements required to support the
5 Guam military build-up. As noted in the ROD, there is an ongoing interagency effort led by the
6 Council on Environmental Quality and the Economic Adjustment Committee to identify the
7 funds (Exhibit 1 at 102), but none have been found so far. Thus, it is speculative for GWA to
8 assert that "[t]hese funds . . . are slated to be provided by the U.S. Government using \$580M in
9 funding from the Government of Japan while providing the balance from its own resources."
10 DN 132 at 5.

11 Next, GWA claims that: "The U.S. Government, through the Department of Defense,
12 will be fully responsible for paying any repayment costs associated with this funding. In other
13 words, this capital improvement funding will come at no cost to local ratepayers." Id. The CCU
14 has asserted that local ratepayers should not pay for improvements it believes are solely
15 associated with the DoD military build-up. In addition, some DoD officials have indicated that
16 Guam ratepayers should not have to repay GoJ financing. However, there has been no
17 commitment by the United States, much less DoD, to be fully responsible for repayment of
18 financing costs. In fact, the ROD portrays a different picture:

19 DoD would then likely purchase utility services from the SPE or Guam utility under a
20 utilities service contract. Funds generated through rate structures established in the
21 utilities service contracts could be used by the SPE or Guam utility to repay financing
22 costs or a portion thereof. Any utilities service contract with a SPE or a Guam utility
would reflect a reasonable DoD rate structure. Given that these SPEs have yet to be
formed, these business arrangements are not currently defined in detail. Therefore, they
are presented as "conceptual" business arrangements.

23 Exhibit 1 at 27.

24 In sum, the ROD served a specific, limited function: DoN selected solutions for its

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27 that will temporarily supply water to GWA during the first few years of the construction
28 program.

1 utility needs associated with the military build-up. DoD did not commit to either implement
2 them or pay for them. Given the uncertainty in funding, GWA should apply the amount of
3 money from its 2010 bond to complete the unfinished projects from the Stipulated Order on an
4 expedited basis.

5 B. The Younex Project

6 The United States notes that GWA's status report emphasizes two important points with
7 respect to this proposed project. First, GWA states that it shares EPA's concerns that GWA
8 lacks capacity at the Northern District WWTP to allow for the construction of this project. DN
9 132 at 6. Second, GWA states that it has not approved any connection to its water and
10 wastewater systems. Id. Importantly, unlike GovGuam's stated position (DN 131 at 2), GWA
11 does not seek to have this Younex project placed outside of the Court's purview.

12 GWA claims that it is seeking infrastructure improvements by Younex through a
13 Developer Agreement. The United States strongly believes that these improvements need to be
14 put in place *before* GWA approves any wastewater or drinking water connection for the Younex
15 project. Otherwise, those planned improvements will not be in place to prevent adverse impacts
16 to both effluent quality at the Northern District WWTP and GWA's ability to provide adequate
17 drinking water.

18 Based on GWA's performance under the Stipulated Order, the United States is concerned
19 that the needed improvements may not be constructed in time to handle the needs of the Younex
20 project. For this reason, the United States will seek to enter into an agreement with GWA to
21 prevent any connection to the wastewater system until GWA is able to certify that adequate
22 capacity exists at the Northern District WWTP to treat any additional flow in compliance with
23 the existing NPDES permit limits. The Clean Water Act clearly provides the United States with
24 the authority to seek in court such a restriction or prohibition. See 33 U.S.C. § 1342(h).

25 In large part, GWA appears to rely on DoD's planned interim improvements to the
26 Northern District WWTP to achieve compliance and increase the plant's capacity. DN 132 at 7-

1 evaluating significant noncompliance are established to identify the most significant violations,
2 based on both the magnitude and duration of the violations. Using this yardstick, the Agana
3 WWTP has been in significant noncompliance for 15 of the last 19 quarters between January
4 2006 and September 2010. The Northern District WWTP has been in significant noncompliance
5 for *all* of the last 19 quarters.

6 For the Agat-Santa Rita WWTP, GWA complains that EPA set the permit limits too
7 stringently. DN 132 at 12-13. The permit was written based on the Clean Water Act's
8 requirements and Guam's water quality standards. Permits are not written with lower standards
9 to suit the needs of the discharger. It is GWA's responsibility to ensure that the WWTP can
10 manage and treat wastewater prior to discharge.

11 In addition, GWA misrepresents compliance at both the Baza Gardens and Umatac
12 WWTPs. Based on a review of GWA's Discharge Monitoring Reports, these WWTPs have
13 failed to comply with permit limits on nutrients (DN 129, Exhibit 1), which are important
14 because excessive nutrient loadings to the receiving waters have the potential to stimulate
15 excessive plant growth and decay. In coastal waters, this process, known as eutrophication, can
16 lead to algal blooms, the rapid increase or accumulation of algae. Algal blooms can have a
17 variety of adverse impacts to marine life including: (1) depleting the water column of oxygen
18 necessary for survival of marine life when the algae die and decay, and (2) generating toxins that
19 can be fatal to marine life. Eutrophication can also stimulate excessive algae growth on coral
20 reefs, and the fast-growing algae can then smother the coral.

21 Finally, none of GWA's WWTPs have disinfection systems in place to destroy bacteria
22 prior to discharge. At the Agat, Baza Gardens, and Umatac WWTPs, this has resulted in
23 continuous exceedances of permit limits for bacteria.

24 **III. CONCLUSION**

25 The United States is drafting a new settlement document to include enforceable deadlines
26 for near-term priority projects and to incorporate funding options that may be available for
27 GWA. We will seek to provide this document to GWA before the next status hearing.

1 The United States remains concerned about GWA's inability to adequately manage daily
2 operations and maintenance issues at its facilities and GWA's failure to properly plan and
3 implement critical capital improvement projects. In order to allow for proper planning, we will
4 seek an agreement with GWA to prevent any connection to the wastewater system until GWA is
5 able to certify that adequate capacity exists at the Northern District WWTP to treat any
6 additional flow in compliance with its NPDES permit limits.

7 In an Order dated October 13, 2010, this Court emphasized its commitment to ensuring
8 that the projects that GWA is required to perform pursuant to Stipulated Order are completed
9 and that GWA's Clean Water Act violations are addressed. DN 130 at 2. As this reply brief
10 illustrates, GWA continues to violate both the Stipulated Order and federal law on an ongoing
11 basis. At this status hearing, we seek the Court's assistance. For GWA's ongoing violations of
12 the Stipulated Order, we request the Court to require that GWA provide EPA with a proposed
13 plan to complete projects required by the Stipulated Order on an expedited basis. In addition,
14 GWA needs to address its continuing violations of effluent limits of its NPDES permits and its
15 continuing pattern of SSOs from its collection system.

16 Respectfully submitted,

17 Dated: November 1, 2010

/s/ Robert D. Mullaney

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