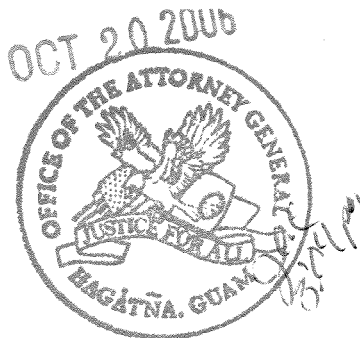


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FILED
DISTRICT COURT OF GUAM

OCT 19 2006

MARY L.M. MORAN
CLERK OF COURT

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21 Attorneys for the United States of America

UNITED STATES DISTRICT COURT
TERRITORY OF GUAM

22	UNITED STATES OF AMERICA,)	CIVIL NO. 02-00035
23)	
24	Plaintiff,)	STIPULATION AND ORDER
25	v.)	AMENDING STIPULATED
26	GUAM WATERWORKS AUTHORITY)	ORDER FOR PRELIMINARY
27	and the GOVERNMENT OF GUAM,)	RELIEF
28)	
	Defendants.)	

GWA Legal Council
 RECEIVED
 DATE: 10/20/06
 A. D. Boreja @ 3:53p
 ANN D. BOREJA

ORDER

1. The following changes shall be made to the Stipulated Order:
 - a. Substitute a new page 5 to add provisions to Paragraph 5 that: (1) specify the oversight role of the Chief Financial Officer; and (2) require the CCU to hire an Assistant Chief Financial Officer, a material change to the Stipulated Order;
 - b. Substitute new pages 6, 6A, and 6B to add requirements in Paragraph 8 that GWA obtain additional engineering support and hire a senior wastewater operator or a GIS/Land Information System Manager, a material change to the Stipulated Order;
 - c. Substitute a new page 11 to modify the due dates in Paragraph 10 for completion of a draft and final Master Plan, a non-material change to the Stipulated Order;
 - d. Substitute new pages 13 and 13A to add requirements to Paragraph 12 that GWA ensure that it has an adequate supply of chlorine and that it upgrade its chlorination system, a material change to the Stipulated Order;
 - e. Substitute a new page 14 to modify the due date in Paragraph 14 for the water meter program, a non-material change to the Stipulated Order;
 - f. Substitute a new page 15 to modify the due date in Paragraph 17 for standby generators, a non-material change to the Stipulated Order;
 - g. Substitute a new page 21 to modify the due date in Paragraph 30 for approval of a final financial plan, a non-material change to the Stipulated Order;
 - h. Substitute a new page 22 to specify the expense base used to calculate the amount of the reserve in Paragraph 32, a material change to the Stipulated Order;
 - i. Substitute a new page 23 to modify the due date in Paragraph 35 for construction of the Agana Ocean outfall, a non-material change to the Stipulated Order;

- 1 j. Substitute a new page 24 to modify the due date in Paragraph 36 for construction
2 of the Northern District Ocean outfall, a non-material change to the Stipulated
3 Order;
- 4 k. Substitute new pages 25, 26, and 26A to add requirements to Paragraph 38 that
5 GWA complete construction of a new water transmission line and complete a
6 condition assessment of its water reservoirs, a material change to the Stipulated
7 Order;
- 8 l. Substitute a new page 27 to provide a revised scope of work in Paragraph 39 for
9 the corrective actions to restore operational capacity for a sewage treatment plant,
10 a material change to the Stipulated Order;
- 11 m. Substitute new pages 28 and 29 to modify the due date in Paragraph 41 for
12 completion of construction, a non-material change to the Stipulated Order, and to
13 provide a revised scope of work in Paragraph 42 for the corrective actions to
14 restore operational capacity for a sewage treatment plant, a material change to the
15 Stipulated Order;
- 16 n. Substitute a new page 30 to modify the due date in Paragraph 44 for completion of
17 construction, a non-material change to the Stipulated Order; and
- 18 o. Substitute a new page 35 to correct a typographical error in Paragraph 53.

19 2. A complete copy of the Stipulated Order with the substituted pages is attached as

20 Exhibit 1 to this Stipulation and Order.

21
22 ~~IT IS SO ORDERED~~ this _____ day of _____, 2006.

23
24
25
26 United States District Judge

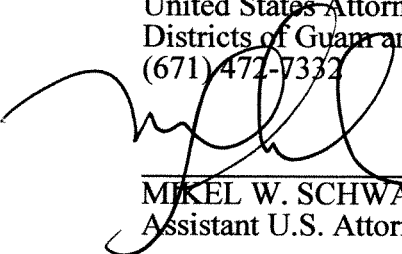
1 **IT IS SO STIPULATED.**

2 For the United States of America, Plaintiff:

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6 ROBERT D. MULLANEY
7 Environmental Enforcement Section
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7 LEONARDO M. RAPADAS
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10 (671) 472-7332

10 Dated: 10-19-06

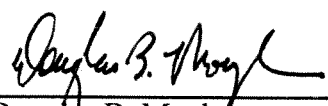

11 MIKEL W. SCHWAB
12 Assistant U.S. Attorney

12 OF COUNSEL:
13 JULIA JACKSON, Assistant Regional Counsel
14 U.S. Environmental Protection Agency
15 75 Hawthorne Street
16 San Francisco, CA 94105


15 IT IS SO STIPULATED.

16 For Guam Waterworks Authority and the Government of Guam, Defendants:

17
18 Dated: _____


19 Douglas B. Moylan
20 Attorney General of Guam
21 Office of the Attorney General
22 Guam Judicial Center, Suite 2-200E
23 120 West O'Brien Drive
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23 Dated: 10/12/2006


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13
14 UNITED STATES DISTRICT COURT
15 TERRITORY OF GUAM

16 UNITED STATES OF AMERICA,)
17)
18 Plaintiff,)
19 v.)
20 GUAM WATERWORKS AUTHORITY)
and the GOVERNMENT OF GUAM,)
21)
22 Defendants.)

CIVIL CASE NO. 02-00035

STIPULATED ORDER
FOR PRELIMINARY RELIEF

FILED
DISTRICT COURT OF GUAM
JUN 05 2003
MARY L. M. MORAN
CLERK OF COURT

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EXHIBIT
1

1 WHEREAS, the United States of America filed a civil action seeking injunctive relief and
2 the assessment of civil penalties against the Guam Waterworks Authority ("GWA") under the
3 Clean Water Act, 33 U.S.C. §§ 1251 - 1387 (the "CWA"), and the Safe Drinking Water Act, 42
4 U.S.C. §§ 300f - 300j-26 (the "SDWA");

5 WHEREAS, GWA is a public corporation that has the authority to produce, treat,
6 transmit, store, distribute, and sell water on Guam, as well as the authority to collect, treat, and
7 sell or dispose of wastewater on Guam;

8 WHEREAS, GWA owns and operates five sewage treatment plants on Guam that are
9 subject to the conditions and limitations contained in National Pollutant Discharge Elimination
10 System ("NPDES") Permit Nos. GU0020087, GU0020222, GU0020095, GU0020141, and
11 GU0020273 issued by the U.S. Environmental Protection Agency ("EPA") pursuant to the
12 CWA;

13 WHEREAS, GWA owns and operates wastewater collection and conveyance systems,
14 including approximately 75 sewage pump stations, that transport raw sewage to its sewage
15 treatment plants;

16 WHEREAS, the NPDES permits require GWA at all times to properly operate and
17 maintain all facilities and systems of treatment and control (and related appurtenances) that are
18 installed or used to achieve compliance with the conditions of the permits;

19 WHEREAS, the Government of Guam is identified as a defendant as required by CWA
20 Section 309(e), 33 U.S.C. § 1319(e);

21 WHEREAS, GWA owns and operates three public water systems that supply drinking
22 water for the majority of the population of Guam: the Northern, Central, and Southern Systems;

23 WHEREAS, GWA's public water systems are required to comply with the National
24 Primary Drinking Water Regulations under the SDWA, including the Maximum Contaminant
25 Levels for microbiological contaminants and the treatment technique for turbidity;

26 WHEREAS, the United States sought in its Complaint both a preliminary and permanent
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1 injunction as well as the appointment of a receiver to address issues of compliance in GWA's
2 Publicly Owned Treatment Works ("POTW") and three public water systems;

3 WHEREAS, the parties agree that entry of this Stipulated Order for Preliminary Relief is
4 the most appropriate way to require the immediate implementation of short-term projects and
5 initial planning measures by GWA and the Government of Guam (jointly "Defendants") to begin
6 to address issues of compliance at GWA's POTW and three public water systems;

7 WHEREAS, the Guam Public Utilities Commission issued an Order on April 10, 2003
8 (see Attachment A to this Stipulated Order), renewing its commitment to provide GWA in a
9 timely manner with adequate rate relief to enable GWA to comply with an EPA-approved
10 strategic plan in a prudent and reasonable manner;

11 WHEREAS, the parties contemplate entering into a further stipulation to address
12 additional compliance issues after Defendants' completion of the initial planning measures set
13 out in this Stipulated Order for Preliminary Relief;

14 THEREFORE, before taking testimony or adjudicating any issue of fact or law, and
15 without any finding or admission of liability against or by GWA or the Government of Guam;

16 **IT IS ORDERED, ADJUDGED, AND DECREED as follows:**

17 **I. Submittals by Defendants**

18 1. Compliance Monitor: Within ten days after the date of entry of this Stipulated
19 Order for Preliminary Relief by the Court (hereinafter the "Entry Date"), GWA shall appoint one
20 individual whose primary responsibility will be to coordinate and report on all compliance
21 activities and deliverables required by this Stipulated Order for Preliminary Relief. Within 20
22 days after the Entry Date, GWA shall provide notice to EPA listing the individual's name,
23 address, telephone and fax numbers, and e-mail address. If GWA appoints a new person as
24 compliance monitor, GWA shall provide contact information about the new compliance monitor
25 to EPA within 10 working days after the appointment.

26 2. EPA Approval of Plans and Other Submittals: After review of any plan, program,
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1 report or other item required to be submitted for approval under this Stipulated Order for
2 Preliminary Relief, EPA shall submit to Defendants in writing either an approval or detailed
3 comments explaining why EPA does not approve the plan, program, report or other submittal.
4 Defendants shall have 30 days from receipt of EPA's comments to submit a revised plan,
5 program, report or other submittal that fully addresses and responds to EPA's comments unless a
6 longer time period is agreed upon by all parties. Defendants shall use their best efforts to
7 incorporate EPA's comments to the extent practicable. Representatives of the parties shall make
8 themselves available during the comment period to informally discuss questions and comments
9 on any documents. Defendants' failure to respond to EPA's comments shall constitute a
10 violation of this Stipulated Order for Preliminary Relief. The procedures of this Paragraph shall
11 also apply to any revised plan, program, report, or other submittal.

12 **II. Management and Organizational Structure of GWA**

13 3. General Manager: Within ten days after the Entry Date, the Consolidated
14 Commission on Utilities ("CCU") shall advertise to hire a full-time General Manager at GWA.
15 At a minimum, the General Manager shall have the following qualifications: (1) a Masters
16 degree in Management, Engineering, Finance, or Public Administration, or, in the alternative, a
17 Bachelor's degree and registration as a Professional Engineer pursuant to the National Council of
18 Engineering Examiners standards in either the Civil, Mechanical, or Electrical Branch; (2) at
19 least ten years of combined senior management experience at drinking water and wastewater
20 utilities, with experience in both areas; (3) proven management and communication skills;
21 (4) demonstrated ability to lead, motivate, and develop staff; (5) experience with planning,
22 design, and construction of major wastewater or drinking water infrastructure projects; and
23 (6) knowledge and experience with: a) drinking water or wastewater engineering, b) user fee
24 system development, c) bond funding, d) staff training and development, and e) federal drinking
25 water and wastewater requirements. The CCU shall use its best efforts to hire a qualified
26 General Manager within 90 days after the Entry Date.

1 4. Chief Engineer: Within 40 days after the Entry Date, the CCU shall advertise to
2 hire a full-time Chief Engineer at GWA. At a minimum, the Chief Engineer shall have the
3 following qualifications: (1) registered professional civil, mechanical or electrical engineer;
4 (2) ten or more years of professional engineering experience; and (3) fully competent and
5 proficient in planning, design, construction, and operation of wastewater treatment facilities,
6 drinking water disinfection systems, wells, and drinking water distribution and transmission
7 systems. If possible, the applicant shall also have experience in wastewater collection systems
8 and surface water treatment systems. The CCU shall use its best efforts to hire a qualified Chief
9 Engineer within 120 days after the Entry Date.

10 5. Financial Officers:

11 A. Chief Financial Officer: Within 60 days after the Entry Date, the CCU shall advertise
12 to hire a full-time Chief Financial Officer at GWA that has the appropriate qualifications
13 (e.g., Certified Public Accountant or Certified Management Accountant) and experience.
14 The Chief Financial Officer shall oversee GWA's Finance, Treasury, Accounting, and
15 Purchasing programs, and shall oversee GWA's compliance with federal and local
16 requirements. The CCU shall use its best efforts to hire a qualified Chief Financial
17 Officer within 150 days after the Entry Date. The Chief Financial Officer may perform
18 duties for the Guam Power Authority pursuant to the Chief Financial Officer's
19 employment agreement with the CCU.

20 B. Assistant Chief Financial Officer: By November 30, 2006, the CCU shall hire an
21 Assistant Chief Financial Officer ("ACFO") for GWA. The ACFO must have a
22 Bachelor's degree in finance, economics, or accounting, and adequate senior
23 level/supervisory experience. By November 30, 2006, GWA shall submit a report to
24 EPA and Guam EPA with documentation on the professional qualifications and
25 experience of the person hired as ACFO.

26 6. General Manager's Authority: In order to allow GWA to operate as an
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1 independent agency, the Chief Financial Officer shall be under the direct supervision of GWA's
2 General Manager. Within 30 days after the Entry Date, Defendants shall provide a report to EPA
3 on any legal and administrative barriers preventing GWA's General Manager from directly
4 supervising GWA's Chief Financial Officer, and recommend a course of action, including
5 proposed legislation or administrative measures, to deal with this issue. By November 9, 2003,
6 Defendants shall respond to EPA's comments in accordance with Paragraph 2 and shall take
7 action to address this issue, including submitting proposed legislation to the Guam Legislature
8 and/or implementing required administrative measures. The CCU reserves the right to review all
9 decisions made by the General Manager with respect to the Chief Financial Officer.

10 7. Conflict of Interest Provision: GWA may enter into a service contract with a third
11 party (such as an engineering or consulting firm or a contract employment firm) to permanently
12 or temporarily fill GWA's staff vacancies. In order to avoid potential conflicts of interest that
13 may arise in that situation, GWA shall not engage in any business other than staffing services
14 with that third party (and any related corporate or business entities) for the duration of the service
15 contract. After the Entry Date, all contracts used to fill new positions on a permanent or
16 temporary basis at GWA shall be limited to either of the following: (1) a contract between GWA
17 and the individual hired; or (2) a contract between GWA and a third party that agrees to provide
18 no other service to GWA except for staffing services for the duration of the service contract.

19 8. GWA Personnel

20 A. Certification of Operators in Direct Responsible Charge ("DRC Operators"): Within
21 180 days after the Entry Date, GWA shall ensure that DRC Operator positions are staffed
22 by operators who have obtained certification at the level required for that position by the
23 Guam Environmental Protection Agency's ("Guam EPA") "Water and Wastewater
24 Systems Classification" memorandum dated October 17, 2002. If current DRC Operators
25 at GWA are not certified at the required level, GWA shall, within ten working days after
26 the Entry Date, notify those employees that they have 180 days after the Entry Date to
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1 obtain the required certification. If an employee does not obtain the required certification
2 within 180 days after the Entry Date, GWA shall transfer the employee and fill the
3 position with a properly certified DRC Operator.

4 **B. Engineering Support:** By January 31, 2007, GWA shall either: (1) hire senior level
5 engineers for water and wastewater in accordance with this Paragraph, or (2) enter into an
6 engineering services contract to provide the equivalent engineering support. GWA shall
7 hire or enter into an engineering services contract for at least three full time senior
8 engineers with the following credentials: (1) a Bachelor of Science degree in civil,
9 mechanical or electrical engineering; (2) registration as a professional engineer (P.E.)
10 pursuant to the National Council of Engineering Examiners in any state with the ability to
11 obtain a P.E. in Guam within one year; (3) a minimum of four years of engineering
12 experience; and (4) a minimum of four years of experience in water or wastewater
13 facilities design, construction, and operation and maintenance. For the senior engineer
14 positions, an advanced engineering degree may be deemed as the equivalent of one year
15 of professional experience. Any engineering support services contract entered into by
16 GWA to fulfil this requirement shall include the same number of engineers with the same
17 engineering qualifications and professional experience as above. GWA shall require the
18 contract engineers to be located at GWA for the duration of the contract services. GWA
19 shall provide to EPA and Guam EPA a copy of each engineer's professional
20 qualifications and experience within ten (10) days of hiring. If GWA elects to enter into
21 an engineering support services contract, GWA shall provide a copy of the contract,
22 scope of work, and the engineers' professional qualifications and experience for EPA's
23 review prior to finalization of the contract. GWA shall provide a copy of the documents
24 concurrently to Guam EPA.

25 **C. Senior Wastewater Operator or GIS/Land Information System Manager:** GWA shall
26 increase wastewater operational and technical support through the hiring of either a
27

1 Senior Wastewater Operator or a GIS/Land Information System Manager by January 1,
2 2007. The Senior Wastewater Operator shall have, at a minimum, a Level IV Wastewater
3 Treatment Operators certification with two years of Level IV direct responsible charge
4 experience or a Level III Wastewater Treatment Operators certification with five years of
5 Level III direct responsible charge experience. The GIS/Land Information System
6 Manager shall have, at a minimum, two years of GIS/Land Information System
7 management experience and a BS in Computer Science, GIS, Engineering, or a related
8 field. GWA shall provide EPA and Guam EPA a copy of the Senior Wastewater
9 Operator's or GIS/Land Information System Manager's qualifications and experience
10 with ten (10) days of hiring.

11 9. GWA Reorganization: GWA shall complete a full reorganization according to the
12 following schedule. Within 90 days after the Entry Date, GWA shall submit to EPA and Guam
13 EPA a draft reorganization plan that proposes a new structure for GWA to ensure that GWA is
14 most capable of completing its mission. For each work unit, the draft plan shall provide at a
15 minimum: a description of work functions, the numbers of employees, and a summary of
16 certifications and qualifications needed for each category of employee. Within 30 days after
17 receipt of EPA's comments on the draft plan, GWA shall respond to EPA's comments in
18 accordance with Paragraph 2 and provide a final reorganization plan to EPA and Guam EPA.

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21 [Rest of page deliberately left blank.]
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1 Within 90 days after GWA has prepared a final reorganization plan, GWA shall submit to EPA
2 and Guam EPA a draft report containing position descriptions and minimum job qualifications
3 that meet industry standards and Guam laws for each position in the new organization. Within
4 30 days after receipt of EPA's comments on the draft report, GWA shall respond to EPA's
5 comments in accordance with Paragraph 2 and shall provide a final report to EPA and Guam
6 EPA.

7 Within 90 days after GWA has provided a final reorganization plan, GWA shall also
8 submit to EPA and Guam EPA a draft Staffing Plan Report that includes the following
9 information: (1) an evaluation of current staff resources at GWA and a discussion of where new
10 hires or retraining will be needed to staff the new organization; (2) a timetable for
11 implementation of staffing measures; and (3) procedures for the transferring of staff and staff
12 reductions (and recommended legislation to enable such changes) as necessary. The draft
13 Staffing Plan Report shall require: (1) all positions in the reorganization of GWA shall be filled
14 with an employee qualified at the minimum level required for that position within 180 days after
15 the final Staffing Plan Report has been issued; and (2) when GWA hires a new employee to fill a
16 position, that employee must be properly qualified for the position at the time of hire. EPA will
17 review the draft Staffing Plan Report and may require changes, additions, deletions or
18 modifications it deems necessary to ensure proper operation and maintenance of GWA's POTW
19 and public water systems. Within 30 days after receipt of EPA's comments on the draft report,
20 GWA shall respond to EPA's comments in accordance with Paragraph 2 and shall provide the
21 final Staffing Plan Report to EPA and Guam EPA. GWA shall implement the Staffing Plan
22 Report's measures in accordance with the timetable in the final Staffing Plan Report. If current
23 employees are not certified at the required level, GWA shall notify such employees within ten
24 working days after the final Staffing Plan Report has been issued.

25 **III. Operations at GWA**

26 10. Water Resources Master Plan: Within 30 days after the Entry Date, GWA shall
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1 prepare a draft scope of work and a draft Request for Proposals (“RFP”) for the preparation of a
2 Water Resources Master Plan (“Master Plan”) and submit them to EPA for approval. GWA shall
3 provide a copy of the documents concurrently to Guam EPA. EPA will review the draft scope of
4 work and RFP and may require any changes, additions, deletions or modifications it deems
5 necessary. Within 30 days after receipt of EPA’s comments, GWA shall respond to EPA’s
6 comments in accordance with Paragraph 2 and shall submit a final scope of work and RFP to
7 EPA and Guam EPA. GWA shall advertise the RFP for the preparation of the Master Plan
8 nationally.

9 Within 90 days after submitting the final RFP to EPA and Guam EPA, GWA shall
10 provide a list of at least five qualified offerors, including the qualifications of each offeror, to
11 EPA and Guam EPA. EPA will provide written notice of the names of any offeror(s) that it
12 disapproves and an authorization to proceed with any of the other offerors. GWA may select any
13 offeror from that list that is not disapproved and may award the contract to that offeror. GWA
14 shall select and retain one of the qualified offerors within 105 days after obtaining EPA’s
15 authorization to proceed, shall notify EPA and Guam EPA of the name of the contractor, and
16 shall begin to prepare the Master Plan (the “Commencement Date”).

17 GWA shall develop a Master Plan that includes:

- 18 (1) A comprehensive analysis, using as a guideline the “10 States Standards” as they
19 apply to wastewater, of wastewater treatment, collection, and conveyance systems,
20 improvement alternatives, and needs for the next twenty years. The Master Plan
21 shall include an infiltration and inflow assessment of GWA’s wastewater
22 collection systems sufficient to identify and prioritize problem areas. The Master
23 Plan shall also include an assessment of the following: septic system hookup
24 needs and alternatives, decentralized treatment systems, consolidation with the
25 U.S. military’s wastewater systems, biosolids management and re-use, and an
26 analysis of costs and other impacts.

- 1 (2) A comprehensive analysis, using as a guideline the Hawaii Water Standards of
2 2002, of public water system improvement alternatives and needs for the next
3 twenty years that addresses disinfection, system pressure, surface water and
4 groundwater resources, treatment needs (including any drinking water well
5 needing treatment due to a determination that the well uses a groundwater source
6 under the direct influence of surface water), transmission and distribution system
7 improvements, potential consolidation with the U.S. military's systems, and water
8 re-use.
- 9 (3) A comprehensive analysis of the costs and benefits of water conservation on
10 Guam.
- 11 (4) An evaluation of necessary process control system improvements, including a
12 Supervisory Control and Data Acquisition ("SCADA") system, information
13 management systems, telemetry, and other applicable types of automation.
- 14 (5) A financial plan that details how revenue will be generated. The financial plan
15 shall include a user fee system, including fees for services such as sewer
16 connection fees. The user fees shall be based on actual water usage, estimated
17 wastewater generation, and actual costs of services provided. GWA shall
18 coordinate with the Public Utilities Commission ("PUC") to ensure that:
19 (1) GWA complies with the public notification requirements for proposed rate
20 increases in 12 GCA §§ 12001.1, 12001.2; and (2) GWA's filings for rate
21 increases are made in accordance with applicable PUC regulations.
- 22 (6) A detailed five-year plan for financing the continued operation, maintenance, and
23 repair of the POTW and three public water systems, including: (a) an estimated
24 annual budget for each of the next five years for all costs of operating,
25 maintaining, and repairing the POTW and three public water systems, including
26 the establishment and maintenance of the Financial Reserves listed in Paragraph
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1 32 below; and (b) a detailed descriptive plan for raising sufficient revenue to meet
2 the projected costs as outlined in the annual budgets, including adjustments or
3 increases in user fees, taxes, assessments or other sources of revenue. Revenues
4 shall be sufficient to cover all compliance activities and deliverables required by
5 this Stipulated Order for Preliminary Relief, as well as any other anticipated
6 expenses, including any measures necessary to ensure compliance with the CWA
7 and SDWA, costs related to the infrastructure improvements recommended in the
8 Master Plan, all related operations and maintenance costs, and corresponding
9 utility expenses, including maintenance of all required Financial Reserves listed in
10 Paragraph 32 below.

11 The following five tasks shall be completed as part of the Master Plan. Within the
12 designated time for completing each task, GWA shall submit a written draft to EPA for review
13 and approval. GWA shall provide a copy of each draft concurrently to Guam EPA. Within 30
14 days after receipt of EPA's comments, GWA shall respond to EPA's comments in accordance
15 with Paragraph 2 and shall provide the final written product to EPA and Guam EPA. The
16 schedule for these tasks is the following:

- 17 (1) Within 180 days after the Commencement Date, GWA shall complete a leak
18 detection study for all three public water systems.
- 19 (2) Within 240 days after the Commencement Date, GWA shall complete an
20 estimated water budget that quantifies and describes how and where water is
21 produced and utilized on Guam.
- 22 (3) Within 270 days after the Commencement Date, GWA shall locate, map, and
23 develop Geographical Information System ("GIS") layers for all of the following:
24 treatment facilities, wells, water lines greater than or equal to six inches in
25 diameter, collection system, pump stations, and GWA's and Guam EPA's water
26 quality monitoring stations.

1 (4) Within one year after the Commencement Date, GWA shall perform a hydraulic
2 analysis of the three public water systems and develop a hydraulic model of the
3 systems.

4 (5) Within 540 days after the Commencement Date, GWA shall locate, map, and
5 develop GIS layers for all of the following (not included in subparagraph (3)
6 above): all other water lines, wastewater laterals, and all septic tanks over the
7 Northern Guam Sole Source Aquifer.

8 The Master Plan shall be completed according to the following schedule:

9 (1) By October 31, 2006, GWA shall complete a draft Master Plan and shall provide a
10 copy of it to EPA and Guam EPA. Upon completion, GWA shall issue a press
11 release and publish notice in a local newspaper, indicating that the draft Master
12 Plan is available for public review at convenient locations (such as public libraries
13 on Guam and GWA's website) and announcing the date and location of any public
14 meeting to discuss the Plan. The draft Master Plan shall be made available for
15 public comment for at least 45 days. During the public comment period, GWA
16 shall hold at least one public meeting. GWA shall issue the public notice at least
17 30 days before the date of the public meeting.

18 (2) By January 31, 2007, GWA shall complete a final Master Plan and shall address
19 all significant comments raised during the public comment period in its final
20 Master Plan. GWA shall provide the final Master Plan to EPA and Guam EPA
21 and shall perform the required tasks in accordance with the schedule set out in the
22 final Master Plan.

23 11. Interim Disinfection Program: GWA shall develop an interim disinfection
24 program for its three public water systems to ensure that the water being provided to the public is
25 adequately disinfected by chlorination. In order to ensure optimal chlorination and disinfection,
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1 the interim disinfection program shall require that: (1) the optimal levels of chlorine residual, as
2 measured in parts per million ("ppm") or milligrams per liter, is met at all times at all
3 chlorination points, taking into consideration the contact time (in minutes) of the chlorine with
4 the water in the distribution system prior to reaching the first consumer ("CT value"); and (2) a
5 minimum level of chlorine residual of at least 0.2 ppm is maintained at all points in the drinking
6 water distribution system at all times.

7 The interim disinfection program shall include a detailed description of the existing
8 chlorination practices including, but not limited to: (1) the locations of all existing chlorination
9 points for each public water system, including chlorination points at the Ugum surface water
10 treatment plant, chlorination points at the wellheads for the groundwater systems, and other
11 distribution system chlorination points; (2) the locations of any proposed immediate additional
12 wellhead and/or distribution system chlorination points; (3) the estimated contact time between
13 the chlorine and water in the distribution system before the water reaches the first consumer (i.e.,
14 the closest connection in the distribution system) for each chlorination point; (4) actual chlorine
15 dosing levels (in ppm) at each chlorination point; and (5) actual CT value for each chlorination
16 point (where CT is defined as chlorine residual level in ppm multiplied by the contact time in
17 minutes prior to the first consumer). Based on the information included in subparagraphs (1)
18 through (5), the interim disinfection program shall include recommendations regarding the
19 following: (6) the optimal possible chlorine dosing levels (in ppm) to apply at each individual
20 chlorination point (taking into account the contact time available before the first consumer); and
21 (7) the optimal CT value for all chlorination points. The interim disinfection program shall
22 propose short-term changes to GWA's chlorination practices to improve disinfection that can be
23 accomplished within one year after the Entry Date.

24 Within 90 days after the Entry Date, GWA shall submit the interim disinfection program
25 to EPA for approval. GWA shall provide a copy of the document concurrently to Guam EPA.
26 Within 30 days after receipt of EPA's comments, GWA shall respond to EPA's comments in
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1 accordance with Paragraph 2, shall provide the final program to EPA and Guam EPA, and shall
2 implement the program. GWA shall update the interim disinfection program annually and as
3 needed to reflect the development of other compliance activities and deliverables required by this
4 Stipulated Order for Preliminary Relief, shall provide its updates to EPA for its review and
5 approval, and shall provide a copy to Guam EPA.

6 12. Public Water Systems' Chlorine Program

7 A. Interim Chlorine Residual Level Monitoring Program: GWA shall develop an interim
8 chlorine residual level monitoring program for its three public water systems to ensure
9 that: (1) optimal chlorine levels are maintained at all chlorination points, taking into
10 account contact time prior to the first consumer after the chlorination points; and (2) a
11 minimum chlorine level is maintained throughout the distribution system. The
12 monitoring program shall contain a detailed description of the following: (1) the
13 locations and frequency of all chlorine residual monitoring necessary in order to ensure
14 that the optimal applied chlorine dose (as specified in subparagraph (6) of the interim
15 disinfection program in Paragraph 11) and optimal CT's (as specified in subparagraph (7)
16 of the interim disinfection program in Paragraph 11) are maintained at all chlorination
17 points at all times; and (2) the locations and frequency of chlorine residual monitoring
18 necessary to ensure that a minimum level of chlorine residual of at least 0.2 ppm is
19 maintained throughout the distribution system at all times. The proposed monitoring
20 shall consist of either continuous, online, automated chlorine residual monitoring or grab
21 samples to be collected and analyzed in the field. The proposed monitoring program shall
22 ensure that those wells that are at the highest risk of fecal bacteriological contamination
23 (i.e., those wells with a historical record of fecal coliform or *E. coli* bacteriological
24 contamination at the well) have the highest level of monitoring. Monitoring for such
25 wells shall consist of continuous, online chlorine residual monitoring with either
26 automatic flow shutoff or an alarm system. The automatic flow shutoff or alarm shall be
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1 triggered by detections of chlorine levels lower than the optimal applied chlorine dose (as
2 specified in subparagraph (6) of the interim disinfection program in Paragraph 11).

3 Within 90 days after the Entry Date, GWA shall submit the monitoring program to EPA
4 for approval. GWA shall provide a copy of the document concurrently to Guam EPA.

5 Within 30 days after receipt of EPA's comments, GWA shall respond to EPA's
6 comments in accordance with Paragraph 2, shall provide the final program to EPA and
7 Guam EPA, and shall implement the program. GWA shall update the interim chlorine
8 residual level monitoring program annually and as needed to reflect the development of
9 other compliance activities and deliverables required by this Stipulated Order for
10 Preliminary Relief, shall provide its updates to EPA for its review and approval, and shall
11 provide a copy to Guam EPA.

12 B. Chlorine Supply: By January 31, 2007, GWA shall ensure that an adequate supply of
13 chlorine is available on island. To satisfy this requirement, a supply of at least 200
14 chlorine cylinders for backup reserve shall be located on island and available to GWA
15 upon demand. GWA may satisfy this requirement through either contract agreement(s)
16 and/or the acquisition of the chlorine cylinders. By January 31, 2007, GWA shall provide
17 to EPA and Guam EPA a copy of the contract agreement(s) and/or documentation of the
18 acquisition of chlorine cylinders.

19 C. Upgrade of Groundwater Chlorination System Project: By October 30, 2006, GWA
20 shall submit a revised workplan and schedule for finalizing the design and construction
21 work of the Upgrade of Groundwater Chlorination System Project. (U.S. EPA Grant
22 XP-97931501-2.) The schedule shall include key milestones for reviews, contractor
23 selection, design, bid phase, and construction phase. GWA shall complete the Upgrade
24 of Groundwater Chlorination System Project by April 1, 2007. GWA shall submit the
25 90% design to EPA for review and comments. GWA shall provide a copy of the
26 documents concurrently to Guam EPA. Within 30 days after receipt of EPA's comments,
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1 GWA shall respond to EPA's comments in accordance with Paragraph 2, shall provide
2 the final schedule and scope of work to EPA and Guam EPA, and shall perform the
3 required tasks in accordance with the schedule set out in the final scope of work.

4 13. Leak Detection and Response Program: GWA shall develop a program for
5 identifying and responding to leaks in the three public water systems. Within 180 days after the
6 Entry Date, GWA shall submit the proposed program to EPA for approval. GWA shall provide a
7 copy of the document concurrently to Guam EPA. Within 30 days after receipt of EPA's
8 comments, GWA shall respond to EPA's comments in accordance with Paragraph 2, shall
9 provide the final program to EPA and Guam EPA, and shall implement the program.

10 14. Water Meter Improvement Program: GWA shall develop a water meter
11 improvement program to ensure that, by November 30, 2007, each connection to the three public
12 water systems has an accurate and accessible water meter that is read monthly and used for
13 billing. Within 90 days after the Entry Date, GWA shall submit the program to EPA for
14 approval. GWA shall provide a copy of the document concurrently to Guam EPA. Within 30
15 days after receipt of EPA's comments, GWA shall respond to EPA's comments in accordance
16 with Paragraph 2, shall provide the final program to EPA and Guam EPA, and shall implement
17 the program.

18 15. Parts Inventory for POTW and Public Water Systems: Within 180 days after the
19 Entry Date, GWA shall develop and maintain a 60-day operation and maintenance parts
20 inventory for its POTW and public water systems that includes any spare parts that may
21 reasonably be needed, and shall provide EPA and Guam EPA with a written list of the parts
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1 inventory. The inventory need not include any parts for which GWA has a written guarantee of
2 their availability within four days of a request. GWA shall provide a written report to EPA and
3 Guam EPA within 180 days after the Entry Date on the adequacy of its parts inventory, including
4 written guarantees of availability. On or before January 28 and July 28 of each year, GWA shall
5 provide a semiannual written report to EPA and Guam EPA regarding the adequacy of its parts
6 inventory.

7 16. Routine Maintenance and Repairs for POTW and Public Water Systems: Within
8 180 days after the Entry Date, GWA shall: (1) provide EPA and Guam EPA with a written
9 report describing the minimum tools and equipment needed for each facility and maintenance
10 area in its POTW or three public water systems to handle any routine maintenance or repair
11 work; and (2) ensure that each facility and maintenance area in its POTW or three public water
12 systems has the necessary tools and equipment. At a minimum, GWA shall ensure that the
13 following systems are included in the report and have the necessary tools and equipment: sewage
14 treatment plants, wastewater collection systems, wastewater conveyance systems (including the
15 sewage pump stations), water treatment plant, water distribution systems, drinking water wells,
16 and chlorination systems.

17 17. Standby Generators: GWA shall ensure that working, appropriately sized,
18 standby generators are available for all wastewater pump stations, treatment plants, and wells that
19 are critical to the three public water systems. Within 90 days after the Entry Date, GWA shall
20 submit a list to EPA for approval, indicating the size of the standby generator for each pump
21 station, treatment plant or well and the schedule of compliance. GWA shall provide a copy of
22 the document concurrently to Guam EPA. Within 30 days after receipt of EPA's comments,
23 GWA shall respond to EPA's comments in accordance with Paragraph 2 and shall provide the
24 final list to EPA and Guam EPA. By November 30, 2006, GWA shall supply standby generators
25 for all critical wells, wastewater pump stations, and treatment plants.

26 18. Underground Storage Tanks: GWA shall prepare an inventory of its underground
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1 storage tanks, indicating which tanks are no longer in use. For any tank that is no longer in use,
2 GWA shall perform the following temporary closure tasks: (1) empty all materials from the tank
3 to within one inch of the tank bottom; (2) leave vent lines open; and (3) secure all lines, pumps,
4 manways, and ancillary equipment with a lock. Within 90 days after the Entry Date, GWA shall
5 provide the inventory to EPA for review and approval, stating the date that GWA has completed
6 the temporary closure tasks for any tanks no longer in use. GWA shall provide a copy of the
7 document concurrently to Guam EPA. Within 30 days after receipt of EPA's comments, GWA
8 shall respond to EPA's comments in accordance with Paragraph 2, shall provide the final
9 inventory to EPA and Guam EPA, and shall perform any additional required tasks in accordance
10 with the schedule set out in the final inventory.

11 19. Emergency Response Plan: GWA shall develop an emergency response plan that
12 provides operating procedures for all employees during and following any disasters, including,
13 but not limited to, typhoons and earthquakes. Within 540 days after the Entry Date, GWA shall
14 submit the plan to EPA for approval. GWA shall provide a copy of the document concurrently to
15 Guam EPA. Within 30 days after receipt of EPA's comments, GWA shall respond to EPA's
16 comments in accordance with Paragraph 2, shall provide the final plan to EPA and Guam EPA,
17 and shall implement the plan.

18 20. Preventive Maintenance Program: GWA shall develop a preventive maintenance
19 program for the POTW and public water systems that details required maintenance, schedules,
20 standard procedures, tracking, and reporting. At a minimum, GWA shall develop preventive
21 maintenance programs for the following systems: sewage treatment plants, wastewater collection
22 systems, wastewater conveyance systems (including the sewage pump stations), water treatment
23 plant, water distribution systems, drinking water wells, and chlorination systems. Within one
24 year after the Entry Date, GWA shall submit the program to EPA for approval. GWA shall
25 provide a copy of the document concurrently to Guam EPA. Within 30 days after receipt of
26 EPA's comments, GWA shall respond to EPA's comments in accordance with Paragraph 2,
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1 Guam EPA, shall distribute the manuals to the appropriate employees, and shall require use of
2 the manuals as part of its standard operating procedures for its POTW and public water systems.
3 GWA shall update the manuals as needed to reflect the development of other compliance
4 activities and deliverables required by this Stipulated Order for Preliminary Relief, shall provide
5 its updates to EPA for its review and approval, and shall provide a copy to Guam EPA.

6 22. GWA's Authority: In order to function properly and efficiently as an independent
7 agency, GWA needs to have the ability to independently: administer financial accounts, make
8 personnel changes, and procure equipment and services (including both engineering services and
9 the direct procurement of services or supplies from off-island companies). Within 30 days after
10 the Entry Date, Defendants shall provide a report to EPA on any legal and administrative actions
11 necessary to allow GWA to operate independently, and shall recommend a course of action,
12 including proposed legislation or administrative measures, to deal with these issues. GWA shall
13 provide a copy of the document concurrently to Guam EPA. Within 30 days after receipt of
14 EPA's comments on the report, Defendants shall respond to EPA's comments in accordance with
15 Paragraph 2 and shall take action to address these issues, including submitting proposed
16 legislation to the Guam Legislature and/or implementing required administrative measures.

17 23. Standard Operating Procedures: GWA shall develop: (1) a set of standard
18 operating procedures for the following processes: architectural and engineering services
19 procurement, construction services procurement, and tools and equipment inventory and
20 controls; and (2) procedures for complying with federal and local laws and monitoring
21 compliance. The standard operating procedures shall require GWA to comply with applicable
22 Guam procurement statutes and other applicable local laws. Within 180 days after the Entry
23 Date, GWA shall submit the draft procedures to EPA for review and approval. GWA shall
24 provide a copy of the document concurrently to Guam EPA. Within 30 days after receipt of
25 EPA's comments, GWA shall respond to EPA's comments in accordance with Paragraph 2, shall
26 provide the final procedures to EPA and Guam EPA, and shall implement the procedures.

1 24. Vulnerability Assessment: Within 180 days after the Entry Date, GWA shall
2 submit a completed vulnerability assessment along with a certification of its completion, as
3 required by Section 1433(a) of the SDWA, to the EPA Administrator in Washington, D.C.
4 GWA shall follow the mailing protocol described in EPA's "Instructions to Assist Community
5 Water Systems in complying with the Public Health Security and Bioterrorism Preparedness and
6 Response Act of 2002," which is located on the EPA website as follows:
7 <http://www.epa.gov/safewater/security/util-inst.pdf>.

8 The completed vulnerability assessment should not be sent to EPA Region 9 in San
9 Francisco. Concurrently with the submission of the vulnerability assessment to the EPA
10 Administrator, GWA shall notify EPA pursuant to Paragraph 50 that the requirements of SDWA
11 Section 1433(a) have been met and that GWA is in compliance with Section 1433(a). Within
12 180 days after the submission of the vulnerability assessment, GWA shall complete an
13 emergency response plan and certify to the EPA Administrator that it has completed the plan in
14 accordance with the requirements of SDWA Section 1433(b) and (c). Within 10 working days
15 after completing the plan, GWA shall also notify EPA pursuant to Paragraph 50 that it has
16 completed the emergency response plan.

17 25. Trade Organizations: Within 90 days after the Entry Date, GWA shall join the
18 American Waterworks Association and the Water Environment Federation.

19 **IV. Financial Administration at GWA**

20 26. Financial Standard Operating Procedures: GWA shall develop a set of standard
21 operating procedures for the following processes: fiscal management and controls, budgeting,
22 accounting, and financial planning. Within one year after the Entry Date, GWA shall submit a
23 copy of the procedures to EPA for review and approval. Within 30 days after receipt of EPA's
24 comments, GWA shall respond to EPA's comments in accordance with Paragraph 2, shall
25 provide the final procedures to EPA, and shall implement the procedures.

26 27. Annual Budget: GWA shall submit each approved annual budget to EPA. The
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1 period before the final financial plan is approved, including all existing debt and expected debt
2 service, and the buildup of the Financial Reserves required in Paragraph 32 below. GWA shall
3 submit to EPA the interim financial plan approved by the PUC within ten working days after
4 approval, and shall implement the plan upon approval by the PUC.

5 30. Approval of Final Financial Plan: Within 120 days after GWA submits a final
6 financial plan in the Master Plan, the PUC shall consider and approve a final financial plan that
7 generates enough revenue to cover the cost of all compliance activities and deliverables required
8 by this Stipulated Order for Preliminary Relief, as well as any other anticipated expenses,
9 including any measures necessary to ensure compliance with the CWA and the SDWA, costs
10 related to the infrastructure improvements identified in the Master Plan, all related operations and
11 maintenance costs, and corresponding utility expenses, including maintenance of all Financial
12 Reserves required in Paragraph 32 below. GWA shall submit to EPA a copy of the final
13 financial plan approved by the PUC within ten working days after approval, and shall implement
14 the plan upon approval by the PUC.

15 31. Five-Year Plan: On an annual basis, GWA shall submit to EPA a detailed five-
16 year plan for financing the continued operation, maintenance, and repair of the POTW and the
17 three public water systems. Each five-year plan shall include: (1) estimated annual budgets for
18 each of the next five years for all costs of operating, maintaining, and repairing GWA's POTW
19 and three public water systems, including the establishment and maintenance of the Financial
20 Reserves listed in Paragraph 32 below; and (2) a detailed descriptive plan for raising sufficient
21 revenue to meet the projected cost as outlined in the budgets, including adjustments or increases
22 in user fees, taxes, assessments or other sources of revenue. GWA shall submit its first five-year
23 plan to EPA within 2 years after the Entry Date. EPA will review each five-year plan and may
24 request additions, deletions, changes or modifications as it deems necessary to insure adequate
25 funding of the operation, maintenance, and repair of GWA's POTW and three public water
26 systems for the five-year period. Within 30 days after receipt of EPA's comments, GWA shall

1 respond to EPA's comments in accordance with Paragraph 2 into a final five-year plan, shall
2 provide the final plan to EPA, and shall implement the measures of the plan.

3 32. Financial Reserves: Within 180 days after the Entry Date, GWA shall begin
4 developing the following Financial Reserves:

5 (1) Debt Service Reserve - This reserve shall be established and maintained in
6 accordance with bond covenants and debt service covenants. Within 30 days after issuing
7 a bond or securing a loan, GWA shall submit to EPA information regarding the amount
8 of this reserve.

9 (2) Emergency Operations, Maintenance, Renovation, and Replacement Reserve - This
10 reserve shall be equal to three months of budgeted expenses for operations, maintenance,
11 renovation, and replacement of GWA's POTW and three public water systems. Within
12 90 days after the Entry Date, GWA shall submit to EPA for approval the proposed
13 amount of this reserve. GWA shall make monthly deposits to the reserve to ensure that
14 the balance matches current needs based on the amounts budgeted for each succeeding
15 fiscal year. The expense base used to calculate this reserve shall include operating and
16 maintenance expenses, including the depreciation expense, plus any capital projects or
17 purchases funded with GWA revenues. The reserve shall be used only to cover
18 operations and maintenance expenses not in the original budget. This reserve can be
19 replaced by the availability of an equivalent emergency line of credit.

20 The above reserves shall be fully developed within 2 years after the Entry Date and shall
21 be used only for the stated purposes, and only in the event that no other revenue is available to
22 meet the commitments. If GWA draws down on any reserve at any time, it shall rebuild that
23 reserve to the required level within 180 days. On or before January 28 of each year, GWA shall
24 submit an annual report to EPA regarding the development and maintenance of the Financial
25 Reserves required by this Paragraph.

26 33. Late Payments: GWA shall develop a program that:
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1 (1) clearly defines how late payments will be addressed and when service will be
2 discontinued. GWA shall consider measures such as discontinuing service for any
3 customer that is more than 60 days behind in payments.

4 (2) provides for a procedure to collect delinquent rates or charges, and to enforce liens, if
5 any, for non-payment of rates or charges, in a practical and timely manner.

6 Within 90 days after the Entry Date, GWA shall submit the program to EPA for approval.

7 Within 30 days after receipt of EPA's comments, GWA shall respond to EPA's comments in
8 accordance with Paragraph 2, shall provide the final program to EPA, and shall implement the
9 program.

10 34. Sewer Hook-up Revolving Fund: GWA shall develop a program instituting a
11 sewer hook-up revolving fund for residents currently required to connect to the wastewater
12 collection system. The program shall be designed to allow residents to spread hook-up costs
13 (including utility fees) over two or more years at low or no interest. GWA shall use, at a
14 minimum, funds provided by the Guam EPA Water Planning Committee. Within 540 days after
15 the Entry Date, GWA shall submit the program to EPA for approval. Within 30 days after
16 receipt of EPA's comments, GWA shall respond to EPA's comments in accordance with
17 Paragraph 2, shall provide the final program to EPA, and shall implement the program.

18 **V. Construction and Rehabilitation Projects at GWA**

19 35. Agana Ocean Outfall: GWA shall develop: (1) a schedule for submitting pre-
20 final (90 percent) and final (100 percent) ocean outfall extension designs and detailed
21 construction schedules for the Agana Sewage Treatment Plant ("STP"); and (2) a scope of work
22 and schedule for initiating and completing a baseline monitoring survey or surveys in the area of
23 the proposed ocean outfall extension to support GWA's revised CWA Section 301(h) application
24 and to establish a basis for the Agana NPDES monitoring program. The schedule shall require
25 GWA to complete construction of the outfall by January 1, 2008. The baseline monitoring
26 survey or surveys shall: (1) include water quality data, quantitative information on the benthic
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1 fauna, and sediment quality data in the area of the proposed discharge; and (2) be performed
2 similarly to the initial baseline monitoring survey for the proposed ocean outfall
3 extension. Within 60 days after the Entry Date, GWA shall submit to EPA for review and
4 approval the scope of work and schedules required by this Paragraph. GWA shall provide a copy
5 of the documents concurrently to Guam EPA. Within 30 days after receipt of EPA's comments,
6 GWA shall respond to EPA's comments in accordance with Paragraph 2, shall provide the final
7 scope of work and schedules to EPA and Guam EPA, and shall perform the required tasks in
8 accordance with the schedules set out in the final scope of work.

9 36. Northern District Ocean Outfall: GWA shall develop: (1) a schedule for
10 submitting pre-final (90 percent) and final (100 percent) ocean outfall extension designs and
11 detailed construction schedules for the Northern District STP; and (2) a scope of work and
12 schedule for initiating and completing a baseline monitoring survey or surveys in the area of the
13 proposed ocean outfall extension to support GWA's revised CWA Section 301(h) application
14 and to establish a basis for the Northern District NPDES monitoring program. The schedule
15 shall require GWA to complete construction of the outfall by January 1, 2009. The baseline
16 monitoring survey or surveys shall: (1) include water quality data, quantitative information on
17 the benthic fauna, and sediment quality data in the area of the proposed discharge; and (2) shall
18 be performed similarly to the initial baseline monitoring survey for the proposed ocean outfall
19 extension. Within 60 days after the Entry Date, GWA shall submit to EPA for review and
20 approval the scope of work and schedules required by this Paragraph. GWA shall provide a copy
21 of the documents concurrently to Guam EPA. Within 30 days after receipt of EPA's comments,
22 GWA shall respond to EPA's comments in accordance with Paragraph 2, shall provide the final
23 scope of work and schedules to EPA and Guam EPA, and shall perform the required tasks in
24 accordance with the schedules set out in the final scope of work.

25 37. Assessment of Chaot Wastewater Pump Station and Sewer Collection and
26 Conveyance System: GWA shall retain a qualified engineering firm to perform an engineering

1 assessment of the Chaot/Marine Drive sewer collection and conveyance system (the “Chaot
2 engineering assessment”). The scope of the Chaot engineering assessment shall include an area
3 sufficiently upstream of the old Chaot sewer pump station to fully assess the capacity and piping
4 of the system to prevent raw sewage overflows at the Chaot sewer pump station and downstream
5 along Routes 4 and 1 to the Agana Main sewer pump station. It shall also include an operational
6 re-evaluation of the new Chaot sewer pump station. The Chaot engineering assessment shall
7 identify any capacity, design, inflow/infiltration, and operational deficiencies, and include the
8 development of a corrective action plan and schedule for implementation. The corrective action
9 plan and schedule shall include, but not be limited to, prioritization of projects, as may be
10 necessary, and time frames for developing a scope of work, completing the design, and
11 commencing and completing construction of all deficiencies identified in the corrective action
12 plan. Within 180 days after the Entry Date, GWA shall submit to EPA for review and approval
13 the Chaot engineering assessment. GWA shall provide a copy of the document concurrently to
14 Guam EPA. Within 30 days after receipt of EPA’s comments, GWA shall respond to EPA’s
15 comments in accordance with Paragraph 2, shall provide the final Chaot engineering assessment
16 (including the final corrective action plan) to EPA and Guam EPA, and shall perform the
17 required tasks in accordance with the schedule set out in the final corrective action plan. Within
18 180 days after the final engineering assessment is completed, GWA shall submit to EPA for
19 review and approval the Chaot engineering design. GWA shall provide a copy of the document
20 concurrently to Guam EPA. Within 30 days after receipt of EPA’s comments, GWA shall
21 respond to EPA’s comments in accordance with Paragraph 2 and shall provide the final Chaot
22 engineering design to EPA and Guam EPA. Construction shall be completed within 540 days
23 after the Chaot engineering design is approved by EPA.

24 38. Water Transmission Lines and Reservoirs

25 A. Water Transmission Line Construction Plan: GWA shall develop a Water
26 Transmission Line Construction (“WTLC”) Plan to ensure its ability to adequately treat
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1 its well sources (including disinfection). The WTLC Plan shall include an assessment of
2 the existing well configuration, including a discussion of CT values currently required
3 and currently achieved under the existing configuration in accordance with the
4 requirements of Paragraph 11 (Interim Disinfection Program). Based on the assessment
5 of the current well configuration, GWA shall make recommendations regarding the need
6 for dedicated transmission lines in its three public water systems, as well as
7 recommendations concerning future treatment, including chlorination/disinfection
8 configurations, for the three public water systems. The WTLC Plan shall prioritize the
9 construction of transmission lines and any necessary chlorination/disinfection
10 configurations to ensure adequate treatment based on the following information about the
11 different parts of the public water systems: (1) the current level of disinfection achieved
12 (the CT values), and (2) the history of bacteriological contamination of the sources, such
13 as the wellfield history. The WTLC Plan shall include a schedule for developing and
14 finalizing a scope of work and design, and commencing and completing construction and
15 upgrades to the water transmission lines and chlorination systems. Within 180 days after
16 the Entry Date, GWA shall submit to EPA for review and approval the WTLC Plan.
17 GWA shall provide a copy of the document concurrently to Guam EPA. Within 30 days
18 after receipt of EPA's comments, GWA shall respond to EPA's comments in accordance
19 with Paragraph 2, shall provide the final WTLC Plan to EPA and Guam EPA, and shall
20 perform the required tasks in accordance with the schedule set out in the final WTLC
21 Plan.

22 B. Sinajana Water Transmission Line Project: By September 30, 2006, GWA shall
23 submit a revised workplan and schedule for finalizing the design and construction work
24 of the Sinajana Water Transmission Line Project. (U.S. EPA Grant FS-97911902-2.)
25 The schedule shall include key milestones for reviews, contractor selection, design, bid
26 phase, and construction phase. GWA shall complete the Sinajana Water Transmission
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1 Line Project by June 30, 2008. GWA shall submit the 90% design per the described
2 project scope of work dated June 2, 2005 (Phases I, II and III) to EPA for review and
3 comments. GWA shall provide a copy of the documents concurrently to Guam EPA.
4 Within 30 days after receipt of EPA's comments, GWA shall respond to EPA's
5 comments in accordance with Paragraph 2, shall provide the final schedule and scope of
6 work to EPA and Guam EPA, and shall perform the required tasks in accordance with the
7 schedule set out in the final scope of work.

8 C. Water Reservoirs Condition Assessment: By October 31, 2006, GWA shall submit a
9 workplan and a schedule to complete a condition assessment to determine the structural
10 stability and soundness of all steel tank water reservoirs. The condition assessment shall
11 include an internal and external structural inspection of each reservoir, and shall include
12 recommendations regarding the necessary course of action to monitor, rehabilitate, or
13 replace each reservoir. The condition assessment shall be performed by a qualified
14 structural engineer in accordance with industry standards established by the American
15 Water Works Association and the Steel Tank Institute. GWA shall provide to EPA and
16 Guam EPA a copy of the workplan and schedule for review and comments. Within 30
17 days after receipt of EPA's comments, GWA shall respond to EPA's comments in
18 accordance with Paragraph 2. After EPA approves a workplan and schedule, GWA shall
19 perform the required tasks in accordance with the schedule set out in the final workplan.
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1 39. Northern District STP Renovation: GWA shall implement corrective actions to
2 restore primary treatment operational capacity to the Northern District STP. The corrective
3 actions shall include, but not be limited to, the following: primary clarifiers, preaeration and
4 aerated grit removal systems, and installation of primary sludge pumps and solids handling (as
5 necessary). GWA shall complete the corrective actions to restore primary treatment operational
6 capacity by March 2, 2007. After completion of the corrective actions to restore primary
7 treatment, GWA shall conduct an operational performance evaluation by May 4, 2007, to
8 determine whether advanced primary treatment is needed to comply with NPDES permit effluent
9 limitations. By May 4, 2007, GWA shall submit to EPA and Guam EPA for review and
10 comments the operational performance evaluation with a determination of the need for advanced
11 primary treatment. Within 30 days after receipt of EPA's comments, GWA shall respond to
12 EPA's comments in accordance with Paragraph 2. If advanced primary treatment is needed, the
13 submitted operational performance evaluation shall include a schedule for the design and
14 installation of the advanced primary treatment system. GWA shall perform the required tasks in
15 accordance with the schedule set out in the operational performance evaluation.

16 40. Agana Main Sewage Pump Station: GWA shall develop a schedule to stop
17 overflows of raw sewage from the Agana Main Sewage Pump Station. The schedule shall
18 include time frames for developing and completing a scope of work, design, and construction.
19 The schedule shall require construction to be completed within 300 days after the Entry Date.
20 Within 60 days after the Entry Date, GWA shall submit to EPA for review and approval the
21 schedule required by this Paragraph. GWA shall provide a copy of the document concurrently to
22 Guam EPA. Within 30 days after receipt of EPA's comments, GWA shall respond to EPA's
23 comments in accordance with Paragraph 2, shall provide the final schedule to EPA and Guam
24 EPA, and shall perform the required tasks in accordance with the final schedule.

25 41. Ugum Surface Water Treatment Plant: GWA shall develop a scope of work and
26 schedule for the rehabilitation, renovation and/or design and construction of new (alternative)
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1 treatment facilities of the Ugum Surface Water Treatment Plant to bring the plant into
2 compliance with SDWA requirements and performance standards. The scope of work shall
3 detail all rehabilitation, renovation, and/or recommended design and construction of new
4 (alternative) treatment work to be performed based on the findings of the CPE of the Ugum
5 Surface Water Treatment Plant prepared for GWA by Belanger and Associates and International
6 Studies & Training Institute, Inc., in May 2001. The scope of work may include other
7 documentation or studies needed to determine the extent of the rehabilitation and renovation
8 needs of the existing plant, and/or may include alternative water treatment feasibility or
9 preliminary engineering studies deemed by GWA to be necessary to determine if other
10 alternative treatment design and construction projects may be preferable and/or feasible to bring
11 the plant into full compliance with all SDWA requirements. The schedule shall include, but not
12 be limited to, time frames for developing and completing all activities contained in the scope of
13 work, any additional studies needed to determine the preferred course of action
14 (rehabilitation/renovation or alternative treatment design and construction), design, and
15 construction. The schedule shall require construction to be completed by January 5, 2008.
16 Within 90 days after the Entry Date, GWA shall submit to EPA for review and approval the
17 scope of work and schedule required by this Paragraph. GWA shall provide a copy of the
18 documents concurrently to Guam EPA. Within 30 days after receipt of EPA's comments, GWA
19 shall respond to EPA's comments in accordance with Paragraph 2, shall provide the final scope
20 of work and schedule to EPA and Guam EPA, and shall perform the required tasks in accordance
21 with the schedule set out in the final scope of work.

22 42. Agana STP Renovation: GWA shall implement corrective actions to restore
23 primary treatment operational capacity to the Agana STP and shall renovate the grit
24 removal/screening system and wet well at the Agana Main Sewer Pump Station ("SPS"). GWA
25 shall complete the corrective actions to restore the primary treatment operational capacity of the
26 Agana STP by March 2, 2007, and shall complete renovations at the Agana Main SPS by June 1,
27

1 2007. After completion of the corrective actions to restore full primary treatment, GWA shall
2 conduct an operational performance evaluation by April 30, 2007, to determine whether
3 advanced primary treatment is needed to comply with NPDES permit effluent limitations. GWA
4 shall submit to EPA and Guam EPA for review and comments the operational performance
5 evaluation with a determination of the need for advanced primary treatment. Within 30 days
6 after receipt of EPA's comments, GWA shall respond to EPA's comments in accordance with
7 Paragraph 2. If advanced primary treatment is needed, the submitted operational performance
8 evaluation shall include a schedule for the design and installation of the advanced primary
9 treatment system. GWA shall perform the required tasks in accordance with the schedule set out
10 in the operational performance evaluation.

11 43. Agat, Baza Gardens, and Umatac-Merizo STPs Renovations and/or Expansions:

12 GWA shall develop a schedule for the performance of CPEs of the Agat, Baza Gardens, and
13 Umatac-Merizo STPs to identify performance-limiting factors and recommended improvements
14 needed to bring each of these STPs into compliance with their respective NPDES permit
15 requirements. The CPEs shall be performed by a qualified engineering firm experienced in
16 performing a CPE for wastewater treatment facilities. Each CPE shall be performed in
17 accordance with EPA guidelines for performing a CPE as described in the following
18 publications: *Handbook: Optimizing Water Treatment Plant Performance Using the Composite*
19 *Correction Program (CCP)* (EPA/625/6-91/027, August 1998); and *Handbook: Improving*
20 *POTW Performance Using the Composite Correction Program Approach* (EPA-625/6-84-008,
21 October 1984), or a later publication if available. The schedule shall include time frames for the
22 following: (1) developing and completing a scope of work, initiating and completing the CPEs,
23 and submitting draft CPEs for the three STPs within one year after the Entry Date; and
24 (2) completion of the final CPEs for the three STPs by September 5, 2004. Within 90 days after
25 the Entry Date, GWA shall submit to EPA for review and approval the schedule required by this
26 Paragraph. GWA shall provide a copy of the document concurrently to Guam EPA. Within 30

1 days after receipt of EPA's comments, GWA shall respond to EPA's comments in accordance
2 with Paragraph 2, shall provide the final schedule to EPA and Guam EPA, and shall perform the
3 required tasks in accordance with the final schedule.

4 44. Santa Rita Spring Booster Pump Station Rehabilitation: GWA shall develop:

5 (1) a schedule for commencing and completing the design and construction work for the Santa
6 Rita Spring Booster Pump Station ("BPS") rehabilitation; and (2) a revised scope of work for the
7 Santa Rita Spring BPS rehabilitation. The schedule shall require GWA to complete construction
8 by July 1, 2007. The scope of work shall include the performance of a hydraulic analysis, by the
9 selected engineering design firm, of the Santa Rita Spring flow volume to ensure that all critical
10 components such as pumps, motors, piping, etc. are sized appropriately. Within 210 days after
11 the Entry Date, GWA shall submit to EPA for review and approval the schedule and scope of
12 work required by this Paragraph. GWA shall provide a copy of the documents concurrently to
13 Guam EPA. Within 30 days after receipt of EPA's comments, GWA shall respond to EPA's
14 comments in accordance with Paragraph 2, shall provide the final schedule and scope of work to
15 EPA and Guam EPA, and shall perform the required tasks in accordance with the schedule set
16 out in the final scope of work.

17 45. Rehabilitation/Replacement of Drinking Water Wells: GWA shall develop a
18 Drinking Water Wells Rehabilitation/Replacement ("DWWR") Plan for all of its drinking water
19 wells. The DWWR Plan shall include: (1) a detailed assessment of all of GWA's wells to
20 determine which wells require either rehabilitation or replacement; (2) criteria for prioritizing the
21 rehabilitation or replacement of wells, which will identify the most critical wells, taking into
22 consideration factors such as well capacity, operating records, any historical record of
23 bacteriological contamination at a well, and the presence or imminent threat of bacteriological
24 contamination and other contamination; and (3) time frames for developing and finalizing a
25 scope of work and design, as well as for commencing and completing rehabilitation or
26 replacement of the wells. GWA shall schedule all required work in two phases. The first phase
27

1 of work shall focus on the most critical wells identified in the DWWR Plan and shall require
2 rehabilitation and/or replacement of those critical wells within 2 years after the Entry Date. The
3 second phase of work shall include all other wells identified in the DWWR Plan and shall require
4 rehabilitation and/or replacement of those wells within five years after the Entry Date. Within
5 120 days after the Entry Date, GWA shall submit the DWWR Plan to EPA for review and
6 approval. GWA shall provide a copy of the document concurrently to Guam EPA. Within 30
7 days after receipt of EPA's comments, GWA shall respond to EPA's comments in accordance
8 with Paragraph 2, shall provide the final DWWR Plan to EPA and Guam EPA, and shall perform
9 the required tasks in accordance with the schedule set out in the final DWWR Plan.

10 **VI. Training at GWA**

11 46. Operator Training: GWA shall develop an operator training program that
12 provides all POTW and public water system operators with information about the proper
13 operation and maintenance of the treatment, disinfection, and conveyance systems. Within 180
14 days after the Entry Date, GWA shall submit the program to EPA for approval. GWA shall
15 provide a copy of the document concurrently to Guam EPA. Within 30 days after receipt of
16 EPA's comments, GWA shall respond to EPA's comments in accordance with Paragraph 2, shall
17 provide the final program to EPA and Guam EPA, and shall implement the operator training
18 program.

19 47. Other Training: GWA shall develop an ongoing training program for appropriate
20 staff in at least the following areas: utility management, financial administration, and planning.
21 GWA shall also offer the CCU training on risk mitigation and other appropriate and available
22 Board Trainings. Within one year after the Entry Date, GWA shall submit the program to EPA
23 for approval. GWA shall provide a copy of the document concurrently to Guam EPA. Within 30
24 days after receipt of EPA's comments, GWA shall respond to EPA's comments in accordance
25 with Paragraph 2, shall provide the final program to EPA and Guam EPA, and shall implement
26 the training program.

1 **VII. Reporting Requirements and Notice Provisions**

2 48. Notice of Noncompliance or Delay: If GWA becomes aware that it will not meet,
3 or it is not likely to meet, any completion date for any compliance activity or deliverable required
4 by this Stipulated Order for Preliminary Relief, or that it is not in compliance with a requirement
5 of this Stipulated Order for Preliminary Relief, GWA shall submit written notification to the
6 United States and EPA within one week of when GWA's General Manager becomes aware of
7 such expected delay or noncompliance. The notice shall contain the following information: a
8 description of the noncompliance or the expected delay, the reason for the noncompliance or the
9 expected delay, an estimate of how much additional time is needed to complete the affected
10 compliance activity or deliverable or to come into compliance, and a statement describing all
11 steps taken to minimize the noncompliance or delay.

12 49. Compliance Progress Reports: GWA shall submit quarterly compliance progress
13 reports to EPA and Guam EPA and make them available to the general public. The first
14 quarterly progress report shall include a compliance schedule for all compliance activities and
15 deliverables required by this Stipulated Order for Preliminary Relief. Quarterly compliance
16 progress reports shall include, but not be limited to, the following: GWA's progress toward
17 completing compliance activities and deliverables required by this Stipulated Order for
18 Preliminary Relief; reporting of compliance and/or noncompliance with schedules established for
19 specific compliance activities and deliverables; explanations of noncompliance and actions taken
20 or to be taken to address noncompliance; and a brief discussion of the status of efforts toward
21 meeting future compliance schedule activities and deliverables required by this Stipulated Order
22 for Preliminary Relief. When the long-term financial plan is approved by the PUC, GWA shall
23 include an updated compliance schedule in the next quarterly compliance progress report that
24 includes all anticipated construction activities and related construction schedules. The quarterly
25 compliance progress report shall be due on or before January 28, April 28, July 28, and October
26 28, and shall cover activities in the preceding calendar quarter. The first quarterly compliance
27

1 progress report shall be due on the 28th calendar day following the first full quarter after the
2 Entry Date.

3 50. Except as specified otherwise, when written notification to or communication
4 with GWA, the Government of Guam, EPA, or the United States is required by the terms of this
5 Stipulated Order for Preliminary Relief, it shall be sent via express mail or similar service with a
6 return receipt requested, or, in the alternative, by both fax and e-mail, and addressed as follows:

7 GWA:

8 General Manager
9 Guam Waterworks Authority
10 P.O. Box 3010
11 Hagatna, Guam 96932
12 Phone: (671) 647-2600
13 Fax: (671) 646-2335
14 e-mail: gmgwa@ite.net

15 Government of Guam:

16 Attorney General of Guam
17 Guam Judicial Center, Suite 2-200E
18 120 West O'Brien Drive
19 Hagatna, Guam 96910
20 Fax: (671) 472-2493
21 e-mail: law@mail.justice.gov.gu

22 EPA:

23 Manager, Pacific Islands Office (CMD-6)
24 U.S. Environmental Protection Agency, Region 9
25 75 Hawthorne Street
26 San Francisco, CA 94105
27 Fax: (415) 947-3560
28 e-mail: machol.ben@epa.gov

United States:

United States Attorney
District of Guam
Sirena Plaza
108 Hernan Cortez Ave., Suite 500
Hagatna, Guam 96910
Fax: (671) 472-7215
e-mail: mikel.schwab@usdoj.gov

Section Chief
Environmental Enforcement Section
D.J. Ref 90-5-1-1-07942 (Mullaney)
U.S. Department of Justice

1 301 Howard Street, Suite 1050
2 San Francisco, CA 94105
3 Fax: (415) 744-6476
4 e-mail: robert.mullaney@usdoj.gov

5 51. All notices and submissions to EPA shall be signed and affirmed by a
6 responsible official of GWA or the Government of Guam using the following certification
7 statement:

8 I certify under penalty of law that I have examined and am familiar with the information
9 submitted in this document and all attachments and that this document and its
10 attachments were prepared either by me personally or under my direction or supervision
11 in a manner designed to ensure that qualified and knowledgeable personnel properly
12 gathered and presented the information contained therein. I further certify, based on my
13 personal knowledge or on my inquiry of those individuals immediately responsible for
14 obtaining the information, that the information is true, accurate, and complete. I am
15 aware that there are significant penalties for submitting false information, including the
16 possibility of fines and imprisonment for knowing and willful submission of a materially
17 false statement.

18 **VIII. EPA Access**

19 52. Any authorized representative of EPA, upon presentation of proper identification,
20 shall have a right of entry to GWA's POTW and three public water systems at any reasonable
21 time for the purpose of monitoring compliance with the provisions of this Stipulated Order for
22 Preliminary Relief, including, but not limited to, inspecting equipment, inspecting and copying
23 all records maintained by GWA, and testing and observing all discharges and drinking water.
24 EPA's rights of inspection and entry under this Paragraph are in addition to, and in no way limit,
25 EPA's rights of inspection and entry under the CWA, SDWA, or any other law.

26 **IX. Stipulated Penalties**

27 53. Stipulated Penalties:

1 a. Defendants shall pay stipulated penalties for failure to meet deadlines
2 specified in this Stipulated Order for Preliminary Relief as specified below:

3 i. For failure to meet the deadlines specified in Paragraphs 1, 13, 18, 19, 24,
4 25, 26, 33, 34, 42, 43, 44, 45, and 47:

5 - \$250 per day per violation for the first 30 days, \$500 per day per violation
6 for the following 30 days, and \$1,000 per day per violation for each day
7 thereafter.

8 ii. For failure to meet the deadlines specified in Paragraphs 3, 4, 5, 6, 7, 14,
9 16, 17, 22, 23, 32, 38, 39, 40, and 46:

10 - \$500 per day per violation for the first 30 days, \$1,000 per day per
11 violation for the following 30 days, and \$2,000 per day per violation for
12 each day thereafter.

13 iii. For failure to meet the deadlines specified in Paragraphs 8, 9, 10, 11, 12,
14 15, 20, 21, 27, 28, 29, 30, 31, 35, 36, 37, and 41:

15 - \$1,000 per day per violation for the first 30 days, \$2,000 per day per
16 violation for the following 30 days, and \$5,000 per day per violation for
17 each day thereafter.

18 b. Defendants shall pay stipulated penalties for failure to meet any other
19 requirements of this Stipulated Order for Preliminary Relief as follows:

20 - \$250 per day per violation for the first 30 days, \$500 per day per violation
21 for the following 30 days, and \$1,000 per day per violation for each day
22 thereafter.

23 54. Stipulated penalties shall begin to accrue on the day after performance is due and
24 shall continue to accrue through the final date of completion even if no notice of the violation is
25 sent to Defendants. Nothing herein shall prevent the simultaneous accrual of separate penalties
26 for separate violations of this Stipulated Order for Preliminary Relief.

1 55. Any stipulated penalty accruing pursuant to this Stipulated Order for Preliminary
2 Relief shall be payable upon demand and due not later than 30 days after Defendants' receipt of
3 EPA's written demand. Defendants shall pay the amount owed to the United States pursuant to
4 this Stipulated Order for Preliminary Relief by certified or cashier's check in the amount due
5 payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-07942 and United
6 States Attorney's Office file number 2002V00100, and delivered to the office of the United
7 States Attorney, District of Guam, Attention: Financial Litigation Unit, Suite 500, Sirena Plaza,
8 108 Hernan Cortez, Hagatna, Guam 96910.

9 56. The United States may, in the unreviewable exercise of its discretion, reduce or
10 waive stipulated penalties otherwise due it under this Stipulated Order for Preliminary Relief.

11 57. If Defendants fail to pay stipulated penalties owed pursuant to this Stipulated
12 Order for Preliminary Relief within 30 days of receipt of EPA's written demand, Defendants
13 shall pay interest on the late payment for each day after the initial thirty day due date. The rate
14 of interest shall be the most recent interest rate determined pursuant to 28 U.S.C. § 1961.

15 58. Stipulated penalties are not the Plaintiff's exclusive remedy for violations of this
16 Stipulated Order for Preliminary Relief. The United States expressly reserves the right to seek
17 any other relief it deems appropriate, including, but not limited to, action for statutory penalties,
18 contempt, or injunctive relief against Defendants.

19 **X. Force Majeure**

20 59. Defendants shall perform all requirements of this Stipulated Order for Preliminary
21 Relief in accordance with the time schedules set forth except to the extent, and for the period of
22 time, that such performance is prevented or delayed by events which constitute a force majeure.

23 60. For the purposes of this Stipulated Order for Preliminary Relief, a force majeure is
24 defined as any event arising from causes beyond the control of Defendants and that cannot be
25 overcome by diligent and timely efforts of Defendants, including their contractors. Economic
26 hardship, lack of a political consensus, normal inclement weather, and increased costs of
27

1 performance shall not be considered events beyond the reasonable control of Defendants for
2 purposes of determining whether an event is force majeure. The requirement that Defendants
3 exercise diligent and timely efforts to fulfill their obligations includes using best efforts to
4 anticipate any force majeure event and best efforts to address the effects of any potential force
5 majeure event (1) as it is occurring and (2) following the potential force majeure events, such that
6 delay is minimized to the greatest extent possible.

7 61. In the event of a force majeure, the time of performance of the activity delayed by
8 the force majeure shall be extended by EPA for the time period of the delay attributable to the
9 force majeure. An extension of one compliance date based on a particular incident does not
10 necessarily result in an extension of a subsequent compliance date or dates. Defendants must
11 make an individual showing of proof regarding each delayed incremental step or other
12 requirement for which an extension is sought. Defendants shall adopt all reasonable measures to
13 avoid or minimize any delay caused by a force majeure.

14 62. When an event occurs or has occurred that may delay or prevent the performance
15 of any obligation under this Stipulated Order for Preliminary Relief, Defendants shall notify by
16 telephone the Manager, Pacific Islands Office, Region 9, (415) 972-3774, or the Guam Program
17 Manager, Pacific Islands Office, Region 9, (415) 972-3770, within 72 hours of Defendants'
18 knowledge of such event. If Defendants are unable to contact EPA Region 9, Defendants shall
19 notify by telephone the U.S. Attorney's Office for the District of Guam at 472-7332, extension
20 119 or 121. Telephone notification shall be followed by written notification made within seven
21 days of Defendants' knowledge of the event. The written notification shall fully describe: the
22 event that may delay or prevent performance; reasons for the delay; the reason the delay is
23 beyond the reasonable control of Defendants if they believe the event constitutes a force majeure;
24 the anticipated duration of the delay; actions taken or to be taken to prevent or minimize the
25 delay; a schedule for implementation of any measures to be taken to mitigate the effect of the
26 delay; and the time needed to implement any dependent activities. For purposes of this Section,

1 Defendants shall be deemed to have knowledge of anything they or their contractors knew or
2 should have known.

3 63. Failure of Defendants to comply with the force majeure notice requirements
4 provided in Paragraph 62 for any delay in performance will be deemed an automatic forfeiture of
5 their right to assert that the delay was caused by a force majeure.

6 64. After receiving written notification from Defendants of a force majeure, EPA
7 shall determine whether Defendants' request for delay is justified and EPA shall notify
8 Defendants of its determination in writing. EPA's failure to respond within 30 days to a request
9 for delay by Defendants shall be deemed a denial of that request. If Defendants disagree with
10 EPA's determination, Defendants may initiate dispute resolution procedures pursuant to Section
11 XI (Dispute Resolution).

12 65. Defendants shall bear the burden of proving that any delay or violation of any
13 requirement of this Stipulated Order for Preliminary Relief was caused by circumstances beyond
14 their control, or any entity under their control, including consultants and contractors, and that
15 Defendants could not have reasonably foreseen and prevented such violation. Defendants shall
16 also bear the burden of proving the duration and extent of any delay or violation attributable to
17 such circumstances.

18 **XI. Dispute Resolution**

19 66. The Dispute Resolution procedures of this Section shall be the exclusive
20 mechanism to resolve disputes arising under or with respect to the Stipulated Order for
21 Preliminary Relief. However, the procedures set forth in this Section shall not apply to actions
22 by the United States to enforce obligations by Defendants under this Stipulated Order for
23 Preliminary Relief that have not been disputed in accordance with this Section.

24 67. If Defendants dispute any determination made by EPA under this Stipulated Order
25 for Preliminary Relief, Defendants shall send a written notice to EPA and DOJ outlining the
26 nature of the dispute, submitting all supporting information and document relating to the dispute,
27

1 describing its proposed resolution, and requesting informal negotiations to resolve the dispute.
2 Such period of informal negotiations shall not extend beyond 15 days from the date when notice
3 was received by EPA and DOJ unless the parties agree otherwise in writing.

4 68. If the informal negotiations are unsuccessful, the disputed determination by EPA
5 shall control, unless Defendants file a motion with this Court for dispute resolution. Any such
6 motion must be filed within 30 days after termination of informal negotiations and must be
7 concurrently sent to EPA and DOJ. The United States shall then have 30 days to respond to
8 Defendants' motion. In any such dispute resolution proceeding, Defendants bear the burden of
9 proving that EPA was arbitrary and capricious.

10 **XII. Applicability**

11 69. The provisions of this Stipulated Order for Preliminary Relief shall apply to and
12 be binding upon GWA, its officers, agents, employees, trustees, successors, and assigns, the
13 Government of Guam, its elected officials, officers, agents, employees, trustees, successors, and
14 assigns, and the United States, on behalf of EPA.

15 **XIII. General**

16 70. This Stipulated Order for Preliminary Relief is enforceable in all of its terms by
17 the Court.

18 71. This Stipulated Order for Preliminary Relief is not and shall not be construed as
19 either an NPDES permit or a modification of any existing NPDES permit. By entering into this
20 Stipulated Order for Preliminary Relief, the United States does not warrant in any manner that
21 Defendants' complete compliance with the terms of this Stipulated Order for Preliminary Relief
22 will result in compliance with the provisions of the CWA, the SDWA, and regulations
23 promulgated pursuant to those statutes. Defendants' complete compliance with the terms of this
24 Stipulated Order for Preliminary Relief does not affect or resolve the United States' claims for
25 civil penalties or permanent injunctive relief.

26 72. This Stipulated Order for Preliminary Relief shall not affect GWA's obligation to
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28

1 comply with its NPDES permits and with all applicable federal laws, regulations, and permits.

2 73. This Stipulated Order for Preliminary Relief does not limit or affect the rights of
3 the United States or Defendants against any third parties, nor does it limit the rights of third
4 parties who are not parties to this Stipulated Order for Preliminary Relief. In addition, this
5 Stipulated Order for Preliminary Relief is not to be construed as creating rights or obligations in
6 third parties.

7 74. Each undersigned representative of Defendants and the Assistant United States
8 Attorney certifies that he is fully authorized to enter into the terms and conditions of this
9 Stipulated Order for Preliminary Relief, to execute the document, and to legally bind the party he
10 represents to this document.

11 **XIV. Modification**

12 75. There shall be no material modifications of this Stipulated Order for Preliminary
13 Relief without the written approval of the parties to this Stipulated Order for Preliminary Relief
14 and the approval of the Court. All non-material modifications, which may include extensions of
15 the time frames and schedules for performance of the terms and conditions of this Stipulated
16 Order for Preliminary Relief, may be made by agreement of the parties and shall be effective
17 upon filing by the United States of such modifications with the Court.

18
19 **ORDER**

20
21
22 IT IS SO ORDERED this 4th day of June, 2003.

23
24 Notice is hereby given that this document was
entered on the docket on JUN -5 2003
25 No separate notice of entry on the docket will
be issued by this Court.

26 Mary L. M. Moran
Clerk, District Court of Guam

27 By: [Signature] JUN -5 2003
Deputy Clerk Date

28 /s/ John S. Unpingco
JOHN S. UNPINGCO
United States District Judge

1 For the United States of America, Plaintiff:

2 THOMAS L. SANSONETTI
3 Assistant Attorney General
4 Environment & Natural Resources Division
5 ROBERT D. MULLANEY
6 Environmental Enforcement Section
7 Environment & Natural Resources Division
8 United States Department of Justice

6 FREDERICK A. BLACK
7 United States Attorney
8 Districts of Guam and NMI
9 (671) 472-7332

9 Dated: 5/20/03

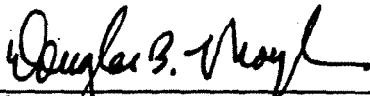

10 MIKEL W. SCHWAB
11 Assistant U.S. Attorney

12 OF COUNSEL:


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15 U.S. Environmental Protection Agency
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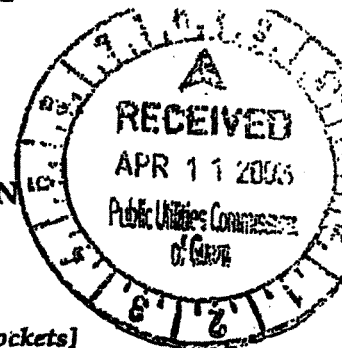
17 For Guam Waterworks Authority and the Government of Guam, Defendants:

18
19 Dated: 5/20/03


20 DOUGLAS B. MOYLAN
21 Attorney General of Guam
22 Guam Judicial Center, Suite 2-200E
23 120 West O'Brien Drive
24 Hagatna, Guam 96910
25 (671) 475-3324

23 Dated: 5/20/03


24 JON A. VISOSKY
25 Dooley Lannen Roberts & Fowler LLP
26 Suite 201, Orlean Pacific Plaza
27 865 South Marine Drive
28 Tamuning, Guam 96913
(671) 646-1222



BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

**GUAM WATERWORKS AUTHORITY
REGULATORY MATTERS**

[Miscellaneous Dockets]

ORDER

By this Order, duly considered at the Commission's April 10, 2003 meeting and by the affirmative vote of at least four Commissioners, the Commission takes action on a number of regulatory matters concerning Guam Waterworks Authority [GWA]. This Order addresses the following regulatory subjects:

1. GWA Staffing Study [Docket 01-07].

On April 2, 2003 the Commission conducted a public hearing to consider Georgetown's staffing study of GWA. The study is mandated by P.L. 26-23 and by the Commission's September 13, 2001 Order. GWA filed no comments regarding the study. After discussion and on motion duly made, seconded and carried, the Commission orders that the study be approved. ALJ is authorized and directed to cause the publication of the study results in accordance with P.L. 26-23. For the record, the Commission notes advice from the Consolidated Commission on Utilities [CCU] that it intends to pursue legislation, which will relieve GPA and GWA from the staffing study requirements of P.L. 26-23.

2. GWA/Navy Settlement [Docket 00-01].

CCU has informed the Commission that it is in the final stages of negotiations with Navy regarding the settlement of litigation for amounts owed by GWA to Navy for water services. Under the proposed settlement, GWA would pay Navy \$9 million over 105 months with interest. CCU has proposed and requested that the surcharge, which was established by Commission order dated September 13, 2001; then placed under a one year moratorium by P.L. 26-81; and which is subject to automatic reactivation on May 6, 2003, be amended to permit its use to fund the Navy settlement in addition to regulatory fees and amounts owed to GPA. The Commission has informed CCU that at its request, the Commission would, on its own initiative, commence proceedings to consider this concept during the June 2003 regulatory session. In the event such a request is filed [which may request consideration of other collateral rate issues], ALJ is authorized and directed to oversee prehearing activities, which will lead to June hearing.

ATCH A

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3. USA v. GWA [District Court Civil Case 02-035] [Docket 02-02]

Federal EPA and GWA are currently negotiating the terms of a stipulated order [*Stipulated Order*], by which GWA, under EPA oversight, will undertake a broad initiative to restore its facilities and to provide safe, reliable, lawful service to the island. A copy of the proposed 37-page draft Stipulated Order was provided to the Commission for comment. Commission comments were submitted to the party litigants by Chairman Brooks' March 27, 2003 letter. EPA has since conferred with the Commission regarding the important role the Commission will serve under the Stipulated Order.

An issue raised by the Stipulated Order is the extent to which the Commission should be involved, under 12 GCA 12004 [*contract review authority*], in reviewing and issuing prior approval of substantial GWA procurements, which are required by the Stipulated Order. After considering Georgetown's position on this issue [*GCG letter dated April 4, 2003*] and after discussion with its ALJ, on motion duly made, seconded and carried, the Commission finds that the essential purpose of section 12004 [*Commission review of reasonableness and prudence of proposed procurement*] is satisfactorily addressed by the history of the EPA litigation, the depth and scope of the Stipulated Order, and by the fact that EPA will serve a significant oversight role in the crafting and implementation of the various procurements. Accordingly, the Commission finds and orders that procurements required by the Stipulated Order shall not require Commission review and approval under its contract review protocol. The Commission wants to make a clear distinction, under the Stipulated Order between these procurements and the interim and final financial plans, which shall undergo a thorough Commission review and approval process. This Commission decision is part of a broader initiative to reduce regulatory expense and to redefine the necessary scope of its regulatory authority, given the presence of the publicly elected CCU.

For the record, the Commission renews its commitment, as made in its March 14, 2002 Order, that it will provide GWA in a timely manner with adequate rate relief to enable it to comply with an EPA approved strategic plan to restore the utility and bring it into compliance with Federal law.

4. GWA Water Service Charge.

By CCU email inquiry dated March 3, 2003, the Commission was made aware of controversy relating to GWA's practice of assessing a basic service fee for water service, without regard to whether water service is available to a customer. By his March 13, 2003 letter, ALJ posed to GWA and Georgetown questions

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regarding this practice and required responses by April 8. ALJ is authorized and empowered after reviewing these responses to determine whether this issue should be included as a matter for Commission consideration during the anticipated June rate hearing.

5. GWA Regulatory Compliance.

GWA is not in compliance with its obligations under the Commission's contract review protocol [Commission Order dated February 20, 2000]. Under separate order and as part of a reduction in regulatory work and expense, the Commission has announced a protocol under which it will attempt to rely on GWA reports in lieu of Georgetown studies regarding GWA accounts receivable, payables, financial condition and significant management initiatives. The

Commission has emphasized to CCU the importance of GWA providing this information in a complete and timely manner so that the Commission can discharge its surveillance duty under law.

GWA has also been reminded of the Commission's December 17, 1999 Administrative Order, which provides that a utility will not be awarded regulatory relief unless its regulatory account with the Commission is current. [Pursuant to the terms of the surcharge established by Commission Order dated September 13, 2001 in Docket 00-01, Commission fees are to be paid from the surcharge proceeds. Accordingly, availability of funds is not an issue regarding the timely payment of regulatory fees.]

GWA is cautioned that it must bring itself into full regulatory compliance in advance of the June regulatory session.

In light of the Stipulated Order discussed in paragraph 3 above, Commission order regarding GWA compliance with the terms and recommendations of the Commission's revenue cycle audit [see Commission Consolidated Order dated December 11, 2001] is abated until further notice. GWA is nevertheless encouraged to consider the audit recommendations as part of its reorganization activities.

Dated this 10th day of April 2003.



Terrence Brooks



Joseph McDonald



Filomena Cantoria



Edward Crisostomo

