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13 UNITED STATES DISTRICT COURT

14 TERRITORY OF GUAM

15 UNITED STATES OF AMERICA, ) Civil Case No. 02-00035  
16 )  
Plaintiff, )  
17 ) UNITED STATES' SUPPLEMENTAL  
v. ) STATUS REPORT AND REQUEST FOR  
18 ) STATUS HEARING  
GUAM WATERWORKS AUTHORITY )  
19 and the GOVERNMENT OF GUAM, )  
20 ) Chief Judge Tydingco-Gatewood  
Defendants. )  
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1 In a status report filed on July 16, 2010, the United States expressed its concern about the  
2 construction of the proposed Younex project known as the Ukudu Workforce housing, which  
3 was reported to house up to 18,000 people. DN 108 at 4. The United States emphasized that the  
4 increased wastewater flows from the project to the Northern District Wastewater Treatment Plant  
5 (“WWTP”) would adversely impact effluent quality from the WWTP, which is already in  
6 ongoing violation of its permit limits. *Id.* In addition, we stressed that the additional water  
7 demand from the Younex project could result in water shortages and low water pressure in  
8 surrounding Guam communities. *Id.* at 5.

9 In its status report filed on July 22, 2010, Guam Waterworks Authority (“GWA”) stated  
10 that EPA was “under the mistaken belief that Younex has legally begun construction on the  
11 Ukudu Workforce housing.” DN 110 at 7. GWA represented that Younex has received only a  
12 “grading permit” and had *not* received a building permit. *Id.*; *see* Exh. O (grading permit).  
13 GWA did concede that it had “observed activity that could be construed as construction activity”  
14 but GWA stated that “if that is the case, Younex is most likely engaged in the *illegal*  
15 construction activity since GWA has not signed off on any building permmit (sic) to date.” DN  
16 110 at 7 (emphasis added). GWA then concluded “even if DPW did issue a building permit, *it*  
17 *did so in contravention of their own rules* since according to GWA’s Engineering and Permits  
18 Division, nobody has signed off on that permit from GWA which is a legal prerequisite under  
19 DPW rules.” *Id.* (emphasis added). GWA assured the Court that it “would not sign off on any  
20 permit were (sic) GWA believed it lacked the capacity to serve the development.” *Id.* at 8.  
21 Finally, GWA states that there are mechanisms under Guam law and GWA rules that would  
22 allow GWA to enter into an agreement to require the developer to upgrade GWA’s drinking  
23 water and wastewater facilities to accommodate the proposed development. *Id.*

24 Despite GWA’s assurances, it appears that the Guam Department of Public Works  
25 (“DPW”) did issue a building permit to Younex for this project on **July 12, 2010**. *See*  
26 Declaration of Michael J. Lee in Support of United States’ Supplemental Status Report (“Lee  
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1 Declaration”), ¶3 and Exhibit 1. Moreover, as the pictures attached to Michael Lee’s declaration  
2 show, Younex has completed grading at this site, poured concrete for foundations, excavated a  
3 basin, begun to erect the framework for a building, and stored prefabricated housing on site. Lee  
4 Declaration, ¶4, Exhibits 2 - 6.

5 According to the permit application, the Younex project will cost \$124 million, will  
6 consist of 1,960 bedrooms with a total square footage of 1,213,627, will use a public supply of  
7 drinking water, and will dispose of its sewage via a public sewer. Lee Declaration, Exhibit 1 at 3  
8 (Application, Section II. C. and Section III. F., H., and K.) There is a Section VII in DPW’s  
9 building permit for the Younex project entitled “COMMENTS BY OTHER AGENCIES,” which  
10 includes both GWA and the Guam Environmental Protection Agency (“Guam EPA”) under the  
11 heading “Agency.” *Id.*, Exhibit 1 at 2. However, this Section VII in the building permit was  
12 simply stricken. *Id.* Apparently, DPW also waived the building permit fee for this project. *Id.*

13 In both our status report and reply to GWA’s status report, the United States expressed its  
14 heightened concern that GWA had not properly addressed the additional drinking water demand  
15 and the increase in wastewater flow that would be caused by the proposed Younex project. DN  
16 108 at 4-5; DN 112 at 6-7. Given our significant concerns with the permit, the United States  
17 arranged for a conference call on August 9, 2010, with the Guam Attorney General’s Office,  
18 DPW, and GWA. *See* Declaration of Fatima J. Ty in Support of United States’ Supplemental  
19 Status Report (“Ty Declaration”), ¶3.

20 During our call with DPW and GWA, we reiterated that the Younex development  
21 appears to currently have a building permit and be under construction. Ty Declaration, ¶4; *see*  
22 Lee Declaration, ¶¶3, 4. We noted that the current permit (Lee Declaration, Exhibit 1) does not  
23 contain any conditions that would reflect GWA’s concerns relating to necessary infrastructure  
24 for wastewater and drinking water connections for the project. Ty Declaration, ¶4. In fact,  
25 based on our call, it did not appear that DPW consulted with GWA at all in the issuance of the  
26 permit. *Id.* at ¶5. Moreover, a building permit fee was apparently waived. *Id.*; Lee Declaration,  
27

1 Exhibit 1.

2 During our call, DPW represented to the United States that it intended to revoke the  
3 permit issued to Younex. Id. at ¶6. It is our understanding that this revocation should occur in  
4 the near future. Id.

5 The United States submits this report to ensure that the Court is fully informed regarding  
6 these recent developments related to the Younex project. As currently permitted, we believe that  
7 this project could soon place an added strain on GWA's already fragile drinking water and  
8 wastewater systems. See DN 108 at 4-5; DN 112 at 6-7. Unless DPW's permitting process  
9 takes GWA's and the Guam EPA's input into proper consideration, GWA will not be able to  
10 properly plan for and avert additional unwarranted threats to the public health and welfare of  
11 Guam's residents.

12 We remain concerned that DPW's permitting process for the Younex project appeared to  
13 curtail proper review by both GWA and Guam EPA. Although it is our current understanding  
14 that DPW intends to revoke this permit, we request the Court to set a status hearing to discuss  
15 DPW's permitting process and the Younex project.<sup>1/</sup> In particular, we would like DPW and  
16 GWA to address the following concerns in written reports to the Court and at the status hearing:

- 17 1. Does Guam's law authorize DPW to issue a building permit without concurrence of  
18 either GWA or Guam EPA?
- 19 2. Why did DPW issue a building permit to Younex without obtaining approval from GWA  
20 and Guam EPA?
- 21 3. What type of construction activities are permitted under Guam law without a building  
22 permit?
- 23 4. What is the current zoning for the site of the Younex project known as the Ukudu  
24 Workforce housing? Has the Guam Land Use Commission ("GLUC") issued a land use  
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26 <sup>1/</sup> The United States respectfully requests that the Court set the status hearing after August 23,  
27 2010, to allow its counsel, Robert Mullaney, to participate.

1 permit for the project? If so, have DPW and GWA conferred any further with GLUC  
2 after the land use permit was issued?

3 5. What laws and rules allow GWA to enter into an agreement to require the developer to  
4 upgrade GWA's drinking water and wastewater facilities to accommodate the proposed  
5 development? DN 110 at p. 8.

6 6. Why did DPW waive a building permit fee for the Younex project, which is valued at  
7 \$124 million? (Lee Declaration, Exhibit 1 at 2-3)

8 7. Would DPW's waiver of a building permit fee for the Younex project (Id., Exhibit 1 at 2)  
9 affect GWA's ability to enter into an agreement to require the developer to upgrade  
10 GWA's drinking water and wastewater facilities to accommodate the proposed  
11 development?

12 8. If the Younex project has a building permit from DPW, is GWA obligated to provide  
13 drinking water and wastewater service to the development? Does GWA have any  
14 authority under Guam law or GWA's rules to refuse to provide service to the Younex  
15 development if a building permit has been issued?

16 9. When is GWA planning to conduct a study of the wastewater demands from the Younex  
17 project? At a minimum, the study should include: (i) the projected wastewater flow  
18 from the proposed Younex project and the timing of the demand; and (ii) the available  
19 capacity in GWA's collection system and at the Northern District WWTP. Based on the  
20 study, GWA should determine whether: (i) the collection system and WWTP have  
21 sufficient capacity to handle the projected wastewater flow; and (ii) GWA can comply  
22 with its permit's maximum daily flow and effluent limits at the Northern District WWTP.

23 10. When is GWA planning to conduct a study of the projected drinking water demand from  
24 the proposed Younex project? At a minimum, the study should include: (i) the projected  
25 drinking water demand from the proposed Younex project and the timing of the demand;  
26 and (ii) GWA's ability to produce and deliver that amount of water. Based on the study,  
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1 GWA should determine whether it can provide drinking water to the project without  
2 degrading the quality of GWA's service to the surrounding community.

3 11. Have DPW and GWA conferred with Guam EPA regarding any environmental impacts  
4 of the planned Younex development?

5 12. What is GWA's estimate for the cost of service to provide drinking water and wastewater  
6 service to the Younex project? How does GWA intend to finance the needed  
7 construction for both wastewater and drinking water projects? If GWA expects to rely on  
8 any contribution from Department of Defense ("DoD"), explain the projected timing of  
9 any DoD contribution and correlate it to the time of the projected demand for wastewater  
10 service and drinking water from the Younex project.

11 13. Will GWA provide the United States a copy of the "design plans, specifications and  
12 calculation for building permit approval" for this project that GWA received on July 1,  
13 2010, so that the United States can assess the project's impact? DN 110 at 7.

14 Respectfully submitted,

15 Dated: August 10, 2010

/s/ Robert D. Mullaney

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