

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN THE MATTER OF:) GWA Docket 22-09
)
REQUEST BY THE GUAM)
WATERWORKS AUTHORITY FOR) **ALJ REPORT**
APPROVAL TO REALLOCATE A)
PORTION OF GWA'S SERIES A BOND)
PROCEEDS)
_____)



INTRODUCTION

1. This matter comes before the Guam Public Utilities Commission ["PUC"] upon the Petition of the Guam Waterworks Authority ["GWA"] for PUC Approval to Reallocate a Portion of GWA's Series 2020A Bond Proceeds.¹
2. The objective of the bond proceeds reallocation is to allocate additional funding regarding the Court-Ordered tank/reservoir projects.²
3. GWA's management seeks to reallocate \$30,425,000 of the 2020 A Bond Proceeds from projects which already been completed or can be deferred and for which funds are not immediately needed.³

BACKGROUND

4. The authorization by the Guam Legislature for the issuance of GWA's Series 2020A Bonds is set forth in Public Law No. 32-069. The highest cost project, at a cost of

¹ GWA Petition for Approval to Reallocate a Portion of GWA's Series A Bond Proceeds, GWA Docket 22-09, filed September 16, 2022.

² Id., at Exhibit B-01.

³ Id.

\$153.4 Million Dollars, was “repair or rebuild all GWA water storage tanks island-wide...”.⁴

5. In GWA Docket 20-03, the PUC authorized GWA to issue Bonds in an amount not to exceed \$134,400,000.00 [the Series 2020A Water and Wastewater System Revenue Bonds].⁵
6. Attached to the Order in GWA Docket 20-03 as Exhibit “A” is a “Table of Projects Funded by Series 2020A Bonds.” Exhibit A is attached hereto as Exhibit “A”.⁶ The net amount of the Bonds available for projects was \$103,672,000.00.
7. The “Exhibit A Projects List” includes project descriptions and funding amounts per project for FY2020, FY2021, and FY2022. One approved project is “PW09-11 Water System Reservoirs 2005 Improvements.” The amount of \$25M was allocated to such project.⁷
8. GWA now seeks to reallocate the additional amount of \$30,425,000 from other projects to PW09-11 “Water System Reservoirs 2005 Improvements.”⁸
9. The Bond Reallocation Schedule now proposed by GWA is attached hereto as Exhibit “B”. It indicates that GWA proposes to add \$30,425,000 to the project for Water System Reservoirs 2005 Improvements. The total expenditure for these Water

⁴ Public Law No. 32-069, Section 1, enacted November 5, 2013.

⁵ PUC Order Approving Long-Term Debt, GWA Docket 20-03, Request by the Guam Waterworks Authority for Approval of the Issuance of Water and Wastewater System Revenue Bonds and to approve the Associated Documents, dated March 26, 2020 at p. 1.

⁶ Id., at Exhibit A.

⁷ GWA Petition for Approval to Reallocate a Portion of GWA’s Series A Bond Proceeds, GWA Docket 22-09, filed September 16, 2022, at Exhibit A-11.

⁸ Id., at p. 3.

Tanks/Reservoirs will be increased from \$25,702,005 to \$56,127,005. The reallocated amount will be deducted from other proposed bond projects as set forth in Exhibit “B”.⁹

10. Before GWA can reallocate/reprogram any projects or associated proceeds of the 2020 Bonds, it must obtain the prior approval of the PUC.¹⁰

11. On August 23, 2022, the Guam Consolidated Commission on Utilities, in GWA Resolution No. 29-FY2022 approved the reallocation of \$30,425,000 of 2020A Bond proceeds from various CIP line items to the CIP line item PW09-11 “Water Systems Reservoirs 2005 Improvements”.¹¹

ANALYSIS

12. The water tanks/reservoir projects are “Court-Ordered” projects, which were ordered by the U.S. District Court in its 2011 Order.¹²

13. GWA indicates that it has completed a majority of the Court-Ordered compliance requirements with respect to the Repair Rehabilitation, Relocation or Replacement of GWA’s water storage reservoirs. However, a smaller number of reservoirs must still be replaced and rehabilitated, and those projects remain outstanding.¹³

⁹ See Exhibit “B” attached hereto.

¹⁰ PUC Order, GWA Docket 20-03, dated March 26, 2020, at par. 3, p.1.

¹¹ CCU GWA Resolution No. 29-FY2022, Relative to Approval of Series 2020A Bond Proceeds Reallocation, approved and adopted on August 23, 2022.

¹² GWA Petition for Approval to Reallocate a Portion of GWA’s Series A Bond Proceeds, GWA Docket 22-09, filed September 16, 2022, at p. 2.

¹³ Id.

14. The estimated costs for the construction and rehabilitation of the remaining tanks/reservoirs have significantly increased requiring additional funding prior to project procurement and contracting. “Increased costs are a direct result of global supply chain issues, increased demand in the local construction market resulting from the military buildup, and other geopolitical impacts on the cost of energy and materials.”¹⁴
15. These “Court-Ordered” projects have deadlines and are definitely a priority; on the other hand, GWA management has identified several non-Court-Ordered projects in the current CIP that can be deferred.¹⁵ The CCU justification for the bond reallocation for the Court Ordered Water Tank Projects is convincing.¹⁶
16. For the non-Court-Ordered projects which will be deferred, the CCU intends that funding “will need to be obtained through future capital financing resources.”¹⁷
17. GWA and its Bond Counsel have addressed the issue of whether this proposed reallocation requires an “opinion of Bond Counsel.” Section 3.03 of the Guam Waterworks 2005 Bond Indenture requires that, where GWA modifies “the specifications or description of any Project or Projects”, it must obtain “an opinion of Bond Counsel” that the transfer and use of such bond amounts “will not adversely affect the exclusion, if any, of interest on any Bonds from gross income for federal income tax purposes.”¹⁸

¹⁴ Id. and foot note 2.

¹⁵ CCU GWA Resolution No. 29-FY2022, relative to Approval of Series 2020A Bond Proceeds Reallocation, approved and adopted on August 23, 2022, at p. 2.

¹⁶ Id., at p. 3.

¹⁷ Id., at p. 2.

¹⁸ Guam Waterworks 2005 Bond Indenture, Section 3.03, dated December 1, 2005.

18. In a series of emails between September 8, 2022, and September 15, 2022, GWA and Bond Counsel, Orrick Herrington, and Sutcliffe, determined that an opinion of Bond Counsel is not required for GWA to proceed with this bond reallocation. No new bond projects are being proposed. Proceeds will be reallocated from projects already listed in the approved PUC list to a single project already within the approved list of projects for the 2020A Bonds. Neither the project descriptions nor the present project specifications have changed.¹⁹

19. Bond Counsel Christine Rankin confirmed that “Solely with respect to the matter of the reallocation of proceeds within the 2020A group of projects, and based on the responses from the GM that GWA is wanting to reallocate the bond proceeds from projects already listed in the approved list to a single project already within the approved list of projects for 2020A bonds and that the project descriptions are not changing and that present project specifications or scopes will not change materially, “no opinion is necessary under the Indenture” for the re-allocations to be requested.”²⁰

¹⁹ Email from GWA Counsel Theresa Rojas to PUC ALJ Fred Horecky dated September 15, 2022, which includes the relevant email chain between GWA management and Bond Counsel, the Orrick Firm.

²⁰ GWA’s Response to Request for Information on GWA Petition, GWA Docket 22-09, dated September 22, 2022, Response No. 1 at p. 1.

20. In the Request for Information, the ALJ raised a concern with GWA as to whether the deferral of the projects for which bond funds are reallocated would cause any adverse impact or harm to GWA or its ratepayers.²¹

21. GWA has confirmed that there will be minimal to no adverse effect from the deferral of projects:

“The projects selected will see minimal to no adverse effects. Several have already been completed, and others can be deferred for a number of reasons. These reasons include but are not limited to delays in resolving land issues, re-prioritization of projects receiving USEPA grant funding allowing reduced bond funding, or having an extended window to complete the project (e.g., within 5-years). Finally, some projects may no longer need bond funding as projects will be completed by private developers, or through other CIPs. A complete table of the deferred projects and the reasons they were selected and whether any or minimal adverse effects exist are included in Attachment B.”²²

22. GWA’s Attachment B-1 is attached hereto as Exhibit “C”. The ALJ is satisfied that the deferred projects can be funded from other grant sources, can be delayed with no adverse effect, or potentially be subsequently funded through other capital financing resources.

23. GWA has justified the bond reallocation to a priority Court-Ordered project. It has further demonstrated that an opinion of Bond Counsel is not necessary, and that there will be minimal to no adverse effect from deferral of certain projects. The reallocation should be approved.

²¹ Email from PUC ALJ Fred Horecky to GWA Legal Counsel Theresa Rojas Re: Additional Information Requested on Bond Reallocation, dated September 22, 2022.

²² GWA’s Response to Request for Information on GWA Petition, GWA Docket 21-09, dated September 22, 2022, Response No. 2 at p. 2.

RECOMMENDATION

24. The Administrative Law Judge recommends that the PUC approve the reallocation of \$30,425,000 of the Series 2020A Bond proceeds from various deferred CIP line items to increase funding for the CIP line item for PW09-11 "Water System Reservoirs 2005 Improvements", as requested in the GWA Petition.

25. A Proposed Order is submitted herewith for the consideration of the Commissioners.

Dated this 24th day of September, 2022.

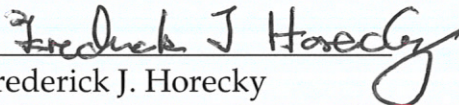

Frederick J. Horecky
Chief Administrative Law Judge

EXHIBIT A - TABLE OF PROJECTS FUNDED BY SERIES 2020A BONDS

GWA Cat	Project #	Description	Series 2020A Funding Amount (\$000)		
			FY2020	FY2021	FY2022
EE	EE 09-02	Electrical Upgrade - Water Wells	\$ 90		
EE	EE 09-04	Electrical Upgrade -Water Booster	\$ 150		
EE	EE 09-05	Electrical Upgrade - Other Water	\$ 100		
EE	EE 09-07	SCADA Improvements -- Phase 2	\$ 45		
EE	EE 09-08	SCADA Improvements -- Phase 3	\$ 25		
EE	MP-Gen-EE-01	SCADA Implementation Phase A2 -- Initial Project Completion	\$ 2,000	\$ 2,250	
MISC	MP-Gen-Misc-01	GWA Systems Planning	\$ 500		
MISC	MP-Gen-Misc-02B	WRMP Update (Interim Update)	\$ 200		
MISC	MP-Gen-Misc-04	Information Technology Improvements	\$ 400		
MISC	MP-Gen-Misc-05	GWA Infrastructure Improvements	\$ 500		
MISC	MP-Gen-Misc-07	Mobile Equipment Replacement Program	\$ 800		
MISC	MP-Gen-Misc-08	General Plant Improvements	\$ 1,000		
MISC	MP-Gen-Misc-09	Security and Resilience Program	\$ 100		
PW	PW 05-06	Water Booster Pump Station		\$ 500	
PW	PW 05-13	Deep Well Rehabilitation	\$ 350		
PW	PW 05-14	New Deep Wells at Down Hard	\$ 500		
PW	PW 05-15	Rehabilitation of Asan Springs	\$ 550		
PW	PW 09-03	Water Distribution System Pipe Replacement and Upgrades	\$ 500	\$ 500	\$ 1,250
PW	PW 09-11	Water System Reservoirs 2005 Improvements	\$ 25,000		
PW	PW 11-02	Ugum Water Treatment Plant Reservoir	\$ 7,500		
PW	PW 12-06	Tank Replacement Piti & Hyundai	\$ 6,500		
PW	MP-PW-Pipe-04	Hyundai Well Piping	\$ 500		
PW	MP-PW-Pipe-05	Kaiser Zone Looping	\$ 300		
PW	MP-PW-Pipe-06	Mangilao Pressure Zone Realignment	\$ 300		
PW	MP-PW-Pipe-07	Mataguac BPS Suction Piping		\$ 500	
PW	MP-PW-Pipe-10	Miscellaneous Piping Projects	\$ 100	\$ 100	
PW	MP-PW-Pipe-11	Miscellaneous Piping Connections	\$ 100	\$ 100	
PW	MP-PW-Pipe-12	Rehabilitation and Replacement Program	\$ 1,000	\$ 1,000	
PW	MP-PW-Pipe-13	2-Inch Pipe Replacement Program	\$ 1,730	\$ 800	
PW	MP-PW-Pipe-15	PRV Rehab and Replacement	\$ 500	\$ 1,000	
PW	MP-PW-Pipe-16	Valve Exercise, Repair, and Replacement Program	\$ 250		
PW	MP-PW-Pipe-17	Cross Island Highway Piping		\$ 100	
PW	MP-PW-Tank-22	Existing Tank Inspections	\$ 150		
PW	MP-PW-Tank-23	Recurring Tank Inspections	\$ 200	\$ 200	
PW	MP-PW-BPS-01	Rehabilitate and Replace BPSs	\$ 209		
PW	MP-PW-BPS-02	Nimitz Hill Upper BPS	\$ 48		
PW	MP-PW-SWTP-02	Ugum SWTP Intake Modifications	\$ 1,000		
PW	MP-PW-SWTP-03	Ugum SWTP Reliability Improvements	\$ 1,000		
PW	MP-PW-Well-01	Well Rehabilitation Program	\$ 200	\$ 1,500	
PW	MP-PW-Well-05	Wellhead Protection Program	\$ 250		
PW	MP-PW-Well-06	Well Repair Program	\$ 250	\$ 250	
PW	MP-PW-Misc-02	Master Meter Implementation and Ongoing Meter Replacement	\$ 500	\$ 250	
WW	WW 05-04	Wastewater System Planning	\$ 150		
WW	WW 09-06	Wastewater Collection System Repl/ Rehabilitation	\$ 100		
WW	MP-WW-Pipe-01	Gravity Pipe Rehabilitation/Replacement Program	\$ 170		
WW	MP-WW-Pipe-02	Barrigada Pump Station Pipe Rehabilitation/Replacement			
WW	MP-WW-Pipe-03	Route 1 Piti Pipe Rehabilitation/Replacement	\$ 340		
WW	MP-WW-Pipe-04	Southern Link Pump Station Pipe Rehabilitation/Replacement	\$ 657		
WW	MP-WW-Pipe-17	Mamajanao Capacity Replacement	\$ 400		
WW	MP-WW-Pipe-26	Finile Drive Rehabilitation - Agat	\$ 813		
WW	MP WW Pipe 27	Septic/Cesspool System Reduction Program			\$ 350

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GWA Cat	Project #	Description	Series 2020A Funding Amount (\$000)		
			FY2020	FY2021	FY2022
WW	MP-WW-MH-01	Manhole Rehabilitation Program	\$ 350		
WW	MP-WW-FM-01	Force Main Rehabilitation/Replacement Program		\$ 100	
WW	MP-WW-FM-02	Replace Yigo Lift Station Force Main		\$ 200	
WW	MP-WW-FM-03	Route 1 Asan Force Main Rehabilitation/Replacement	\$ 2,124		
WW	MP-WW-FM-04	Hagåtña WWTP Force Main Rehabilitation/Replacement	\$ 6,500		
WW	MP-WW-Pump-01	Lift Station Rehabilitation/Replacement Program	\$ 1,420	\$ 6,500	
WW	MP-WW-Pump-02	Tumon Basin - Fujita Lift Station Analysis	\$ 6,000	\$ 3,000	
WW	MP-WW-Pump-03	Replacement of Former Navy Pump Station (Donut Hole)	\$ 1,301		
WW	MP-WW-WWTP-08	Northern District WWTP Completion		\$ 7,500	
Subtotal by Fund Source			\$ 75,722	\$ 26,350	\$ 1,600
Grand Total by Fund Source			\$		103,672

GWA Cat Description
PW Potable Water
WW Wastewater
EE SCADA Electrical

Guam Waterworks Authority
Bond Reallocation Schedule - CCU Resolution 29-FY2022

Exhibit A

B2020A Bond Schedule and Reallocation						
CIP Number	CIP Name	Available Balance	Funding Reduction	Reallocated Funding	Adjusted Balance	Comment
MP-Gen-EE-01	SCADA Implementation Phase A2 - Initial Project Completion	\$ 4,250,000	\$ (4,250,000)		\$ -	Deferred
MP-WWW-FM-02	Replace Yigo Lift Station Force Main	\$ 200,000	\$ (200,000)		\$ -	Deferred
MP-WWW-FM-04	Hagåtña WWTP Force Main Rehabilitation/Replacement	\$ 6,600,000	\$ (4,850,000)		\$ 1,750,000	Deferred
MP-WWW-MH-01	Manhole Rehabilitation Program	\$ 350,000	\$ (350,000)		\$ -	Deferred
MP-WWW-Misc-04	Fats, Oils, and Grease Study	\$ 50,000	\$ (50,000)		\$ -	Deferred
MP-WWW-Pipe-03	Route 1 Piti Pipe Rehabilitation / Replacement	\$ 940,000	\$ (940,000)		\$ -	Deferred
MP-WWW-Pipe-04	Southern Link Pump Station Pipe Rehabilitation/Replacement	\$ 657,000	\$ (657,000)		\$ -	Project Complete; DOD Funded
MP-WWW-Pipe-17	Mamajanao Capacity Replacement	\$ 814,000	\$ (814,000)		\$ -	Deferred
MP-WWW-Pipe-26	Finite Drive Rehabilitation - Agat	\$ 813,000	\$ (813,000)		\$ -	Deferred
MP-WWW-Pump-02	Tumon Basin - Fujita Lift Station Analysis	\$ 9,600,000	\$ (9,600,000)		\$ -	Deferred
MP-WWW-Pump-03	Replacement of Former Navy Pump Station (Donut Hole)	\$ 1,301,000	\$ (1,301,000)		\$ -	Deferred
MP-WWW-WWTP-09	Ocean Outfall Inspection Program	\$ 100,000	\$ (100,000)		\$ -	Deferred
PW 12-06	Tank Replacement Piti & Hyundai	\$ 6,500,000	\$ (6,500,000)		\$ -	Deferred
Total Funding Reduction		\$(30,425,000)				
Total Reallocation		\$30,425,000				
PW 09-11	Water System Reservoirs 2005 Improvements	\$ 25,702,005		\$30,425,000	\$ 56,127,005	Court Ordered Projects

EXHIBIT B

ATTACHMENT B-1

<i>Reallocations</i>			What are the adverse effects if deferred?	
BC	MP-Gen-EE-01 SCADA Implementation Phase A2 – Initial Project Completion	\$ 4,250,000.00	B2020A	No adverse effect - central SCADA Control Center is still in progress. Implementation of fifteen (15) to twenty (20) additional water and wastewater sites to a SCADA system will be delayed. Buildout of the communication network to connect existing SCADA-ready sites will be delayed.
MM	MP-WW-FM-02 Replace Yigo Lift Station Force Main	\$ 200,000.00	B2020A	Minimal adverse effect – project design will be delayed. Priority lists have been updated and some projects have moved lower on the list and/or will need additional funding to cover both design and construction.
MM	MP-WW-FM-04 Hagåtña WWTP Force Main Rehabilitation/Replacement	\$ 4,850,000.00	B2020A	No adverse effect - GWA is receiving USEPA grant funding, allowing the amount of bond funding to be reduced.
MM	MP-WW-MH-01 Manhole Rehabilitation Program	\$ 350,000.00	B2020A	Minimal adverse effect - Activities anticipated under the <i>Manhole Rehabilitation Program</i> will be covered under other CIPs.
MM	MP-WW-Misc-04 Fats, Oils, and Grease Study	\$ 50,000.00	B2020A	No adverse effect - GWA is receiving USEPA grant funding, allowing the amount of bond funding to be reduced.
MM	MP-WW-Pipe-03 Route 1 Piti Pipe Rehabilitation/Replacement	\$ 940,000.00	B2020A	Minimal adverse effect - Priority lists have been updated and some projects have moved lower on the list and/or will need additional funding to cover both design and construction.
MM	MP-WW-Pipe-04 Southern Link Pump Station Pipe Rehabilitation/Replacement	\$ 657,000.00	B2020A	No adverse effect – funds no longer needed as <i>Southern Link Pump Station Pipe Rehabilitation/Replacement</i> was completed under the NDWWTP expansion project (funded by DOD grants).
MM	MP-WW-Pipe-17 Mamajanao Capacity Replacement	\$ 814,000.00	B2020A	Minimal adverse effect – project design will be delayed. Priority lists have been updated and some projects have moved lower on the list and/or will need additional funding to cover both design and construction.
MM	MP-WW-Pipe-26 Finile Drive Rehabilitation - Agat	\$ 813,000.00	B2020A	Minimal adverse effect – project will be delayed. Priority lists have been updated and some projects have moved lower on the list and/or will need additional funding to cover both design and construction.
MM	MP-WW-Pump-02 Tumon Basin - Fujita Lift Station Analysis	\$ 9,600,000.00	B2020A	No adverse effect - GWA is receiving USEPA grant funding, allowing the amount of bond funding to be reduced.

ATTACHMENT B-2

MM	MP-WW-Pump-03 Replacement of Former Navy Pump Station (Donut Hole)	\$ 1,301,000.00	B2020A	No adverse effect – funding no longer needed as Replacement of Former Navy Pump Station is being completed by a private developer due to the proposed development's anticipated sewer load.
MM	MP-WW-WWTP-09 Ocean Outfall Inspection Program	\$ 100,000.00	B2020A	No adverse effect - Ocean outfall inspection program funding needs to be increased due to the cost of the specialized activity, which is to occur every five years for only two locations. Note that the NDWWTP outfall was inspected in 2020 and a diffuser was installed at this outfall in 2021 with DoD grant funding. Inspection at 2 nd location, HWWTP, will be delayed but can be done within 5-year window.
BR	PW 12-06 Tank Replacement Piti & Hyundai	\$ 6,500,000.00	B2020A	No adverse effect - The new Hyundai (now Barrigada Heights) 1MG concrete tank has already been constructed and is in service. The Piti tank work cannot proceed until the land issue with the National Park Service is resolved.