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IN THE SUPERIOR COURT OF GUAM
HAGÅTÑA, GUAM

THE GOVERNMENT OF GUAM, Plaintiff, vs. KEPCO MANGILAO SOLAR, LLC. and SAMSUNG E & C AMERICA, INC., Defendants.	**Civil Case No.** No. CV0597-21 **GOVERNMENT'S OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS**

INTRODUCTION

The Government of Guam ("Government" or "Plaintiff") has alleged that Defendant SAMSUNG E&C AMERICA, INC.'s, ("Samsung") and Defendant KEPCO MANGILAO SOLAR, LLC ("KEPCO") (collectively "Defendants") engineered an unprecedented environmental disaster, the scope of which remains unclear. Through

this suit, the Government seeks to ensure Defendants' egregious actions are entirely revealed, to fully account for the damages in all their reverberation, and – to the extent possible – redress the harms once revealed. The facts set forth in the First Amended Complaint ("FAC") properly establish claims for a public nuisance and natural resource damage. Therefore, this Court should deny the present Motion for Judgment on the Pleadings and allow this case to move forward.

STANDARD OF REVIEW

Defendants must prove to a court that there are no material issues of fact to be tried in order to succeed on a motion for judgment on the pleadings. A court will grant a motion for judgment on the pleadings if "convinced 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Yokeno v. Lai*, 2014 Guam 18 ¶ 20 (quoting *Taitano v. Calvo Finance Corp.*, 2009 Guam 9 ¶ 6). A motion for judgment on the pleadings "involves a comprehensive evaluation of the merits of a claim to determine whether one party is entitled to judgment as a matter of law." *Id.* at ¶ 24. Motions under Guam Rule of Civil Procedure ("GRCP") Rule 12(b)(6) and GRCP Rule 12(c) are "functionally identical." *Id.* at ¶ 20, fn. 4.

The moving party, for the purposes of a GRCP 12(c) motion, concedes the accuracy of the factual allegation in their adversary's pleading, but does not admit other assertions in the other party's pleading that constitute conclusions of law, legally impossible facts, or matters that would not be admissible in evidence in trial. Wright & Miller, 5C Federal Practice and Procedure: Civil 2d § 1368 (2d ed. 1995).

Dismissal for lack of subject-matter jurisdiction is appropriate if the complaint, considered in its entirety, on its face fails to allege facts sufficient to establish subject-matter jurisdiction." *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 984-85 (9th Cir. 2008). If a defendant raises an affirmative defense in his answer it will usually bar judgment on the pleadings. *See General Conference Corp. Of Seventh–Day Adventists v. Seventh–Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989).

ARGUMENT

The Government holds the island's natural resources in trust for the people of Guam. This duty is established by common law and has been incorporated into our statutes. The Government has filed this action as part of its responsibility to protect those resources and hold those who damage the resources accountable.

In both common law and statutory forms, the Government has pleaded viable claims for public nuisance and natural resource damage with sufficient factual allegations. Guam has the right to bring damages claims for harm to its quasi-sovereign interests - including economic interests - resulting from Defendants' contamination of our people's natural resources. Defendants seek to block discovery at this early stage simply because they obtained agency approval to restart construction.[1] Meanwhile, investigation since the filing of the FAC has already

[1] The agencies and the Office of the Attorney General needed to also weigh if the completed construction would benefit the people of Guam in light of the harm Defendants caused in conducting that construction.

resulted in the discovery of additional facts and claims detailed in the Second Amended Complaint. Defendants have opposed the Motion for Leave to Amend, which has been fully briefed and is currently pending before the Court without a hearing date.[2]

Defendants have failed to establish that beyond a doubt Plaintiff can prove no set of facts in support of its claims that would entitle it to the relief sought. Therefore, this court should deny the Motion for Judgment on the Pleadings. Alternatively, this court should grant leave to amend the facts and claims.

I. THIS MOTION WILL BE MOOT IF THE COURT GRANTS THE PLAINTIFF'S MOTION FOR LEAVE TO AMEND

Since the filing of this case, the Office of the Attorney General (OAG) has unearthed that (1) neighboring landowners had informed Defendants KEPCO Mangilao Solar, LLC ("KEPCO") and Samsung E & C America, Inc. ("Samsung") (collectively referred to as "Defendants") that significant runoff from the Mangilao Solar Project had caused flooding and damage to roadways weeks before the July 22, 2021 disaster; and (2) Defendants had disturbed historic sites and cultural deposits. As a result, Plaintiff filed a Motion for Leave to Amend, which adds claims for cultural resource damage, hindering public access, and negligence. As set forth in the briefing on the Motion for Leave to Amend, Plaintiff has facts that would support these

[2] The arguments put forth by Samsung in this Motion are largely identical to those in their Opposition for Leave to file the Second Amended Complaint. Government's arguments here, though similar to those presented in their Reply in Support of Motion for Leave to Amend, are centered on the FAC's two causes of action and refute the novel "mootness" argument.

additional claims, as well as the claims here at issue. Furthermore, with facts continuing to be discovered, this reveals the importance of this case proceeding to discovery. If Plaintiff's Motion for Leave to Amend is denied, it seeks to properly re-plead these issues of vital concern. Alternatively, if leave to amend is granted, the Motion at hand is entirely moot and should be summarily denied.

II. ALL CLAIMS WITHIN THE FIRST AMENDED COMPLAINT ARE SUFFICIENTLY PLED TO WITHSTAND A MOTION FOR JUDGMENT ON THE PLEADINGS

In order to obtain dismissal, Defendants must show beyond a doubt that Plaintiff can prove no set of facts in support of its claims that would entitle it to the relief sought. Defendants cannot meet this significant burden and the Motion for Judgment on the Pleadings should be denied.

As with a GRCP 12(b)(6) motion to dismiss, a motion for judgment on the pleadings, merely serves to assess whether a complaint contains allegations of material facts putting a defendant on notice of the true nature and character of a plaintiff's claim. *See Joseph v. Guam Bd. of Allied Health Exam'rs*, 2015 Guam 4 ¶ 9 ("Guam law requires only notice pleading, not fact pleading."). Here, the FAC puts Defendants on notice of the facts alleged, and in fact, goes beyond providing more than mere notice as required. Furthermore, it is premature for this Court to consider issues of fact, as this case is not at the summary judgment stage.

To encapsulate the facts in the FAC, Plaintiff alleges an unprecedented environmental disaster occurring in Guam where Defendants' acts and omissions led

to unspeakable environmental degradation of the island's natural landscape and natural resources. Defendants, by intentionally failing to implement erosion controls and construct ponding basins prior to any grubbing or earthwork activities, created a catastrophic event causing significant discharge of runoff and sediment from the Mangilao Solar Project into Sasayan Cave (a freshwater cave also known as Marbo Cave), the ocean, and surrounding areas. The FAC also notably alleges that Defendants' acts were not simply reckless but also willful or knowing. For example, there is evidence Defendants knew that the Mangilao Solar Project was located within the recharge area of the Northern Guam Lens Aquifer, a sole-source aquifer that supplies eighty percent (80%) of the island's drinking water. Am. Compl. at ¶¶ 5-6.

Based on the facts proffered in the FAC, the allegations against Defendants are more than enough to sustain a challenge under GCRP 12(c).

A. The amended complaint states not just a statutory claim for public nuisance but also a common law claim

Count I of the FAC sufficiently alleges that Defendants have engaged in conduct that amounts to both common law and statutory public nuisance. Public nuisance is defined as an "unreasonable interference with a right common to the general public." Restatement (Second) of Torts § 821(b)(1) (1979). Resolution of a nuisance claim is not based on whether the plaintiff finds the invasion unreasonable but "whether reasonable persons generally, looking at the whole situation impartially and objectively, would consider it unreasonable." *People ex rel. Gallo v. Acuna,* 929

P.2d 596 (Cal. 1997) (citing Restatement (Second) of Torts, §§ 826–831)(quotations and citation omitted).

The Restatement provides circumstances under which interference with a public right may be deemed intentional and unreasonable and therefore give rise to liability for a public nuisance. The Restatement defines an intentional invasion of the public right as follows: "An invasion of another's interest in the use and enjoyment of land or an interference with the public right, is intentional if the actor (a) acts for the purpose of causing it, or (b) knows that it is resulting or is substantially certain to result from his conduct." Restatement (Second) of Torts § 825 (1979). The Restatement also explains that consideration of certain factors are necessary to determine whether an act constitutes a public nuisance or whether an interference with a public right is unreasonable. The Restatement also explains that consideration of certain factors are necessary to determine whether an act constitutes a public nuisance or whether an interference with a public right is unreasonable:

> (a) Whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
>
> (b) whether the conduct is proscribed by a statute, ordinance, or administrative regulation, or
>
> (c) whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

Id. § 821B(2).

Plaintiff's public nuisance claim is more than sufficient to survive a motion to dismiss or motion for judgment on the pleadings. Consistent with the Restatement, Defendants' acts impacted and interfered with the public's right to safety, health and much more. The FAC also alleges Defendants' acts were reckless, willful or knowing. For instance – when considering Defendants' state of mind – there is evidence Defendants knew that the Mangilao Solar Project was located within the recharge area of the Northern Guam Lens Aquifer, a sole-source aquifer which supplies eighty percent (80%) of the island's drinking water. Am. Compl. at ¶¶ 5-6. Furthermore, Defendants' reckless, willful and knowing acts caused soil (sediment), debris, and trash to be discharged into the ocean and adjoining properties to include Marbo Cave and its pool. Am. Compl. at ¶¶ 19-21. As one example, Defendants' acts were so egregious such that the result was large volumes of water and sediment entering Marbo Cave, covering the cave and pool with sediment film, debris, and trash. *Id.* at ¶ 21.

In sum, the FAC alleges facts consistent with the elements of a public nuisance claim. As required by the Restatement or any common law claim, Plaintiff's Amended Complaint includes facts showing: the critical public importance of public rights in the waters and associated ecological resources that have been harmed by Defendants' actions; Defendants' state of mind; and Defendants' conduct amounting to public nuisance.

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B. The FAC states not just a statutory claim for natural resource damage but also a common law claim for natural resource damage – otherwise known as a public trust claim

The Attorney General – as trustee – may defend an articulable interest of Guam's citizens by abating public nuisances and conserving natural resources. *See Alfred L. Snapp & Son v. Puerto Rico*, 458 U.S. 592, 602-604 (1982). To accomplish this, the Attorney General has the authority to pursue not only statutory but also common law claims. *See Maryland Department of Natural Resources v. Amerada Hess,* 350 F.Supp. 1060, 1067 (D.Md.1972); *See also Ohio v. City of Bowling Green*, 313 N.E.2d 409, 411 (Ohio 1974) (A sovereign has "the obligation to bring suit not only to protect the *corpus* of the trust property but also to recoup the public's loss occasioned by the negligent acts of those who damage such property."); Allan Kanner, *The Public Trust Doctrine, Parens Patriae, and the Attorney General As the Guardian of the State's Natural Resources*, 16 Duke Envtl. L. & Pol'y F. 57, 108 (2005)

Exercise of this duty implies a property interest in the sovereign's lands. *Toomer v. Witsell*, 334 U.S. 3 85, 408 (1948) ("A state may care for its own in utilizing the bounties of nature within her borders because it has technical ownership of such bounties or, when ownership is in no one, because the State may for the common good exercise all the authority that technical ownership ordinarily confers."); *Continental Ins. v. N.E. Pharni. & Chem. Co.*, 811 F.2d 1180, 1185 (8th Cir.1987) (concluding, based on Supreme Court precedent, that the government has a property interest in natural resources)

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1. *The common law Public Trust Doctrine affords the Attorney General the ability to make the claim for natural resource damage, in which Guam has a clear legal interest.*

The U.S. Supreme Court has long acknowledged a state's right to sue on behalf of its citizens to protect natural resources – especially water – held in public trust. *See Hawaii v. Standard Oil Co. of California*, 405 U.S. 251, 258 (1972) (*parens patriae* case involving pollution of rivers, diversion of streams, pollution by industrial fumes, and discharge of sewage into the harbor). The scope and content of the public trust doctrine are primarily a matter of state law. *See, e.g., Idaho v. Coeur d'Alene Tribe,* 521 U.S. 261, 285 (1997); *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469, 475 (1988).

The seminal public trust doctrine case is *Illinois Central R.R. Co. v. Illinois*, 146 U.S. 387, 452 (1892) where the U.S. Supreme Court held states hold their navigable waters and underlying lands in trust for the public for purposes of navigation, commerce, and fisheries. "Thus, the public trust is ... an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust." *Nat'l Audubon Soc'y v. Superior Ct.*, 33 Cal. 3d 419, 441(1983).

Guam's public trust doctrine is embedded in statute and rooted in common law. *See* 5 GCA § 30103; 12 GCA §§ 14501, 14505. The legislature also recognizes this doctrine by designating all surface and groundwater as property of the people and to be held in trust. *See* 12 GCA §§ 14501, 14505. Even in the absence of explicit

recognition of the public trust doctrine in a state constitution, as in Guam's Organic Act, other states have recognized that this common law power exists independent of statutory provisions.

The public trust doctrine should "be molded and extended to meet changing conditions and needs of the public it was created to benefit." *Borough of Neptune City v. Borough of Avon-by-the-Sea*, 294 A.2d 47, 55 (N.J. 1972). Historically, the public trust doctrine has been applied only to tidelands and navigable waters but has been judicially extended to cover other natural resources deemed worthy by courts of public ownership. *See, e.g., Center for Biological Diversity, Inc. v. FPL Group, Inc.*, 83 Cal. Rptr. 3d 588, 595-96 (Cal. Ct. App. 2008) (public trust doctrine covers wildlife).

2. The savings clause in 10 GCA § 47111(c) shows the regulatory scheme is not exclusive.

The mere existence of related statutes does not create exclusive remedies prohibiting Plaintiff's common law claims. As a basic principle, the enactment of a statute does not abrogate a preexisting common law claim unless the legislature so expressly states. *Accord Watson v. Brown*, 686 P.2d 12, 15 (Haw. 1984) ("A statutory remedy is, as a rule, merely cumulative and does not abolish an existing common law remedy unless so declared in express terms or by necessary implication."); *See also Abraham v. County of Hennepin*, 639 N.W.2d 342, 346-47 (Minn. 2002) ("[U]nless a statute provides that its remedy is exclusive, a party should not be prevented from bringing concurrent claims."); *Christensen v. Lundsten*, 863 N.Y.S.2d 886, 889 (N.Y. Dist. Ct. 2008) ("Statutes arising after the creation of the common law are held to

abrogate it only to the extent of the 'clear import of the language used' and only to the extent the 'statute absolutely requires.'").

Here, not only has the legislature not expressly or necessarily abolished the common law claims for public nuisance and water damage, the legislature has actually done the *reverse* by explicitly *allowing* these common law claims. Plaintiff's right of recovery is not diminished by the coexistence of express statutory remedies where the legislation does not presume to preempt common law rights. *See Selma Pressure Treating Co. v. Osmose Wood Preserving Co.*, 221 Cal. App. 3d 1601 (Ct. App. 1990), disapproved of on other grounds by *Johnson v. Am. Standard, Inc.*, 43 Cal. 4th 56 (2008).

Defendants mistakenly assert that Plaintiff's claims should be dismissed because the mere existence of corresponding statutes implicitly precludes the availability of common law remedies for violations of those laws. This assertion skips the first step of the legal analysis of coexisting statutes, which is to determine if the legislature intended the scheme to be exclusive of common law. Statutory schemes can be both comprehensive and non-exclusive of common law.

Defendants have not demonstrated the Legislature's intent to establish exclusivity, and the initial presumption should be that the rights are cumulative. *Mahoney v. Crocker Nat. Bank*, 571 F. Supp. 287, 293 (N.D. Cal. 1983) ("Where a right is established at common law or by statute, before a new statutory remedy is created, the statutory remedy will generally be considered 'merely cumulative, and

the older remedy may be pursued.'"). Rather, 10 GCA § 47111[3] demonstrates the non-exclusivity of the Water Pollution Control Act. *See* 10 GCA § 47111(c) ("Nothing in this Act shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor."). Section 47111(c) is a savings clause, and the Government is "any person" pursuing their right to damages for injury. The injury is to Guam's interest in natural resources, as established by the public trust doctrine, and the FAC alleges sufficient facts to establish injury.

Defendants incorrectly assert that Guam Environmental Protection Agency's ("GEPA") powers are exclusive and exclusionary. Although 10 GCA § 45105 does say that GEPA "shall be responsible for the implementation of ... (5) the Water Pollution Control Act" that language is not exclusive of other actors, especially when considering section 47111's carve-out. When faced with a potential contradiction it is axiomatic that in interpreting statutes, courts should first look to harmonize conflicting provisions. *See Cruz v. Guam Election Comm'n*, 2007 Guam 14, ¶ 30. Similarly, Defendants cite 10 GCA § 47105 to establish GEPA's 'sole power' merely due to the use of the word "shall," when the issue is beside the point as the Government does not seek to "issue, modify or revoke orders for the abatement of pollution."

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[3] Defendant Samsung mistakenly blurs the distinction between the Water Pollution Control Act, which is 10 GCA § 47101 et. seq., and 10 GCA § 45101 et. seq., which is the Guam Environmental Protection Act.

III. THE COURT HAS SUBJECT MATTER JURISDICTION OVER THIS MATTER

A. Plaintiff's common law claims are not subject to administrative review.

Plaintiff's Amended Complaint is premised on both statutory grounds and common law. The Superior Court has concurrent jurisdiction over Plaintiff's natural resource damage and public nuisance claims because courts have original jurisdiction via the common law of the public trust doctrine. *See generally*, Rebecca Lagrandeur Harms, *Preserving the Common Law Public Trust Doctrine: Maintaining Flexibility in an Era of Increasing Statutes*, Environs Envtl. L. & Pol'y J., Fall 2015, at 97, 104 ("But the Court (*National Audubon Society v. Superior Court*, 33 Cal. 3d 419 (1983)) rejected this argument, concluding that the public trust doctrine is separate and independent from the statutory water rights scheme").

The *Mono Lake* case, *Nat'l Audubon Soc'y v. Superior Ct. of Alpine Cty.*, 658 P.2d 709 (Cal. 1983), directly addresses the fallaciousness of Defendant's position that administrative exhaustion is first required. *Mono Lake* involved review of a 1940 state agency decision to allow the City of Los Angeles to divert freshwater from non-navigable tributaries of Mono Lake for the city's drinking water. *Mono Lake*, 658 P.2d at 712. The court concluded that the sovereign's duties under the public trust doctrine were continuous. "[T]he core of the public trust doctrine is the state's authority as sovereign to exercise a continuous supervision and control over the navigable waters of the state and the lands underlying those waters." *Id. Mono Lake* also held that the court's common law jurisdiction was concurrent with the

jurisdiction of the water appropriative rights system and that exhaustion of administrative remedies was not required to proceed with a public trust claim.

The various agencies lack authority to respond to the magnitude or entirety of Defendants' actions, thus, agency involvement cannot be a prerequisite to instituting suit. *See Ghost Player, L.L.C. v. State*, 860 N.W.2d 323, 328-29 (Iowa 2015) (exhaustion only required when action or inaction is related to the authority of the agency); *Rowen v. LeMars Mutual Ins. Co. of Iowa*, 230 N.W.2d 905, 909 (Iowa 1975) (exhaustion only required when "the relief sought is within the jurisdiction of the [agency]").Contrary to Defendants' use of *Barrett -Anderson v. Camacho*, agencies like GEPA and the CLB do not have the "specialized personnel, experience, and expertise" in matters of the public trust doctrine and public nuisance, areas in which in contrast this court and the OAG have better knowledge. 2015 Guam 20.

Aside from Plaintiff's common law claims, the Court plainly has subject matter jurisdiction over the public nuisance claim, for example, because 21 GCA § 23101 specifically grants such suits by the Attorney General. Section 23101 contains no requirement that the Attorney General must first wait for the conclusion of the administrative process, and Defendants cite no authority that common law public nuisance or natural resource damage claims require administrative exhaustion.

B. Preemption is inapplicable in the Present Case.

The doctrine of preemption does not bar Guam's common law claims. Preemption is inapplicable to the issues in this case. Defendant cites the doctrine of preemption and corresponding cases in federal court. All such citations are

inapposite, as these cases hinge on questions of federal law addressed in federal court. The two counts in the complaint do not rely on federal law, or acts of Congress. Federal courts are courts of limited jurisdiction, whereas the Superior Court is one of general jurisdiction. "Federal courts, unlike state courts, are not general common-law courts and do not possess a general power to develop and apply their own rules of decision." *City of Milwaukee v. Illinois and Michigan*, 451 U.S. 304, 312 (1981). As regarding what defendants have framed as "state law preemption," that the Supreme Court of Guam has recognized that some administrative remedies are exclusive does not mean that all such remedies are exclusive. Defendants have cited a tax case and an election law case. Neither areas of law are at issue here. In contrast, Plaintiff's causes of action in the FAC have an explicit savings clause that forestalls the exclusivity of administrative remedies.

IV. ALL PLAINTIFF'S CLAIMS ARE LIVE

Guam's public nuisance laws authorize parties whose property have been injured or lessened by a nuisance to seek abatement as well as damages. *See* 21 GCA § 23101; 20 GCA § 11102. California case law is highly persuasive when interpreting whether Guam's public nuisance statutes provide for more than mere abatement, because Guam's public nuisance statutes were taken from California. Notably, California courts have interpreted that state's public nuisance statutes to extend beyond abatement to include monetary damages when it is the state bringing a nuisance action. *See Selma Pressure Treating Co., Inc. v. Osmose Wood Preserving*

Co. of Am., Inc., 221 Cal. App. 3d 1601, 1614 (1990) (Under California nuisance law, "[w]here the State has a property interest which has been injuriously affected by a nuisance, the State can, like any property owner, seek damages.") (overruled on grounds unrelated to public nuisance by *Johnson v. Am. Standard, Inc.*, 43 Cal. 4th 56, 70 (2008)).

Defendants have prematurely raised the issue of abatement, requesting that this Court take judicial notice of various agency actions and interpret these facts as having established the government's "satisfaction" that the damages are completely abated. The Department of Public Works ("DPW") can only be "satisfied" with matters pertaining to DPW's delegated duties, and whatever stop-work orders were rescinded are better indicators of Defendants coming back into regulatory compliance than having totally abated the damage they have caused. DPW cannot seek exemplary damages in an administrative decision for egregious conduct. Plaintiff contends that only after discovery has been completed can the Court properly determine whether the relief sought in this suit is duplicative with whatever agreements Defendants have with DPW.

Moreover, Plaintiff has learned, even within the last seven days, that Defendants continue to act in ways that harm the government's interests by digging into a cultural deposit without proper archaeological oversight. This case does not present the "exceptional circumstances" that allow a court to deviate from the general rule that evidence outside the pleadings should not be considered. The simple fact is that DPW stop-work order cannot be considered integral to the FAC since it was not

referenced in the FAC. Plaintiff alleges that through discovery a fuller picture of the damages will be provided than what is already available through DPW. Defendants are essentially asking this Court to dive into the facts of this case and take notice of how they have engaged in abatement. This, however, is not the appropriate stage for this analysis, as such an assertion touches on the facts and merits of this case. The Court, at this juncture, is limited to a review of whether the FAC has provided sufficient notice to Defendants of the character of Plaintiff's claims.

In the case at bar, the Government seeks monetary damages for public nuisance. The Government can recover damages on its public nuisance cause of action, as the Government not only has a property interest in the groundwater and public easements that Defendants damaged but is also pursuing damages for degradation to Guam's natural resources which it holds in trust. The Government, as trustee of Guam's natural resources, is seeking damages related to those usufructuary interests, a legal interest for the benefit of the people of Guam, and its *parens patriae* interest in land and water.

CONCLUSION

For all the above reasons, Government respectfully requests this Court deny Defendants' Motion for Judgment on the Pleadings.[4]

Dated this 17th day of March, 2022.

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[4] Alternatively, Plaintiff requests leave to amend its pleading to allow for a second amended complaint.

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