



By the order of the court, Judge David A Wiseman

E-FILED
CNMI SUPERIOR COURT
E-filed: Feb 24 2009 12:00PM
Clerk Review: N/A
Filing ID: 23908186
Case Number: 04-0589
N/A



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FOR PUBLICATION

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

MARINE REVITALIZATION CORP.)
and ANTHONY PELLEGRINO, in his)
personal capacity and as an officer of)
Marine Revitalization Corporation,)
Plaintiffs,)
vs.)
CNMI DEPARTMENT OF LAND AND)
NATURAL RESOURCES,)
Defendant.)
_____)

CIVIL ACTION NO. 02-0566
CIVIL ACTION NO. 04-0589

ORDER GRANTING PLAINTIFF'S
THIRD ORDER IN AID OF JUDGMENT

RULING AND ORDER DENYING
DEFENDANT'S MOTION TO QUASH
AND/OR MODIFY THE ORDER IN AID
JUDGMENT

THIS MATTER came for hearing on December 18, 2008, at 1:30 p.m. on Defendant's Motion to Quash and/or Modify the Order in Aid of Judgment and Plaintiff's Motion for an Order in Aid of Judgment. Counsel Michael Dotts appeared on behalf of Plaintiffs Marine Revitalization Corporation and Anthony Pellegrino (hereinafter MRC). Assistant Attorney General David Lochabay appeared on behalf of Defendant, CNMI Department of Land and Natural Resources (hereinafter DLNR).
The court having heard the arguments of counsel and having reviewed applicable law and considered the parties' briefings now submits its ruling and order.

1 **I. SYNOPSIS**

2 On August 24, 1995, DLNR and MRC entered into the Marine Revitalization Corporation
3 Submerged Lands Lease Act of 1995 (hereinafter Lease Agreement) pursuant to Public Law 9-46. Part
4 of the agreement included construction of the new marina at Outer Cove by MRC. For their part,
5 DLNR agreed that all commercial boats would be required to use the new marina and the usage fees
6 would belong to MRC. MRC fully performed on the contract and completed the marina. DLNR,
7 however, failed to fulfill their obligations under the Lease Agreement causing damages to MRC. The
8 parties agreed to enter into binding arbitration. On December 3, 2004, arbitration resulted in a
9 unanimous finding that DLNR breached the Lease Agreement and owed MRC more than five million
10 dollars. In a showing of good faith, DLNR stipulated to a judgment which confirmed the arbitration
11 award. The parties agreed that as of January 20, 2005, DLNR owed MRC \$5,919,849.99. On January
12 27, 2005, the Court entered an Order in accordance with the stipulation of the parties (hereinafter
13 Stipulated Judgment). *Marine Revitalization Corp., et al. v. CNMI Dept. of Lands and Natural*
14 *Resources*, Civ. No. 04-0589D (N.M.I. Super. Ct. Jan. 27, 2005) ([Unpublished] Stipulated Judgment).

15 DLNR's acquiescence to arbitration and to the Stipulated Judgment appeared to be an indication
16 that they intended to fairly resolve the dispute. However, DLNR's actions since agreeing to the
17 Stipulated Judgment indicates that they do not intend on fulfilling their obligations to MRC regardless
18 of prior agreements or the courts' orders. DLNR has made no effort to comply with the Stipulated
19 Judgment or subsequent Orders of the court.

20 On May 10, 2005, following Plaintiff's request, the first Order in Aid of Judgment (hereinafter
21 First Order) was issued in this matter. *Marine Revitalization Corp., et al. v. CNMI Dept. of Lands and*
22 *Natural Resources*, Civ. No. 04-0589D (N.M.I. Super. Ct. May 10, 2005) ([Unpublished] Order in Aid
23 of Judgment). According to the First Order, DLNR had made no written request to Legislators to
24 appropriate funds to pay the judgment. Further, there was evidence that \$20,000 was presently available
25 for payment of the judgment. Therefore, Defendant and the CNMI Department of Finance were ordered

1 to:

- 2 1. Pay \$20,000 forthwith to Plaintiff's from an account for the payment of judgments at the
3 Department of Finance;
- 4 2. Pay all income of the DLNR from its operations to cover Plaintiff's costs on executing this
5 judgment into the court biweekly and;
- 6 3. Report to the Court by June 2005, on what efforts have been made to obtain an appropriation of
7 funds by the legislature to pay the judgment and to report to the Court on what has been
8 collected out of the operation of the DLNR.

9 From May of 2005, when the First Order was issued, until approximately February of 2008,
10 extensive settlement talks ensued between the parties. During this time period, however, no payments
11 were made by Defendant in accordance with the First Order. The final settlement conference between
12 the two parties was held on February 11, 2008. At that time, Plaintiff states that they presented seven
13 detailed proposals for ways in which the Defendant may begin to satisfy the judgment. On February 22,
14 2008, Defendant rejected all seven proposals. *See* Plaintiff's Notice of Failure of Settlement Efforts,
15 Apr. 3, 2008.

16 By March 2008, three years after the First Order was issued, Defendant had utterly failed to
17 comply with the First Order or the Stipulated Judgment in all respects and had rejected all offers by
18 Plaintiff. This spectacular disregard for the court's orders prompted MRC to once again file a Motion in
19 Aid of Judgment. In April 2008, Plaintiffs filed a second Motion in Aid of Judgment and a hearing on
20 the matter was held on May 6, 2008. Defendant received notice of the hearing but failed to appear and
21 filed no opposition to Plaintiff's motion.

22 At the hearing, MRC advised the court that Defendant had made no payments in compliance
23 with the First Order and had not offered to make any payments of any kind, whatsoever, despite the fact
24 that Defendant's counsel has met with the Plaintiff's counsel in attempts to obtain some payment plan or
25 schedule.

1 On May 21, 2008, following the hearing which Defendant did not attend, another Order in Aid of
2 Judgment (hereinafter Second Order) was issued by the court. *Marine Revitalization Corp., et al. v.*
3 *CNMI Dept. of Lands and Natural Resources*, Civ. No. 04-0589D (N.M.I. Super. Ct. May 21, 2008)
4 ([Unpublished] Order in Aid of Judgment). In the Second Order, the court reiterated the contents of the
5 First Order and further ordered the following:

- 6 1. The \$20,000 ordered paid to Plaintiff's on May 10, 2005, shall be paid to Plaintiff's counsel on
7 or before July 1, 2008, with an accumulated interest at the rate of 9% from May 10, 2005 to the
8 date of payment;
- 9 2. Plaintiffs, as well as all CNMI corporations in which Plaintiff's Marine Revitalization
10 Corporation or Anthony Pellegrino is the sole shareholder, are authorized to offset their taxes to
11 the CNMI;
- 12 3. In the event the Order is not complied with, Plaintiffs are authorized to seek further relief,
13 including but not limited to an order giving Plaintiff's operation and control over both the Outer
14 Cove Marina and Smiling Cove for the limited purpose of assessing and collecting fees to offset
15 Plaintiffs' cost of executing this judgment and;
- 16 4. The Defendant's are given 30 days from the date of the judgment to file any objections and if no
17 objection is filed, the Order goes into effect automatically after 31 days after its issuance.

18 Following the issuance of the Second Order, Defendants filed no objection and once again, have
19 completely disregarded the court's Second Order in every respect. It was not until September 3, 2008,
20 some four months after the Second Order was issued, that DLNR acknowledged the Second Order by
21 filing the present Motion to Quash and/or Modify Order in Aid of Judgment. In response, Plaintiffs
22 opposed the motion and have once again filed a motion for an Order in Aid of Judgment.

23 In October, Plaintiff Mobile Oil joined in MRC's Third Motion for an Order in Aid of Judgment.
24 See Mobil's Joinder in MRC's Third Motion for an Order of in Aid of Judgment; Oct. 14, 2008.

1 For the reasons stated below, Defendant’s Motion to Quash and/or Modify the Order in Aid of
2 Judgment is hereby DENIED. Further, Plaintiff’s request for a Third Order in Aid of Judgment is
3 hereby GRANTED and will be filed forthwith under separate document.
4

5 **II. DISCUSSION**

6 In their present motion, Defendant argues that DLNR is an executive branch agency and
7 therefore, cannot sue or be sued in its own name.¹ Further, DLNR does not dispute that there is a
8 judgment against them and that the entire amount is outstanding, but they claim that the judgment can
9 only be paid by specific appropriation of the legislature and no such appropriation has been made. In
10 support of this, DLNR argues that the meaning of the relevant statute is clear on its face and the court is
11 bound to enforce the plain language of the statute. Seemingly, DLNR believes they have no further
12 obligations in this matter, their hands are tied, and there is nothing more they can do. However, DLNR
13 asserts no reason why other portions of the First Order and Second Order, such as reporting to the Court
14

15 ¹Defendants state in their motion: “Although DLNR is a named defendant in this action, it is simply a line
16 agency in the executive branch of the CNMI government and cannot sue or be sued in its own right . . . the real
17 party in interest is the CNMI government.” Defendant’s Motion to Quash and/or Modify Order in Aid of
18 Judgment at 2; Sept.3, 2008. (hereinafter Defendant’s Motion). Defendant states nothing further on this issue.
19 This Court is unclear what bearing this assertion has on the issues presently before the Court. Is Defendant
20 implying that they should not be held to the arbitration, the Stipulated Judgment or the Orders in Aid of the
21 Judgment that followed because they should never have been the named party in this matter to begin with?
22 Certainly, the argument is untimely and incomplete and therefore, will not be addressed. Defendant seemingly
23 concedes the issue in the very next paragraph stating: “Defendant does not dispute that Plaintiffs have a valid and
24 subsisting judgment entered on or about January 27, 2005, confirming an arbitration award of \$5,919,849.99, and
25 that the entire amount of the judgment, including accrued interest, is outstanding.” Defendant’s Motion at 1-2.

1 on their efforts in obtaining an appropriation, have not been complied with.

2 MRC counters that DLNR waived their objections by failing to comply with Second Order's
3 command that objections be filed within 30 days. Further, MRC claims that DLNR's motion fails on the
4 merits because 1) the Stipulated Judgment is enforceable under *Camacho v. Commonwealth*; 2) the
5 continued refusal of DLNR to honor the judgment violates the separation of powers; 3) other analogous
6 situations support the enforcement of the judgment; and 4) like any party to a contract, the
7 Commonwealth is obliged to pay its obligations.

8 In their reply, DLNR contends that the rules permit an order in aid of judgment to be modified at
9 any time, so regardless of the language in the Second Order, they did not waive their right to bring the
10 present motion to quash or modify the Second Order. DLNR also counters that the *Camacho* holding is
11 distinguishable, that federal cases are irrelevant, and the separation of powers prohibits this Court from
12 ordering a legislature to enact an appropriations measure. In response, MRC maintains they are not
13 requesting this Court to compel payment nor are they asking the Court to order the Secretary of Finance
14 to make payments to MRC from funds that have not already been appropriated. Rather, they are asking
15 the Court to authorize an assignable tax credit. Further, MRC maintains that 7 CMC § 2254 has no
16 application to this matter because the judgment was not issued pursuant to 7 CMC § 2251-2254, rather,
17 the judgment was issued pursuant to Public Law 9-46 which specifically approved the lease agreement.
18 Nonetheless, MRC claims that even if 7 CMC § 2254 is applicable, it should not prohibit enforcement of
19 orders of the court or payments of judgments.

20 **A. Waiver**

21 The Second Order stated "the Defendants have 30 days from the date of this order to file any
22 objection . . . then the Order shall go into effect. . . ." *Marine Revitalization Corp., et al. v. CNMI Dept.*
23 *of Lands and Natural Resources*, Civ. No. 04-0589D (N.M.I. Super. Ct. Jan. 27, 2005) ([Unpublished]
24 Order in Aid of Judgment at 2). MRC argues that DLNR waived any protestation by failing to comply
25 with the Second Order's command that objections be filed within 30 days. DLNR argues that 7 CMC §

1 4207 permits parties to request modification of an Order at any time and any provision in an order which
2 limits the time period that an objection to an order may be made nullifies the statutory rights of the
3 parties. Rule 7 CMC § 4207 states: “Any order in aid of judgment made under this chapter may be
4 modified by the court as justice may require, at any time, upon application of either party and notice to
5 the other, or on the court’s own motion.” 7 CMC § 4207.

6 First, it must be noted that regardless of whether the Second Order could validly restrain the time
7 period in which Defendant had a right to object to the order, Defendant was still obligated to comply
8 with the Second Order 30 days after it was issued. If Defendant believed that the time restrictions
9 included in the Second Order were invalid or otherwise illegal, they were entitled to object to those
10 commands within thirty days *before* the Second Order took effect. Defendant chose not to object to the
11 order and as such, the Second Order took effect on approximately June 16, 2008. Therefore, when
12 Defendant had failed to object to the Second Order within the 30 days, *at the very least*, it is clear that
13 the commands of the Second Order became operative.

14 Second, while this Court agrees that 7 CMC § 4207 permits a party to move the court for a
15 modification of its orders at any time, the rule in no way permits a party to disregard the orders of a
16 court and then claim that the law supports their chosen course of action. Defendant’s responsible course
17 of action was to object within 30 days, thus complying with the Second Order. Otherwise, Defendant
18 was obligated to abide by the Second Order beginning 30 days after its issuance continuing until any
19 future determinations were made regarding the Second Order.

20 While Plaintiff’s make strong arguments supporting waiver, the Court agrees that § 4207 permits
21 Defendant’s motion and the substantive merits of Defendant’s motion should be addressed.

22 **B. The First Order and Second Order are Valid**

23 Defendant argues that the First Order and Second Order are not valid because the sole method of
24 satisfying the judgment in this case is by specific appropriation of the legislature, pursuant to 7 CMC §
25 2254, and no legislative appropriation for the payment of this judgment has been made. Therefore,

1 Defendant concludes that the First Order and Second Order are not a valid exercise of the judiciary
2 power and are unenforceable against them to compel payment of the judgment or to permit Plaintiff's to
3 offset the arbitration award by withholding taxes.

4 *1. 7 CMC § 2254*

5 A basic principle of statutory construction is that language must be given its plain meaning.
6 *Estate of Faisao v. Tenorio*, 4 N.M.I. 260 (1995). When language is clear, court will not construe it
7 contrary to its plain meaning. *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270 (1991).

8 In their motion, DLNR relies on 7 CMC § 2254 which states: “*Judgments rendered pursuant to*
9 *this article shall be paid from such funds as may be appropriated by the Commonwealth Legislature for*
10 *that purpose.*” 7 CMC § 2254 (emphasis added). Section 2254 applies to all judgments rendered under
11 Article 3 of Title 7, Division 2. 7 CMC §§ 2251-2254. The issue is whether the stipulated judgment
12 between the parties in this case is “rendered pursuant” to Article 3.

13 DLNR argues that the judgment rendered in this case falls within 7 CMC § 2251(b), and
14 therefore, § 2254 prohibits this Court from enforcing the judgment without specific appropriation from
15 the legislature.² MRC argues that § 2254 has no application here because the judgment was not
16 rendered under §2251. Rather, according to MRC, the judgment was rendered pursuant to Public Law
17 9-46, which specifically approved the Lease Agreement from which the dispute arose. Additionally,
18 MRC argues that even without the enactment of Public Law 9-46, the plain language of § 2251 precludes
19

20 ²It should be noted that portions of the First Order and Second Order which were in no way commands
21 that appropriations be made were also blatantly ignored. For example, the First Order directed Defendant to
22 report to the court on what efforts had been made to obtain the appropriation. Defendant did not report to the
23 court and it can be reasonably concluded that no efforts have yet been made to obtain the appropriations.
24 Defendant has not made any attempt to explain why this portion of the Order is invalid or did not need to be
25 complied with.

1 its application to the judgment rendered in this case.

2 According to 7 CMC § 2251, judgments obtained pursuant to the following actions shall be paid
3 through legislative appropriation:

4 Except as otherwise provided in article 1 of this chapter
5 (commencing with 7 CMC § 2201), actions upon the following
6 claims may be brought against the Commonwealth government in
7 the Commonwealth Trial Court which shall have exclusive original
8 jurisdiction thereof:

9 (a) Civil actions against the Commonwealth government for the
10 recovery of any tax alleged to have been erroneously or illegally
11 collected, or any penalty claimed to have been collected without
12 authority, or any sum alleged to have been excessive or in any
13 manner wrongfully collected under the tax laws.

14 (b) Any other civil action or claim against the Commonwealth
15 government founded upon any law of this jurisdiction or any
16 regulation issued under such law, or upon any express or implied
17 contract with the Commonwealth government, or for liquidated or
18 unliquidated damages in cases not sounding in tort.

19 7 CMC § 2251.

20 DLNR simply argues that § 2251 (b) is applicable because the arbitration award, which is the
21 basis for the Stipulated Judgment, was founded on breach of contract. MRC argues that this is not a
22 “civil action” or “claim” brought against the Commonwealth government as required by § 2251,
23 therefore, the statute is inapplicable on its face.

24 In *Camacho v Commonwealth*, the District Court discussed the scope of §2254. *Camacho v*
25 *Commonwealth*, Civ. No. 05-0043 (D.N.M.I.) (Order Granting Motion for Writ of Execution and, In the
Alternative, For an Order in Aid of Judgment). Following a jury trial in District Court, Camacho was
awarded approximately \$241,000. Relying on 7 CMC § 2254, the Commonwealth argued that the
plaintiffs had no means to enforce the judgment against them absent an appropriation by the Legislature.
The Court concluded that 7 CMC § 2254, on its face, was limited to judgments issued by the
Commonwealth Superior Court. *Id.* at 3.

1 Camacho goes on to discuss the greater implications of the issue before them stating:

2 [T]he failure of the Legislature to fulfill its constitutional mandate
3 does not, cannot, and will not prevent the court from taking all
4 necessary steps to ensure that its judgments are enforceable. A
5 court that cannot enforce its judgments must forever close its
6 doors, as it will have become nothing more than historical
7 curiosity.

8 *Id.* at 11.

9 Certainly, the greater implications discussed in *Camacho* are also at issue here. DLNR has
10 agreed to pay MRC a large sum of money which MRC is owed. As part of their promise, DLNR agreed
11 the stipulation was enforceable by the Court.

12 Here, the Stipulated Judgment followed agreed upon arbitration at the request of the parties. The
13 judgment was not the result of resolution in the Superior Court and was not rendered pursuant to claims
14 brought in Superior Court or a civil action in the Superior Court. Plaintiffs are attempting to enforce an
15 agreed upon stipulation which was born from Public Law 9-46. The issues between DLNR and MRC
16 were not resolved in the Superior Court. Rather, the judgment was rendered pursuant to Public Law 9-
17 46. DLNR argues the holding is inapplicable because the trial was in a district court. However, the
18 court's interpretation of the statute is persuasive. It was read narrowly to include only those judgments
19 which resulted from the Commonwealth Superior Court.

20 Therefore, the Stipulated Judgment is not subject to the restrictions of § 2254 and is neither a
21 result of a civil action nor is it a result of claims against DLNR in the Superior Court. The Stipulated
22 Judgment was rendered pursuant to an agreement by the parties following Public Law 9-46, which
23 specifically approved the Lease Agreement and declared all arbitration to be final and binding on the
24 parties.

25 Moreover, statute based arguments by DLNR are unpersuasive because enforcement was
specifically approved by subsequent legislation. Public Law 9-46 precisely states that “[t]he decision of
the arbitrators shall be final and binding on the parties. It shall be enforceable by either party in the
Commonwealth courts.” PL 9-46 at § 24(e). This clear mandate, enacted after § 2254, specifically

1 submits the agreement to enforcement by the Court and usurps the argument that this Court cannot
2 enforce the Stipulated Judgment through its Orders. Therefore, the decision of the arbitrators that
3 formed the basis for the Stipulated Judgment between the parties is not the type of claim or civil action
4 contemplated by § 2251(b) as evidenced by the government’s enactment of Public Law 9-46 where the
5 Legislature specifically approved the lease *and* the power of the courts to enforce the Lease.

6 For the reasons stated above, § 2254 is inapplicable to the Stipulated Judgment agreed to by the
7 parties as a result of arbitration as dictated by Public Law 9-46 where Legislators specifically agreed to
8 allow the Superior Court to enforce the Lease.

9 However, even if 7 CMC § 2254 were applicable, authority exists which grants the Judicial
10 Branch power to enforce its judgments. Although unnecessary to this Court’s conclusion, the remaining
11 arguments will be addressed.

12 13 2. Separation of Powers

14 In *Mandel v Myers*, the California Supreme Court examined whether or not legislative refusal to
15 pay judicial judgments violated the separation of powers doctrine under the California Constitution.
16 *Mandel v. Myers*, 29 Cal. 3d 531 (1981). In *Mandel*, the legislature failed within a reasonable time to
17 appropriate money for an award of attorney’s fees to the prevailing party in litigation. *Id.* at 535.
18 Similar to the facts of this case, the legislature had deliberately refused to pay a judgment and the
19 plaintiff was forced to seek the assistance of the courts.

20 The Court in *Mandel* held that the separation of powers prohibited the courts from specifically
21 ordering the legislature to make an appropriation, thereby, usurping legislature power. However, this
22 did not preclude the judiciary from “decreeing that funds that have been appropriated by the Legislature
23 should be paid without regard to an improper or invalid legislative restriction. If, in the absence of such
24 invalid restriction, appropriated funds are reasonably available for the expenditures in question, the
25 separation of powers doctrine poses no barrier to a judicial order directing the payment of such funds.”

1 *Id.* at 542.

2 Here, Public Law 9-46 was a Legislative agreement to expenditures for the Outer Cove Marina.
3 Moreover, the First Order and Second Order mandated \$20,000 be paid to Plaintiffs that the Court
4 determined *had been previously appropriated* for payment of judgments and remained available. Under
5 the rationale of *Mandel*, the judiciary is not precluded from decreeing funds which have already been
6 appropriated be paid to satisfy judgments. The First Order and Second Order only required DLNR to use
7 best efforts in requesting an appropriation and ordered funds which were already appropriated be paid to
8 Plaintiffs.

9 The *Mandel* Court recognized that the Attorney General representing the Government had
10 provided no explanation or rationale for the denial of payment. Thus, the court reached the only
11 reasonable conclusion that the denial of payments was based on the Legislature's own reassessment of
12 the validity of the judgment. This, the court held, was certainly a violation of the principles of the
13 separation of powers. *Id.* at 547-48. Alternatively, if the Legislature had no legitimate reason for failing
14 to pay the judgment and arbitrarily withheld the benefits that the budget afforded other similarly situated
15 individuals, the appropriation restriction violated elementary principles of equal protection. *Id.* Either
16 way, whether payment is denied for arbitrary reasons or as a methodical reassessment of the judgment,
17 the Legislature's denial of payment is invalid.

18 Similarly here, the Attorney General has provided no rational or reasons for denying the
19 payment to MRC. And while other judgments have been satisfied, this validly and legally owed debt
20 remains outstanding. For example, Public Law 15-28 (effective in 2006, after the First Order was
21 issued) appropriated more than \$450,000 for payment of judgments rendered against the
22 Commonwealth. Similar to the findings in *Mandel*, it is inappropriate for the Legislators to choose
23 which judgments to satisfy and which to ignore. While § 2254 provides that judgments must be
24 appropriated by specific legislation, the statute does not and cannot permit Legislators to pick and
25 choose the legal obligations they wish to fulfill.

1 The Commonwealth has inherently guaranteed appropriation of the funds by stipulating to the
2 judgment and enacting Public Law 9-46. This Court is not attempting to force Legislators to make an
3 appropriation, rather, the Orders in Aid of Judgment are directing state officials to pay judgments which
4 the Legislative Branch *has already* contemplated and agreed to abide by. The *Mandel* Court's
5 conclusion is particularly appropriate:

6 [I]ndividual citizens who litigate claims against the government in
7 our state courts are constitutionally entitled to expect that when the
8 government loses, the Legislature will respect the final outcome of
9 such litigation. The Legislature is not a supercourt that can pick
10 and choose on a case-by-case basis which final judgments it will
11 pay and which it will reject. If that kind of arbitrary conduct by
12 the Legislature were to be the law, our system of justice would be
13 subordinated to the popular vote of legislators, and our
14 constitutional bedrock principle of separation of powers would
15 become a shattered mass of scattered fragments.

16 *Id.* at 552.

17 The situation before this Court is not completely synonymous to the aforementioned cases.
18 Compounding the egregiousness of DLNR's chosen course of action is the fact that the government
19 stipulated and agreed to pay MRC. This judgment is not the result of contested litigation or a contestable
20 jury award for exuberant damages. Rather, the substantial sum owed to Plaintiffs has been
21 acknowledged by Defendant and the Government has promised that they will pay MRC. This crucial
22 difference makes the enforcement of the judgment exponentially more obligatory.

23 3. Tax Offsets

24 As discussed above, § 2254 does not prevent this Court's Orders in Aid of Judgment. The
25 Commonwealth Legislation has inherently consented to the appropriation of funds to support the Lease
Agreement by enacting Public Law 9-46. Further, the Commonwealth affirmed this agreement by
stipulating to a judgment which specifically granted the Court the power to enforce the decision of the
arbitrators. Lastly, the doctrine of separation of powers is not violated by this court enforcing the
Stipulated Judgment, rather, the Legislative's decision to pay some but not all judgments violates the

1 separation of powers. Therefore, there is nothing which prevents this Court from directing MRC to
2 offset their taxes as outlined in the prior Orders in Aid of Judgment. This tax offset or tax credit includes
3 absolutely no mandate to the Legislature. Offsetting taxes does not require any action from the
4 legislature.

5 In fact, although pathetically inadequate to fulfill the Commonwealth's obligation, offsetting the
6 judgment with MRC's owed taxes is the method least likely to further disrupt the Commonwealth's
7 deteriorating financial situation.

8 9 III. CONCLUSION

10 The rationale for enforcing judgments, especially those judgments which the Government has
11 consented to and provided for, is sound and jurisdictions are in agreement. The separation of powers
12 principles bestows upon the Judiciary the tools to enforce judgments of the court and their ability to do
13 so cannot be crippled by an uncooperative government defendant. Failing to fulfill their contractual
14 duties and then disregarding the Court's orders which followed can create an environment of distrust
15 and may shape an unsavory reputation for the Commonwealth. A noble reputation takes great effort to
16 build and may be destroyed suddenly.

17 It is not the intention of this Court, nor of the Plaintiffs, to compound an already dire economic
18 situation. However, the reputation of the Commonwealth cannot afford the long term consequences of a
19 Government which accepts the benefits of a contract, refuses to fulfill their own obligations, and ignores
20 judgments which they have stipulated to. These actions not only create an appearance of impropriety
21 but they develop a precedent and a standard of operations within the CNMI which has far reaching
22 consequences that will no doubt impede and prevent the attraction of investment in the future
23 development of the Commonwealth. Additionally, DLNR's debt to MRC is worsening daily -
24 inevitably increasing the harm not only to MRC but to the entire CNMI.

