

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4
5 Plaintiffs,

6 v.

7 PUERTO RICO AQUEDUCT AND SEWER
8 AUTHORITY, et al.,

9
10 Defendants.

Civil No. 06-1624 (PG/JAF)

11 **PRELIMINARY INJUNCTION ORDER**

12 Before the court is Defendant Puerto Rico Aqueduct and Sewer
13 Authority's ("PRASA") Motion for injunctive relief (Docket No. 30),
14 which incorporates its memorandum of law in support thereof, wherein
15 PRASA requests temporary and permanent injunctive relief against
16 Leovigildo "Leo" Cotté-Torres (hereinafter "Cotté"), in his personal
17 and official capacity as Mayor of the Municipality of Lajas, Puerto
18 Rico, as well as any and all persons acting on his behalf or under
19 his direction, and any and all persons undertaking the actions more
20 fully described in the motion. Cotté has responded. (Docket No. 41.)
21 A hearing for preliminary injunction was held today and only PRASA
22 and the Environmental Protection Agency presented evidence.

23 PRASA's motion seeks immediate injunctive relief in the form of
24 an Order from the court prohibiting Cotté, any and all persons acting
25 on his behalf or under his direction, and any and all persons
26 undertaking the actions more fully described in the Motion, to
27 preserve the status quo, to ensure that PRASA may continue to

1 undertake a series of improvements to the Lajas Wastewater Treatment
2 Plant (the "Lajas WWTP") to achieve phosphorus removal and increase
3 its treatment capacity, and the elimination of the La Parguera
4 Wastewater Treatment Plant (the "La Parguera WWTP") by connection to
5 the Lajas WWTP, specifically by means of the installation of an 8-
6 inch line and an intermediate relay lift station to connect the La
7 Parguera WWTP to the Lajas WWTP. The referenced relay lift station is
8 being constructed along road PR-303 in the Municipality of Lajas. The
9 elimination of the La Parguera WWTP is to be achieved by the
10 diversion of flow to the Lajas WWTP by construction of a gravity
11 sewer line, a force trunk sewer line and two lift stations (the
12 "Project").

13 The Project is being undertaken by PRASA as a result of the
14 Consent Decree (Docket No. 16) entered in the instant case, as well
15 as the Judgment entered in criminal case number 06-202 (PG) (the
16 "Criminal Judgment").

17 It appears from the evidence received today and the previous
18 Declaration of Joel Lugo Rosa Under Penalty of Perjury Pursuant to 28
19 U.S.C. § 1746, as well as the Declaration of Angel Feliberty
20 Silvestry Under Penalty of Perjury Pursuant to 28 U.S.C. § 1746, that
21 Cotté, as well as other persons acting on his behalf or under his
22 direction or out of their own volition, have attempted to impede
23 PRASA's compliance with the Consent Decree and the conditions of the
24 Criminal Judgment. The allegation is to the effect that Cotté's

1 interference with PRASA's obligations included mobilizing the Lajas
2 Municipal Police to impede PRASA's prosecution thereof. These
3 allegations against the mayor were not seriously contested at today's
4 hearing, but we find that members of the community were mainly
5 involved in obstructing PRASA's construction process. It appears
6 possible that these individuals relied on different objections by the
7 mayor, mainly on the piping route, which are not pertinent here now.

8 The powers established under the All Writs Act support this
9 court's authority to protect EPA-negotiated consent decrees. See
10 Sable v. General Motors Corp., 90 F.3d 171 (6th Cir. 1996). In Egri
11 v. Connecticut Yankee Atomic Power Co., 270 F.Supp.2d 285 (D.Conn.
12 2002), it was decided that the All Writs Act conferred jurisdiction
13 upon the federal court to remove from state court a suit by
14 landowners seeking to halt approval by the town of a nuclear power
15 plant's proposal to construct a dry nuclear waste storage unit on
16 premises, when the federal court had authorized construction as part
17 of a settlement of a suit brought by the town. In addition, this
18 court has jurisdiction pursuant to the All Writs Act to craft a
19 temporary injunction to compel residents of the town, as non-parties
20 to the underlying suit, from acts that will frustrate the consent
21 decree's operation on PRASA; the court does not purport to bind non-
22 parties to particular provisions of the decree itself, except insofar
23 as essential to the implementation of the consent decree. See In re

1 Egri, 68 Fed.Appx. 249 (2nd Cir.2003), 2003 WL 21510422, *cert. denied*,
2 124 S.Ct. 1419 (2003).

3 Under the All Writs Act, the court's power to effectuate an
4 injunction extends to persons who, though not parties to the original
5 action or engaged in wrongdoing, are in a position to frustrate the
6 implementation of a court order or the proper administration of
7 justice, as in the instant case. See Catskill Mountains Chapter of
8 Trout Unlimited, Inc. v. City of New York, 244 F.Supp.2d 41 (N.D.N.Y.
9 2003), *aff'd in part and remanded*, 451 F.3d 77 (2nd Cir. 2006), *cert.*
10 *denied*, 127 S.Ct. 1373.

11 In limited and extraordinary circumstances, the court may enjoin
12 individuals who are not parties to the action where they have notice
13 of court's orders, they intentionally violate those orders, they are
14 members of a class who cannot realistically be specified in advance
15 of such violations, and their actions interfere with obligations and
16 the ability of parties to comply with the court's orders, create
17 conditions of lawlessness and chaos in the community, and interfere
18 with the court's ability to adjudicate rights and responsibilities of
19 parties before it. See U.S. v. State of Wash., 459 F.Supp. 1020
20 (W.D.Wash. 1978), *aff'd*, 645 F.2d 749 (9th Cir.1981). Cotté, as well
21 as the general population of the Commonwealth of Puerto Rico, have
22 notice of the Consent Decree and the Criminal Judgment; in fact, the
23 Criminal Judgment ordered PRASA to publicize an announcement on three
24 major newspapers in Puerto Rico containing the nature of the offense

1 committed, the fact of the conviction, the nature of the punishment
2 imposed, and the steps that will be taken to prevent the recurrence
3 of similar offenses (Crim. No. 06-202 (PG), Docket No. 22, at p. 3,
4 ¶ 2). Therefore, Cotté and anyone else seeking to thwart PRASA's
5 compliance with the Consent Decree have actual and constructive
6 knowledge of the Consent Decree and the Criminal Judgment, inasmuch
7 as the Criminal Judgment also incorporates by reference the Consent
8 Decree, and the court has knowledge that PRASA publicized the
9 conviction in accordance with the Criminal Judgment.

10 Preliminary injunctive relief is a remedy that should be granted
11 if the movant proves the following elements: (1) the likelihood of
12 success on the merits; (2) the potential for irreparable harm to the
13 movant; (3) the balance of the movant's hardship if relief is denied
14 versus the nonmovant's hardship if relief is granted; and (4) the
15 effect of the decision on the public interest. See Ross-Simons of
16 Wardwick, Inc. v. Baccarat, Inc., 102 F.3d 12, 15 (1st Cir. 1996);
17 Narragansett Indian Tribe v. Guilbert, 934 F.2d 4, 5 (1st Cir. 1991).
18 Likelihood of success is the touchstone of the preliminary injunction
19 inquiry. See Ross-Simons, 102 F.3d at 16; Weaver v. Henderson, 984
20 F.2d 11, 12 1st Cir. 1993). PRASA's request fully complies with the
21 required criteria as set forth *infra*.

22 It being determined by the court that PRASA is not only
23 entitled, but also obligated under the Consent Decree and the
24 Criminal Judgment to prosecute the Project; that Cotté's actions have

1 the potential for irreparable harm to PRASA; that the harm to PRASA
2 outweighs any harm to Cotté; and that the Project is of extreme
3 public interest not only to the people of Lajas but also to the
4 People of Puerto Rico, the court, therefore, **GRANTS** PRASA's request,
5 and it is **HEREBY ORDERED**:

6 1. Cotté and any other person or entity are enjoined from
7 taking any action which would thwart PRASA's compliance
8 with the Consent Decree and the Criminal Judgment.

9 2. Cotté and any other person or entity shall cease and desist
10 from any and all actions designed to impede prosecution of
11 the Project and thereby thwart PRASA's compliance with the
12 Consent Decree and the Criminal Judgment.

13 3. This Preliminary Injunction Order shall remain in full
14 force and effect until further Order of this court.

15 4. The individual persons above stated are FOREWARNED that
16 they may be subject to civil contempt, and/or economic
17 sanctions for any violation to this Order.

18 Lastly, the court emphasizes that, after the issuance of a
19 previous Temporary Restraining Order, there has been absolute calm at
20 the project site and no additional incidents have arisen. The
21 previously-issued TRO has been respected by all concerned. As stated
22 by the court at the hearing, we are looking forward to resolving this
23 matter and, at this time, will not delve into fixing responsibilities
24 for the June 18, 2009, incidents. The mayor, through counsel, has

1 expressed his desire to cooperate fully, and we assume his good faith
2 in that respect. However, any additional violation will be strictly
3 sanctioned by contempt or otherwise.

4 The parties will show cause, **on or before August 13, 2009**, as to
5 why this preliminary injunction should not be declared permanent.

6 **IT IS SO ORDERED.**

7 San Juan, Puerto Rico, this 13th day of July, 2009.

8 s/José Antonio Fusté
9 JOSE ANTONIO FUSTE
10 Chief U. S. District Judge