

DEPARTMENT OF THE CORPORATION COUNSEL 205

2014 FEB 18 AM 9:30

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COM Pleadings\Briefs\Rebuttal Brief (2014-02-14).doc

Attorneys for COUNTY OF MAUI,
DEPARTMENT OF WATER SUPPLY

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

ʻIao Ground Water Management
Area High-Level Source Water
Use Permit Applications and
Petition to Amend Interim
Instream Flow Standards of
Waiheʻe, Waiehu, ʻIao &
Waikapu Streams Contested Case
Hearing

Case No. CCH-MA06-1

COUNTY OF MAUI, DEPARTMENT OF
WATER SUPPLY'S REBUTTAL BRIEF;
SECOND SUPPLEMENTAL
DECLARATION OF DAVID TAYLOR;
SUPPLEMENTAL DECLARATION OF
CRAIG C. LEKVEN, P.E.;
CERTIFICATE OF SERVICE

COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY'S REBUTTAL BRIEF

COMES NOW COUNTY OF MAUI, Department of Water Supply
("DWS"), by and through its attorneys, PATRICK K. WONG,
Corporation Counsel, and JENNIFER M.P.E. OANA, Deputy
Corporation Counsel, and hereby submits this rebuttal brief,
Second Supplemental Declaration of David Taylor, and

Supplemental Declaration of Craig C. Lekven, P.E., on behalf of the Department of Water Supply, County of Maui ("DWS"), pursuant to Minute Order No. 27, as follows:

- I. As a clarification, Alexander and Baldwin's Waiale Surface Water Treatment Plant proposal, although not favored by some parties in this case, is the least expensive alternative or supplemental source for DWS.

Both Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc. ("Hui/MT") and the Office of Hawaiian Affairs ("OHA") argue at length that the issue of the Waiale Water Treatment Plant ("Waiale WTP") was settled in the first round of this contested case hearing. To clarify, DWS did not argue for additional surface water for this in its opening brief.

The parties were instructed to evaluate the economic impact if their use of Na Wai Eha surface water were restricted. In evaluating that economic impact for the County, the County's experts used data and reports that have been compiled by or for DWS, including analyzing DWS's "Final Candidate Strategies" for alternative water source. Therefore, the Waiale WTP "proposal" is not something that DWS is "resurrecting", but was an option that has been studied extensively and was part of one of DWS's Final Candidate Strategies.

To respond to Hui/MT's argument that "[c]ontrary to DWS's claims that the Waiale proposal is cheapest, the WUDP

makes clear that the proposal is 'not viable until a long-term source of water is confirmed and the price of the source water is determined,'" Hui/MT glosses over the beginning of the sentence where it says, "[Na Wai Eha surface water treatment] is perhaps one of the least expensive alternatives. . ." Exhibit B-R13 at 43 (emphasis added).

Further, although Hui/MT argued that at the rate of \$0.90/1000 gallons, the Waiale proposal would be among the more expensive strategies, Hui/MT again glosses over the discussion in the WUDP which states, "[t]he cost of source water is a dominant but uncertain factor. For example, at a price of \$0.30 per thousand gallons of source water, the Na Wai Eha water treatment strategies are among the least expensive strategies." Exhibit B-R13 at 45.

DWS's engineering expert's analysis was based on the "Final Candidate Strategies" listed in the table on page 92 of DWS's Water Use and Development Plan ("WUDP"). Supplemental Declaration of Craig C. Lekven, P.E. at ¶ 5. The Waiale WTP option in that table was based on a raw water cost of \$0.30/1000 gallons. Id. at ¶ 6. The \$0.90/1000 gallons analysis did not become a "Final Candidate Strategy" in the WUDP. Id. Upon review of the "Total 50 Yr. Study Period System Costs" graph on page 54 of the WUDP, the total 50-year net present value ("NPV")

difference between the \$0.30/1000 gallons and the \$0.90/1000 gallons options is approximately \$24 million. Id. at ¶ 7. Adding \$24 million to the 50-year total NPV for the Waiale WTP option on page 92, it becomes \$730 million, still a little less than the East Maui wells option. Id.

II. DWS applauds HC&S's efforts to use R-2 water from the Wailuku-Kahului Wastewater Reclamation Facility.

DWS is pleased that HC&S undertook the feasibility study on its potential use of reclaimed water from the County's Wailuku-Kahului Wastewater Reclamation Facility and applauds HC&S's efforts to use R-2 water for its irrigation needs. DWS reserves the right to comment further upon a full review of HC&S's testimony regarding its feasibility study.

DATED: Wailuku, Maui, Hawaii, February 14, 2014.

PATRICK K. WONG
Corporation Counsel
JENNIFER M.P.E. OANA
Deputy Corporation Counsel

Attorneys for COUNTY OF MAUI
DEPARTMENT OF WATER SUPPLY

By 

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SECOND SUPPLEMENTAL
DECLARATION OF DAVID TAYLOR

SECOND SUPPLEMENTAL DECLARATION OF DAVID TAYLOR

I, DAVID TAYLOR, declare as follows:

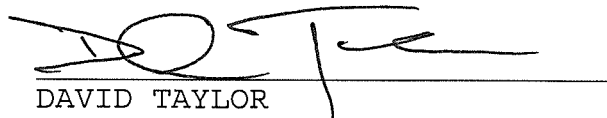
1. I am the duly appointed Director of the Department of Water Supply of the County of Maui ("DWS"). My background and qualifications were set forth in detail in the original declaration that I submitted on behalf of DWS in this case on January 3, 2014.

2. I have personal knowledge of the facts stated in this Declaration, except as to matters stated on information and belief, and as to those matters, I believe them to be true. If called upon, I could testify competently thereto.

3. This supplemental declaration is submitted in support of DWS.

4. A true and correct copy of the Third Amendment To Agreement Concerning Withdrawal From The Iao/Waikapu Ditch, dated January 30, 2014, is marked as Exhibit B-R14.

I declare under penalty of law that the foregoing is true and correct of my own personal knowledge and that this Declaration was executed on February 14, 2014 in Wailuku, Maui, Hawaii.



DAVID TAYLOR
Director
Department of Water Supply
County of Maui

DEPARTMENT OF THE CORPORATION COUNSEL 205

PATRICK K. WONG 5878

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SUPPLEMENTAL DECLARATION OF
CRAIG C. LEKVEN, P.E.

SUPPLEMENTAL DECLARATION OF CRAIG C. LEKVEN, P.E.

I, CRAIG C. LEKVEN, declare as follows:

1. I am a Registered Professional Civil Engineer, duly licensed in both Hawaii and California. My background and qualifications were set forth in detail in the original declaration that I submitted on behalf of the County of Maui,

Department of Water Supply ("DWS") in this case on January 3, 2014.

2. I have personal knowledge of the facts stated in this Declaration, except as to matters stated on information and belief, and as to those matters, I believe them to be true. If called upon, I could testify competently thereto.

3. This written testimony in the form of a supplemental declaration is submitted on behalf of DWS.

4. I have reviewed the opening and responsive briefs filed by all of the parties in this case.

5. My engineering economic analysis was based on the "Final Candidate Strategies" listed in the table on page 92 of DWS's Water Use and Development Plan ("WUDP").

6. The Waiale Water Treatment Plant option in that table was based on a raw water cost of \$0.30/1000 gallons. The \$0.90/1000 gallons analysis did not become a "Final Candidate Strategy" in the WUDP.

7. Upon review of the "Total 50 Yr. Study Period System Costs" graph on page 54 of the WUDP, the total 50-year net present value (NPV) difference between the \$0.30/1000 gallons and the \$0.90/1000 gallons options is approximately \$24 million. Adding \$24 million to the 50-year total NPV for the Waiale WTP

option on page 92, it becomes \$730 million, still a little less than the East Maui wells option.

I declare under penalty of law that the foregoing is true and correct of my own personal knowledge and that this Declaration was executed on February 13, 2014 in Wailuku, Maui, Hawaii.



CRAIG C. LEKVEN, P.E.
Supervising Engineer
Brown and Caldwell

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served upon the following individuals by U.S. mail, postage prepaid, to their last known addresses as follows:

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DATED: Wailuku, Maui, Hawaii, February 14, 2014.

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Attorneys for COUNTY OF MAUI
DEPARTMENT OF WATER SUPPLY

By 

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Deputy Corporation Counsel