

DEPARTMENT OF THE CORPORATION COUNSEL 205

2014 FEB 18 AM 9:30

PATRICK K. WONG 5878
Corporation Counsel
JENNIFER M.P.E. OANA 8018
Deputy Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793
Telephone No.: (808) 270-7740
Fax No.: (808) 270-7152

S:\ALL\LITIGATION CASES\Na Wai Eha IIFS Remand\Pleadings\COM Pleadings\Exh & Wit Lists\DWS Supp Exh List (2014-02-10).wpd

Attorneys for COUNTY OF MAUI,
DEPARTMENT OF WATER SUPPLY

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

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

Case No. CCH-MA06-01

COUNTY OF MAUI, DEPARTMENT OF
WATER SUPPLY'S SUPPLEMENTAL
EXHIBIT LIST; EXHIBIT "B-R14";
CERTIFICATE OF SERVICE

COUNTY OF MAUI, DEPARTMENT OF
WATER SUPPLY'S SUPPLEMENTAL EXHIBIT LIST

MDWS Exhibit No.	Description	References	Admitted in Evidence
B-R1	Second Amendment to Agreement Concerning Withdrawal From The Iao/Waikapu Ditch, dated February 27, 2008	DWS Trial Brief, p. 3; Declaration of David Taylor (hereafter, "Taylor Decl."), ¶ 12, 13.	

MDWS Exhibit No.	Description	References	Admitted in Evidence
B-R2	DWS's SWUPA-E, dated March 31, 2009	DWS Trial Brief, p. 3; Taylor Decl., ¶ 14.	
B-R3	DWS's SWUPA-N, dated March 31, 2009	DWS Trial Brief, p. 3; Taylor Decl., ¶ 14.	
B-R4	Letter from CWRM to DWS, dated April 23, 2009	DWS Trial Brief, p. 3; Taylor Decl., ¶ 14.	
B-R5	Letter from CWRM to DWS re DEC-ADM97-A1 Modification of Water Use Permit (WUP No. 699 to WUP No. 921) for Well No. 5332-05, dated June 2, 2011	DWS Trial Brief, p. 5.	
B-R6	Letter from CWRM to DWS re DEC-ADM97-A1 Modification of Water Use Permit (WUP No. 680 to WUP No. 920) for Well No. 5332-02, dated June 2, 2011	DWS Trial Brief, p. 5.	
B-R7	Maui County General Plan 2030 (Chapter 1: Population)	Declaration of Michele McLean (hereafter, "McLean Decl."), ¶ 19; Taylor Decl., ¶ 33.	
B-R8	Expert Report of Brown and Caldwell, dated December 27, 2013	DWS Trial Brief, pp. 14-23; Declaration of Craig C. Lekven, P.E. (hereafter, "Lekven Decl."), ¶ 10.	
B-R9	Plaintiff's Motion to Enforce Consent Decree, filed February 28, 2013, in Civil No. 03-1-0008(3)	DWS Trial Brief, pp. 15, 16; Taylor Decl., ¶ 43.	

B-R10	Order Granting Plaintiff's Motion to Enforce Consent Decree, filed November 14, 2013, in Civil No. 03-1-0008(3)	DWS Trial Brief, p. 16; Taylor Decl., ¶ 43.	
B-R11	Maui County Department of Water Supply Water Conservation Efforts	DWS Trial Brief, pp. 19, 20; Declaration of Pamela Pogue (hereafter, "Pogue Decl."), ¶ 10.	
B-R12	Expert Report of Paul H. Brewbaker, Ph.D., dated December 31, 2013	DWS Trial Brief, pp. 23-27; Declaration of Paul H. Brewbaker, Ph.D. (hereafter, "Brewbaker Decl."), ¶ 11.	
B-R13	Maui County Water Use and Development Plan Central DWS District Plan Update - Exhibit A, dated November 16, 2010 (adopted by Ordinance No. 3804, effective December 27, 2010)	Taylor Decl., ¶ 33; Pogue Decl., ¶ 7.	
B-R14	Third Amendment to Agreement Concerning Withdrawal from the Iao/Waikapu Ditch, dated January 30, 2014	Second Supplemental Declaration of David Taylor, ¶ 4.	

In addition to the above-listed exhibits, the County reserves the right to introduce other documents at the remand hearing for purposes of impeachment or rebuttal.

The County also requests that the Hearing Officer take Judicial Notice of all exhibits introduced in the original

proceeding and the complete contents of the Commission on Water Resource Management's ("CWRM's") files relative to this matter, including all Water Use Permit Applications, all correspondence, and all other official filings relating to the subject of this contested case hearing.

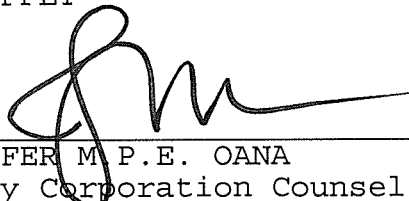
The County also requests that the Hearing Officer take Judicial Notice of the Water Use Permits previously issued to the County Department of Water Supply for the basal and high-level portions of the Iao Aquifer, and the findings and conclusions of CWRM in connection therewith.

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



JENNIFER M.P.E. OANA
Deputy Corporation Counsel

**THIRD AMENDMENT TO AGREEMENT CONCERNING
WITHDRAWAL FROM THE IAO/WAIKAPU DITCH**

This Amendment is made this 30th day of January, 2014, by and between WAILUKU WATER COMPANY, LLC, a Hawaii limited liability company (successor in interest to Wailuku Agribusiness Co., Inc.), whose address is P.O. Box 2790, Wailuku, Maui, Hawaii, 96793, hereinafter referred to as "Wailuku", and the COUNTY OF MAUI, through its DEPARTMENT OF WATER SUPPLY, whose address is 200 South High Street, Wailuku, Maui, Hawaii, 96793, hereinafter referred to as "DWS".

WITNESSETH:

WHEREAS, Wailuku Agribusiness Co., Inc. and DWS entered into that certain unrecorded Agreement Concerning Withdrawal from the Iao/Waikapu Ditch dated June 9, 2004, hereinafter called "Agreement", wherein Wailuku Agribusiness Co., Inc. allowed DWS to withdraw surface water from the Iao/Waikapu Ditch for the purpose stated in said Agreement; and

WHEREAS, Wailuku Agribusiness Co., Inc. assigned its interest in said Agreement to Wailuku; and

WHEREAS, by agreement entitled "Amendment to Agreement Concerning Withdrawal from the Iao/Waikapu Ditch" dated November 29, 2007, the parties amended the Agreement by extending the term of the Agreement to February 29, 2008; and

WHEREAS, in February 2008 by an agreement entitled "Second Amendment to Agreement Concerning Withdrawal from the Iao/Waikapu Ditch", the parties extended the terms of the Agreement to March 1, 2011; and

WHEREAS, the parties have continued the Agreement and abided by the terms of the

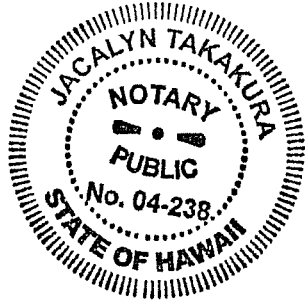
Agreement as of this date; and,

WHEREAS, Wailuku and DWS wish to further amend the Agreement with respect to the term of the Agreement;

NOW, THEREFORE, the parties hereto agree that the Agreement is hereby amended to extend the term of the Agreement from March 1, 2011 to February 28, 2018, provided, however, as to the payment for the delivery of water by Wailuku to DWS, the price for delivery shall be amended to equal the tariff rate applicable to DWS, as determined by the Public Utility Commission (P.U.C.) of the State of Hawaii in Docket No. 2008-0025, said rate to commence upon on final order of the P.U.C. under the referenced docket; Provided further, the volume of water required to be delivered by Wailuku to DWS under this Agreement may be amended by Wailuku, at its discretion, after the Commission on Water Resource Management (the "Commission") has determined the Interim Instream Flow Standards, which determination by the Commission is currently pending. The amount of water to be delivered shall only be amended to the extent required by the Commission and no more. Lastly, the volume of water to be delivered may be amended by Wailuku, in its discretion, pursuant to the volume of water provided to DWS under the surface water use permit to be issued to DWS by the Commission. Such modified volume shall be effective upon written notice of the same by Wailuku to DWS, provided such volume shall not be less than the volume of water permitted to be delivered under said surface water use permit.

No other amendments are made herein, and Wailuku and DWS do hereby ratify, confirm and acknowledge as being in full force and effect all of the terms and conditions of the Agreement not amended hereby.

IN WITNESS WHEREOF, Wailuku and DWS have executed this instrument the day and year first above written.



WAILUKU WATER COMPANY, LLC

By: [Signature]
AVERY B CHUMBLEY
Its Manager

“Wailuku”

COUNTY OF MAUI

By: [Signature]
ALAN ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:

[Signature]
DAVID TAYLOR
Director of Water Supply

[Signature]
DANNY AGSALOG
Director of Finance

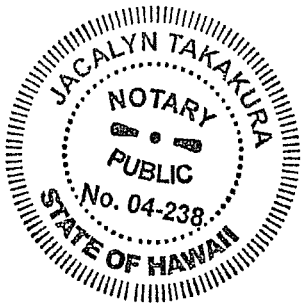
APPROVED AS TO FORM
AND LEGALITY:

[Signature]
for EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
County of Maui)SS.

On this 29th day of January, 2014, before me personally appeared Avery Chumbley, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Jacalyn Takakura
Notary Public, State of Hawaii

Print Name: Jacalyn Takakura

My commission expires: 05/02/16

Doc. Date: Undated # Pages: 5
Name: Jacalyn Takakura Second Circuit
Doc. Description: Third Amendment to Agreement concerning Withdrawal from the Iao/Waikapu Ditch

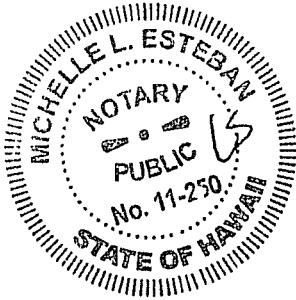
Jacalyn Takakura 1/29/14
Notary Signature Date

NOTARY CERTIFICATION

STATE OF HAWAII)
)SS.
COUNTY OF MAUI)

On this 30th day of January, 2014, before me personally appeared ALAN ARAKAWA, to me personally known, who, being by me duly sworn or affirmed, did say that ~~she~~^{he} is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed in behalf of said County of Maui by authority of its Charter, and the said ALAN ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



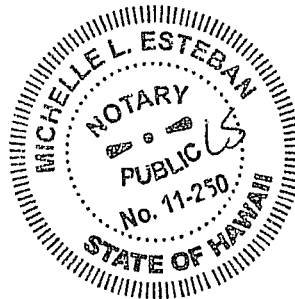
Michelle L. Esteban
Notary Public, State of Hawaii

Print Name: MICHELLE L. ESTEBAN

My commission expires: 8-14-2015

Doc. Date: 1/30/2014 # Pages: 5
Michelle L. Esteban Second Circuit
Doc. Description: 3rd Amendment
Withdrawal from the 601
Waikapu Ditch
Michelle L. Esteban 1/30/2014
Notary Signature Date

NOTARY CERTIFICATION



COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

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

Case No. CCH-MA06-1

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:

DAVID M. LOUIE, ESQ.
Attorney General
JULIE H. CHINA, ESQ.
Deputy Attorney General
State of Hawaii
465 King Street, Suite 300
Honolulu, HI 96813
Attorneys for the Commission on
Water Resource Management

ISAAC H. MORIWAKE, ESQ.
D. KAPUA SPROAT, ESQ.
SUMMER KUPAU-ODO, ESQ.
Earthjustice
850 Richard St., Suite 400
Honolulu, HI 96813
Attorneys for Hui O Na Wai Eha

DAVID SCHULMEISTER, ESQ.
ELIJAH YIP, ESQ.
Cades Schutte LLP
1000 Bishop St., Suite 1200
Honolulu, HI 96813
Attorney for Hawaiian Commercial
& Sugar Company

PAUL R. MANCINI, ESQ.
JAMES W. GEIGER, ESQ.
Mancini, Welch & Geiger LLP
RSK Building
305 Wakea Ave., Suite 200
Kahului, HI 96732
Attorneys for Wailuku
Water Company LLC

GILBERT S.C. KEITH-AGARAN, ESQ.
Takitani Agaran & Jorgensen, LLLP
24 N. Church St., Suite 409
Wailuku, HI 96793
Attorney for Wailuku
Water Company LLC

ANNA ELENTO-SNEED, ESQ.
PAMELA W. BUNN, ESQ.
Alston Hunt Floyd & Ing
American Savings Bank Tower, Suite 1800
1001 Bishop Street
Honolulu, HI 96813
Attorney for Office of Hawaiian Affairs

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 

JENNIFER M.P.E. OANA
Deputy Corporation Counsel