

February 9, 2018

2018 FEB -9 AM 10:46  
OFFICE OF THE  
COUNTY COUNCIL

RECEIVED

MEMO TO: PRL-1(32) File

F R O M: Mike White <sup>TF</sup>  
Council Chair

SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENT RELATING TO  
LITIGATION MATTERS (SPECIAL COUNSEL AUTHORIZATION:  
DAVID TAYLOR V. ALAN ARAKAWA, ET AL.; CIVIL 18-1-0056(1)) (PRL-1(32))**

The attached informational document pertains to Item 1(32) on the Committee's agenda.

Attachment

January 17, 2018

Department of Water Supply  
Acting Director, Gladys Baisa  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

RE: Anuhea Water Project - Meter Installation- 14.13.080

Dear Gladys,

Due to a recent phone call from Jase Miyabuchi, on Friday, January 12, 2018, I feel compelled to address the subject of meter installation and meter reservation extensions.

Having gone through several Department of Water Supply administrations and three engineers, along with mediation, just to get a meter reservation and the necessary approvals along with nearly completing the construction process. I find it difficult to now hear no extensions longer than 2 years plus 2, 6 month extensions will be allowed a meter installation. So you're telling me, after I spent nearly 30 years of my life and some fellow property owners spent more than 40 years of their lives, plus expending hundreds of thousands of dollars, we will not be seeing our meters installed?


After our mediation, which was approved by Ed Kushi, Corporation Counsel, and before signing the meter reservation document, I spoke with your Department about this and was assured, if our progress on the Project was ongoing, we would be allowed extensions. Words used were, "I can tell you based on past cases, I believe there has been precedence set to allow continued reservation extensions as long as progress is being made." We can provide the full email if required. We are aware that the Department has, through multiple administrations, allowed extensions beyond 3 years based on 14.13.080. Why are we, all of a sudden, being singled out?

I have much communication on behalf of our Project to the DWS asking for documents to be approved in a more timely manner, yet there was delay after delay. Once our plans were submitted, the approval process took so long, at one point, the engineer couldn't recall our Project and where our file might be. We had to get two easements and at times those within the County didn't seem to know the process, causing backtracking of what seemed a near completed process. We had questions on a PRV box design that needed approvals from Jase. The approvals took several months and delayed our Project to the point the contractor took on other jobs. If I looked back through our files, I could find other such delays that caused so much frustration and involved so much wasted time and money.

Often, my requests for a prompt response fell on deaf ears which caused us to write, phone or email Deputy Director Paul Meyer. Many times I stressed the fact that we were trying to meet the time constraints placed on us by the Department. During those communications, I was assured we would get meter reservation extensions to allow us to complete the Project, as it was known we were consistently working to see it to completion.

We will not accept the now, new decision made by the present administration due to an attorney, representing a couple who are not on the meter list and have no understanding of the process many of us are required to go through. The administration is well aware the process can easily take longer than 2-3 years to complete, due to staff shortages in the Department of Water Supply and logistical situations that come up in the process. We have a contract with the Department of Water Supply dating back to February 21, 2012. We have honored that contract and are near completion of the approved waterline. For the Department of Water to now renege on this contract and create further delays is outrageous. I am requesting the Department of Water immediately rectify this situation to avoid further action and submit a response by Tuesday, January 30th.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Barbara Luke".

Barbara Luke for the Anuhea Water Project

cc: Alan Arakawa, Keith Regan, Mike White, Yuki Lei Sugimura  
Enclosure

## A G R E E M E N T

This Agreement (hereinafter, the "Agreement") between the DEPARTMENT OF WATER SUPPLY, COUNTY OF MAUI (hereinafter, the "Department"), and the following owners of parcels in the Anuhea Place Subdivision, Kula, Maui, Hawaii, 96790 ("hereinafter "Appellants"):

<u>APPELLANTS/OWNERS</u>	<u>TMK/PARCEL NUMBER</u>
Warren Molina	(2) 2-3-008:017
Jon Davern Thuro	(2) 2-3-008:018
Eric Y.L. Ching, Trustee Eric Y.L. Ching Revocable Trust	(2) 2-3-008:021
Laura N. Ching, Trustee Laura N. Ching Revocable Trust	
Jeffrey Paul Alexander Donna Mae Alexander	(2) 2-3-008:022
Mary Caravalho Norma Caravalho	(2) 2-3-008:023
Frank Caravalho, Jr. George Robert Medeiros, III	(2) 2-3-008:024
Stan E. Riddle, Trustee W. Stanley Riddle and Marjorie Riddle 1996 Trust	(2) 2-3-008:031
Frank Felix, Jr. Trustee Frank Felix, Jr. Revocable Trust Clara N. Felix, Trustee Clara N. Felix Revocable Trust Mary Caravalho	(2) 2-3-008:033
Elliot L. Luke Barbara J. Luke	(2) 2-3-008:034

## W I T N E S S E T H

WHEREAS, Appellants are the owners of nine (9) lots located in the 15 lot agriculturally zoned Anuhea Place Subdivision ("the Subdivision"), Kula, Maui, Hawaii 96790; and

WHEREAS, the Subdivision which was created in 1967 was approved by the County of Maui without County water service or water meters; and

WHEREAS, the Appellants have requested water service from the Department since the early 1970's, well before the creation of the Upcountry Water Meter List in 1994; and

WHEREAS, the Appellants were consistently advised that the County line serving Kula 200 Subdivision was not a point of adequacy and they could not connect to the Kula 200 line; and

WHEREAS, Appellants were not permitted prior to the enactment of the Water Meter Issuance Provisions for the Upcountry Water System in 2002 to put their names on the Water Priority List; and

WHEREAS, after meeting with the Department on June 27, 2011, Appellants' representatives were advised by the Department in a letter dated August 15, 2011 that because the lots are agriculturally zoned, the Department would allow a point of adequacy for water system improvements within the Kula 200 subdivision for the first 5/8" meter for each of the 9 existing lots owned by Appellants along Anuheha Place; and

WHEREAS, the Department in its August 15, 2011 letter further advised Appellants that because meter issuance was governed by the Maui County Code Chapter 14.13: "Water Meter Issuance Provisions for the Upcountry Water System," the Appellants would have to wait until meters became available according to their priority on the Water Meter Waiting List; and

WHEREAS, Appellants on September 13, 2011 timely filed a Notice of Appeal to the Board of Water Supply of the Department's position set out in its August 15, 2011 letter that they were subject to the priority requirements of the Water Meter Priority List and could not be given a meter at this time; and

WHEREAS, the Board of Water Supply appointed Judge E. John McConnell, Ret. as the Hearings Officer for this Appeal; and

WHEREAS, a Pre-Hearing Conference was conducted by Hearings Officer McConnell on December 5, 2011 which was attended by personnel of the Department of Water Supply, together with the Department's attorney, and by Appellants Stan Riddle, Marjorie Molina, Elliot and Barbara Luke, Frank Carvalho, Jr. and Frank Felix who appeared in person and all other Appellants were represented by Appellants Elliot Luke and Stan Riddle pursuant to letters of authorization for Appellants Stan Riddle and/or Elliot Luke to act as their representatives during the Appeal process; and

WHEREAS, upon review of the submissions made by Appellants to the Department in support of their position on Appeal and discussions during the December 5, 2011 Pre-Hearing Conference, the Director has determined that Appellants are entitled to a waiver of

the provisions of MCC §14.13.050 and are also entitled to be offered County water meters irregardless of their current position on the Water Meter Priority list; and

WHEREAS, the Director of the Department of Water Supply specifically finds that:

1. Waiver of the provisions of MCC §14.13.050 in this instance is not contrary to the public's health, safety or welfare;
2. Strict application of the provisions of this chapter would cause an absurd, unfair, or unreasonably harsh result;
3. The circumstances or conditions of this case are unique and exceptional and the director would grant a request made upon the same facts of this case if made by every similarly situated applicant; and
4. The action of the Director will be without detriment to existing users.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Appellants and the Department jointly agree as follows:

1. The Owners of each of the original nine Appellant lots in the Anuheia Place Subdivision, shall be entitled to reserve one 5/8" County water meter upon submitting a reservation application for a meter and paying the \$6,030.00 meter reservation fee which must be paid at the time of the submission of the reservation application, notwithstanding the Owners' position on the Water Meter Priority List.

2. The point of adequacy is determined to be at the end of the 6" waterline on Ho'opalu Drive near Kula Highway, Kula, Maui.

3. Those Owners who submit reservation applications pursuant to this agreement will be responsible for the following:

- a. Paying for all design and construction costs to extend a 6" minimum diameter watermain extension from the point of adequacy to the Subdivision. These improvements must comply with County Department of Water Supply standards and be approved by the Department of Water Supply.

- b. Obtaining permission from the State of Hawaii to construct the waterline across Kula Highway.

c. Paying for the cost of installation of a pressure reducing valve assembly should the water system pressure exceed 125 psi anywhere within the waterline extension.

d. Paying for the cost of installation of separate service laterals and water meters. The service laterals and meters may be remote meters located away from the properties receiving meters with individual private lines from the meter to each of the parcels receiving County water service. Easements for the location of each meter and private line will need to be obtained by Appellants prior to meter installation.

e. The existing water meter servicing TMK No. (2) 2-3-008:022 (Alexander parcel) shall be turned in and a new meter servicing this parcel shall be installed together with the other water meters servicing Appellants' parcels. Alexander will be credited the water meter reservation fee for the new meter by the turning in of the old meter.

f. Water system improvements must be dedicated to and accepted by the County prior to meter issuance.

g. Upon installation of the water meters issued pursuant to this Agreement, those lot owners who requested water service in the past and are designated on the Water Meter Priority List as of the date of this Agreement as "WR" (water request) will be removed from the list. However, if the lot owners are on the list and designated "SD" (subdivision) they will remain at their current position on the priority list. The lot Owners shall not be precluded from making a new request for water service for a lot arising from subdivision of the original lot and shall be placed on the Water Meter Priority List pursuant to MCC §14.13.040.

h. Upon the full execution of this Agreement, the County will send a certified letter to the owners of record of each of the 9 lots in the Anuheha Place Subdivision notifying them of the terms of this agreement and advise them that they have 30 days from date of receipt of this letter to apply for water service for their lot, submitting with the completed application the \$6,030 meter reservation fee. Failure of a lot owner to accept the offer of the water meter by completing and returning to the Department required application, to submit the reservation fee and/or to respond to the notification within 30 days will be deemed a non-acceptance of the offer, and the offer as to that lot will be terminated. The non-responding lot Owner or Owner who does not accept this offer will remain on the Water Meter Priority list with the priority designation for the request for water service stated on the list as of the date of this Agreement.

i. Appellants, by signing this agreement, warrant that

they have investigated the costs of the work and other actions they are agreeing to undertake as listed above and that they will be financially able to complete all tasks required of them by this Agreement. In the event Appellants are unable to perform all work required of them by this Agreement, this Agreement will be deemed void and the offer of water meters will be withdrawn. Appellants will continue in their current positions on the Water Meter Priority List and be entitled to a water meters as they become available pursuant MCC \$14.13.040.

j. Upon the full execution of this Agreement, Appellants will be deemed to have stipulated to Dismissal of the Appeal with prejudice (Appeal No. 11-02) and the Department shall notify the Board of Water Supply at the meeting following the full execution of this document that the Appeal has been dismissed by way of this Agreement.

k. The Appellants/Owners, their heirs, successors, and assigns herein agree and covenant to defend, indemnify, and to hold harmless the Department, the COUNTY OF MAUI, its officers, employees and agents, from and against all claims for property damage, personal injury, or wrongful death, arising out of or in connection with this Agreement, and will reimburse the County of Maui, its officers, employees and agents for any judgements, costs, and expenses including reasonable attorney's fees incurred in connection with the defense of any such claim incurred by the County of Maui in enforcing this agreement

4. Attorneys' Fees and Costs. Each party in this matter shall bear its own attorneys' fees and costs.

5. Instruments of Further Assurance. The parties agree to execute and deliver any and all further instruments and documents, if necessary, and to take such action as may be reasonably required to

6. Waiver. The failure of any party to enforce at any time any of the provisions of this Agreement shall not be construed to be a waiver of any right of such party thereafter to enforce such provisions and each and every other provision hereof.

7. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The parties agree to execute whatever other documents and take any actions that are necessary to effectuate and carry out the intent of this Agreement.

8. Governing Law and Venue. The validity of this Agreement and of any and all terms and provisions thereof, as well as the rights and duties of the parties to this Agreement, shall be interpreted and construed pursuant to and in accordance with the



laws of the State of Hawai'i and any action brought to enforce any provision of this Agreement or under this Agreement shall be brought in the Second Circuit Court, State of Hawaii.

9. Entire Agreement and Modification. This Agreement constitutes the entire agreement between the parties and there are no understandings or agreements other than those incorporated in this Agreement. This Agreement shall not be altered, amended or modified or otherwise changed in any respect or particular whatsoever except by a writing duly executed by all parties hereto.

10. Severability. If any provision of this Agreement or the application thereto to any person or circumstances shall, for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to the other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.


11. Counterpart Execution. This Agreement may be executed in counterparts, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and said counterparts together shall constitute one and the same instrument. This Agreement may also be executed by way of facsimile or electronic signature and such signature shall be sufficient to bind the party so executing this Agreement. Such party shall thereafter promptly forward a confirming copy of such facsimile or electronic signature to the other party.

12. Date of Agreement. The date upon which this Agreement will be deemed to be fully executed, is the date upon which the Agreement is executed by the Director, Department of Water Supply, he County of Maui.

**IN WITNESS WHEREOF**, the parties hereto executed this instrument on the day, month and year first written above.

Dated at WAILUKU, Maui, Hawaii, this 21<sup>st</sup> day of February, 2012.

COUNTY OF MAUI

By:   
DAVID TAYLOR  
Director  
Department of Water Supply