

CHARMAINE TAVARES
Mayor



JEFFREY K. ENG
Director

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February 23, 2009

Honorable Charmaine Tavares
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For transmittal to:

Honorable Michael P. Victorino
Chair, Water Resources Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Charmaine Tavares 2/24/09

Dear Chair Victorino:

Subject: **ACCESS THROUGH THE HANS MICHEL PROPERTY FOR MAINTENANCE AND OPERATION OF KANAHA VALLEY STREAM (WR-27)**

Thank you for your February 9, 2009 request to update comments on the status of the agreements with Mr. Hans Michel. There are two agreements; the original June 3, 1994 agreement, and a May 23, 2005 amendment. This discussion updates our status letters of September 11, 2006, February 23, 2007, September 5, 2007, March 19, 2008, and a December 10, 2008 letter to Mr. Michel.

JUNE 3, 1994 AGREEMENT between Hans Michel (Owner) and the Board of Water Supply, County of Maui (Board).

- 1. Water Meter for the Property:** The board shall provide a 5/8-inch water meter on property and adjacent to existing 0.30 MG Kanaha tank after (1) owner makes request, and (2) owner enters into elevation agreement. Owner shall pay for water consumed.

"By Water All Things Find Life"

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Comment: Mr. Michel has not submitted an application for water meter, and an elevation agreement is not done. Mr. Michel needs to initiate this request, however, has indicated he is not interested in securing this meter.

- 2. Maintenance of Dirt Roadway Located Between the Lahainaluna High School's Piggery and the Board's Kanaha Pump Station No. 2:** The board shall maintain the existing roadway and stream crossing within the property, and pursue a resolution with the State of Hawaii to maintain the existing roadway and stream crossing within the state's property. The board shall limit maintenance work to repair of damage or wear caused by board with crushed rock waste or base course. Damage to the stream crossing due to storm flow shall be jointly funded by owner and board.

Comment: Done, and ongoing. The board, or department, has delivered and placed base course on the existing roadways on numerous occasions. The department has also completed the repair of the stream crossing in 2008 at the department's sole expense.

- 3. Drainage Control Improvements Within the Board's 0.30 MG Kanaha Tank Site:** Board shall repair damages to roadway adjacent to Kanaha tank site caused by runoff through the tank site. Repair work to restore ground to original condition as reasonably possible.

Comment: Done. Although a dry-stack rock wall was originally considered, the department constructed a hollow tile wall along the tanksite boundary to eliminate drainage concerns. This work was completed in June 2007. Prior to that work, the department imported base course and graded this area on numerous occasions.

- 4. Board Vehicles Parking on the Property Adjacent to the 0.30 MG Kanaha Tank:** Owner shall allow board vehicles to park adjacent to tank, and grade to maintain the parking area.

Comment: Done. As noted in condition 3, the department constructed a hollow tile wall to permanently address grading and drainage concerns.

- 5. Grading of the Roadway Near the Tank Site Access Driveway Gate:** Board shall perform excavation work, one-time to the satisfaction of owner, for vehicle turn-around near tank site access.

Comment: Done.

6. **Board 0.30 MG Kanaha Tank Site Boundary Adjustment:** Board shall modify the subdivision map (SD 90-15) to delete portion of land Owner wishes to acquire. Owner shall coordinate with State to acquire State owned land.

Comment: Ongoing. Early in the project a consultant prepared a preliminary subdivision plat. That plat was not submitted because of land title issues. The department has contracted the services of Title Guaranty Escrow & Title Services and anticipates a title report in July 2009. Subject to the result of that effort, the next steps will be planned.

7. **Easements:** Owner shall grant easements to Board for (1) Board vehicle parking, (2) 0.30 MG Kanaha tank overflow discharge, (3) Kanaha tank surface runoff discharge, (4) pump prelubrication discharges at pump stations 1 & 2, (5) vehicular access along existing dirt road to Kanaha tank site & pump stations 1 & 2, and (6) waterlines and appurtenances.

Comment: Ongoing, see comments item 6.

8. **Repair Eroded Areas Within the Property and Along the Pedestrian Trail:** The board shall discuss with the State of Hawaii and Pioneer Mill the Owner's request to repair pedestrian trail along cliff eroded by overflow water from screenbox, and erosion on property caused by overflow water.

Comment: Ongoing. The design of the overflow allows water to cascade over the cliff wall. This 1994 design consolidates two prior outlets into one, collecting overflow from the Department of Education tanks, the DWS finish water tank, and return water from the DWS Lahaina Water Treatment Facility.

9. **Boulder Removal:** Board, at its cost, remove or relocate 5 boulders from property.

Comment: Done.

10. **Relocation of Board Waterlines:** Board, at its cost, relocate portion of 6-inch waterline from pump station 2 into access easement.

Comment: In past conversation with Mr. Michel, relocation of the waterline at this time is not cost effective, and serves no purpose. Relocation of the waterline into the proposed easement is intended when repairs are required, or the easements will be designated to encompass the existing waterline location.

11. **Ownership of the Pump Site No. 2:** Owner shall dedicate to Board title to Kanaha Pump Site No. 2, as revised. Ownership revert back to owner if pump station function abandoned.

Comment: Ongoing, see comments item 6.

12. **Relocation of Access Gate at Pump Station No. 2:** Board shall relocate vehicle access gate to east (south?) side of site. Owner to grant easements for roadway and power pole relocation.

Comment: Ongoing, see comments item 6. The Owner and Department recently entered into an agreement to reduce the pump site from 4,874 square feet to 2,000 square feet, with necessary easement adjustments. This amendment to agreement dated May 23, 2005, recorded in the Bureau of Conveyances October 10, 2005 at 2:00 PM, document no. 2005-205101. The conditions of that agreement are discussed later. In January 2009 the department installed an access gate on the south side of the pump station site.

13. **Grading of Land Near Pump Station No. 2 for Access Onto Kanaha Stream:** The board discuss with State and Pioneer Mill excavation work to access stream with heavy equipment.

Comment: Done, heavy equipment access into the stream is available.

14. **Flowage Easement for Discharge From the Lahaina Water Treatment Plant Improvements and the Existing State and Pioneer Mill Co., Ltd. Water System:** Board pay \$25,000 for flowage easement from south boundary line of property to Kanaha Valley.

Comment: Done.

15. **Payment of Attorney Fees:** Board pay Owner \$900.00 for attorney fees during May 11, 1993 meeting.

Comment: Done.

16. **Reimbursement to the Owner for Improvements Performed by the Owner Which Benefitted the Board:** Board pay Owner \$40,000.00 for materials, equipment and labor for various maintenance and improvements.

Comment: Done.

17. **Damage or Injury from Landslide or Earthquake and Falling rocks:** Owner not responsible or liable for damages or injury resulting from landslide, earthquake or falling rocks.

18. **Stream Crossing and Heavy Flood Water:** Owner not responsible for loss or injury when crossing stream.
19. **Damage to Vehicle and Injuries to Employees and Agents:** Owner's property is a farm. Owner not responsible for damage or injury caused by collision with animals.
20. The Board shall not grant permission over roadway easements, except employees and agents pursuing Board's business.

MAY 23, 2005 AMENDMENT TO AGREEMENT between Hans Michel (Owner) and Department of Water Supply (Department). Recorded in Bureau of Conveyances on October 10, 2005 at 2:00 PM, document no. 2005-205101.

1. **Revise Kanaha Pump Site 2:** Revise Kanaha Pump Station Site 2 (Lot B) to:
(a) 2,000 square feet area reflected by existing fenced site and parking lot turn-around, and (b) revise 20-foot wide easements 9 and 12 to follow south boundary of Lot B.

Comment: This work is not complete. Land title issues are being pursued. See condition 6 of the 1994 agreement.

2. **Revise Exhibits A & B (1994) with Exhibits A-1 and B-1 (2005).**

Comment: These exhibits show the above mentioned revisions.

3. **Other terms, covenants, and conditions of 1994 agreement unchanged.**

In addition, your letter provided two additional worksheets prepared by Mr. Michel. The first, possibly dated March 20, 2006 appears to review the 1994 agreement conditions, and the second dated August 2, 2006 appears to identify additional conditions.

MARCH 20, 2006 (not readable) Handwritten Work Sheet prepared by Mr. Michel apparently reviewing the conditions of the 1994 agreement. We list Mr. Michel's comments, however, each condition is addressed earlier in this letter.

1. Water Meter for Property 5/8 inch. Not ready Not Done.
2. Road Maintenance after Rain Storm Dec. 07. Not Done
3. Done
4. Done
5. Done
6. Done
7. Not Complete – Land Title

8. Not Done Pedestrian Kuleana Trail.
9. Done
10. Not Done Waterline into Road Easement
11. Not Complete – Land Title Pump No. 2
12. Gate Pump No 2. Not Done Land Title
13. Not Complete No Cement
14. Note Complete Flowage Easement Water fall erosion No Cement – Tree trim
15. Done
16. Done
 2. Amendment Agreement from 2005, No. 2005-205100 = No. 2005-205101

AUGUST 2, 2006 Handwritten Work Sheet prepared by Mr. Michel.

1. Steam Crossing repair – “checked” on worksheet.
2. Stonewall destroyed to Pump No. 2 – “checked” on worksheet. Response: Several years ago a dry stack rock wall constructed by Mr. Michel was damaged by an excavator hired by the Department. After much discussion and consideration of alternatives, the Department repaired the rockwall in 2006.
3. 2. Amendment 2005, recover Lawyer Fee \$3,697.75 + interest – Response: This amendment to the 1994 agreement was initiated by, and benefits Mr. Michel. The department does not, and did not represent an intent, to pay these fees.
4. Flume ramp puka – Response: This comment appears to refer to the roadway approach ramp to the cattle guard under the flume. Although not part of any agreement, the department is preparing to harden this approach with in-house personnel within the next month.
5. Cattle Guard rail bent 4p x 14.Ft – Response: Based on field observation, only 2 rails were damaged and required replacement. These rails were replaced in January 2009.
6. Road wash out from 2002 – 2007 Dec. – “checked” on worksheet. Response: This area where runoff crosses the access to Mr. Michel’s property is a constant maintenance effort, and the department has addressed on many occasions.
7. Waterfall erosion + Tree trim – Response: See condition 8 of the 1994 agreement.
8. Stonewall along side of fence. Water tank – “checked” on worksheet. Response: See conditions 3 & 4 of the 1994 agreement.
9. Cement crossing to well No. 2 need Repair – Response: The department feels the condition of this crossing is adequate.
10. Puka in pipeline band-aid fix – Response: The department repairs “pukas” or small breaks with repair clamps, the industry standard for such repairs.
11. Subdivide Well No 2. 1977 in Service – Response: See conditions 6 & 11 of the 1994 agreement.
12. Cut turn around by Well No. 2 to Intake – Response: Based on field observation and operations, the department does not feel this work is necessary.

Honorable Michael Victorino
Chair, Water Resources Committee
February 23, 2009
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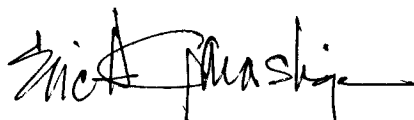
13. Property back Tax from 1972 plus Interest – Response: This is not a condition of any agreement, and Mr. Michel has not lost use of the lands, however, RPT Office reported the assessment on the proposed land entitlements to the department was about 23-cents for FY2008. RPT has awarded that assessment since 2000.
14. Survey Road Map incorrect – Response: The land surveyor or engineer who prepared the map certified its correctness, however, conditions may have changed. Topographic features will be verified if necessary.
15. Missing B-mark Intake “X” – Response: This is not a condition of any agreement.
16. Survey Family Land Loi TMK 4-6-17-1 – Response: This is not a condition of any agreement.
17. Stream Crossing by Well No 2 need Cement – Response: This is not a condition of any agreement.
18. Plus 1994 Contract Incomplete – Response: See comments on 1994 agreement status.
19. Tank side Fire hydrant as Promised for all the Headache + Inconvenience – Response: This is not a condition of any agreement, however, the department did review this request and determined a fire hydrant in the vicinity of the tank will not provide any pressure for fire protection, and would be misrepresentative of availability.

In addition to the above noted discussion, in 2004 the Department constructed a man bridge to provide safe crossing of the stream during high flows.

Following the December 2007 storm and related damages, the department reinforced the intake dam, restored the spillway and addressed the undermining caused by erosion. The department worked with Civil Defense and FEMA to recover the costs associated with this recovery. We also hired a contractor on two occasions in 2007 to excavate the eroded landslide material accumulated behind the dam. Recent rainfall has again transported sediment to the dam. We are monitoring the deposits and will coordinate the services of a contractor to remedy this condition when appropriate.

Thank you for the opportunity to provide this update. As you can see, the outstanding items are primarily land related to the apparent cloud on the land title. We will have a better handle on this in July 2009.

Sincerely,



ERIC H. YAMASHIGE, PE, LS
Deputy Director