

Council Chair
Danny A. Mateo

Vice-Chair
Michael J. Molina

Council Members
Gladys C. Baisa
Jo Anne Johnson
Sol P. Kaho'ohalahala
Bill Kauakea Medeiros
Wayne K. Nishiki
Joseph Pontanilla
Michael P. Victorino



Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

February 9, 2009

Mr. Jeffrey K. Eng, Director
Department of Water Supply
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Eng:

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

The prior Council's Water Resources Committee met on December 15, 2008, and received an update from the Department of Water Supply (DWS) on the matter related to agreements dated June 3, 1994, and May 23, 2005, between Mr. Hans Michel and the Board of Water Supply. The agreements detail numerous conditions to be met by the DWS. I am attaching a copy of the portion of the minutes of the December 15 meeting so that you may review the statements made by the DWS, and the tenor of Mr. Michel's disappointment to some of the Department's statements and responses.

The attached exhibit, relating to Kanaha Valley improvements, from the Fiscal Year 2009 Budget Ordinance requires "that a quarterly status report shall be submitted to Council until the project is completed." The first quarterly report was due in September 2008. At the Committee's December 15, 2008 meeting, the Committee was assured that a quarterly report would be forthcoming; however, no anticipated date for the Council's receipt of the report was specified.

May I request the following:

1. That the quarterly reports for September and December 2008 be transmitted to the Council, as required by the Fiscal Year 2009 Budget, with a copy to the Committee.
2. That a copy of the signed and dated contract between the DWS and the land title company, which has been contracted to perform the title search, be transmitted to the Committee.
3. That a status update and an estimated completion date of the title search, according to the land title company, be transmitted to the Committee. If delays

Mr. Jeffrey K. Eng
February 9, 2009
Page 2

are anticipated by the land title company, please provide a comprehensive explanation for those delays.

4. That a detailed explanation related to all unfinished work, as noted by Mr. Michel in the attached copy of his correspondence dated July 31, 2008, including all items noted on page two of the correspondence be transmitted to the Committee. Please include all documentation related to the "ongoing" discussion between the Board of Water Supply, the State, and Pioneer Mill regarding Mr. Michel's request to repair the pedestrian trail as noted in your attached response letter dated March 20, 2008.

It appears that many of the conditions contained in the June 3, 1994 agreement are directly related to the results of the title search; however, many are not. The Fiscal Year 2009 Budget appropriates \$625,000 for Kanaha Valley Improvements. Please explain why none of the \$625,000 has been expended in order to satisfy some of the pending conditions that are unrelated to the title search.

Finally, I am attaching copies of correspondence dated September 11, 2006, February 23, 2007, and March 20, 2008, from the DWS providing updates on the above matter. Please note that this matter has been ongoing since 1994, and seemingly very little action has been taken since the September 2006 update. It is regrettable that Mr. Michel has found it necessary to enlist the help of the Council on this administrative matter. May I please request that you make every effort to expedite the completion of all conditions set forth in the agreements and include an expected date for completion of the conditions, in your quarterly report.

May I please request a response no later than **Monday, February 23, 2009**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Kim Willenbrink at ext. 7761, or Tammy Frias at ext. 8005).

Sincerely,



MICHAEL P. VICTORINO, Chair
Water Resources Committee

wr:ltr:027aws01:kcw
Attachments

cc: Honorable Charmaine Tavares, Mayor
Eric Yamashige, Deputy Director of Water Supply
Mr. Hans Michel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

M I N U T E S
WATER RESOURCES COMMITTEE
COUNCIL OF THE COUNTY OF MAUI
COUNCIL CHAMBER, EIGHTH FLOOR
WAILUKU, MAUI, HAWAII
DECEMBER 15, 2008

REPORTED BY: Tonya McDade, Hawaii CSR #447
Registered Professional Reporter
Certified Realtime Reporter
Certified Broadcast Captioner

1 probably on Friday. And, unfortunately, many of us will
2 be at the Christmas programs for -- at some of the
3 schools, so we may not be here. And so we wanted to
4 take this opportunity to wish you Godspeed, wish you
5 well, and hope that you will someday find your way back
6 to these shores. Thank you very much. It is our
7 sincere and deepest pleasure and honor to have had you
8 serve as Councilwoman for the County of Maui.

9 CHAIR ANDERSON: Thank you, Jocelyn. Thank
10 you very much.

11 Our next testifier is Hans Michel. Members,
12 Mr. Michels [sic] is here today due to the -- okay,
13 thank you -- in regards to Water Resource Item 27. And
14 if you'll look in your binders, at the last page, in
15 Item 27, I think it might be easier to follow along with
16 Mr. Michel.

17 Hans:

18 MR. MICHEL: Good morning, Council Member, and
19 good morning, Michelle Anderson. Thank you very much
20 for you still allow me to come one more time before you
21 with your job and go back to the mainland. I'm kind of
22 sorry to see you go. But I wish you well wherever you
23 go.

24 CHAIR ANDERSON: Thank you.

25 MR. MICHEL: And I wanted to know from

1 Eddie -- Ed -- from Eddie [sic] Yamashige, from the last
2 meeting in March 28, '08, when he says he will check on
3 the title guaranty. And when they mention, it will take
4 maybe two to three months. And I never had the
5 follow-up letter from Eddie [sic] since then. I would like
6 to know what nearly what happen, and I would like to know
7 what happened to the completion of 1994 contract between
8 me and the Water Department of County of Maui.

9 CHAIR ANDERSON: Mr. Michels [sic], you've
10 given us a worksheet showing the things that you don't
11 feel have been completed in your 1994 agreement. Number
12 7, the land title, and a pedestrian kuleana trail, a
13 waterline into the road easement, a land title for Pump
14 Number 2. There's several land title issues here. No
15 cement, Item 13. So, you know, you're referencing a
16 letter. And I'm not certain. Is the letter the one
17 that was sent by Vice-Chair Victorino? What letter are
18 you referencing, Mr. Michels [sic]?

19 MR. MICHEL: Well, today, actually, we have a
20 letter over here that was from you guys' County over
21 here, Exhibit A. It says, "Kanaha Valley improvement,
22 provide that the" --

23 CHAIR ANDERSON: Can you give us a date? Is
24 there a date on the letter?

25 MR. MICHEL: Yes. The date is 4-25-08.

1 CHAIR ANDERSON: Okay. Was that -- I don't
2 see that in our binder.

3 MR. MICHEL: It came from you people.

4 CHAIR ANDERSON: Was that ever transmitted to
5 us? This is a -- an exhibit on our budget
6 appropriations, Members, for Kanaha Valley improvements.
7 "Quarterly status reports shall be submitted to the
8 Water Committee until the project is completed." So
9 maybe we'll have Mr. Yamashige give us a status report.
10 \$625,000 was appropriated to take care of this.

11 And so -- so I'm wondering, Mr. Michels [sic],
12 you sent us, in July '08, a handwritten worksheet on the
13 areas that still needed to be fulfilled in -- in your
14 agreement with the County. Is there anything on this
15 list that still -- that's been done that -- that is not
16 reflected on this list?

17 MR. MICHEL: Yes. In other words, what I have
18 here is the two worksheet after we had a budget hearing
19 in Lahaina. Was in March 20th, '08. And then I wrote
20 that letter. And I show to you what -- what the
21 Department has done in the contract and what Water
22 Department is still missing in the contract.

23 And there are additional damage cut through
24 before and after the contract which are all mention in
25 here. Some Eddie [sic] has done and some not never show.

1 But, I believe you have the two worksheet.

2 CHAIR ANDERSON: Yes, we do. And I'm just
3 wondering if there's anything else that's been done
4 that's not reflected on this worksheet.

5 MR. MICHEL: Nothing has done except what I
6 have here on the worksheet. And there are four places I
7 have checked off which got done and the rest is still
8 missing.

9 CHAIR ANDERSON: Okay. Thank you, Mr. Michels
10 [sic]. Members, questions for Mr. Michels [sic]? You
11 know, if we need to, we can call you up as a resource
12 later, Mr. Michels [sic].

13 MR. MICHEL: Okay.

14 CHAIR ANDERSON: Thank you.

15 MR. MICHEL: Thank you very much.

16 CHAIR ANDERSON: So is there anyone else who
17 wishes to testify?

18 (Silence.)

...END PUBLIC TESTIMONY...

19 CHAIR ANDERSON: Okay. I'm gonna wait and
20 close testimony because I don't want any problems with
21 Mr. Michels [sic] coming up again. So, Members, I think
22 what we need to do at this point is ask Mr. Yamashige
23 for an update on the situation. If you please,
24 Mr. Yamashige.

25

1 ITEM NO. 27 ACCESS THROUGH THE HANS MICHEL PROPERTY
2 FOR MAINTENANCE AND OPERATION OF KANAHA
3 VALLEY STREAM (C.C. No. 06-160)

4 MR. YAMASHIGE: Yes. Thank you very much,
5 Madam Chair.

6 If you look at the worksheet that Mike --
7 Mr. Michel prepared -- I cannot really see what the date
8 is -- you'll notice that a lot of it refers to land
9 title. As I understand it, Mr. Michel has been pursuing
10 the land title issue for the conveyance of land for tax
11 reasons. And we did check with the Real Property Tax
12 Division, and he is being assessed a reduced rate. In
13 fact, all of the land that the Department is --

14 CHAIR ANDERSON: Eric, you gotta put your mike
15 real close because we're not picking you up --

16 MR. YAMASHIGE: Okay.

17 CHAIR ANDERSON: -- on the --

18 MR. YAMASHIGE: Is this any better?

19 CHAIR ANDERSON: Yeah. Better, Clarita?

20 Thank you.

21 MR. YAMASHIGE: Okay. We did check with the
22 Real Property Tax Division. And all of the land that is
23 in question for conveyance to the Department, either by
24 fee or by easement, is already being recognized at a
25 lower rate. And Mr. Michel is being charged

1 approximately 23 cents a year for that land.

2 That being said, we are pursuing the
3 conveyance of easements while we recently put out a
4 contract to do a -- do a title report, a title search on
5 that property. And that is only required for the fee
6 simple title.

7 CHAIR ANDERSON: When you say "recently,"
8 Mr. Yamashige, what's recently? Because we were told
9 months ago that you were gonna do this, a title report.

10 MR. YAMASHIGE: Yes. We did receive a
11 proposal. I can't remember how much it was. But we --
12 we were considering -- and we actually did talk to
13 Mr. Michel about just the conveyance of easements
14 instead of the conveyance of fee. I do not believe
15 anything came out of that discussion. So we are
16 pursuing the -- the title report.

17 CHAIR ANDERSON: It's my understanding that
18 Mr. Michels [sic] wants the agreement, as executed, to
19 be fulfilled which requires a transfer of ownership for
20 certain of the easements. And is there a problem with
21 that?

22 MR. YAMASHIGE: No. The -- the conveyance of
23 easements would be easier. It's when we try to receive
24 title to land --

25 CHAIR ANDERSON: Uh-huh.

1 MR. YAMASHIGE: -- it becomes a little bit
2 more difficult.

3 CHAIR ANDERSON: Well, I mean, that's what the
4 agreement says, that's what the County signed off on.
5 And are you saying that there isn't clear title, or
6 there's some problem with the --

7 MR. YAMASHIGE: That -- that is what I was
8 told. Which is why we are proceeding with that title
9 report, because we'll -- we'll find out once and for all
10 if there is a -- a cloud on the title.

11 CHAIR ANDERSON: And when do you expect the
12 title report to be done?

13 MR. YAMASHIGE: I don't know. I don't know
14 how long it'll take. It is -- it is not -- well, with
15 this initial title report would -- will determine -- or
16 the title company will determine how much more is
17 required, because it may be something that requires
18 quite a bit of research.

19 CHAIR ANDERSON: Well, I mean, so far, it just
20 sounds speculative, there's no concrete anything for us
21 to go on, Mr. Yamashige. And, you know, we've been
22 trying to settle this for four years with Mr. Michels
23 [sic].

24 MR. YAMASHIGE: I think longer than that.

25 CHAIR ANDERSON: Well, yeah. But, I mean, on

1 my watch, it's been four years. This was one of the
2 first items I brought up on the Water Resource
3 Committee. And the -- you know, you guys got seven --
4 \$625,000 to deal with this. And I think that you're
5 long overdue on giving us a quarterly status report.
6 And so I would request that your Department bring
7 forward a status report on all items within the
8 agreement so that the next Council can take this up and
9 review your status report, and see if we can't move on
10 this, even if we have to hire a consultant to get it
11 done, because Mr. Michels [sic] has waited long enough.

12 Mr. Pontanilla, did you have a question?

13 COUNCILMEMBER PONTANILLA: Yes. Thank you,
14 Chairman. I -- I think you asked the one question that
15 I was gonna ask in regards to the first quarter report,
16 which -- which we haven't received, that was supposed to
17 have been in on September -- I don't -- if there's a lag
18 in regards to the CIP reporting of that particular
19 project.

20 The other question I'd like to ask Eric is
21 that, you know, we -- we -- we hear things, but we don't
22 have any documentation in regards to title report,
23 what -- when we sent it to the Department that, you
24 know, do this research. Do we have any documentation
25 that you guys send -- send out? And any documentation

1 in regards to what our Chairman had requested, you know,
2 any drop date for response on the report itself, title
3 search report?

4 MR. YAMASHIGE: We do not have a date when
5 this report's gonna be prepared. I -- I need to check
6 with our Engineering Division if -- if that has been
7 done.

8 COUNCILMEMBER PONTANILLA: Okay. If -- if we
9 could have something in writing from the Department
10 regarding the title search report and any feedback from
11 the organization or entity that's doing the research in
12 regards to response. Thank you.

13 MR. YAMASHIGE: Thank you. We'll -- we'll
14 include it in the quarterly report.

15 CHAIR ANDERSON: Okay. Thank you,
16 Mr. Pontanilla. You know, I wanna make sure the date --
17 let's see. This is -- Budget Chair?

18 COUNCILMEMBER PONTANILLA: This is the '09
19 Budget, Chairman.

20 CHAIR ANDERSON: This is -- this is the '09
21 budget?

22 COUNCILMEMBER PONTANILLA: Yeah. And the
23 first quarter goes from July to end of September.

24 CHAIR ANDERSON: And so we have until next
25 December to either expend or encumber these funds, is

1 that correct?

2 COUNCILMEMBER PONTANILLA: Yes.

3 CHAIR ANDERSON: Because we don't want these
4 funds to lapse. And we wanna make sure -- do you know,
5 Mr. Yamashige, how much of this money's been spent from
6 -- up until September?

7 MR. YAMASHIGE: Of the 625,000, I do not
8 believe anything was spent, because the Department does
9 have a -- a budget for the Kanaha Valley. We -- we have
10 been expending money in the valley for maintenance of
11 the system.

12 CHAIR ANDERSON: But not this money?

13 MR. YAMASHIGE: Not that money.

14 CHAIR ANDERSON: Yeah.

15 MR. YAMASHIGE: That's correct.

16 CHAIR ANDERSON: I would note that this is the
17 -- the total amount. And it includes the Napili well
18 generator and Mahinahina improvements. So we will
19 expect, then, a written -- who is heading up this
20 project?

21 MR. YAMASHIGE: I think, at the last meeting,
22 one of our engineers said that they were taking care of
23 this.

24 CHAIR ANDERSON: Okay.

25 MR. YAMASHIGE: But we -- we'll follow up on

1 it.

2 CHAIR ANDERSON: Okay. Thank you very much.
3 Members, any other questions?

4 COUNCILMEMBER MATEO: Madam Chair?

5 CHAIR ANDERSON: Oh, geez. Danny, hi.

6 COUNCILMEMBER MATEO: You're in the forest.

7 CHAIR ANDERSON: Sorry about that.

8 COUNCILMEMBER MATEO: Madam Chair, for the
9 Department. I -- I think, because, you know, the Chair
10 has had this particular item for the last four years --
11 prior to her, I had it for two -- and it just seems that
12 it continues to lag. It is not being given the kind of
13 priority. And we're -- we're -- we're no farther ahead
14 than we were years ago. So unless the Department can
15 give us some kind of a timetable or some kind of a
16 target date that both Mr. Michels [sic] and the
17 Committee can be assured that we are progressing, and
18 trying to meet some of the commitments the County has
19 referenced that we have not yet finalized -- so I -- I
20 know it's difficult for you to give us some kind of
21 schedule, but funds are there. Commitments or overtures
22 to addressing them has been made. And we're still
23 tinkering around with specifics at this time. So I'm
24 hoping that the Department can at least come up -- you
25 know, even if it's within the next 12 months, to try to

1 at least finalize it or give us a percentage that, in
2 the next 12 months, we will complete 50 percent of these
3 items. So we're assured that something's gonna get
4 done.

5 Thank you, Madam Chair.

6 CHAIR ANDERSON: Thank you, Member Mateo. Did
7 you wanna respond?

8 MR. YAMASHIGE: Yes. Thank you, Madam Chair.
9 Thank you very much, Mr. Mateo.

10 I would like to say that I believe we have
11 accomplished quite a bit in the valley. I -- I've been
12 here about three and-a-half years, so I -- I understand
13 that it has been going on for quite some time. But our
14 operations people have done quite a bit in the valley to
15 address several of these issues, as we try to focus our
16 attention on the conditions of the agreement and not
17 anything, you know, outside of those conditions. So we
18 are focused on the agreement.

19 If you will notice the outstanding items, it
20 is kind of coming down to the land issues, the actual
21 conveyance of either the granting of easements or the
22 conveyance of the land. And that has taken, I -- I will
23 agree, a lot longer than anybody would like.

24 The other conditions -- the physical
25 conditions we've been addressing. And, you know, I

1 think we have taken care of quite a bit of 'em.

2 CHAIR ANDERSON: Thank you, Mr. Yamashige.
3 Mr. Michels [sic], did you have some comments, please?

4 MR. MICHEL: Yes, I do have over here. You
5 had a meeting, Mr. Yamashige, with the Water Resource
6 people over here. And that meeting was March 28, '08.
7 And there was a lady with you, Wendy, which I believe
8 was your assistant or something. And she mentioned she
9 can get the title and all what needs to be done squared
10 away with two or three months. But you never did send
11 me a follow-up letter and told me what you were doing.
12 You never send a letter if you had hired somebody since
13 then for get the title search done. We never -- you
14 never sent any email or anything. Everything is always
15 blank.

16 But as Michelle Anderson note today, it's been
17 a long time. And I hope you'll do something soon,
18 before I change my mind and I will take your Water Board
19 and you guys to court, and I will have to sue you for
20 what you are worth.

21 And, Eric, you are a nice guy, but you're very
22 slack. You don't do your job, because this is not only
23 the title you're talking. Remember, I told you, and I
24 showed you last year -- last year, October, by the
25 cattle guard, four rails are bend and destroyed. Well,

1 you never did come and fix it. We still waiting for it.
2 Now, it was your bulldozer, D6, who destroyed it. And
3 you know that. It's only a bulldozer who can twist
4 that. I only have a small truck that go up and down.
5 And before the cattle guard, all the pavement got knock
6 away over the year and never get replaced. Because when
7 I ask Bobby Vida, your superintendent, working below
8 you, he said he can do nothing unless you give him the
9 order. So there's two guys doing nothing. And that's
10 what's going on all over these past years and years.

11 And please do something very soon. I mean,
12 that even could be done next week, not next year.

13 And last year, December, we had flooding. I
14 called you. And I was to call the Civil Defense to
15 come and check. Well, you guys had a bigger problem in
16 Kula. So I let that go. All you guys all went to Kula.
17 You came fix the intake in January, which I was very
18 proud of you, you guys got something done. And
19 Mr. Victorino is -- came up in December, checked it out,
20 and he saw what was happening and then got fixed. And
21 I'll be glad you got that done.

22 But my personal item in the valley you have
23 neglected from the day you stepped into Water
24 Department. And I'm very sad because we need people who
25 have little more grit and be more truthful to get the

1 job done for the small guy.

2 CHAIR ANDERSON: Okay. Mr. Michels [sic], I'm
3 gonna ask you not to make it personal, and stick to the
4 -- the facts of the issue that you want addressed.

5 MR. MICHEL: Okay. The issue --

6 CHAIR ANDERSON: You said the personal --

7 MR. MICHEL: Oh, I'm sorry.

8 CHAIR ANDERSON: Personal items --

9 MR. MICHEL: But I have to let you know how
10 this thing went work, you know.

11 CHAIR ANDERSON: No, no, no.

12 MR. MICHEL: Because, you know, otherwise you
13 guys give him a raise next year. Okay.

14 My problem is he never did fix the road from
15 last year heavy rain in December. Not one load. Nobody
16 came with the backhoe.

17 In previous year, 2004, Zeke Kalua, under the
18 old Mayor Arakawa, went fix the road for Water Department
19 because these buggers had no time. It's not personal,
20 but if the guy doesn't show to work, if he's scheduled
21 to come to Lahaina, we crush the waste and fix the
22 road, if he doesn't show up, then you forgotten again.

23 You see, Lahaina, we always get the feeling of
24 secondhand citizen. And I definitely am a secondhand
25 citizen in the West Maui Mountain. But you people have

1 the water. Until we have a drought, and you have a
2 struggle, you know that. And then, God forbid, it might
3 give you guys a eye-opener, you know, the neglect.

4 From 1975, Water Resource Management from
5 Honolulu came in that valley, drilled a well without any
6 paperwork, so to speak. It was a exploratory well. And
7 when they hit the water, they flood the whole thing.
8 But the paperwork never came through. And I told
9 them -- Tatsumi Imada, who was the Director at that
10 time, you need the paperwork squared away. "Oh, we'll
11 do it." The next thing, he's gone. Rae Shikuma came
12 in, nothing happened. Then I had to hire attorney. And
13 I told you, I pay \$6,600 for my attorney for get that
14 contracts got done. And it got signed and sealed.

15 And today, you're still dragging your feet,
16 Yamashige, for get my contract completed, because
17 somehow you guys don't seem to understand, to read the
18 English language, what needs to be done. It's very sad.

19 And according to Jeff Eng, he told me go see
20 the Mayor because Yamashige isn't moving. I told him, "I
21 know that." So I called the Mayor and the Mayor will
22 send two guys come out in the field sometime this week.
23 And then we see what's gonna happen on that.

24 But, definitely, the road neglect is still
25 there. It's a shame, a very shame for the Water

1 Department in and out every day.

2 Last week, you guys had the burned out
3 transformer in the valley. You guys come horse around
4 10:00 at night. I'm not complaining. We live there,
5 you know. But the idea is this, you have so much
6 problem you don't even know about.

7 The million gallon tank up in the hill got
8 emptied down to six feet. Lahainaluna had a fire, you
9 guys over there whistle Dixie. But nobody talks about.
10 Hans Michel know, because I can hear the noise what's
11 going on, I can hear when the grate in wells open, when
12 those things shuts. You see, we live there. That's our
13 home, you know. And the goats and the farm is part of
14 our livelihood. If I had a job and a income like you,
15 well, maybe I could play golf and not -- instead of the
16 goat.

17 But I ask you, Mr. Yamashige, please do
18 something this year, get your backhoe, your crusher
19 waste, you promised UTB for put on the steep hill
20 for it will not wash out. The guy below Bobby Vida told
21 me he can do nothing unless Bobby give him the order.
22 Well, you the chairman of the Department, so get after
23 these guys and get the job done. And if they can't do
24 it, well, then lay 'em off. Get somebody from HC&S,
25 they get plenty guys over there who like work. Simple

1 as that. No more excuse, Mr. Yamashige, because you had
2 too many years of that.

3 CHAIR ANDERSON: Okay. Thank you, Mr. Michels
4 [sic]. I'm gonna --

5 MR. MICHEL: You're welcome.

6 CHAIR ANDERSON: I'm gonna request that
7 Department take the worksheet that is in our binder,
8 dated July 31st, 2008, and give us a letter responding
9 to Mr. Michel's concerns of all these items listed that
10 have not been done. This was done after the response to
11 Vice-Chair Victorino's request back in March. So I
12 think we need another update. And if you could address
13 those concerns in your status report, I think that would
14 be helpful for everyone.

15 Okay. Thank you, Mr. Michels [sic]. We'll
16 again try to address your concerns as best we can.

17 I think everybody needs to know that we can
18 make requests to the administrative departments, but we
19 cannot demand that they do anything. That's beyond our
20 purview. We've given them the money, and so it's up to
21 them. But we can request an updated status report as
22 that is part of -- that's one of our provisions in the
23 budget appropriation.

24 So thank you, Mr. Michels [sic]. I'm sorry
25 that it's taken so long, truly.

1 MR. MICHEL: Then my question is this, who has
2 power over the Water Department to tell 'em get going or
3 do nothing? Who is that, the Mayor? Or who has the
4 power to get them --

5 CHAIR ANDERSON: The Mayor and the Director of
6 the Department have the authority to direct the
7 Department.

8 MR. MICHEL: Thank you very much.

9 CHAIR ANDERSON: Thank you, Mr. Michels [sic].

10 Okay, Members, we're gonna move on. We're
11 gonna take a quick -- oh, is there anyone else that
12 wants to testify before we move into our next item? Our
13 next item is an update on our Water Use and Development
14 Plan. And we're gonna take a brief recess to set up the
15 screen. So before we do that, anybody else that wants
16 to testify? Zeke Kalua. You can sign up afterwards,
17 Zeke.

...BEGIN PUBLIC TESTIMONY...

18 MR. KALUA: Thank you, Madam Chair, Members of
19 the Committee.

20 My name is Ezekiela Kalua, former Executive
21 Assistant to the former Mayor, Alan Arakawa.

22 You know, Committee, the thing that's really
23 sad about this is that there is, and has been, a lot of
24 really good effort by the Water Department in the past,
25 by even myself as an Executive, of taking on this

1 project to work with Hans and Eric. And the thing
2 that's really challenging about this project is -- is if
3 you totally look aside of the fact of the land title
4 issues, the road goes through Lahainaluna School and
5 runs along the cliff side and then goes under an old
6 irrigation flume, it crosses three different culverts
7 before you even get to where the pump is itself that
8 pushes the water up a 145-foot cliff to the main water
9 gathering station in Lahaina. You know, maybe there
10 could have been a better way to do it in the past, but,
11 unfortunately, this is what we got. And the thing about
12 the Water Department is I've -- I've personally gone out
13 there with Eric Yamashige and Hans. We've looked at the
14 area and we've -- we've seen the challenges that have
15 been there.

16 You know, there was unfortunate damage that
17 had happened by bringing the machines in there to clean
18 out the inlet and the waterway, in the first place.
19 But, you know, it requires that size, that caliber of
20 machinery to get up and do that kind of work. Because
21 it's -- it's -- it's not a paved asphalt road that leads
22 to a green water tank with fencing somewhere. I mean,
23 it's really that challenging.

24 The thing that is really at stake with this
25 project, though, is that if we don't get this thing

1 solved and we don't make sure that we have adequate
2 water, a lot of people will lose, including the school.
3 And the thing is, from the work that we've done with
4 Hans -- and even Eric will attest to it -- Hans has been
5 very patient. A six-year timeframe to where we're at
6 today is really not the case. It's been longer than
7 that.

8 And the thing is, you know, Hans provides the
9 access. He doesn't get in the way of these guys. If
10 you look at the work he's done personally around this
11 area that the County is gonna be using, it's been made
12 very accessible, very safe.

13 You know, I think it's just time to get it
14 done, you know what I mean. He doesn't wanna point
15 fingers, he doesn't wanna be the bad guy, he doesn't
16 wanna go and sue the County. But, you know, he -- he
17 needs to get some work done. And for the sake of the
18 people in all of West Maui that rely on this water, you
19 know, we need to get some work done on this, too.

20 I don't envy you, Eric, but you are really a
21 good guy, you are. I've seen you do a lot of good work
22 over there. But it's time. So, I mean, it's -- it's --
23 you know, we gotta get on these people that are doing
24 the title report.

25 You know, saying that it's easier to give him

1 a discounted rate does nothing for him liability-wise if
2 one of the Water Department workers is on his property
3 working on a County machine and gets hurt, you know what
4 I mean. And -- and Hans is not a rich man, you know,
5 he's just trying to make it, just like the rest of us
6 out there. And he only wants to transfer this title
7 over to the County because it shouldn't be his
8 liability. Now, they drilled this well in '75. That's
9 how long he's been paying the taxes, you know what I
10 mean.

11 By the County repaying him for his attorney
12 fees, it's, in essence, an admittance of responsibility,
13 not an admittance of guilt. But by default, we, the
14 County, are saying, okay, we recognize that our contract
15 is not fulfilled, here we are.

16 So with all respect to everybody involved,
17 let's not point fingers, let's start signing contracts,
18 let's get this taken care of. Thank you.

19 CHAIR ANDERSON: Thank you, Zeke. Any
20 questions?

21 COUNCILMEMBER PONTANILLA: Yeah.

22 CHAIR ANDERSON: Yeah, Mr. Pontanilla.

23 COUNCILMEMBER PONTANILLA: Thank you,
24 Chairman. Thank you, Zeke, for being here this morning.
25 And your comments is well-received.

1 I -- I have one question, though. When you
2 were working with the Water Department, you were trying
3 to resolve this problem, did the Department -- or have
4 you questioned them about the preventive maintenance
5 program that they do not only for, you know, this
6 particular situation here, but throughout Maui County,
7 where we have intake, to provide us water for the County
8 of Maui?

9 MR. KALUA: At the time, both the Director and
10 the Deputy were concerned about that. But when I looked
11 at our long-term preventive maintenance schedule,
12 obviously, Upcountry took the brisk [sic] of that. You
13 know, water pipes in the ground, in some areas, over 36
14 years old. It's definitely on the mind of the
15 Department. But I think, without speaking for them, it
16 seemed more of a priority maybe to find more areas to
17 tap water than to do repair and maintenance to some of
18 the areas.

19 And without being the guy to admit to guilt, I
20 mean, we -- \$85 million over four years never got spent
21 for the capital improvements. And the excuse, for lack
22 of a better word, at the time was we didn't have enough
23 engineers. It could've fell on anybody's hands, but,
24 unfortunately, it was -- you know, it was on us. Maybe
25 a little bit from before and a little bit after. But

1 the fact of the matter is, there's so much work that
2 needs to be done out there, you know. And whether or
3 not we're gonna continue to not have enough engineers,
4 or maybe we need to find \$700 billion to, all of a
5 sudden, fix all of these improvements, you know, who
6 knows if we even have the manpower. Preventive
7 maintenance is definitely on their (inaudible).

8 The problem is, with this access road, you
9 know, it's in Lahaina, where it never rains. But when
10 it does, it floods. And you got a cliff side road that
11 goes past the Ag Department that begins going through
12 the Auto Department, it goes underneath the flume. I
13 mean, it's before Water Department went over there and
14 helped clear it out, Hans had spent some of his own
15 money to have (inaudible) construction go inside there
16 and do some work. And if he didn't do that, our
17 Department would have to fly people and equipment in
18 with helicopters just to do maintenance.

19 You know, I would recommend, if any of you
20 have never had the opportunity to go, visit it. Because
21 if you look really good at what Hans did around the area
22 that he's given to the County, he's given them a
23 blessing. He's fenced it, he's landscaped it --
24 landscaped it, he's manicured it. Some areas of the
25 County, there's total, total disregard for the working

1 conditions. But in this area, it's -- it's really not
2 that bad.

3 COUNCILMEMBER PONTANILLA: Thank you, Zeke,
4 for the comments this morning. Thank you. Thank you,
5 Chairman.

6 CHAIR ANDERSON: Thank you, Mr. Pontanilla.
7 Any other comments, questions? Zeke, thank you very
8 much for coming and clearing the matter up. We
9 appreciate it.

...END PUBLIC TESTIMONY...

10 CHAIR ANDERSON: So it will be up to this next
11 Water Resource Committee to follow through on this and make
12 sure that we get some kind of status report from the
13 Department. And, again, I don't know what else we can do.

14 I'm really sorry, Mr. Michels [sic], that --
15 that -- well, basically, that the Department hasn't
16 fulfilled their obligation. You need to come to the
17 mike. And that we really appreciate the efforts that
18 you have done on behalf of the people of the West Side
19 who depend on the water that runs through your property
20 and that you so unselfishly give of your time to, in
21 clearing the intakes when there are floods and rainwater
22 problems. So we want you to know that we very much
23 appreciate it.

24 MR. MICHEL: Chair, I appreciate what you done
25 for us. And I hope Eric will do something soon. But

1 my biggest concern now is -- of today is the road. Will
2 Mr. Yamashige send his trucks and his backhoe up there
3 and start fixing the road, or he might wait another
4 year? That's my big question.

5 CHAIR ANDERSON: All right. Let's ask that
6 question, since we're coming into the rainy season.
7 Mr. Yamashige, do you have any plans to send a backhoe
8 and some filler, whatever it takes, gravel, to repair
9 the road?

10 MR. YAMASHIGE: Thank you, Madam Chair. I
11 have heard from our Operations an estimate of how much
12 gravel -- not gravel, but base course that they were
13 going to take into the valley.

14 CHAIR ANDERSON: Uh-huh.

15 MR. YAMASHIGE: But that has not been
16 scheduled. So when -- that will happen when time
17 permits.

18 CHAIR ANDERSON: When time permits. Time
19 never permits. You know, I mean, I -- he needs -- he
20 needs the road fixed now. We are -- September, October,
21 November, December. We're three months past due on the
22 quarterly status report. So if you could check into
23 that and get us a time certain, and I -- you know, if
24 you've spent none of this \$625,000 towards Mr. Michel's
25 problem, I guess now would be the time to do that. And

1 maybe -- if your Department doesn't have staff or time
2 to do it, maybe you should contract a private company
3 that's looking for work who'd be very happy to get out
4 there and take care of the road.

5 MR. YAMASHIGE: Madam Chair, let me just say
6 that the Department, over the past year, has spent
7 nearly \$70,000 in the valley. A lot of it we have
8 worked with FEMA to get reimbursed. So we're not
9 spending the money that you budgeted or we budgeted for
10 those repairs.

11 We have, also, in addition to the December
12 2007 storm, been into the valley on a couple occasions
13 to clean out the back of the reservoir. There was an
14 apparent landslide up the valley a few years ago. So
15 every time it rains, it brings down the silt and debris,
16 which we hire a contractor to go in and excavate.

17 Currently, with the recent rainfall, I know
18 that there is silt and debris accumulating again. So --
19 so we'll probably have to hire a consultant -- a
20 contractor to go in and clean that out. And, you know,
21 again, we'll monitor how it's being filled and -- when
22 we have to go in.

23 It's not like the Department is not doing
24 anything in the valley. There is a lot of things that
25 have been accomplished. Maybe not the way Mr. Michel

1 would want it done, but, yes, Madam Chair, we are doing
2 it.

3 CHAIR ANDERSON: Okay. Well, hopefully, you
4 can take care of the road when you take care of the silt
5 and debris. Mr. Victorino?

6 VICE-CHAIR VICTORINO: Yeah, Madam Chair.
7 Thank you.

8 I've listened very intently to what you have
9 been saying, Mr. Yamashige. And I'm not one to -- to
10 criticize. And I don't wanna, you know, like Zeke said,
11 don't point fingers, but we're well aware that if we
12 don't do these repairs or we don't do the necessary
13 upgrades to this roadway, and we're to lose this
14 roadway, we would literally be cut off from any means
15 other than by air. Am I correct in saying that?

16 MR. YAMASHIGE: Mr. Victorino, I -- I don't
17 think you're looking at a catastrophic failure on this
18 maintenance. This is maybe some rails that are
19 developed because of the flow of rainfall or runoff.
20 But it's not like -- you know, it's not gonna be
21 passable.

22 A couple years -- well, not even a couple
23 years ago -- the Department did expend some funds to fix
24 one of the crossings of the stream. And that was
25 damaged, I don't know how many years ago, but it was

1 repaired by the Department. And, you know, some of
2 these things that have been done, and maybe is -- aren't
3 recognized, we are, again, trying to address the
4 conditions of the agreement. However, there are other
5 maintenance efforts that are being done in the valley.

6 VICE-CHAIR VICTORINO: Eric, I'm not -- Mr.
7 Yamashige, I'm not questioning that. And -- and -- and
8 I was there. I've been there. I understand what needs
9 and was done, wasn't done, should have been done. I'm
10 not into that. I -- I just feel we worked to this
11 point, and you say no catastrophic incident would --
12 could or would happen. Well, I hate to disagree with
13 you because we've had other catastrophic incidents
14 happen throughout this County. And once we lose it, it
15 -- you know, it -- it's a big, big expense. He's
16 willing to give us the -- the easement, which he's been
17 very generous about. He's given us all the help he can
18 give.

19 Eric, all I'm saying -- Mr. Yamashige, I
20 should say -- is let's do this ASAP, let's get it done.
21 I'd like to see a time certain by the end of March, no
22 later than that. I will -- I will also be writing a
23 letter to -- to the Chair -- to the Mayor asking for
24 that. Because we have to have a time certain. We need
25 to know, the people of Maui County. West Maui needs

1 to know. And if we lose that -- that intake and we lose
2 that -- that pump, West Maui really goes in a big world
3 of hurt. And we all know that.

4 So no offense. I don't want to blame, point,
5 whatever, but I've been here two years, some of the
6 Members have been here six years, like Vice-Chair Mateo,
7 and it's been an ongoing thing. I think the time for
8 talking is done, let's do it now. And that's what I'd
9 like to hear. We get it done now.

10 Thank you, Madam Chair. I'm sorry to be so
11 adamant about it.

12 CHAIR ANDERSON: No. We appreciate it,
13 Mr. Victorino. Thank you. Okay, Members -- Mr. Michels
14 [sic].

15 MR. MICHEL: Yeah. I thank Mr. Victorino,
16 because he came there. She came there. Mr. Yamashige
17 come, he makes notes. And after he's gone, you never
18 hear and see nothing happening. And that's the sad
19 part. The problem is the road from last year, December,
20 heavy rain, nothing ever got fixed. With my little
21 putt-putt tractor, I fill in holes. But we need crusher
22 waste in order to do what they say, UTB will be
23 the best for keep things together.

24 The problem is, I don't wanna point finger,
25 but definitely old Eric over there is not the man to get

1 the job done. And I will personally go see the Mayor
2 for he will do something about it. Other than that, I
3 put you people all in the newspaper. Then maybe, if the
4 medium -- media will get insight, maybe something will
5 happen. I mean, you guys, I thank you all for your
6 help, but Eric is not the man because he's too slow.
7 And he does not can jump on the guys below him because
8 those guys, they ain't gonna do nothing. I'm sorry.
9 I've been in the valley for 40 years. Can you imagine? I
10 could write a book.

11 CHAIR ANDERSON: Yeah. I think maybe the time
12 has come for a -- a outside contractor to take over the
13 job and get it done. The Department, obviously, doesn't
14 have the staffing or the --

15 MR. MICHEL: The willpower. The willpower is
16 missing.

17 CHAIR ANDERSON: Okay. Well, thank you very
18 much for coming, Mr. Hans --

19 MR. MICHEL: Thank you very much.

20 CHAIR ANDERSON: -- once again and bringing
21 your problem forward for the public to hear.

22 Okay, Members, we're going to move on to our
23 next item. We're going to take -- anybody else want to
24 testify? Seeing none, I'm going to close public
25 testimony.

5. Molokai Community Plan Area	
a. Kawela Tank Improvements	600,000
b. Molokai Source Development	50,000
6. Countywide	
a. Countywide Facility Improvements	250,000
K. From Water Fund - Unrestricted	
1. Paia-Haiku Community Plan Area	400,000
a. Haiku Waterline Improvements	
b. Paia-Haiku Tank Improvements	
c. Upper Ulumalu Road Repair	
2. West Maui Community Plan Area	625,000
a. Kanaha Valley Improvements	
(1) Provided, that a quarterly status report shall be submitted to Council until the project is completed.	
b. Mahinahina Water Treatment Plant Improvements	
c. Napili A Well Backup Generator	
3. Countywide	
a. Countywide Facility Improvements	2,220,000
 TOTAL CAPITAL IMPROVEMENT PROJECT APPROPRIATIONS	 <u>99,614,000</u>
 TOTAL APPROPRIATIONS (OPERATING AND CAPITAL IMPROVEMENT PROJECTS)	 <u>560,888,736</u>

EXHIBIT 1

Work Sheet

Water Aug. 2, 06.

9.AM. 8th floor

T.M.K. 4-6-17-12

- ✓ 1. Stream Crossing repair
 - ✓ 2. Stone wall destroyed to Pump No 2
 - 3. 2. Amendment 2005, recover Lawyer fee \$3'697.75 + interest.
 - 4. Flume ramp puka
 - 5. Cattle Guard rail bent 4p. X 14.Ft
 - 6. Road wash out from 2002 - 2007 Dec. Rain - Need crusher waste or C.T-B
 - 7. Waterfall erosion + Tree trim
 - 8. on slope of Waterfall
 - 8. Stonewall along side of fence. Water tank
 - 9. Cement crossing to well No 2, need Repair
 - 10. Puka in pipeLine band-aid fix
 - 11. Subdivide well No 2. 1977 in Service
 - 12. Cut turn around by Well No 2 to Intake
 - 13. Property back Tax from 1972 plus Interest
 - 4. Survey Road Map incorrect
 - 5. Missing B-mark Intake
 - 6. Survey Family Land Lohi T-M-K. 4-6-17-1
 - 7. Stream Crossing by Well No 2 need Cement
 - 8. Plus 1994 Contract Incomplete
 - 9. Tank side Fire hydrant as Promised
- for all the the Headache + Inconvineance

11/17/07
Work sheet

Honorable Michelle Anderson, Chair
Water Resources Committee
Maui County Council

Subject: Access Through Hans F. Michel Property
Maintenance and Operation of
Kanahele Valley Stream-Intake (WR-2)

1. Water Meter for Property $\frac{5}{8}$ 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 Kula Trail
9. Done
10. Not Done Water Line into Road Easement
1. Not Complete - Land Title Pump No. 2
2. Gate Pump No. 2. Not Done Land Title
3. Not Complete No Cement
4. Not Complete Flowage Easement Water
fall erosion No Cement - Tree Trim
5. Done
6. Done
2. Amendment Agreement from 2005
No. 2005-205100 \Rightarrow No. 2005-205101

ALAN M. ARAKAWA
Mayor



GEORGE Y. TENGAN
Director

ERIC H. YAMASHIGE, P.E., L.S.
Deputy Director

RECEIVED

2006 SEP 12 PM 4:01

DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2155
www.mauiwater.org

OFFICE OF THE MAYOR

OFFICE OF THE
COUNTY COUNCIL

06 SEP 12 P 4:35

RECEIVED

September 11, 2006

Honorable Alan M. Arakawa
Mayor, County of Maui
Wailuku, Hawaii 96793

For transmittal to

Honorable Michele Anderson, Chair
Water Resources Committee
Maui County Council
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL
[Signature] 9/12/06
Mayor

Dear Chair Anderson:

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

Thank you for the opportunity to provide comments on the status of the agreements with Mr. Hans Michel. There are two agreements, attached for reference. We identify the conditions of the agreement, the status, and an order of magnitude cost & time to accomplish the outstanding conditions.

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.

Comment: Owner has not submitted application, and elevation agreement not done.

"By Water All Things Find Life"



Honorable Alan M. Arakawa
For transmittal to:
Honorable Michelle Anderson
Page 2
September 11, 2006

- 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: The Board, or department, has delivered and placed base course on the existing roadways on multiple occasions. The stream crossing within the State property was recently damaged. Work on this crossing will require a Corps of Engineers (COE) permit for work within the stream. O/M cost: \$100,000.

- 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: The department recently, upon request from Mr. Michel, delivered and spread two truckloads of base course in December 2005.

- 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: As noted in condition 3, the department, upon request from Mr. Michel, delivered and spread two truckloads of base course in December 2005.

- 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: Board completed this work.

- 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.

Honorable Alan M. Arakawa
For transmittal to:
Honorable Michelle Anderson
Page 3
September 11, 2006

Comment: This work is not complete. There are land title issues requiring resolution. The Department will research resolution and processing of subdivision.

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: This work is not complete. There are land title issues requiring resolution. The Department will research resolution and processing of subdivision.

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: The design of the overflow allowed the water to cascade over the cliff wall. The department needs to initiate discussion with the State and Kaanapali.

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 conversation with Mr. Michel, relocation of waterline at this time not cost effective, and serves no purpose. Relocate waterline into proposed easement when repairs required.

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: This work is not complete. There are land title issues requiring resolution.. The Department will research resolution and processing of subdivision.

Honorable Alan M. Arakawa
For transmittal to:
Honorable Michelle Anderson
Page 4
September 11, 2006

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: This work is not complete. There are land title issues requiring resolve. 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.

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 Benefited 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.

Honorable Alan M. Arakawa
For transmittal to:
Honorable Michelle Anderson
Page 5
September 11, 2006

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.
2. **Revise Exhibits A & B (1994) with Exhibits A-1 and B-1 (2005).**
3. **Other terms, covenants, and conditions of 1994 agreement unchanged.**

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

We have evaluated the intake dam, and designed reinforcing to strengthen the dam, restore the dam spillway, and reduce erosion undermining. This work requires coordination with the US COE. Order-of-magnitude cost is \$250,000, and estimated time of 1-1/2 years, subject to funding. We have also, on several occasions, hired a contractor to remove landslide materials from the dam storage basin.

Finally, 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 is pursuing a contractor to re-stack the damaged rockwall in its original construction. Order-of-magnitude cost is \$100,000, and an estimated time of one year, subject to funding.

Honorable Alan M. Arakawa
For transmittal to:
Honorable Michelle Anderson
Page 6
September 11, 2006

Thank you for the opportunity to provide this update. The Department continues to pursue the conditions of the agreement, the maintenance of the improvements, and the operation of the water system.

Sincerely,



GEORGE Y. TENGAN
Director

Attachments

CHARMAINE TAVARES
Mayor

JEFFREY K. ENG
Director



RECEIVED
ERIC H. YAMASHIGE, P.E., L.S.
Deputy Director

2007 FEB 23 PM 2:03

DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI

200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2155
www.mauiwater.org

February 23, 2007

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

For Transmittal to:

Honorable Michelle Anderson, Chair
Water Resources Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Anderson:

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

Thank you for the opportunity to respond to your February 14, 2007 inquiry into this matter. We offer the following responses to your specific questions (**which are referenced in bold**):

1. **Provide a detailed explanation regarding the efforts to obtain a permit from the Corps of Engineers to begin the extensive repairs to the stream crossing located on State property (Condition No. 2).**
 - a. **Has your Department obtained the permit?**
 - b. **Has anyone been contracted to do the work?**
 - c. **Please provide a copy of the design plan being considered by the Department.**
 - d. **What is the anticipated timeframe for completion?**

"By Water All Things Find Life"



Honorable Charmaine Tavares
For Transmittal to:
Honorable Michelle Anderson
Page 2
February 23, 2007

Initial contact with the Corps of Engineers has not yet resulted in a site visit. Construction plans for the remedy are not yet prepared. At this time, due to high construction costs, the Department anticipates accomplishing this work with our current staffing and funds appropriated in the Fiscal Year 2008 budget.

2. **Explain how the retaining wall will be built to prevent further damage to the roadway adjacent to the Kanaha tank site (Condition No. 3).**
 - a. **Who has been contracted to do the work?**
 - b. **When will the work begin?**
 - c. **Is there a design plan? If so, please transmit a copy to the Committee.**

The Department recently acquired rocks from a construction site and delivered them to the property. We are prepared to begin repair to the dry stack rock wall constructed by Mr. Michel (see question 4) on Monday, February 26, 2007. We will construct a similar type wall, at a much smaller scale, at the tank site to control the grade differential and reduce erosion.

3. **Has your Department visited the site to determine whether the two truckloads of base course delivered in December 2005 to repair the roadway was adequate to restore the ground to its original condition?**

Yes, the Department has visited the site multiple times since December 2005 and the area is adequately graded.

4. **At the meeting of August 2, 2006, the Director of Water Supply stated that repair work to the owner's dry stack rock wall, damaged by an excavator hired by the Department in 2004, will definitely be completed by the end of fiscal year (June 2007).**
 - a. **Who has been contracted to do the work?**
 - b. **When will the work be completed?**

The Department recently hired an excavator to remove sediment deposited at the dam reservoir by heavy rains in late 2006. The contractor's commitments did not allow an earlier entry to perform the necessary work. Similarly, the contractor is not able to commit to assisting with the rock wall repairs as previously discussed.

Honorable Charmaine Tavares
For Transmittal to:
Honorable Michelle Anderson
Page 3
February 23, 2007

The Department is renting an excavator beginning Monday, February 26, and is repairing the wall with current staffing.

5. **At the meeting of September 13, 2007, the Deputy Director of Water Supply stated that the subdivision process is unable to be initiated until a title search has been completed and that the Department is pursuing the title search. What measures have been taken to secure a title search on said property to ensure that Conditions 6, 7, 11, and 12 of the agreement are met? If no measures have been taken, please explain.**

Early in the project, a consultant prepared a preliminary subdivision plat. That plat was not submitted because of land title issues. The Department will secure the services of a title company to perform a title search with funds proposed in the Fiscal Year 2008 budget. Subject to the results of that effort, the next steps will be planned.

6. **Condition No. 8 states, "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 screen box, and erosion on property caused by overflow water." Your Department responded that the design of the overflow allowed the water to cascade over the cliff wall. Please provide the Committee with the original design of the overflow and explain how the Department plans to prevent further erosion.**

Attached are sheets C-7, 8 & 10 of the 1994 construction plans (there appears to be no sheet C-9). The screen box overflow drainline is highlighted in pink for identification. Please note this drainline is also used for overflow from the Department of Education tanks, the DWS finish water tank, and return water from the DWS Lahaina Water Treatment Facility (highlighted in yellow). This drainline collects, and eliminates at least two outlets formerly allowed to cascade over the cliff (highlighted in blue). Our Engineering Division will visit and assess the erosion concern.

7. **At the meeting of August 2, 2006, the Deputy Director of Water Supply stated that he would need about six months to prepare an estimated funding proposal. What measures has your Department taken to secure**

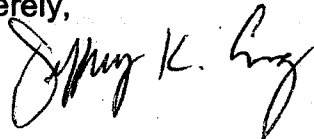
Honorable Charmaine Tavares
For Transmittal to:
Honorable Michelle Anderson
Page 4
February 23, 2007

funding for the above-mentioned projects? Please include a timetable in your description. If no measures have been taken, please explain.

Due to booming economy, availability of construction companies to perform the work is limited, and if available, costs are extremely high. We have evaluated the scope of work and will perform the work with current staffing. With respect to the subdivision process, that scope will be determined upon receipt of the title report. That report will also determine the course of action that will be pursued.

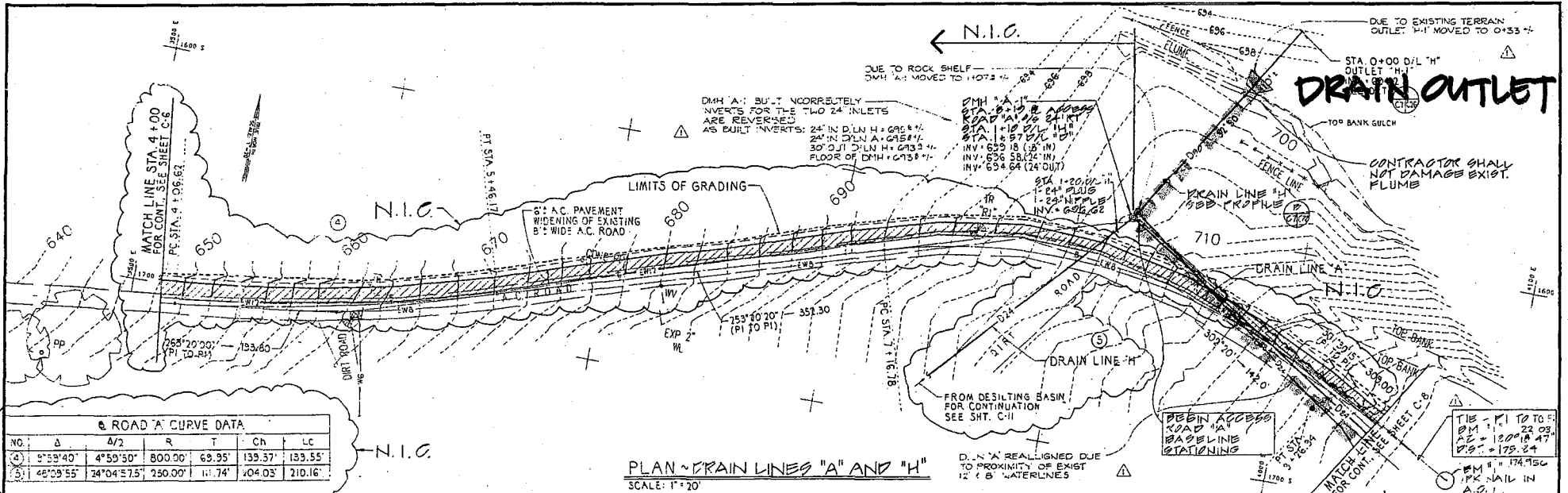
Thank you for your attention to this matter. Please feel free to call me at Ext. 7816 if you have any questions.

Sincerely,



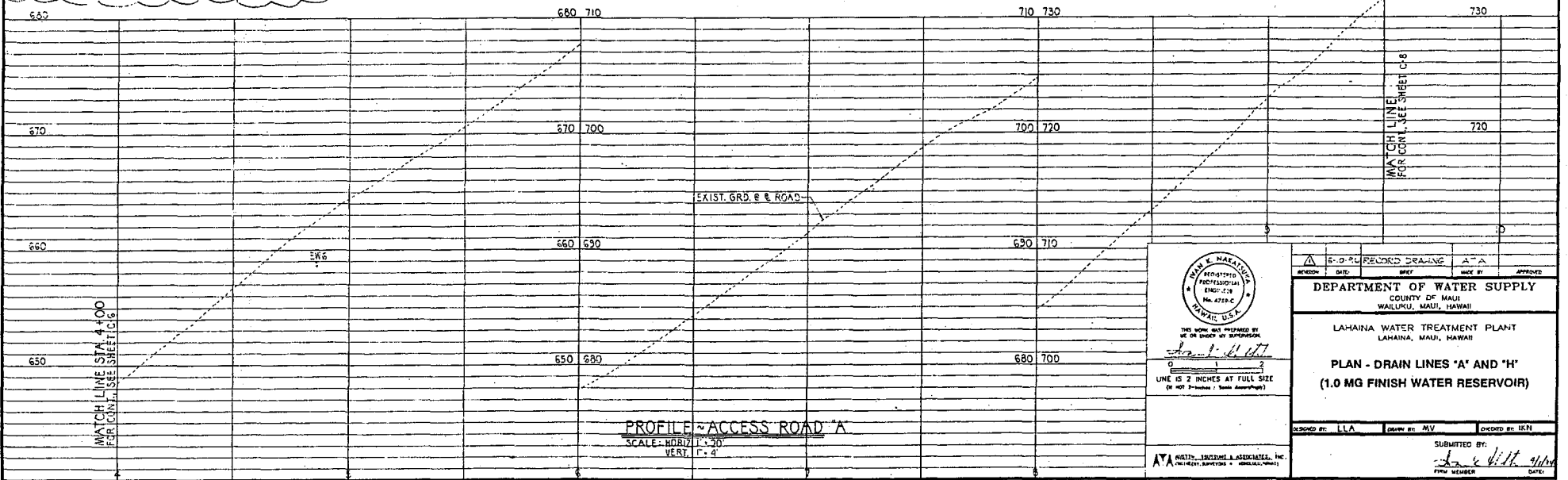
JEFFREY K. ENG
Director of Water Supply

Attachments



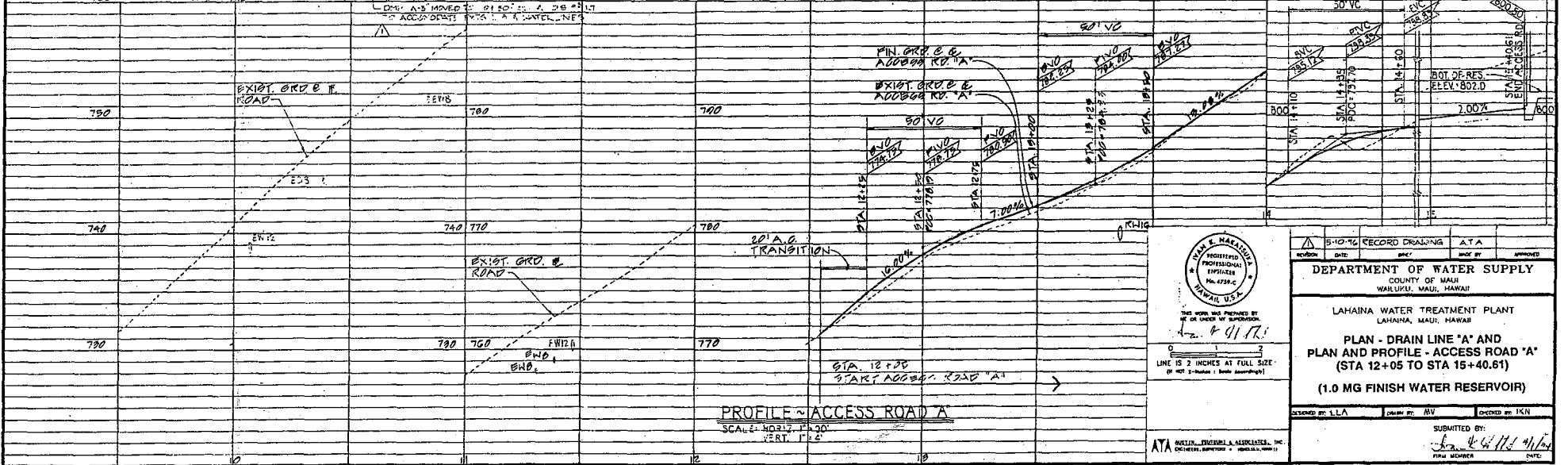
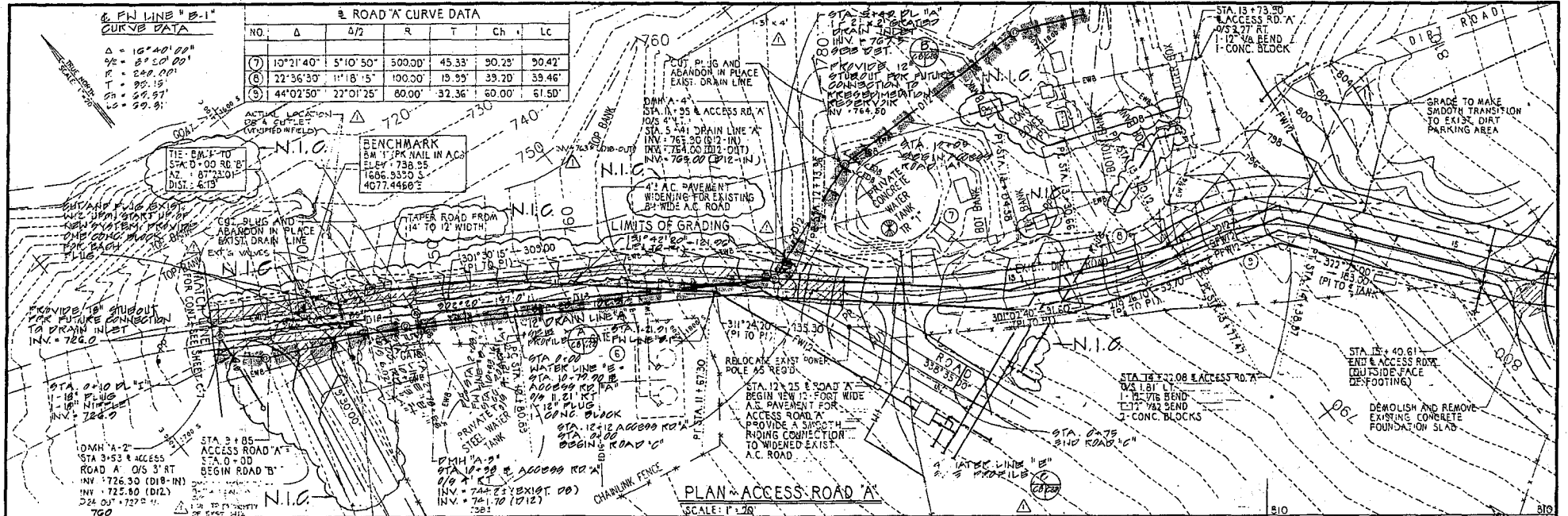
ROAD A CURVE DATA

NO.	Δ	Δ/2	R	T	Ch	LC
④	5°33'40"	4°50'30"	800.00'	69.95'	133.37'	133.55'
⑤	46°09'55"	24°04'57.5"	250.00'	111.74'	104.03'	210.16'



THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION
 DATE: 1-16-77
 LINE IS 2 INCHES AT FULL SIZE
 (BY 100% PRODUCTION / Scale as shown)

RECORD DRAWING	DATE	BY	APPROVED
DEPARTMENT OF WATER SUPPLY	LAHAINA WATER TREATMENT PLANT LAHAINA, MAUI, HAWAII		
PLAN - DRAIN LINES "A" AND "H" (1.0 MG FINISH WATER RESERVOIR)			
DESIGNED BY: LLA	DRAWN BY: MV	CHECKED BY: EKN	
SUBMITTED BY: <i>[Signature]</i>		DATE: 1-16-77	
IAN K. NAKAGAWA REGISTERED PROFESSIONAL ENGINEER No. 4759-C HAWAII, U.S.A.			



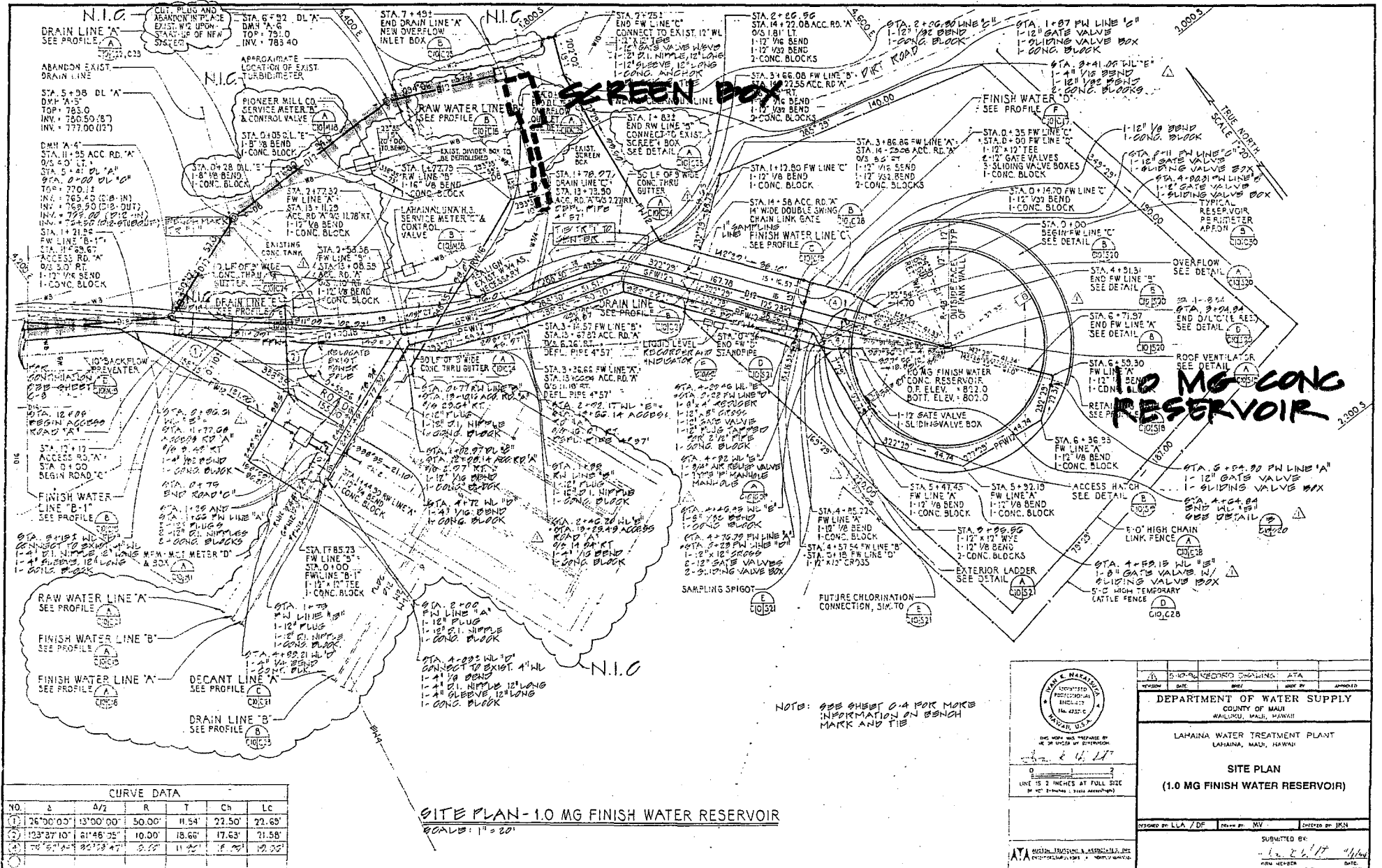
DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
HAULUKU, MAUI, HAWAII

LAHAINA WATER TREATMENT PLANT
LAHAINA, MAUI, HAWAII

**PLAN - DRAIN LINE 'A' AND
PLAN AND PROFILE - ACCESS ROAD 'A'**
(STA 12+05 TO STA 15+40.61)
(1.0 MG FINISH WATER RESERVOIR)

DESIGNED BY: LLA DRAWN BY: MV CHECKED BY: JKN

SUBMITTED BY: *[Signature]*
DATE: 4/11/12



CURVE DATA						
NO.	Δ	Δ/2	R	T	Ch	Lc
1	26°00'00"	13°00'00"	50.00'	11.54'	22.50'	22.69'
2	123°37'10"	61°48'35"	10.00'	18.66'	17.63'	21.58'
3	78°57'24"	39°28'42"	3.75'	11.20'	7.70'	12.25'

SITE PLAN-1.0 MG FINISH WATER RESERVOIR
SCALE: 1" = 20'

NOTE: SEE SHEET C-4 FOR MORE INFORMATION ON BENCH MARK AND TIE



DESIGNED BY	DATE	CHECKED BY	DATE
DEPARTMENT OF WATER SUPPLY			
COUNTY OF MAUI HAULILO, MAUI, HAWAII			
LAHAINA WATER TREATMENT PLANT LAHAINA, MAUI, HAWAII			
SITE PLAN (1.0 MG FINISH WATER RESERVOIR)			
DESIGNED BY	DATE	CHECKED BY	DATE
SUBMITTED BY: <i>[Signature]</i> DATE: <i>[Date]</i>			
FOR: <i>[Signature]</i> DATE: <i>[Date]</i>			

(NOTE: NO SHIT C-9)

CHARMAINE TAVARES
Mayor



JEFFREY K. ENG
Director

ERIC H. YAMASHIGE, P.E., L.S.
Deputy Director

DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793-2155
www.mauewater.org

March 20, 2008

RECEIVED
2008 MAR 20 PM 4:17
OFFICE OF THE MAYOR

RECEIVED
08 MAR 20 PM 4:28
OFFICE OF THE MAYOR

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

For Transmittal to:

Honorable Michael P. Victorino
Council Member
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL
Charmaine Tavares 03.20.08
Mayor Date

Dear Council Member Victorino:

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

This responds to your correspondence dated March 12, 2008. Thank you for the opportunity to provide updated comments on the status of the agreements with Mr. Hans Michel. There are two agreements that pertain to the Mr. Michel's property: 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 and September 5, 2007.

June 3, 2004 Agreement between Hans Michel and the Board of Water Supply:

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

"By Water All Things Find Life"



Honorable Charmaine Tavares
For Transmittal to:
Honorable Michael P. Victorino
March 20, 2008
Page 2

Comment: Mr. Michel, the property owner, has not submitted application for a water meter, and elevation agreement has not been executed. Mr. Michel must submit an application for a water meter and initiate a request for an elevation agreement. As such, Mr. Michel has not yet been issued a water 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 of Water Supply shall maintain the existing roadway and stream crossing within the property, and pursue resolution with the State of Hawaii regarding which governmental entity should maintain the existing roadway and stream crossing within the State's property. The Board shall limit maintenance work to repair damage or wear caused by the Board with crushed rock waste or base course. Damage to the stream crossing due to storm flow shall be jointly funded by the owner and the Board.

Comment: The board, or department, has delivered and placed base course on the existing roadways on numerous occasions as needed. The Department has also recently, within the last year, completed the repair of the stream crossing.

- 3. Drainage Control Improvements Within the Board's 0.30 million gallon Kanaha Tank Site:** The Board shall repair damage to the 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: This has been completed. Although a dry-stack rock wall was originally considered, the Department recently constructed a hollow tile wall along the tank site boundary to address drainage concerns.

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

Comment: This has been completed. As noted in No. 3 above, 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:** The Board shall perform excavation work, one-time to the satisfaction of the owner, for vehicle turn-around near tank site access.

Comment: This has been completed.

Honorable Charmaine Tavares
For Transmittal to:
Honorable Michael P. Victorino
March 20, 2008
Page 3

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

Comment: Early in the project, a consultant prepared a preliminary subdivision plat. The plat was not submitted because of existing land title issues. The Department is coordinating the services of a land title company to perform a title search. After the title report is provided by the title company and the Department has thoroughly reviewed the report and analyzed its options, the next steps will be planned appropriately.

7. **Easements:** The owner shall grant easements to Board for (1) Board vehicle parking, (2) 0.30 million gallon 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: Mr. Michel has not yet granted the easements to the County due to the title issues discussed in No. 6 above.

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 a cliff eroded by overflow water from the screenbox, and erosion on the property caused by overflow water.

Comment: The discussion between the Board, State, and Pioneer Mill is ongoing regarding Mr. Michel's request to repair the pedestrian trail. The design of the overflow allows water to cascade over the cliff wall. This 1994 design consolidates two outlets into one. The drainage system returns overflow from the State Department of Education water tanks, Department of Water Supply water tank, and Department's Lahaina Water Treatment Facility to the stream.

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

Comment: This has been completed.

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

Comment: In the Department's past conversation with Mr. Michel, relocation of the waterline at this time is not cost effective, and serves no purpose. We intend to relocate

Honorable Charmaine Tavares
For Transmittal to:
Honorable Michael P. Victorino
March 20, 2008
Page 4

the waterline into the proposed easement when repairs are required, or the easements will be designated to encompass the existing waterline location.

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

Comment: Mr. Michel has not yet dedicated Site No. 2 to the County due to title issues discussed in No. 6 above.

- 12. Relocation of Access Gate at Pump Station No. 2:** The Board shall relocate vehicle access gate to east side of site. The owner to grant easements for roadway and power pole relocation.

Comment: The Board has not yet relocated the vehicle access gate to the east side of the site, nor has Mr. Michel granted easements in favor of the County for roadway and power pole relocation due to title issues discussed in No. 6 above. Mr. Michel and the Department recently entered into an agreement to reduce the pump site from 4,874 square feet to 2,000 square feet, with the corresponding revisions to the easement agreement. This amendment to the easement agreement is dated May 23, 2005 and recorded in the Bureau of Conveyances on October 10, 2005 as Document No. 2005-205101. The conditions of that agreement are discussed in more detail below. We note that the reference to the gate as being on the east side of the site is inaccurate, as the gate is located on the south side of the site.

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

Comment: This has been completed. 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:** The Board must pay \$25,000 for flowage easement from south boundary line of property to Kanaha Valley.

Comment: This has been completed.

- 15. Payment of Attorney Fees:** The Board must pay the owner \$900.00 for attorney fees during May 11, 1993 meeting.

Honorable Charmaine Tavares
For Transmittal to:
Honorable Michael P. Victorino
March 20, 2008
Page 5

Comment: This has been completed.

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

Comment: This has been completed.

17. **Damage or Injury from Landslide or Earthquake and Falling Rocks:** The owner is not responsible or liable for damages or injury resulting from landslide, earthquake or falling rocks.
18. **Stream Crossing and Heavy Flood Water:** The owner not responsible for loss or injury when crossing stream.
19. **Damage to Vehicle and Injuries to Employees and Agents:** The owner's property is a farm. The owner is not responsible for damage or injury caused by collision with animals.
20. **Permission Over Roadway Easements:** The Board shall not grant permission over roadway easements, except employees and agents pursuing Board business.

May 25, 2005 Amendment to Agreement between Hans Michel and Department of Water Supply, Bureau of Conveyances Document No. 2005-2055101:

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 has not yet been completed. We are working with Mr. Michel to address title issues as discussed in No. 6 above.

2. **Revise Exhibits A & B (1994) with Exhibits A-1 and B-1 (2005).**
3. **Other terms, covenants, and conditions of 1994 agreement unchanged.**

Additionally, in 2004, the Department constructed a man bridge to provide safe crossing over the stream during high flows. This work was done in addition to the work the Department performed in accordance with the agreements.

Honorable Charmaine Tavares
For Transmittal to:
Honorable Michael P. Victorino
March 20, 2008
Page 6

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 rock wall in 2006.

Following the December 2007 storm and related damages, the department reinforced the intake dam, restored the spillway, and addressed the undermining caused by erosion. We also hired a contractor on two separate occasions in 2007 to excavate the eroded landslide material accumulated behind the dam. Recent rainfall has again transported sediment to the dam. We are coordinating the services of a contractor to remove the sediment from the dam.

In conclusion, the outstanding items related to this issue are primarily regarding outstanding title issues discussed above.

Thank you for the opportunity to provide this update. If you have any further questions, please contact Eric H. Yamashige, Deputy Director of Water Supply, at Ext. 7834.

Sincerely,



for JEFFREY K. ENG
Director of Water Supply

xc: Jo Anne Johnson, Council Member
Michelle Anderson, Council Member
Michael J. Molina, Council Member
Charmaine Tavares, Mayor
Sheri A. Morrison, Managing Director