

December 14, 2006

Via Hand Delivery, E-Mail and U.S. Mail

Brian.Moto@co.maui.hi.us

Jane.Lovell@co.maui.hi.us

Mr. Brian T. Moto, Esq.
Corporation Counsel
Ms. Jane E. Lovell, Esq.
Deputy Corporation Counsel
Department of Corporation Counsel
County of Maui
200 S. High Street
Wailuku, Maui, Hawaii 96793

Re: Demand that County of Maui Cease and Desist Violations of Consent Decree entered in The Coalition to Protect East Maui Water Resources, et al. v. The Board of Water Supply, et al., Civil No. 93-0734(3), in the Second Circuit Court of the State of Hawaii

Dear Brian Moto and Jane Lovell:

This letter is to demand that the County of Maui immediately cease and desist work of any kind, directly and through its contractors, on all phases and components of the 36" pipeline installation project in East Maui. This work is in direct violation of a Court Order, the Consent Decree, entered by Judge Joseph E. Cardoza in The Coalition to Protect East Maui Water Resources, et al. v. The Board of Water Supply, et al., Civil No. 93-0734(3), in the Second Circuit Court of the State of Hawaii, for the reasons set forth in greater detail below.

This letter is written on behalf of my clients, Plaintiffs, in the above-referenced case The Coalition to Protect East Maui Water Resources, Hui Alanui o Makena, The Sierra Club and Mark Sheehan.

This letter is being written to you as the attorney and agent for the Defendants and violators in the above referenced case The Board of Water Supply, County of Maui; Department of Water Supply, County of Maui and George Tengan, in his capacity as Director of the Water

Department, County of Maui. It is your obligation to immediately provide copies of this letter to your clients.

A. The Provisions of the Consent Decree

The Consent Decree contains the following terms and conditions that are controlling in this situation.

1. Acceptance of the SEIS Limited to Phase I of the EM Plan

1.1 **The acceptance of the SEIS for the EM Plan shall be valid for Phase I only of the EM Plan. “Phase I” of the EM Plan means Hamakuapoko Well No. 1 (State Well No. 5420-02) and Hamakuapoko Well No. 2 (State Well No. 5320-01), with an approximate installed capacity of 2 million gallons per day (“mgd”) located in the Hamakuapoko region of the Paia Aquifer System, together with associated treatment facilities and transmission line extended to Paia, to carry the groundwater produced by these two wells, as safe drinking water, as part of the County water system.** (Emphasis added)

3. Phase I is Redefined as the EM Plan and the Remainder of the EM Plan is Withdrawn

3.1 Phase I of the EM Plan shall be redefined as the EM Plan in its totality or entirety. The County agrees to withdraw as a plan, project or program what are now known as the remaining Phases of the EM Plan, namely Phases II through VI.

6. Use of 36” Diameter Transmission Line

6.1 The County has represented that the 36” in diameter transmission line between Paia and the two Hamakuapoko Wells has been selected because of a prior contractual commitment to purchase the 36” pipes. The County, therefore, agrees as follows:

(a) the use of the 36” transmission line is not to be considered as a commitment to develop or transmit water resources more than can be produced by the two Hamakuapoko Wells in the agreed-upon portion of the East Maui Region;

(b) **the 36” transmission line shall be used solely in connection with Phase I of the project, as described in § 1.1 above. Any other use of this Hamakuapoko to Paia 36” transmission line to transmit water shall require a new EA or EIS;** (Emphasis added)

(c) for the first 200 yards of the transmission line after both of the Hamakuapoko Wells, in the Paia direction, 24” in diameter pipes shall be used in constructing the transmission line instead of pipes 36” in diameter, as a means of assuring

that the capacity of the transmission line is limited to the approximate amount intended by Phase I of the EM Plan.

4. Studies to be Conducted Before Any Further Effort is Made to Develop Groundwater Resources in the Agreed-Upon Portion of the East Maui Region

4.1 Any further efforts by the County Defendants to develop groundwater resources in the agreed-upon portion of the East Maui Region (described in Exhibit “A” attached hereto, which is a map delineating clearly the area referenced, hereafter, the “agreed-upon portion of the East Maui Region”) will be treated as a completely new County project, commenced with a new planning process, new plans and, at the appropriate time, with the preparation of a new Environmental Assessment (“EA”) or Environmental Impact Statement (“EIS”) pursuant to Chapter 343, HRS. The parties expressly agree that neither this provision, nor any other part of this Consent Decree, refers or relates to the Haiku Well (State Well No. 5419-01), the Kulamalu Well (State Well No. 5317-01) or the Pookela Well (State Well No. 5118-02).

4.2 Before any new project is planned by the County of Maui to develop groundwater in the agreed-upon portion of the East Maui Region, the County will undertake a Cost/Benefit Study of the surface and groundwater resources available in the Central Maui Region, Upcountry Maui Region and East Maui Region and conduct a rigorous Cost/Benefit analysis, including the evaluation of economic and environmental factors, of developing and transmitting these water resources. This Study shall address planning for stream restoration in the agreed-upon portion of the East Maui Region.

4.3 Before any new project is planned by the County of Maui to develop groundwater in the agreed-upon portion of the East Maui Region, the County will vigorously investigate and pursue the availability of surface water from the Waikapu (60101), Iao (60102) and/or Waihee (60103) hydrologic units for public use by preparing a report which shall include a rigorous analysis of the costs and benefits of making these water resources part of Maui’s public water system.

4.4 If the report on the availability of surface waters in West Maui, referenced in § 4.3 above, does not result in a determination that a sufficient supply of water can be made available from these sources to meet the needs of County residents who can be served by these waters and should the Cost/Benefit Studies, referenced in §§ 4.2 and 4.3 above, not result in a determination that it would be more cost/beneficial to develop water resources outside the agreed-upon portion of the East Maui Region, then the County may re-commence planning for a project to develop groundwater resources within the agreed-upon portion of the East Maui Region.

4.5 **Any new project planned by the County of Maui to develop groundwater in the agreed-upon portion of the East Maui Region shall be consistent with the Water Use and Development Plan for the Island of Maui and the State Water Code.** (Emphasis added)

4.6 Copies of the reports, studies and analyses referenced in §§ 4.2, 4.3 and 4.4 above shall be provided to Plaintiffs upon their completion.

5. Consultation With East Maui Coalition and Other Plaintiffs

5.1 **The County agrees to consult with representatives or designees of Plaintiffs with respect to any future plan to develop water resources in the agreed-upon portion of the East Maui Region, including but not limited to on the studies, reports, analyses referenced above, any new plan to develop groundwater in the agreed-upon portion of the East Maui Region and any new EA or EIS for this new plan.** To facilitate this consultation, Plaintiffs agree to provide the Director of the Department of Water Supply with the name, current address and telephone number of one person through whom all of Plaintiffs may be deemed to have been contacted for the purposes of initiating this consultation. (Emphasis added)

7. Future Use of EIS and SEIS for EM Plan

7.1 Should the County, at some time in the future decide to develop additional groundwater resources in the agreed-upon portion of the East Maui Region, the County shall not resubmit or incorporate by reference the EIS or the SEIS prepared for the former EM Plan. The County shall, at the appropriate time, prepare a new EIS for any new plan to develop groundwater resources within the agreed-upon portion of the East Maui Region. In any EIS prepared by the County, the County shall comply with Chapter 343 and the regulations promulgated thereto. The County shall not, without considerable pre-examination and comparison, use the EIS or SEIS prepared for the former EM Plan, or the studies or analysis prepared for these documents, in any new EA or EIS. Among the studies within the FSEIS which the County Defendants may reference in any further EA or EIS are (a) laboratory report test results for contaminants from former SEIS test well (State Well No. 5418-08); and (b) USGS studies and reports. Among the studies and research conclusions within the FSEIS which shall not be relied upon or used in any further EA or EIS are (a) the test results from the testing of the former SEIS test well (State Well No. 5418-08) with respect to the impacts of groundwater pumping on stream flows in the agreed-upon region; (b) the study of alternatives and the costs and benefits of developing alternative water resources; (c) the costs and benefits of relocating the proposed EM Plan wellfield further mauka; (d) the study of the impact of the EM Plan on marine resources throughout the region; (e) the study of the impact of groundwater pumping on streams and existing wells; and (f) the study of the impact of agricultural contaminants on groundwater quality. The County shall consider factors such as: existing aquifers, groundwater resources, streams, diversions, wells, private and public water systems, location of cesspools, socio-economic impacts, the impact of groundwater pumping on marine resources throughout the region, and plans for stream restoration.

12.1 Within ten (10) days of the entry of this Consent Decree by the Court, the Plaintiffs agree to dismiss, with prejudice, Civil Action No. 03-1-0008(3) and Civil Action No. 93-0734(3)

subject to the Terms and Conditions of this Consent Decree and the preservation of the ability of any party to this Consent Decree to seek the enforcement of these Terms and Conditions in this Court. (Emphasis added)

B. The County Ordinance Prohibiting Use of Both Hamakuapoko Wells

The Maui County Council first passed Resolution No. 06-39 on April 21, 2006 that urged the County Department of Water Supply to discontinue plans to use the Hamakuapoko Wells for drinking water.

The County Administration was equivocal about whether it would honor a Maui County Council Resolution.

As such, the Maui County Council enacted a law, Ordinance No. 3404, which directly states, in § 14.01.050, entitled “Hamakuapoko Wells,” that “Water from Hamakuapoko Wells 1 and 2 shall not be provided for human consumption.”

The effective date of Ordinance No. 3404 was October 2, 2006. This Ordinance was approved as to form and legality by Deputy Corporation Counsel Edward S. Kushi, Jr. Any work on the 36” pipeline after October 2, 2006 was plainly in violation of the Consent Decree. The County of Maui was obligated as a matter of law to issue a Stop Work Order at least by this date pending the preparation of appropriate environmental documents. The County of Maui never consulted with my clients before commencing this project.

C. County of Maui Clear Violation of the Consent Decree

The County of Maui Department of Water Supply has elected to proceed with the construction of the 36” pipeline project. Work on the installing the 36” pipeline is now being undertaken.

It would be factually and legally impossible for the County of Maui Department of Water Supply to be installing the 36” pipeline consistent with the Consent Decree for the following major reasons:

1. The Consent Decree only allows the 36” pipeline to be installed for the purpose of connecting to the two Hamakuapoko Wells;
2. The Consent Decree only allows the 36” pipeline to be installed for the purpose of connecting to the two Hamakuapoko Wells for the purpose of providing safe drinking water from these two specific wells.

Maui County Council Ordinance No. 3404 makes it illegal to connect to the two Hamakuapoko Wells for these purposes. The County of Maui Department of Water Supply cannot be installing the 36” pipeline for these two purposes.

The current County Administration and current County of Maui Department of Water have admitted, as matters of fact, on the record, that they are not constructing the 36" pipeline project for reasons that are permitted by the Consent Decree. The current County Administration and current County of Maui Department of Water have provided the following reasons for now proceeding with constructing the 36" pipeline project:

1. The 36" pipeline is being constructed not to connect to Hamakuapoko Well Nos. 1 and 2 but instead to eventually develop more waters East of these two wells.

2. The 36" pipeline is being constructed not to connect to Hamakuapoko Well Nos. 1 and 2 but instead to connect the Central Maui Water System to the Upcountry Water System (Makawao/Pukalani/Kula).

The Consent Decree plainly states that if the County of Maui wishes to proceed with the EM Plan for any purpose other than those explicitly permitted that further environmental review documents must first be prepared. Since it is the stated position of the current County Administration and current County of Maui Department of Water that the 36" pipeline is being constructed for purposes other than to supply safe drinking water from the two Hamakuapoko Wells, by the Consent Decree, further environmental documentation was required to be first prepared studying these new purposes and projects before construction began or continued after October 2, 2006 on the 36" pipeline. A simple review of the environmental documents on record at the Office of Environmental Quality Control reveals that no such environmental review was first conducted by the County of Maui.

D. Demand For Stop Work Order

If you have not provided me with written proof on or by the close of business (4:00 p.m.) on December 19, 2006 that the County of Maui has issued a Stop Work Order and that all work has completely stopped on all phases and components of the 36" pipeline installation project in East Maui, I will promptly file in Judge Cardoza's courtroom a Motion to Enforce Consent Decree in The Coalition to Protect East Maui Water Resources, et al. v. The Board of Water Supply, et al., Civil No. 93-0734(3), in the Second Circuit Court of the State of Hawaii for the reasons set forth herein. The project must be closed down and any portions of the pipeline already installed must be sealed. I will also seek a temporary, preliminary and permanent injunction, reimbursement of all attorneys fees and costs incurred and appropriate sanctions against your clients if they refuse to Stop Work.

Very truly yours,

Isaac Hall

IH/nh

cc: The Coalition to Protect East Maui Water Resources
Hui Alanui o Makena
The Sierra Club
Mark Sheehan
Hon. Michelle Anderson, Chairperson of the Water
Resources Committee of the Maui County Council