

MEMORANDUM OF UNDERSTANDING CONCERNING SETTLEMENT OF WATER AND RELATED ISSUES

Pursuant to this Memorandum of Understanding, the Board of Water Supply, County of Maui ("BWS") and Alexander & Baldwin, Inc. ("A&B") hereby agree to cooperate on certain matters being discussed by the parties relating to the following subjects:

1. Wailoa Ditch
2. Iao-Waikapu Ditch
3. H'poko Wells
4. Power
5. Central Maui Source Joint Venture ("JV")
6. East Maui Water Development Plan

The implementation of this Memorandum will be pursuant to one or more agreements to be negotiated and agreed upon as a package. The parties agree as follows:

1. Wailoa Ditch

The 1973 Memorandum of Understanding ("MOU") will be amended (the "Amendment") to accomplish the following:

- (a) Increase the BWS's allotment to 12 mgd with option for additional 4 mgd (per original agreement).
- (b) During periods of low flow, BWS to have minimum allotment of 8.2 mgd.
- (c) During periods of low flow, HC&S will have a minimum flow of 8.2 mgd (9.4 mgd should fire flow be required).
- (d) When the ditch flow drops below the combined minimum needs of BWS and HC&S (i.e., 16.4 mgd, or 17.6 mgd with fire flow), then BWS and HC&S each shall be entitled to receive: (a) its respective direct contribution to the ditch flow (i.e., BWS would be entitled to the portion of ditch flow attributable to ground water it pumps into the ditch, and HC&S would be entitled to the portion of the ditch flow attributable to its East Maui lands (30%); and (b) 50% of the amount of ditch flow remaining after deducting the parties' direct contributions from the total.
- (e) During periods of low flow, HC&S will not divert water to lower elevation ditch systems.

- (f) When the three-day average flow in the ditch falls below 55 mgd, BWS shall fully utilize all available ground water sources to supplement the Upcountry system and encourage conservation practices by domestic water users.
- (g) Extend the term of the MOU for 25 years.
- (h) The fee charged to BWS will remain unchanged (six cents per thousand gallons).
- (I) BWS to initiate and implement a long-term plan for permanent improvements to the Waikamoi flume system.
- (j) A&B to cooperate in the development of a dual system to serve Upcountry diversified agriculture.
- (k) BWS will develop and implement a stream flow monitoring program to provide current baseline data.
- (l) As long-term agricultural water needs are reduced, a stream restoration program will be studied, developed, and initiated by BWS.
- (m) In return for increasing the allocation of ditch water to BWS, A&B may receive an appropriate allocation of domestic water (subject to normal system-wide limitations and conformity with general and community plans), to be mutually agreed upon in the Amendment.
- (n) BWS shall utilize its best efforts to maintain storage levels at 80% of maximum capacity of both Piiholo and Kahakapao reservoirs.
- (o) BWS shall pursue the implementation of additional raw water storage in the Lower Kula system.
- (p) BWS shall cooperate with A&B regarding appropriate permits or leases (short and long-term) for East Maui waters from the State of Hawaii.
- (q) BWS to pursue ground water development for Upcountry Maui to mitigate drought effects. For example, BWS shall pursue exploratory wells (i.e., Lower Kula and Pulehu) to supplement the domestic water sources for Upcountry. A&B may participate in such well development in exchange for an appropriate water allocation (subject to normal system-wide limitations and conformity with general and community plans).
- (r) BWS to pursue, with HC&S's cooperation, establishing supplemental water sources to maintain the viability of the Kula Ag Park.

2. Iao Waikapu Ditch

Subject to Wailuku Agribusiness's agreement, a new Agreement Concerning Temporary Withdrawal from the Iao Waikapu Ditch will be entered into and include the following terms:

- (a) BWS shall be entitled to withdraw up to 300,000 gallons per day from the Iao Waikapu Ditch, except when the flow in the Iao Stream falls below 11.5 mgd.
- (b) BWS shall pay a monthly charge of \$2,000 for this allocation.
- (c) BWS shall be entitled to take additional water (for a total withdrawal of up to 2 million gallons per day) whenever the flow in Iao Stream exceeds 55 mgd. For this additional water, BWS shall pay \$0.12 per thousand gallons (not including water used for back-washing filters).
- (d) The term of the agreement shall be two years and may be extended upon mutual agreement of the parties.

3. H'poko Wells

BWS and HC&S to pursue the following:

- (a) BWS to expedite completion of necessary engineering reports and will pursue approvals to utilize the wells for domestic purposes.
- (b) A&B will convey all necessary land and easements to BWS.
- (c) Subject to the completion and acceptance of the East Maui Development Plan EIS, A&B will consider participating in the construction of the transmission line from the well site to the BWS's Paia system in exchange for an appropriate allocation of water for its participation.
- (d) In consideration of providing such necessary land and easements, A&B may receive an appropriate allocation of domestic water (subject to normal system-wide limitations and conformity with general and community plans) to be mutually agreed to.

4. Power

BWS and HC&S intend to pursue the following:

- (a) HC&S will provide appropriate information on its transmission and distribution system to BWS or its consultants.
- (b) HC&S shall provide available power to BWS at mutually agreed upon locations, at a price not to exceed that paid by Maui Electric. BWS understands that the power being provided is not “firm”, and that it shall be responsible for any necessary stand-by generators.
- (c) BWS shall, with HC&S’s cooperation, explore the long-term feasibility of developing hydroelectric and other alternative energy sources.

5. Central Maui Source Joint Venture

- (a) BWS acknowledges that there is an unmet obligation to the Central Maui Source Joint Venture arising out of the JV’s prior development of three wells having an installed pumping capacity of 13.4 mgd.
- (b) Subject to the approval of the other parties to the JV, BWS and the JV shall enter into a mutually acceptable settlement agreement resolving all outstanding issues regarding the Central Maui Source Joint Venture.
- (c) Any entitlement arising out of this resolution shall be for properties the JV members own or subsequently acquire for development within the area served by the Central Maui system; rights may be transferred to a subsequent purchaser or developer, but may not otherwise be transferred.
- (d) Within 30 days of the Memorandum, the Chairman of BWS (and/or his designees) shall enter into negotiations with representatives of the JV on a settlement agreement to establish:
 - (1) Existing usage by members of the JV;
 - (2) Future usage standards to be applied;
 - (3) The remaining entitlement of the JV;
 - (4) The terms and conditions of providing and utilizing the entitlement.

6. East Maui Water Development Plan

BWS and HC&S intend to pursue the following:

- (a) BWS to proceed expeditiously with the supplemental EIS for the project as originally planned.
- (b) BWS will assure that stream flow monitoring is an integral part of the scope of work.
- (c) A&B may participate in the project in exchange for an appropriate water allocation (subject to normal system-wide limitations and conformity with general and community plans).

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Memorandum of Understanding as of this 13th day of ~~March~~ April, 2000.

ALEXANDER & BALDWIN, INC.

APPROVED AS TO FORM AND LEGALITY:



Its ~~Vice President~~



Deputy Corporation Counsel



Its Vice president

Date: April 13, 2000

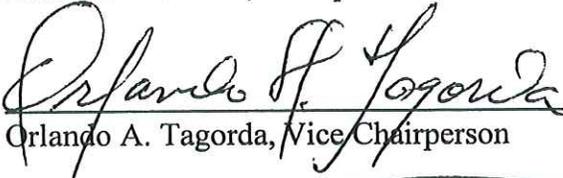
MAUI COUNTY BOARD OF WATER SUPPLY



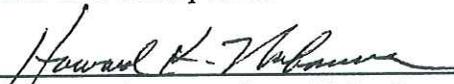
Elmer F. Cravalho, Chairperson



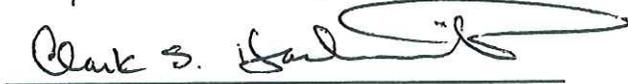
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Orlando A. Tagorda, Vice Chairperson



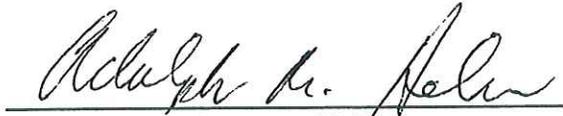
Howard Nakamura, Board Member



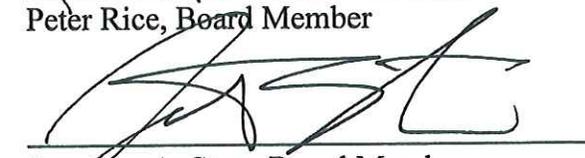
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