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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In re Petitions to Amend Interim
Instream Flow Standards for
Honopou, Huelo (Puolua), Hanehoi,
Waikamoi, Alo, Wahinepe'e,
Puohokamoa, Haipua'ena,
Punalau/Kōlea, Honomanu, Nu'ailua,
Pi'ina`au, Palauhulu, Ohia (Waianu),
Waiokamilo, Kualani, Wailuanui, West
Wailuaiki, East Wailuaiki, Kopili'ula,
Puaka`a, Waiohue, Pa`akea, Waiaka`a,
Kapa`ula, Hanawī and Makapipi
streams.

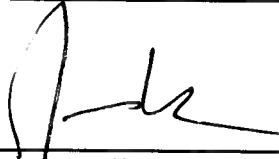
Case No. CCH-MA13-01

REBUTTAL DECLARATIONS OF MAUI
TOMORROW FOUNDATION, INC. AND ITS
SUPPORTERS FOR RE-OPENED HEARING
CERTIFICATE OF SERVICE

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**REBUTTAL DECLARATIONS OF MAUI TOMORROW FOUNDATION, INC.
AND ITS SUPPORTERS FOR RE-OPENED HEARING**

DATED: Wailuku, Maui, Hawaii 1.6.17



Isaac Hall
Attorney for Maui Tomorrow Foundation,
Inc., and its Supporters

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties listed below by
on January 6, 2017.

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1.6.17


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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In re Petitions to Amend Interim Instream Flow Standards for Honopou, Hanehoi/Puolua (Huelo), Waikamoi, Alo, Wahinepe'e, Puohokamoa, Haipua'ena, Punalau/Kōlea, Honomanu, Nu'ailua, Pi'ina'au, Palauhulu, Ohia (Waianu), Waiokamilo, Kualani (Hamau), Wailuanui, Waikani, West Wailuaiki, East Wailuaiki, Kopili'ula, Puaka'a, Waiohue, Pa'akea, Waiaka'a, Kapa'ula, Hanawī and Makapipi streams.	Case No. CCH-MA13-01 REBUTTAL DECLARATION OF LUCIENNE DE NAIE
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REBUTTAL DECLARATION OF LUCIENNE DE NAIE

1. My name is Lucienne de Naie. I am a resident of Huelo, Maui County in the State of Hawaii. I am a supporter and board member of Maui Tomorrow.
2. This Declaration is based upon my personal knowledge, except where otherwise stated.
3. I submitted a Declaration for the earlier phase of this contested case in 2015, and for the reopened contested case, in 2016, and I incorporate my earlier testimony from those Declarations.
4. I wish to address from my knowledge, the accuracy or completeness of statements found in the October 2016 declaration of Garrett Hew and the opening brief of County of Maui.

Declaration of Garrett Hew

More Clarity and Accuracy Needed on Management of Stream Diversions

5. Mr Hew's declaration at ¶5 describes the streams that have sluice gates that can be opened to adjust flow and limit the "amount of water that can be collected." This description omits the mention of the sluice gate at Puolua stream diversion on New Haiku Ditch. It should be corrected to have an accurate record, since this is an area

proposed for full and permanent restoration. Mr. Hew refers to opening the Puolua gate at ¶12 of his declaration, so A&B is aware that there is a sluice gate at this location.

6. Mr. Hew would also provide more clarity for decision makers if he would amend his declaration to list which streams have sluice gates respective to each ditch.

Broader Range of Interim Restoration Strategies Needed

7. Mr. Hew's declaration at ¶ 5 also describes that opening a sluice gate may not return 100% of the flow to the stream during periods of heavy rainfall. The declaration treats this as a non-issue, but in that's not the case for some streams like Hanehoi and Puolua, where the "interim" restoration is only at one single sluice gate where the streams are diverted by the Haiku ditch.
8. It appears from the vague workplan and timetable submitted by HC&S/EMI (Exh C-158) that most upper elevation diversions in the Huelo area will not be modified for several years. These upper diversions will require permits/OCCL review and constructions to allow restored flows. Modifying and sealing the diversion intake structures at New Haiku Ditch will also require Maui County SMA review. In other words, the only interim "restoration" provided for these streams for several years or more will likely be the small sluice gates.
9. When heavy rains come, a portion of the only water being restored to these streams is being siphoned off to the unmodified diversions on these two streams at New Haiku ditch. This is not acceptable and "interim restoration" needs to provide more relief in the near future. A&B should provide alternate strategies for bypassing as many diversions as possible on the Hanehoi-Huelo-Puolua stream system during the long "interim" period before all permits and review are completed.
10. Community members have suggested creating a simple "notch" in the dam at the Hanehoi-Haiku Ditch diversion. This has been done at Wailuanui stream/ Wailoa Ditch intake and it allows stream water to flow over the dam even when stream levels are not high. (See Exh E- 168) This simple solution would also provide for a more balanced flow in the stream.

11. Currently the Puolua and Hanehoi stream have flow bypassing the diversion dams only at one side, passing through the narrow sluice gate. (See Hanehoi sluice gate in Exh E-169) The Hanehoi diversion structure traps a stagnant area of water, breeding mosquitos and preventing any native streamlife from migrating upstream. (see Exh E-163 slide 24-a). A notch would allow some flow under most water level conditions and eliminate the stagnant pond. Puolua stream faces a similar situation.
12. No information is provided by Mr. Hew on remedies EMI can take to avoid this situation at the Huelo diversion intakes. The community solution, which is not mentioned in the A&B /EMI workplan, should be included in ¶12-¶14 of the Hew declaration and fully discussed during the scope of the contested case proceedings concerning “how EMI will manage interim restorations.” Then it should be implemented as soon as practical.

Managing Interim Restorations: Where Does Water Released from Ditches Go?

13. Mr.Hew’s declaration at ¶7 describes the location of the “main ditch control points” on the various ditches. He notes at ¶8 that one method of reducing diversions is “partially or completely closing the gates on main control points.” No details are given as to what happens to the diverted water carried by the respective ditches when the control points are fully or partially closed, and more importantly, how that water would help achieve mandated interim restoration levels of the sixteen stream systems specified in Dr Miike’s April 1, 2016 order and further clarified and affirmed in the Commission’s July 18, 2018 order. Those details should be provided to allow the Commission to make an informed decision on effectiveness of Interim Restoration procedures.
14. Mr Hew’s declaration at ¶12 describes various measures taken by EMI to date to release flows into various streams. It does not specify any modifications to the ditch control point on Wailoa Ditch near Honopou stream intake structure, but community members have observed that Wailoa ditch east of Honopou stream is full to capacity and then water appears to be dumped back into the Honopou stream west of the main stream channel. This information on what happens to the water in Wailoa ditch that

has been gathered from other streams to the east should be provided to Dr Miike, the Commission and the public. It is a vital part of the Contested Case scope topic: “how EMI will manage interim restorations?”

Stream Flow Monitoring Plans to Achieve April 1, 2016 IIFS for East Maui Streams

15. Mr. Hew’s declaration at ¶9 notes that with its reduced needs and the abundant rainfall in East Maui, HC&S and the EMI system is “relying principally on water entering the ditch system west of Piinau stream” but notes in ¶10 that during drought conditions HC&S/EMI would need to return to importing water from further east in the Ke’anae and Nahiku lease areas.

16. Mr. Hew’s declaration at ¶12 omits any reference to measures that will be taken, by EMI itself, or in cooperation with CWRM, to monitor or measure compliance with the interim stream flow levels covered in Dr. Miike’s April 1, 2016 order, if the streams of the Ke’anae-Nahiku lease areas that are now completely undiverted, are once again diverted into the EMI system during drought conditions. This is a very important part of the Contested Case scope: topic “how EMI will manage interim restorations.”

Restoration of Honomanu Stream, Monitoring of Huelo Stream Flows Should be Addressed in Contested Case “Management of Interim Restorations”

17. On December 9, 2016 the BLNR met to hear A&B’s request for extension of its holdover permit to divert stream water from state lands in the four East Maui License areas. As part of their decision the BLNR ordered that Honomanu stream be added to the list of restored streams in the License area. The A&B filings in the contested case should be amended to reflect this requirement of their water license permits and plans and timeline for restoration discussed.

18. Likewise, Mr. Hew's declaration at ¶12 omits any reference of how stream flow levels will be monitored and managed in Hanehoi and Puolua streams which, while proposed for "full and permanent restoration," will have many years of modification before that is achieved. EMI and the Commission should clarify the protocol to determine if the interim flows in these streams during periods of greater and lesser rainfall, are in compliance with at least the minimum IIFS ordered by Dr. Miike on April 1, 2016.

Stream Diversion Structure Removal on Permanently Restored Streams

19. Nowhere in Mr. Hew's declaration, or the A&B/EMI stream restoration workplan (Exh 158) is there any information regarding EMI's plans to remove diversion structures from the seven "permanently restored" stream systems.
20. CWRM's July 18, 2016 order clearly states that this information is required: "The Commission orders that A&B coordinate its efforts to permanently abandon or remove all diversion structures on the above identified streams with the CWRM staff to ensure that all diversions are appropriately identified and addressed in A&B's plans to abandon or remove the diversion structures. Whenever possible and practical, A&B should attempt to remove all diversions. Within 30 days A&B should provide a more detailed plan for restoration of stream flow for the above identified streams and with a more exact projected time frame for completion of permit processing and completion of construction."
21. Exhibit C-158, the workplan submitted by A&B to CWRM in October 2016, does not contain the information requested by this CWRM order. There is no reference to removing diversion structures on any one of the seven stream systems covered in the workplan. This information should be provided to the Commission, hearings officer and the public as part of the contested case process.

Stream Restoration Modifications Needed to Allow Full Migration of Native Streamlife

22. There is no discussion in the A&B brief, Declarations, Exhibits or workplan regarding modification of diversion structures to allow natural migration of native stream species on Hanehoi, Puolua and Huelo streams during the interim period before stream diversion structures are removed.
23. Community members in the Huelo area have repeatedly asked for these barriers to native streamlife migration to be removed for many years (see Declaration of Schupp at ¶16 and Caveny at ¶9.) Honopou stream had a “trough style” bypass (see Exh E-6 a & b) installed a number of years ago, but no such modifications, a trough or a “notch” have ever been implemented for Hanehoi and Puolua stream diversions.
24. Hawaii State Water Code requires that stream flows be adequate to support native stream life. Eight months after announcing that Hanehoi-Puolua- Huelo streams would be fully and permanently restored, A&B has failed to make any modifications in the diversion works to allow native stream life to migrate successfully along the streams, nor to announce any plans for such actions. This should be remedied during the Contested Case and the Commission should require the dams to be modified while communities wait for them to be removed.

Consulting Community Members Re: Management and Monitoring of Interim Restorations on Their Streams

25. Community members in Huelo have never been directly consulted by A&B regarding A&B’s plans to modify the numerous diversion structures on Hanehoi, Huelo and Puolua streams. This would make sense since part of the community depends upon the stream systems for domestic water supply.
26. It is clear that full and permanent restoration of Hanehoi, Huelo, and Puolua stream could take many years due to multiple diversions of various branches of the streams at various ditch levels. In spite of this reality, A&B and the State Water Commission have made no apparent effort to work with local community in Huelo to monitor existing flows on the affected

streams to determine if they meet the minimum flow standards set by the hearings officer in April 1, 2016. If such monitoring is being done, the results are not being posted on the CWRM website or conveyed to community members.

Little Progress on Full and Permanent Restoration in 2016

27. On April 22, 2016, A&B informed the State Commission on Water Resource Management (“CWRM”) of its intention to “fully and permanently” restore water to seven “priority taro streams” including Hanehoi and its tributary Puolua (EXH C-154). Since that time, we have seen very little progress made towards the “full and permanent” restoration of not just the water flows, but the healthy ecosystems of Hanehoi and Puolua streams. Our community is concerned that this could end up being one more “paper promise” that takes many years to be actualized in part or in full. The Commission should create enforceable filing deadlines for these applications and levy fines if they are not complete.
28. Mr Hew at ¶13 refers the permit application to abandon diversions on the seven “taro stream” systems submitted to CWRM on Sept 16, 2016, but does not provide the permit application as an Exhibit for community members and others to view. (See Exh E-172)
29. This eight page Application appears to have taken 5 months to complete and submit (May 2016 to September 2016). I contacted CWRM staff in October 2016 and learned that A&B was told by CWRM staff, a few weeks after the Application was submitted, that the Application was incomplete and could not be processed without more specific information being provided. It appears clear that A&B did not follow the checklist of required information at the beginning of the Application form, which called for photos and drawings of modifications to be provided. The Commission should set deadlines for submissions of the A&B Diversion Abandonment Applications and State and County Agencies should give priority to their review and approval.
30. The Application filed by A&B (obtained finally through a Maui Tomorrow discovery request) refers only to Hanehoi and Puolua stream and omits reference to Huelo stream. The Work Plan submitted to CWRM as part of the A&B Application does list the Huelo stream intakes on Lowrie Ditch (Intake L-7) as well as those of Hanehoi Intake (L-5) ,

West Hanehoi (Intake L-6) and Puolua (Intake L-7a). It is confusing not to have the three streams acknowledged in both sections of the Application, and this should be amended.

Conclusion: Hew Declaration

31. In conclusion, Mr. Hew's Declaration is missing essential information that is required by the scope of the contested case, by Dr. Miike's Order of April 1, 2016 or by the Commission's order of July 18, 2016. This information, as noted above, should be provided by A&B as part of the Contested Case.

County of Maui, Opening Brief

32. In section C. of its Opening Brief, "MAUI COUNTY'S POSITION ON THE FUTURE USE OF THE CENTRAL MAUI FIELDS" the County of Maui discusses its support of "continued operation of East Maui Irrigation Company ("EMI") to service any continued diversified agriculture within the Central Maui fields."

33. In its June 9, 2016 Motion on Scope of Reopened Hearing Section C. the County states: "MDWS does not currently have the infrastructure that would be necessary to provide water to these fields, regardless of whether they remain in agricultural use, or transition to commercial or residential uses."

34. In section B. of its Opening Brief, "THE IMPACT OF HC&S'S CESSATION OF SUGAR OPERATIONS ON MDWS'S USE OF SURFACE WATER" Maui County states:

"Additionally, MDWS is concerned that, should East Maui Irrigation ("EMI") not continue to deliver large quantities of water for use by HC&S/A&B, the company will no longer be able to continue its operations. Taylor Reopening Dec. ¶ 9. The closure of EMI would have potentially devastating impacts on the ability of MDWS to deliver water to over 35,000 customers within the Upcountry Service Area because MDWS currently lacks the financial capacity or the expertise necessary to take over, maintain, or operate the EMI system should they cease operations."

35. In direct contradiction to these statements, Mayor Arakawa announced in a Dec 14, 2016 Press conference that he had reached an agreement with Wailuku Water Co to acquire

8,764 acres of the Na Wai Eha watershed, including all the irrigation diversion and transport systems. Copies of the acquisition agreement was provided to those attending. (See Exh E-170.) This purchase, which still requires review and approval of the Maui County Council, would allow the County to participate in the provision of stream water to around 4,000 acres of Central Maui agricultural land owned by A&B not served by East Maui water.

36. The Mayor further stated that he was in active discussions with A&B regarding future County purchase of the EMI system as well. At a January 4, 2017 presentation, Maui County Environmental Coordinator Rob Parsons presented a slide show regarding the Mayor's plans to purchase Na Wai Eha and the East Maui Irrigation water systems. Mr Parson's slides showed that the Mayor hoped to have the Commission grant Maui County Department of Water Supply an additional 10 mgd of stream water to supply a new ag park in upcountry Maui and provide a water source for a new surface water treatment plant in North Kihei that could supply water to the South Maui region and "relieve pressure on the Iao aquifer."
37. It appears that the County hopes to have a greater interest in the disposition of the waters of over one hundred East Maui streams and all of the streams and tributaries of Na Wai Eha. This potential future interest is not being reflected in their submissions to the Commission and their records for the contested case should be amended to include this possibility and discuss their plans and intentions to utilize and manage the East Maui stream resources.

Maui County Upcountry Demand

38. Maui County Opening Brief in Section B also states that the County, in regards to their upcountry water system, "anticipates a need of an additional 9.15 mgd to be able to meet future demands through 2030." This is based upon 7.5 mgd for the 1,852 applicants on the Upcountry Water meter list and 1.65 mgd to service projected Upcountry growth of 8,424 new residents.
39. The figures cited in the County's October 2016 Opening Brief are not completely consistent with those presented at public meetings and on the County's website in November of 2016. Different figures are shown on p. 21 of County's draft Water Use and Development Plan for Upcountry. (Exh E-171).
40. These figures specify that the Upcountry Water meter List has a demand between 3.6 and 7.3 mgd because "historically about 50 percent of the requests are withdrawn or denied." The anticipated water needed to accommodate additional new growth in the Upcountry area is estimated in the WUDP to be .7 mgd, not 1.65 mgd as stated in the County's Contested

case brief. This would result in a total demand between 4.3 mgd and 8 mgd, while the County's brief states the demand at a flat 9.15 mgd.

41. The Commission should direct the County to provide consistent demand figures to justify all its proposed uses of East Maui Public Trust resources.

42. I declare under penalty of law that the foregoing is true and correct.

Executed this 6 day of JANUARY 2017.

Lumaine deSane
Name

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

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Case No. CCH-MA13-01

DECLARATION OF ROBERT PAHIA

DECLARATION OF ROBERT PAHIA

1. My name is Robert Pahia; I am a resident of the County of Maui, State of Hawaii.
2. This Declaration is based upon my personal knowledge, except where otherwise stated.
3. I am the manager of Hoaloha Farms.
4. I worked as a nurseryman at Duncan's Nursery in Kaneohe, Hawai`i from 1973 to 1986, a total of approximately 13 years.
5. From 1986 to 2005, a total of approximately 19 years, I worked as an Agricultural Research Technician under Dr. John Cho at the University of Hawai'i Kula Agricultural Research Center. My work involved identifying genetic markers in kalo and hybridizing them through cross-breeding for improved yield and disease resistance.
6. I have been farming on various parcels of land in Maui County from 1995 until the present, a total of approximately 21 years.

7. I currently farm and/or oversee the farming of Hoaloha Farms, which comprises 61 acres of land at the Maui Tropical Plantation in Waikapu. This land was formerly used for sugar cane farming by Hawaiian Commercial & Sugar. Current crops include kalo, bananas, sweet potatoes, and a mix of various vegetables. We supply this produce to Old Lahaina Luau, Aloha Mixed Plate, and Star Noodle Restaurant, as well as to various consumers on other islands.

8. Since 2015, I have been increasing my implementation of regenerative farming techniques similar to those described in the Maui Tomorrow Foundation report, Mālama `Āina: A Conversation About Maui's Farming Future. These techniques, which build soil fertility, increase crop production, and reduce water usage, include a) cover cropping to increase soil organic matter and carbon content, b) and allowing soil mycorrhizae to increase through the avoidance and/or minimization of the use of chemical fertilizers, pesticides and/or fungicides, and c) using efficient irrigation methods such as drip irrigation.

9. In 2014, the United States Department of Agriculture, Natural Resources Conservation Service conducted a test on the 61 acres that I am farming at Waikapu, after 1 year of cover cropping. The results indicated an approximately 30 percent increase in water holding capacity, with a corresponding reduction in water usage.

10. I have reviewed Exhibit C-157, referred to in the October 2016 Declaration of Mr. Rick Volner, Jr. I find the data therein to be unsupported and unsubstantiated; the conclusions that Mr. Volner arrives at in his testimony regarding the water requirements of the crop types listed cannot be considered valid without supporting information and demonstrated calculations.

11. On December 21, 2016 I met with Mr. Rick Volner, Jr., to discuss the cost of potential land leases on former HC&S sugar land. Mr. Volner told me that interior lands, away from existing developed area, were available for 30-year lease terms at a price of \$85/acre. On the other hand, Mr. Volner stated that

lands near existing towns and roadways were only available at short lease terms and higher prices.

I declare under penalty of law that the foregoing is true and correct.

Executed this 6th day of January 2017.
Robert N. Pahia
Robert Pahia

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Kapa'ula, Hanawī and Makapipi
streams.

Case No. CCH-MA13-01

REBUTTAL DECLARATION OF ALBERT PEREZ

REBUTTAL DECLARATION OF ALBERT PEREZ

1. My name is Albert Perez; I am a resident of the County of Maui, State of Hawaii.
2. This Declaration is based upon my personal knowledge, except where otherwise stated.
3. I submitted a previous Declaration for this reopened contested case on October 17, 2016, and I incorporate my testimony from that Declaration.
4. I am the Executive Director of the Maui Tomorrow Foundation (MTF). My background and qualifications were set forth in a previous exhibit.
5. I wish to address from my knowledge the accuracy and/or completeness of statements found in the October 2016 declaration of Mr. Rick W. Volner, Jr.
6. Mr. Volner's Declaration at Paragraph 2 quotes from the Alexander and Baldwin, Inc. (A&B) press release of January 6, 2016, which HC&S has attached as an exhibit. This quote states, in relevant part, that

“In the long-term, A&B's vision is to keep the former plantation lands in central Maui in agriculture through a patchwork of compatible diversified agriculture activities, some farmed by HC&S, some by others.”

This would effectively turn A&B into a commercial water purveyor, the cost of the water being charged either directly, or indirectly via the value imputed in its lease rents.

Commercial agriculture is not a protected public trust use; prospective commercial water sales, even if for commercial agriculture, would also have lower priority than public trust uses.

7. Contrary to Mr. Volner's statement in the January 6, 2016 press release that "A&B's vision is to keep the former plantation lands in central Maui in agriculture," a December 30, 2016, article in the Maui News (Exhibit E-167) reported on the auctioning off of more than 450 pieces of HC&S farm equipment left over from sugar operations, including Tournahaulers, bulldozers, excavators, tractors, dump trucks, pickup trucks, forklifts, welders, machine shop equipment, and spare parts – in short, valuable equipment that A&B would want to keep if it were serious about making the transition to diversified farming. A&B was quoted in the article as saying "it would be involved with any future sugar cultivation only as a landlord." The auction web site can be accessed at <http://gaauction.com/events/hcs/>.

8. Also contrary to Mr. Volner's statement that "A&B's vision is to keep the former plantation lands in central Maui in agriculture," the same December 30, 2016 Maui News article (Exhibit E-167) reported the latest numbers on employee layoffs. Of 675 workers employed at the beginning of 2016, 350 remained on the payroll, but their last day of work was December 30th, the day the article was published. If A&B were serious about quickly making the transition to diversified farming, this corporation could have retained many of these employees.

9. Similarly, contrary to Mr. Volner's statement that "A&B's vision is to keep the former plantation lands in central Maui in agriculture," A&B's strategy with regard to the future of their former Maui sugar lands is elucidated in their presentation entitled, "Alexander & Baldwin, Inc., Premier Hawaii Real Estate Company, Investor Day Presentation, November 2, 2016, available on their web site at http://alexanderbaldwin.com/wp-content/uploads/2016/11/ALEX-Investor-Day-Presentation-Nov-2016_Upload.pdf. In particular, pages 71-78 (Exhibit E-173), detail a strategy involving Land Management, Ag

Operations, and Land Disposition. According to this strategy, while pursuing long range land development entitlements, they need to secure water rights and maintain water delivery in order to be able to develop and “dispose” of the land. Agriculture, for A&B, is an activity that it plans to pursue at the lowest possible cost, until the market demand for developed land warrants its disposal. As stated on page 74 of this Investor Day Presentation, their primary objectives are to:

- Employ lands at their highest and best use
- Generate adequate revenue from portfolio of ongoing uses to (1) offset holding costs, (2) over time earn a modest positive cash flow return on land asset value
- Selectively monetize or entitle parcels as market, community needs warrant, benefitting from long term land price appreciation

Further, on page 76, this Investor Day Presentation states that A&B will “Focus on identifying ag lands suitable for future growth and moving them through Hawaii’s complicated and lengthy entitlement process.” Clearly, this is not a company that intends to pursue agriculture on these former sugar lands over the long term. Public trust water should not be allocated for prospective real estate development purposes at the expense of higher priority public trust uses.

10. Mr. Volner’s Declaration at Paragraph 13 refers to a “Diversified Agricultural Plan,” and states that “HC&S is actively engaged in furthering of a plan to transition the former sugarcane lands to the cultivation of diversified agriculture by A&B and others that would be sustainable and economically viable.” However, despite our discovery request that A&B produce said plan, it has not been forthcoming; we therefore have no way of evaluating it, or of determining whether it contains the requisite elements that are typically associated with a “plan,” including a list of steps with timing and resources used to achieve an objective. A “plan” is commonly understood to be a temporal set of intended actions through which one expects to achieve a goal; none of these elements is presented in any of the Exhibits submitted by or on behalf of A&B.

11. Mr. Volner's Declaration at Paragraph 15 refers to Exhibit C-155, a color coded map generated by HC&S that illustrates the mix of uses currently "envisioned" by HC&S Diversified Agricultural Plan. Ten different "conceptual uses" are listed on this map. However, none of the Declarations or Exhibits submitted by or on behalf of A&B contains any discussion of timing, resource allocation, or any of the elements typically associated with a business plan, including an analysis of the industry background, the crops and/or value-added products being contemplated, the business environment (strengths, weaknesses, opportunities and threats), an analysis of competition, transportation costs, a market analysis and marketing plan, operations plan, management plan, financial plan, implementation plan, milestones, and evaluation methodology. Exhibit C-155 would be better characterized as a preliminary conceptual sketch, and can not serve as the basis for allocating public trust waters to lands that are not actually planted and that lie fallow.

12. Mr. Volner's Declaration at Paragraph 17 states that of 31,250 acres of former sugar fields that were previously irrigated with a combination of surface water delivered by EMI and brackish water pumped from HC&S' brackish water wells, 26,000 acres will need to be irrigated. His Declaration at Paragraph 18 states that Exhibit C-156 notes for each category of use the acreage that is located above the reach of HC&S' brackish water wells, and can thus be irrigated with surface water only. However, the area that is above the reach of these brackish water wells is not shown on Exhibit C-155. In order to allow proper evaluation water requirements, and to allow appropriate crop coefficient and evapotranspiration data to be assigned, A&B should be required to show on a map which acreage can be irrigated only with surface water, and which acreage can be irrigated with a combination of surface water and brackish well water.

13. Mr. Volner's Declaration at Paragraph 18 further states that "The irrigation requirement for each crop was determined by applying the appropriate crop coefficient to the average daily evapotranspiration rates for the fields in question . . ." The data used to make these calculations are shown in Exhibit C-157. However, Exhibit C-157 only shows data for 11 fields, a small fraction of the many fields that are shown on the map on Exhibit C-155; data for the remaining fields should be shown. In addition, one of the fields for which data is shown on Exhibit C-157 (Field 110) is shown as "Pasture - Unirrigated," which will not require water. It is unclear how the data shown are used to arrive at the water requirements figures shown in Exhibit C-156, especially when one of the fields does not require water; calculations for each field should be

shown, and the “Pasture – Unirrigated” column (Field 110) should be removed, or its inclusion explained and justified.

The data used in the tables shown in Exhibit C-157 are not provided, nor is there any description of the methodology used to gather them. This makes it impossible to verify whether these numbers come from actual studies.

It should also be noted that while Exhibit C-157 shows evapotranspiration data for 7 color coded crop categories (one of which does not require water), the Gallons per Acre per Day calculations in the lower part of this exhibit use 10 color coded crop categories, and 12 categories total. The relationship of two tables shown on this exhibit is unclear; calculations should be shown.

14. Mr. Volner’s Declaration at Paragraph 18 does not include any discussion of methods that could be used to reduce irrigation requirements. According to the United States Department of Agriculture, Natural Resources Conservation Service, a 1% increase in organic matter (carbon) in the top 6” of soil increases its water holding capacity by approximately 27,000 gallons per acre (see Exhibit E-166). It is likely that water use would be 10-50% less than these numbers, if the regenerative methods were to be embraced and implemented. These methods are detailed on page 23 of MTF’s “Mālama `Aina” report (previously submitted as an exhibit) and include:

- Capturing and storing rainwater through terracing
- Building swales on contour
- Keyline plowing
- Ponds
- Building healthy soil to improve water holding capacity using compost
- Mulch
- Cover crops
- Planting windbreaks to decrease evapotranspiration and harvest atmospheric moisture
- Using rotational grazing to improve soils
- Planting climate adapted crops that require minimal irrigation
- Using conservation tillage methods
- Using efficient irrigation methods
- Planting perennial crops requiring no tillage

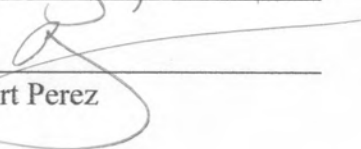
In a 30-year farm systems trial, the Rodale Institute found that corn grown in organic fields had 30 percent greater yields than conventional fields in years of drought. Healthy soil that is rich in organic matter and microbial life serves as a sponge that delivers moisture to plants. The trial

also found that organic fields can recharge groundwater supplies up to 20 percent (see MTF's "Mālama `Aina" report, previously submitted as an exhibit).

15. Mr. Volner's Declaration at Paragraphs 22, 23, 24 and 25 points to several uncertainties regarding the use of brackish water. He attempts to use this uncertainty to justify allocation of public trust water to A&B. However, these are lands that are not actually planted and that lie fallow. A&B must be required to make diligent efforts to find crops that are tolerant to brackish water before any consideration can be given to allocating public trust water to those fields.

I declare under penalty of law that the foregoing is true and correct.

Executed this 6th day of January, 2017.



Albert Perez