

NATIVE HAWAIIAN LEGAL CORPORATION  
1164 Bishop Street, Suite 1205  
Honolulu, Hawai'i 96813  
Telephone: 521-2302

SUMMER L. H. SYLVA 9649  
CAMILLE K. KALAMA 8420  
Attorneys for Petitioners  
Nā Moku Aupuni O Ko'olau Hui  
Lurlyn Scott and Sanford Kekahuna

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAI'I

PETITION TO AMEND INTERIM  
INSTREAM FLOW STANDARDS FOR  
HONOPOU, HUELO (PUOLUA),  
HANEHOI, WAIKAMOI, ALO,  
WAHINEPEE, PUOHOKAMOA,  
HAIPUAENA, PUNALAU/KOLEA,  
HONOMANU, NUAAILUA, PIINAAU,  
PALAUHULU, 'ŌHI'A (WAIANU),  
WAIOKAMILO, KUALANI, WAILUANUI,  
WEST WAILUAIKI, EAST WAILUAIKI,  
KOPILIULA, PUAKAA, WAIOHUE,  
PAAKEA, WAIAAKA, KAPAULA,  
HANAWI and MAKAPIPI STREAMS

CASE NO. CCH-MA13-01

PETITIONERS NĀ MOKU AUPUNI O  
KO'OLAU HUI, LURLYN SCOTT AND  
SANFORD KEKAHUNA'S  
RESPONSIVE BRIEF REGARDING  
RE-OPENED HEARING;  
DECLARATION OF LURLYNN SCOTT;  
EXHIBIT "A-177"; CERTIFICATE OF  
SERVICE

PETITIONERS NĀ MOKU AUPUNI O KO'OLAU HUI, LURLYN SCOTT AND  
SANFORD KEKAHUNA'S RESPONSIVE BRIEF REGARDING RE-OPENED HEARING

Pursuant to the Order Regarding the Scope of the Re-Opened Hearing to Address the Cessation of Sugar Operations by HC&S, so ordered by Chairperson Suzanne Case on August 18, 2016 (the "Order") and Minute Order No. 22, Petitioners Nā Moku Aupuni O Ko'olau Hui, Lurlyn Scott and Sanford Kekahuna (hereinafter, collectively, "Nā Moku"), hereby submit their brief responding to: (1) the October 24, 2016 and November 7, 2016 Reports of Commission on Water Resources Management (CWRM) staff person Dr. Ayron M. Strauch, (2) the County of

Maui's Reopening Opening Brief, and (3) the Hawaiian Commercial and Sugar Company's Opening Brief Regarding Re-Opened Evidentiary Hearing.

## **I. PROCEDURAL HISTORY**

The Hearings Officer closed the evidentiary portion of the hearing in this contested case on April 2, 2015. On January 6, 2016, HC&S announced it planned to close its sugar operations by the end of 2016. The Hearings Officer filed his Recommended Findings of Fact, Conclusions of Law, Decision and Order on January 15, 2016.

The Commission issued Minute Order No. 18 on March 10, 2016 directing the Hearings Officer to re-open the evidentiary hearing for a limited purpose -- to address significant changes in water use by Alexander & Baldwin "A&B" and its subsidiaries. According to the Commission,

Such additional evidence should lead to: 1) revision of the Hearings Officer's findings of fact on offstream uses; 2) rebalancing of instream versus noninstream uses; and 3) reassessment of the Hearings Officer's current proposed amendments to the interim instream flow standards.

Minute Order No. 18.

The Hearings Officer's Minute Order No. 19 outlined the scope of the rehearing as follows:

- a. HC&S/A&B's current and future use of surface waters and the impact on groundwater sources for its central Maui fields of HC&S's cessation of sugar operations;
- b. the impact of HC&S's cessation of sugar operations on MDWS' use of surface water; and
- c. Maui County's position on the future use of the central Maui fields; and
- d. how EMI is managing the decrease in diversions, how it would manage the interim restorations, and any issues concerning the integrity of the EMI ditch system with the current and any future changes in offstream diversions.

Minute Order No. 19 at 2.

The Commission confirmed the scope as set forth in Minute Order No. 19, and further directed that any new information, where available, regarding streamflows in East Maui streams where diversions have been ceased, be incorporated into the rehearing. Order Regarding the Scope of the Re-Opened Hearing to Address the Cessation of Sugar Operations by HC&S.

## **II. THE COUNTY OF MAUI PROVIDES NO ADDITIONAL EVIDENCE TO SUPPORT AN ALLOCATION BEYOND THE HEARINGS OFFICER'S 2015 RECOMMENDATION**

“MDWS defers to HC&S/A&B.” County Re-Opening Brief at 2. These five words encapsulate Maui County’s position statement for these reopened Hearing. Maui County’s present stance is entirely consistent with the position it has taken throughout these proceedings. Expired agreements, extensions, and a more than decades old memorandum of understanding on which a water delivery system that serves 35,000 Upcountry Maui residents depends are the proverbial “strings” which bind these parties and have guaranteed Maui County’s blind loyalty for all these years. As admitted at the outset of these Hearing, the parties’ operative MOU “requires DWS to cooperate with EMI regarding attainting [*sic*] the appropriate permits or leases for East Maui water from the State of Hawaii.” County (2014) Opening Brief at 4-5 (Taylor Dec. ¶ 15, Exhibit “B-15”). This contractual obligation helps to explain, at least in part, Maui County’s belief that “allowing HC&S/A&B a wide degree of flexibility in researching and developing alternative agricultural models that are economically and agronomically feasible, is necessary” even if no vetting of those models’ short or long-term viability has occurred. According to Maui County, unsubstantiated water need estimates and preliminary talks to relinquish unknown quantities of agricultural park lands at some uncertain future date are sufficient prerequisites for a massive, present-day commitment of public trust resources to a private, for-profit commercial enterprise. But as the CWRM well knows, “the state may compromise public rights in the resource pursuant only to a decision made with a level of openness, diligence, and foresight commensurate with the high priority these [public] rights [in the resource] command under the laws of our state.” *In re Water Use Permit Application*, 94 Hawai‘i 97, 143, 9 P.3d 409, 456 (2000) (*Waiāhole I*). As will be shown in section III, *infra*, the

highly speculative alternative agricultural models put forth by HC&S/A&B manifests a lack of due diligence, transparency, or preparedness.

1. The Impact of HC&S's Cessation of Sugar Operations on MDWS's Use of Surface Water

Maui County's contention that it "did not actively pursue water to accommodate future needs during the IIFS contested case hearing and subsequent filings of the proposed FOF and COL" out of its altruism for "the needs of HC&S and the instream values pursued by Nā Moku and Maui Tomorrow" is belied by the pleadings and witness testimony it offered throughout these proceedings. County Re-Opening Brief at 3. In its original Opening Brief, Maui County "quantified the average Upcountry Water System demand at 7.9 MGD," and internally verified that "the current demands of the Upcountry Service Area are being met." County (2014) Opening Brief at 9. At that time, Maui County also determined that "future needs through 2030 when taking into account projected population growth [pursuant to the Maui Island Plan], and the extensive waiting list for additional water meters," projected an increased demand "somewhere between 13.3 MGD and 17.05 MGD by 2030" of which "DWS [would] need to develop between 4.2 and 7.95 MGD from new sources." *Id.* at 10-11.

Maui County's future need projection has been confirmed by the Hearings Officer not once, but twice, during the course of these proceedings: first, as FOF #115 in his Minute Order No. 16 titled Proposed Findings of Fact, Conclusions of Law, & Decision and Order; and second, in Minute Order No. 21, wherein he stated that "the record is clear" that "MDWS's anticipated additional need to 2030 is 4.2 mgd to 7.95 mgd." Minute Order No. 21 at 3-4. Despite appearing to rely entirely on evidence and testimony previously offered during the contested case hearing for its future needs through 2030, Maui County now "anticipates a need of an additional 9.15 mgd" -- a value in excess of the prior 4.2 mgd to 7.95 mgd fact finding without additional evidentiary support. County Re-Opening Brief at 4. Maui County's untenable argument that its longstanding use of basal aquifer wells to supplement its use of surface water within the Upcountry Service Area is an expense suddenly too onerous for existing MDWS customers to incur now that HC&S/A&B has relinquished its lion's share of East Maui surface water is

meritless. That fact alone does not tip the cost-benefit analysis in favor of MDWS to the detriment of appurtenant and riparian uses and resource protection. For the Commission to rule out the use of its wells as an alternative source, the County must make a showing that such use is impracticable as the Commission has previously stated that, “an applicant’s inability to afford an alternative source of water, standing alone, does not render that alternative impracticable.” *In re ‘Iao*, 128 Haw. at 260, 287 P.3d at 161 (internal quotations and brackets omitted).

Likewise, Maui County’s alarmist concern 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” is not credible. County Re-Opening Brief at 4. It is no coincidence that neither Maui County nor EMI have identified the “large quantities of water” necessary for EMI to be able to continue its operations. What we do know, based on A&B’s own admissions, is that: (i) reduced diversion amounts “do[] not by itself compromise the structural integrity of the ditch system,” such that no specific amount of water flowing through the system is necessary for ditch integrity (A&B Re-Opening Brief at 15); (ii) EMI’s delivery of “large quantities of water for use by HC&S/A&B” was significantly reduced earlier this year when it voluntarily ceased diverting streamflows from the entire Nahiku and Keanae license areas with no reported adverse consequences to ditch integrity or water provisions to MDWS customers (Declaration of Garrett Hew for Reopened Hearing at ¶ 9); and (iii) A&B’s January 6, 2016 announcement -- that it unilaterally decided to close its sugar plantation due to “the roughly \$30 million Agribusiness operating loss” it was then-expected to incur in 2015 and the forecast for continued significant, unsustainable losses going forward -- was and remains the only credible threat to EMI’s operational viability (Exhibit C-153). Conclusory, unsubstantiated statements that “MDWS currently lacks the financial capacity or the expertise necessary to take over, maintain, or operate the EMI system” or that nebulous incompatibilities prevent Maui County from operating EMI’s system do not hold water. County Re-Opening Brief at 5.

For years, the ominous threat that reductions in A&B/EMI/HC&S’ access to East Maui surface water would send Maui’s economy into a tailspin -- threatening 750-1,400 jobs on Maui and \$115 - \$172 million annually -- was finally realized, **not** by a reduction in surface water

supplies but by a unilateral business decision that served the bottom line of a private, commercial interest. Shareholder profits eclipsed concerns about adverse economic impacts to hundreds of displaced employees, the economic engine that fuels Maui's economy, or potential disruptions in service to MDWS customers. While the prudence is Maui County's decision to continue to rely almost exclusively on the same company's provision of domestic water to 35,000 of its customers is debatable, it does not negate or suspend the presumption that prescribes a higher level of scrutiny for private commercial uses. HO Proposed Decision at 93, COL#13 (citing *Waiahloe I*, 94 Hawai'i at 142, 9 P.3d at 454).

Nā Moku, like Maui County, supports keeping the lands used by HC&S/A&B in agriculture, just **not** at the expense of or detriment to public trust resources and constitutionally-protected public trust purposes. The two are not mutually exclusive.

### **III. HC&S FAILS TO ESTABLISH REASONABLE BENEFICIAL USE OF EAST MAUI STREAM WATER**

Nā Moku does not dispute that the Commission may “reasonably estimate instream and offstream demands” and that it may be based on future predictions and policy judgments. *In Re 'Iao*, 128 Haw. at 254-255, 287 P.3d at 155-156. Nevertheless, those estimations must be reasonable and must be mindful of the Commission's duty to “protect instream values to the extent practicable.” *Id.* at 258, 287 P.3d at 159. The highly speculative nature of A&B's projected future uses and lack of present uses cannot be elevated above present instream values and public trust purposes weighing in favor of stream restoration.

#### **A. HC&S Omits Essential Details About its Current Uses**

HC&S's description of its current water uses fails to provide basic and necessary information about the specific surface water needs for each of those uses. It admits that it no longer uses surface water to irrigate sugar but otherwise provides zero details as to the volume used for its current stated purposes. Opening Brief at 4. HC&S's current water use is limited to “irrigation of diversified agricultural test crops, irrigation of cover crops to minimize soil erosion

and miscellaneous uses such as industrial wash water, firefighting and dust control.” *Id.* Its January 6, 2016 public statement on transition identifies testing for energy crops and irrigated cattle pasture and a plan to create an agricultural park, yet nowhere in its briefing or attached declarations and exhibits does it provide the irrigated acreage or water needs for the various test crops and purposes. Exhibit C-153.

The only statement on current water use amounts is merely a statement of how much it currently diverts. In its description of how it currently manages the diversion, HC&S states that “water flows in the Wailoa ditch at Maliko Gulch have been reduced to 20 to 25 mgd, which is enough to serve the County and HC&S’ reduced water needs.” HC&S Opening Brief at 14. Assuming the County uses its maximum of 8 mgd, HC&S still diverts 12 mgd without identifying the purpose(s) and water needs for each. Likewise, although HC&S currently limits its diversions to streams “west of Piinaau,” it claims that drought conditions would require it to import water from further east in the Nahiku and Keanae area. *Id.* Essentially, HC&S wants access to the entire ditch system without detailing its current water needs for particular purposes, why those needs cannot be met with its existing groundwater resources, and whether the County’s needs alone can be satisfied with water diverted west of Pi’ina’au Stream. Because the IIFS levels set in this proceeding are interim measures, more information as to current needs and purposes must be provided.

**B. HC&S’ Speculative Future Uses Cannot Establish a Reasonable Beneficial Use of 116 MGD**

HC&S has presented a “vision,” not evidence in support of its claimed 116 mgd total irrigation needs to keep its 30,000 acres of former sugar cane lands in agriculture. Declaration of Rick Volner, Jr. for Reopened Hearing at ¶ 5 . HC&S’ General Manager admits the challenge to “identify an economically viable plan to maintain the majority of HC&S lands in an alternative agricultural use” and that the plan “will evolve over time.” *Id.* at ¶ 14. The “plan” consists primarily of a map indicating different types of crops that would be planted in various areas of the plantation and their corresponding water needs. Not even an estimated time frame for

execution of the different parts of the plan is provided. HC&S envisions others farming portions of the plantation, but does not identify today any existing partnerships or agreements that would suggest any of the projected uses will be operational in the near future. HC&S's map and projections constitutes a basic first step in identifying potential crops and their approximate locations on its acreage. It provides zero information as to the economic viability of its various crops or industries, and no time frame for when the full acreage would be planted out in order to justify the full amount of water use. Without more information, the Commission cannot evaluate the economic impact of incremental reductions in surface water deliveries to the plantation.

In calculating its overall water needs for 26,600 acres at 116 mgd, HC&S identified a 9,565 acres as having no current access to groundwater. HC&S simply declares that groundwater cannot be provided to this acreage without any information as to the cost or feasibility of making groundwater available to that acreage. This acreage accounts for 40.21 mgd of its claimed 116 mgd total water need. In the 2015 proceedings, HC&S' Exhibit C-49 indicated an area that was formerly served with groundwater "through the use of booster pumps (18C1 and 18C2) and a pipeline to pump water uphill from Well 18." Exhibit C-49; Declaration of Garrett Hew attached to HC&S' 2015 Opening Brief at ¶ 26. Although the booster no longer serves the area today, it once served a substantial portion of the acreage now claimed to have no access to groundwater. To eliminate groundwater as an alternative water source for the 9,565 acres, A&B must provide, or the Commission must initiate and obtain for itself, the required cost information **before** ruling out groundwater as a practicable alternative. *See In Re 'Iao*, 128 Haw. at 262, 287 P.3d at 163 (holding that the Commission erred when it made its decision to lower the water requirement for Well 7 based on cost when it "did not have the data needed to truly analyze cost.").

### **C. HC&S Cannot Rely on Obsolete Estimates of System Losses for Future Allocations**

The Commission may consider system losses in its estimations of noninstream uses for the purpose of weighing the importance of a party's noninstream uses. "The value of diverting water, only to lose water due to avoidable or unreasonable circumstances is unlikely to outweigh the value of retaining the water for instream uses." *In Re 'Iao*, 128 Haw. at 257, 287 P.3d at 158.



The Commission must, therefore, “reasonably estimate losses, mindful of its duty to protect instream values to the extent practicable.” *Id.* at 258, 287 P.3d at 159. Given the magnitude of the change in use of the 26,600 acres of plantation, it is not reasonable to rely on A&B’s 2015 loss estimate specific to its now discontinued sugar crop.

HC&S presented in the prior hearing of losses occurring within the EMI ditch system, extending from Makapipi Stream to Maliko Gulch, and the plantation itself. In terms of losses in the diversion system, a USGS 2012 Seepage Report supported the Hearings Officer’s Finding that, “because both open and ditches and tunnels in the EMI diversion system not only incur seepage losses but also gains from groundwater, especially in the tunnels, it is not clear whether net seepage losses even occur in the EMI diversion system. At low flows, USGS study results show that losses are greater than gains, but at higher flows, gains are greater than losses[.]” Hearings Officer’s Proposed Findings of Fact, Conclusions of Law, & Decision and Order Filed January 15, 2016 (“HO Proposed Decision”), at 71, FOF 384. Accordingly, the Commission should primarily consider losses occurring on the plantation itself and not in the diversion system ending at Maliko Gulch.

As far as total surface and ground water losses occurring on the plantation itself, A&B did not provide direct measurement because, as the Hearings Officer found, to do so “would require closing sections of the ditches and reservoirs, allowing the water to remain in those structures for a period of time, and taking before and after readings,” an undertaking “impractical to do on a large scale because it would interrupt plantation operations.” HO Proposed Decision at 72-73, FOF 390. HC&S had compared its estimated losses to the National Engineering Handbook and calculated losses for “each type of material” and applied the corresponding seepage and evaporation factors. *Id.* at 73, FOFs 392-394. Ultimately, the Hearings Officer found that 41.7 mgd or 22.7 percent of surface water delivered and groundwater pumped “are reasonable losses.” *Id.* at 74, FOF 399. The parties can reasonably expect what HC&S’ General Manager all but concedes: “that new diversified agriculture ventures will require significant new investments in farming and processing equipment.” Volner Declaration for Reopening at ¶ 25. In other words, system loss estimates and corresponding reasonableness determinations cannot be

based on the system as it exists now or on the evidence provided in 2015. Mitigation assessments also cannot be evaluated based on the current record. It is wholly premature at this stage to set an amount of reasonable losses for a system that has yet to be conceived.

**D. A&B Fails to Demonstrate A Lack of Practicable Alternatives**

The water code requires the Commission to “weigh the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses[.]” HRS § 174C-71(2)(D). In doing so, the Commission must consider the available alternatives to diverting surface water, as the availability of alternative sources diminishes the importance of diverting stream water when it weighs noninstream uses versus instream purposes. *In Re 'Iao*, 128 Haw. at 259, 287 P.3d at 160. Further, although there is no burden on the parties, the Water Commission requires a higher level of scrutiny for private commercial water usage. *In re Water Use Permit Applications*, 105 Hawai‘i 1, 16, 93 P.3d 643, 658 (2004) (*Waiāhole II*). In determining the amount of groundwater available to A&B as a practicable alternative to diverting East Maui stream water, the Commission may “compromise public rights in the resource pursuant only to a decision made with a level of openness, diligence, and foresight commensurate with the high priority these rights command under the laws of our state.” *In re Wai'ola O Moloka'i, Inc.*, 103 Hawai‘i 401, 430, 83 P.3d 664, 693 (2004) (citation omitted).

In its discussion of water availability, A&B makes three general arguments as to why its ground water supply and historic pumping levels to supply groundwater are not alternative sources for its projected 116 mgd total water requirement: (1) lack of recharge from reduced irrigation will lead to increased salinity and reduced groundwater availability; (2) future crops may be less tolerant of brackish well water; and (3) higher costs of pumping may make other crops economically infeasible. The evidence as presented does not justify ruling out groundwater as an alternative irrigation source, nor does it provide sufficient information for the Commission to reduce its estimate for of groundwater alternatives by any particular amount.

1. General Concerns of Increased Salinity Cannot Operate to Eliminate Groundwater Alternatives

After the 2015 proceedings, the Hearings Officer concluded that HC&S' brackish wells could be used to irrigate 17,200 acres of its plantation at 4,844 gallons per acre per day or about 83.32 mgd. HO Proposed Decision at 109, COL 104. The total irrigation requirement claimed by HC&S for its proposed uses for nearly the same acreage in the re-opened proceedings amounts to a total of 58.46 mgd with a gross irrigation requirement of 75.64 mgd. HC&S Opening Brief at 9. Therefore, should pumping continue at historic levels, it would exceed HC&S' gross irrigation requirement for 17,035 acres of the plantation. Although A&B argues that it cannot rely on historic pumping levels if surface water irrigation is substantially reduced, it has provided no detail to justify reducing available groundwater calculus to any specific level and makes no prediction itself as to a specific amount that will be available in the future. Without more information, any reduction in the calculation of available groundwater would be arbitrary and inconsistent with the Commission's duties. Given that the instant proceedings are setting *interim* instream flow standards, the Commission should use "the best information presently available." *Waiahole II*, 105 Haw. at 9, 93 P.3d at 651. The best information presently available is the historic pumping rates presented during the 2015 proceedings. Between the setting of interim and permanent streamflows, there is ample time to collect data as to the available groundwater now that the amount of surface water irrigation has been drastically reduced.

2. Increased Cost Alone Cannot Eliminate Groundwater as an Alternative

The Commission cannot reduce or eliminate groundwater as an available alternative to A&B based on cost without the requisite data needed to "truly analyze cost." *In Re 'Iao*, 128 Haw. at 262, 287 P.3d at 163 (holding the Commission erred in reducing the amount of water available from Well 7 without requisite data). In the 2015 proceedings, A&B presented evidence sufficient for the Hearings Officer to determine the increased cost of reducing surface water deliveries to the Lowrie and Haiku Ditches. HO Proposed Decision at 81, FOF 442; Exhibits C-76, C-78. Whether this increased cost would render groundwater as an alternative source and to what extent is unknown at this time because the economics of future planned agricultural

industries are either unknown or have not been presented here. Accordingly, the Commission cannot rule out groundwater as an alternative based on higher costs of pumping over ditch deliveries alone.

**F. A&B's Current Management of the EMI Ditch System**

1. No Surface Water Need be Diverted to Preserve the Integrity of the EMI Ditch System

The maintenance of the East Maui Irrigation system does not require a determination of reasonable beneficial use of East Maui stream water. A&B admits that reduced diversion amounts “do[] not by itself compromise the structural integrity of the ditch system so long as the complete system, including the open ditches and roadways, continues to be maintained as a single, coordinated system.” HC&S Opening Brief at 15. In other words, no specific amount of water flowing through the system is necessary for its integrity. Indeed, A&B does not currently divert stream water from the entire Nahiku and Keanae license areas and does not claim any resulting adverse effect to the integrity of the system. Declaration of Garrett Hew for Reopened Hearing at ¶ 9.

The only claimed adverse effect on the system based on reduced diversions is the increased maintenance required for open ditches to clear vegetation growth. *Id.* at ¶ 15. A&B does not provide any flow amount required to reduce this impact, and does not provide the cost of increased maintenance on a total or incremental basis. Accordingly, the maintenance of the EMI ditch system should not be a basis for allocating any amount of water use for offstream purposes.

2. EMI's Management of Diversions Must be Monitored

A&B's explanation of its management of the decreased diversions is a matter primarily for the Commission to monitor and enforce. Nevertheless, Nā Moku is concerned that water is being unnecessarily diverted from an unknown number of streams and flushed down Honopou Stream as the last stream in line such that flows in the stream are unnaturally high. Declaration of Lurlynn Scott at ¶¶ 4-6. The higher than natural flows bring with them increased silt and debris and prevent Ms. Scotta and her family from engaging in gathering and other activities in

Honopou Stream. *Id.* Ms. Scott's observations of unnaturally high streamflows are consistent with the IIFS readings discussed in Part II, section 2, *supra*. Adding more water than natural to the stream bed raises the same concern as the CWRM staff raised for conveyance streams in 2010. May 25, 2010 CWRM Staff Submittal at 20.

Ms. Scott's observations also raise questions as to whether the current diversions measured at Maliko of 20 to 25 mgd accurately reflect the amount of water taken from streams and moving through the ditch system. Because diversions are not measured at each intake, Nā Moku has no way to determine the accuracy of A&B's statements regarding management of diversions and, consequently, neither does the Commission.

#### **IV. RESPONSE TO THE OCTOBER 24 AND NOVEMBER 17 CWRM STAFF REPORTS**

The written testimony summarizing the supplemental data requested from the CWRM by the Hearings Officer for the reopened contested case hearing and dated November 7, 2016 (CWRM's Supplemental Testimony) underscores the CWRM's failure to "establish IIFS that 'protect instream values to the extent practicable' and 'protect the public interest.'" *Waiāhole II*, 105 Hawai'i at 11, 93 P.3d at 653. *See also* HO Proposed Decision at 96, COL #34. Nā Moku does not dispute that in the IIFS-setting context, the CWRM "need only reasonably estimate instream and offstream demands," *In re 'Īao Ground Water Mgmt. Area High-Level Source Water Use Permit Applications & Petition*, 128 Hawai'i 228, 258, 287 P.3d 129 (2012) ("*In re 'Īao*"). Nevertheless, that *reasonableness* is premised on the agency's exercising sound judgment to establish instream flow standards based on valid, credible data and evidence. CWRM's Supplemental Testimony, however, contains patently false statements of material fact and highlights an ongoing failure to protect and enforce instream values to the extent practicable. This assertion is neither conjecture nor argument. Facts gleaned from CWRM's Supplemental Testimony prove the point. Who is to blame for these shortcomings is less important than identifying and resolving, once and for all, the barriers preventing the CWRM from discharging its duty to protect instream values and the public interest.

1. CWRM's Supplemental Testimony Contains A Patently False Statement Of Material Fact Which Should Be Immediately Stricken From The Record

CWRM's Supplemental Testimony contains the statement: "Complete restoration to streams occurred immediately following the termination of revocable permits to East Maui Irrigation in January 2016." *Id.* at 2. This is a patently false statement of material fact, which if not immediately struck from the record, undermines the integrity of this IIFS amendment process and the agency responsible for establishing and enforcing same. On January 8, 2016 – two days after A&B announced its cessation of HC&S sugar operations due to unsustainable agribusiness operating losses – the First Circuit Court of the State of Hawaii declared invalid the four revocable permits approved by the BLNR to A&B and EMI since July 1, 2000. *See* Exhibit A-177 (*Order Granting Plaintiffs' Motion for Partial Summary Judgment, Filed October 21, 2015, filed January 8, 2016* ("A&B's Water Use Invalidation Order")); *see also* Exhibit C-153. Prior to being invalidated, the four revocable permits had long afforded A&B and EMI the right, privilege, and authority for the development, diversion, and use of water from the four license areas from which the subject streams of the 27 Petitions to Amend the Interim Instream Flow Standards in East Maui are drawn. *Id.* Ever since their January 2016 invalidation, and contrary to CWRM's Supplemental Testimony, A&B and EMI have continued to divert water from the license areas which are the subject of A&B's Water Use Invalidation Order, all the while relying on the tacit agreement of State authorities legally constrained by the same order. *Id.* We know this to be true because A&B and EMI have repeatedly confirmed their ongoing development, diversion, and use of East Maui surface water beyond January 2016:

- On **June 6, 2016**, Garret Hew, EMI President, provided CWRM Deputy Director Jeff Pearson written notice that, "[c]onsistent with HC&S's commitment to fully restore Hanehoi Stream, some work needs to be done on these [Hanehoi] tributaries to preclude the intermittent diversion of water from these tributaries." *Letter dd. 6/6/16 from EMI President G. Hew to CWRM Deputy Director J.*

*Pearson* at 1.<sup>1</sup> A plain reading of this text indicates that until ditch work is completed, intermittent diversions of Hanehoi will continue to occur. Contrary to the CWRM's Supplemental Testimony, "complete restoration to streams" had not been achieved six-months following termination of the revocable permits to EMI.

- On **June 15, 2016**, EMI notified DLNR and CWRM Chairperson Suzanne Case of the current status of EMI's implementation measures to restore water to 16 of the 27 streams which are the subject of the 27 Petitions to Amend the Interim Instream Flow Standards in East Maui. *Letter dd. 6/15/16 from EMI to CWRM Chairperson S. Case*. According to EMI's self-reporting, diversions were closed and/or sluice gates were opened or removed on 11 of the 27 East Maui streams. *Id.* at 2. Honopou, Puolua, Hanehoi, and Pi'ina'au streams required further modifications, pending regulatory approvals, to modify diversions that feed one or more of the Lowrie, New Hamakua, Haiku, and Wailoa ditches. *Id.* As a result, CWRM's categorical statement that "complete restoration to streams" had occurred by January 2016 was a condition that had not been completed as of June 2016 and EMI anticipated to be completed in the near future.
- On **August 10, 2016**, A&B and EMI further clarified in a follow-up letter to Chairperson Case the status of EMI's restoration efforts in an attempt to modify the Interim Restoration Order issued on July 18, 2016 so as to permit EMI to dictate streamflow conditions conducive to their changing needs. *Letter dd. 8/10/16 from A&B and EMI to CWRM Chairperson S. Case*. Although the CWRM ultimately denied that request, in a footnote on page 2 of their letter, A&B and EMI revealed that while "the sluice gates at the main diversions on the [Palauhulu, Waiokamilo, Wailuanui (East and West), Honopou, Hanehoi/Puolua, Kualani, and Pi'ina'au] are fully open, thus allowing the vast majority of water in

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<sup>1</sup> Documents filed with the CWRM about matters which are the subject of this contested case hearing (CCH-MA 13-01) are part of the record and therefore omitted from Nā Moku's exhibit list.

those streams to remain undiverted,” the “[d]iversion on minor tributaries of the [same seven streams] do not have sluice gates and can only be stopped by being permanently sealed.” *Id.* at 2, note 1 (emphasis added). And while they nevertheless touted that “as of the date of the [June 15,2016] Status Report, EMI was essentially releasing 100% of the flow” for East Wailuaiki, Waiohue, Hanawī, Kōpili‘ula, Puaka‘a, and Makapipi, they attributed that occurrence to “the combined effect of relatively abundant recent rainfalls and the orderly winding down by A&B of its sugar plantation.” *Id.* at 3. Once again and contrary to CWRM’s Supplemental Testimony, A&B and EMI made crystal clear that **no correlation** existed between A&B and EMI’s **ongoing** stream restoration projects and “the termination of revocable permits to East Maui Irrigation in January 2016.” *See id.* (explaining that “EMI was only able to do this due to the combined effect of relatively abundant recent rainfalls and the orderly winding down by A&B of its sugar plantation.”). According to A&B and EMI, it was serendipity, not voluntary compliance with A&B’s Water Use Invalidation Order that prompted their still ongoing stream restoration efforts.

2. CWRM’s Supplemental Testimony Demonstrates Its Failure To Protect And Enforce Instream Values To The Extent Practicable

The setting of measurable IIFS is the primary mechanism by which the Commission discharges its duties as the primary guardian of public rights and the public trust placed on all waters of the State of Hawaii. *See In re Water Use Permit Applications*, 94 Hawai‘i 97, 143, 9 P.3d 409, 455 (2000) (*Waiāhole I*). If it is indeed true that the Commission bears the burden of “establish[ing] IIFS that ‘protect instream values to the extent practicable’ and protect the public interest,” HO Proposed Decision at 96, COL #35 (*citing Waiāhole II*, 105 Hawai‘i 1, 11, 93 P.3d 643, 653 (2004)), then it is also true that the burden to measure and ensure the IIFS is met is borne by the Commission as well. Streamflow monitoring at established IIFS locations is necessary to satisfy that burden and give effect to any IIFS Commission Order. If the parties are to rely on the Hearings Officer’s legal conclusion that “an IIFS must be achieved by an average



of multiple measurements at the specified [IIFS] location,” HO Proposed Decision at 120, COL #156(c), multiple measurements at the specified IIFS locations must occur at regular intervals for the IIFS values to have any meaningful effect. And even if “monitoring the IIFS through mean (average) flows is likely the most achievable approach,” active monitoring at each of the prescribed IIFS locations is required at a minimum. HO Proposed Decision at 122, COL #165. So long as the CWRM Staff’s supplemental reflects partial or incomplete IIFS monitoring, it fails to supply the Commission with the evidence it needs - evidence otherwise at its disposal - to satisfy its burden of establishing amended IIFS values that protect instream values to the extent practicable and protect the public interest. CWRM Staff’s omission of even one stream or IIFS location from its monitoring efforts is one too many, if in fact “stream-by-stream IIFS amendments have [been established to] address[] appurtenant/riparian and domestic uses, and . . . the maintenance of fish and wildlife habitats.” HO Proposed Decision at 132, COL #240.

Likewise, unreliable and/or inaccessible data due to defective, outdated monitoring systems and nonsystematic reporting compromise stream-by-stream IIFS amendments established to protect and enhance public trust purposes that include “provid[ing] sufficient flows for irrigation and domestic uses” (HO Proposed Decision at 134, COL #243), as well as “flows sufficient to enable growth, reproduction, and recruitment of native stream animals” (HO Proposed Decision at 134, COL #245). Thus, when CWRM Staff report that their ability to verify previously established IIFS values have been frustrated by a “corrupted” DLNR server and its backup which have been inaccessible since October 28, 2016, the CWRM’s IIFS enforcement efforts are stalled and/or aborted and the risk of any ensuing harm is borne by our clients, the public interest, and the trust resources CWRM is charged to protect. *See* CWRM’s Supplemental Testimony at 1.

The importance of ready access to complete and accurate monitoring data organized in a systematic way is underscored by the IIFS monitoring summaries generated and included in the CWRM’s Supplemental Testimony for a small selection of the 27 streams which are the subject of these proceedings. For example:

- **Gage 6-59**, one of two gages which monitors streamflow below Haiku Ditch on Honopou Stream, where the IIFS from 2010 is 1.29 mgd, recorded an almost 400% increase in median flow from 2015 (6.42 mgd) to 2016 (22.54 mgd through October 25). *Id.* at 4. CWRM Staff acknowledged that because “excess ditch flow is dumped [by EMI] at this stream,” hydrographs do not typically reflect “the actual amount of water flowing in the stream channel.” *Id.* These artificially inflated flows evidence water waste, cross-contamination of streamflows, and the unnecessary deprivation of streamflows from their original stream source -- occurrences that IIFS monitoring should be guarding against, not idly reporting or facilitating, as is the case here. It also appears that CWRM’s Supplemental Testimony should have included (but failed to so with no explanation) an IIFS monitoring summary for the second Honopou gage located near the 40 foot elevation. *See* Exhibit HO-1. These discrepancies and omissions deprive the Commission of the evidence it needs - evidence otherwise at its disposal - to satisfy its burden of establishing amended IIFS values that protect instream values to the extent practicable and to protect the public interest.
- **Gage 6-60**, one of three gages which monitors streamflow above the Lowrie Ditch on Hanehoi Stream, where the IIFS from 2010 is 0.74 mgd, offers the Commission and the parties to this contested case hearing few details. CWRM’s Supplemental Testimony at 4. According to CWRM Staff, that is because “Gage 6-60 is challenging to get to and data are infrequently downloaded.” *Id.* at 4. It is unclear whether CWRM staff confirmed that the rating curve developed by USGS from 2009-2010 is still accurate. *Id.* And no explanation for why, how, or when these “challenges” are expected to be resolved, if at all, is provided.
- **Gage 6-61**, which is supposed to monitor streamflow in Palauhulu, is presumed to have been “washed away during a storm flow likely in March 2016.” *See* CWRM’s Supplemental Testimony at 4. It appears no IIFS monitoring has taken place since that event, and no testimony about efforts, if any, to replace a gage

now missing for at least 8 months, has been provided. *Id.* This still unaddressed issue deprives the Commission with the evidence it needs - evidence otherwise at its disposal - to satisfy its burden of establishing amended IIFS values that protect instream values to the extent practicable and protect the public interest.

- **Gage 6-67**, the gage which monitors streamflow in Waikamoi, where the seasonal IIFS from 2010 is 1.81 mgd (wet) and 0.0 mgd (dry), recorded erratic flow data, particularly during the 2015 and 2016 wet season. CWRM’s Supplemental Testimony at 5. The IIFS was met approximately 65% of the year during 2015 and 2016, but during the **wet seasons**, the IIFS was met only 34% and 14% of the time, then-registering median flows of 0.53 mgd and 0.19 mgd respectively. *Id.*<sup>2</sup> This, despite the fact that annual median flows for the same years were comparable to and/or outperformed wet season values at 0.11 mgd and 1.73 mgd, respectively. *Id.* CWRM Staff acknowledge that in addition to “gage malfunction [leading] to lost data,” the IIFS monitoring “control” for Waikamoi is “subject to move during high flow events.” *Id.* In the absence of another explanation, gaging malfunctions and unstable control environments may explain the extremely low wet season flow data. *Id.*
- **Gage 6-65**, which monitors streamflow in West Wailuaiki Stream at Hana Highway below the Koolau Ditch, where the seasonal IIFS from 2010 is 2.46 mgd (wet) and 0.26 mgd (dry), recorded IIFS compliance less than half the time (49.3%) for 2015, and increased improvement (65.8%) in 2016. [Insert footnote: Although the text of CWRM’s Supplemental Testimony at page 6 under subheader “6-65 West Wailuaiki nr Hana Hwy” attributes the above-cited median flow values to gage 6-62, that numerical reference appears to be a typo.] CWRM’s Supplemental Testimony at 6.

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<sup>2</sup> Although the text of CWRM’s Supplemental Testimony at page 4 under subheader “6-67 Waikamoi nr Hana Hwy” attributes the above-cited median flow values to gage 6-62, that gage number appears to be a typo.

In sum, the CWRM's Supplemental Testimony for 2015 and 2016 included only nine IIFS monitoring summaries for at least 27 IIFS stations established by CWRM to track and enforce its established IIFS. CWRM's Supplemental Testimony at 4-7. Only four of the nine summaries included the number of days each IIFS was met. *Id.* at 4-6. Three of the nine summaries reported "challenging," "not very stable," or non-existent IIFS monitoring, effectively thwarting IIFS compliance and enforcement efforts. *Id.* at 2, 4,7. Two of the nine summaries admittedly contain no statistics or calculated data "due to the malfunctioning DLNR server." *Id.* at 2, 6, 7. And at least one summary all but conceded that its IIFS monitoring data is artificially inflated by excess dumping and cannot be relied on. *Id.* at 4.

The above unexplained and/or unresolved inconsistencies undermine the integrity of the IIFS-setting and monitoring process. Uncritical reasoning has the same injurious effect. For example, the sweeping, conclusory statement that, "[d]espite 2016 being a wet year overall" an atypically drier January and February were alone to blame for "many stations not meeting the IIFS," (CWRM's Supplemental Testimony at 2), notwithstanding that EMI's well-known practice of diverting and dumping at Honopou could just as easily explain why the many stations to the east of Honopou have not met the IIFS while its recorded flows have increased by 400%, evidences a lack of searching objectivity and research-based explanations that are the hallmarks of sound science. A return to the basics -- observing, verifying and recording reported or known events; ensuring ready, reliable access to relevant data from working IIFS gages and functional data servers; fixing disabled or malfunctioning systems in a timely manner; maintaining reliable controls; collecting and evaluating multiple measurements at regular intervals from all IIFS stations; and generating organized, self-explanatory reports or summaries for all streams at least annually -- is a necessary prerequisite to restoring confidence in the CWRM's IIFS-setting, monitoring, and enforcement efforts for the 27 East Maui streams which have been the subject of these proceedings for the last 16 years.

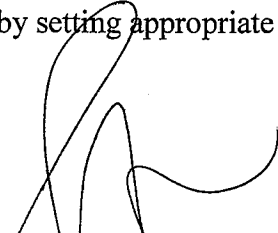
## **V. JOINDER IN MAUI TOMORROW'S POSITIONS ON RE-OPENING**

Nā Moku hereby joins in the positions of Maui Tomorrow and its Supporters in the re-opened proceedings as presented in its Opening Statement and Brief filed October 17, 2016.

## **VI. CONCLUSION**

The Hearings Officer and Commission have an opportunity now to collect the best information possible to plan for future uses of Maui's precious water resources. Given the admittedly speculative nature of future planned uses for that water, the ongoing protection of instream values and public trust purposes far outweighs future noninstream uses and leaves no doubt that the Commission must now protect the streams by setting appropriate IIFS in all petitioned streams.

DATED: Honolulu, Hawai'i, January 6, 2017.



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SUMMER L. H. SYLVA  
CAMILLE K. KALAMA  
Attorneys for Petitioners  
Nā Moku Aupuni O Ko`olau Hui  
Lurlyn Scott and Sanford Kekahuna

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

PETITION TO AMEND INTERIM  
INSTREAM FLOW STANDARDS FOR  
HONOPOU, HUELO (PUOLUA),  
HANEHOI, WAIKAMOI, ALO,  
WAHINEPEE, PUOHOKAMOA,  
HAIPUAENA, PUNALAU/KOLEA,  
HONOMANU, NUAAILUA, PIINAAU,  
PALAUHULU, 'ŌHI'A (WAIANU),  
WAIOKAMILO, KUALANI, WAILUANUI,  
WEST WAILUAIKI, EAST WAILUAIKI,  
KOPILIULA, PUAKAA, WAIOHUE,  
PAAKEA, WAIAAKA, KAPAULA,  
HANAWI and MAKAPIPI STREAMS

CASE NO. CCH-MA13-01

DECLARATION OF LURLYN SCOTT

**Declaration of Lurlyn Scott**

I, Lurlyn Scott, hereby declare that:

1. I live and farm taro in Honopou Valley and have gathered in Honopou Stream and diverted water for my family's lo'i kalo my whole life.
2. I've seen Honopou Stream during dry seasons, wet seasons, high flows and low flows.
3. In 2008, interim instream flow standards were set for two points along Honopou Stream. The IIFS were not met for the most part following the 2008 decision and subsequent modifications to the diversion structures.
4. Around April 2016, I noticed the flows in Honopou Stream were much higher than ever before and more than what I would expect to flow naturally under undiverted conditions.
5. The higher flows overflowed my 'auwai on several occasions and the overflows and silt and debris carried in them fills my 'auwai which now require constant cleaning.
6. Although I've spent my life asking the Commission to restore water to Honopou Stream, I am concerned that water diverted from streams to the East of Honopou is being

brought through the ditches and dumped in Honopou Stream so that the water flows are higher in the stream when normally summer flows are lower. My family and I rely on the lower summer flows to gathering and recreation and the high flows limit our ability to go in the stream for these purposes.

7. The additional water concerns me because I also gather in other streams to the East and I support the restoration of those streams to support my traditional and customary practices, as well as the practices of other East Maui community members. I also do not know the possible harmful impacts of adding more water than natural will have on the integrity of the Honopou stream bed, the health and life cycles of the stream animals and nearshore fisheries, the promotion of erosion, and other environmentally destructive impacts.

DATED: Honopou, Maui, HI, January 5, 2017.

---

Lurlyn Scott

**EXHIBIT A-177**



10:45 o'clock A.M.

1/8 2016

R. Otsuka  
Clerk, 10th Division

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

HEALOHA CARMICHAEL, LEZLEY  
JACINTHO, and NA MOKU AUPUNI O  
KO'OLAU HUI,

Plaintiff(s),

vs.

BOARD OF LAND AND NATURAL  
RESOURCES, CARTY CHANG, in his  
official capacity as Interim Chairperson of  
the Board of Land and Natural Resources,  
the DEPARTMENT OF LAND AND  
NATURAL RESOURCES,  
ALEXANDER & BALDWIN, INC.,  
EAST MAUI IRRIGATION CO., LTD.,  
HAWAIIAN COMMERCIAL AND  
SUGAR CO., and COUNTY OF MAUI,  
DEPARTMENT OF WATER SUPPLY,

Defendant(s).

) CIVIL NO. 15-1-0650-04 (RAN)  
) (Environment; Declaratory Judgment)

) ORDER GRANTING PLAINTIFFS'  
) MOTION FOR PARTIAL SUMMARY  
) JUDGMENT, FILED OCTOBER 21, 2015;  
) CERTIFICATE OF SERVICE

) **Hearing:**

) Date: November 24, 2015  
) Time: 10:30 a.m.  
) Judge: Rhonda A. Nishimura

I do hereby certify that the foregoing is  
a full, true, and correct copy of the  
original on file in this office.

*R. Otsuka*  
Clerk, Circuit Court, First Circuit

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT,  
FILED OCTOBER 21, 2015

On October 21, 2015, Plaintiffs Healoha Carmichael and Lezley Jacintho (collectively, "Plaintiffs") filed herein Plaintiffs' Motion for Partial Summary Judgment. On November 16, 2015, memoranda in opposition to Plaintiffs' Motion were filed herein by Defendants Board of Land and Natural Resources ("BLNR"), Department of Land and Natural Resources ("DLNR"),

and Suzanne Case (collectively, the “State Defendants”); Defendant County of Maui, Department of Water Supply (“DWS”); and Defendants Alexander & Baldwin, Inc. (“A&B”) and East Maui Irrigation Co., Ltd. (“EMI”; collectively, the “A&B Defendants”). On November 19, 2015, Plaintiffs filed herein their reply memorandum in support of Plaintiffs’ Motion.

Plaintiffs’ Motion came on for hearing before the Honorable Rhonda A. Nishimura on November 24, 2015. Summer L.H. Sylva, Esq., Camille K. Kalama, Esq., and David Kimo Frankel, Esq. appeared on behalf of Plaintiffs. Linda L.W. Chow, Esq. appeared on behalf of the State Defendants. David Schulmeister, Esq. and Elijah Yip, Esq. appeared on behalf of the A&B Defendants. Caleb P. Rowe, Esq. appeared on behalf of DWS.

The Court, having reviewed Plaintiffs’ Motion, the memorandum attached thereto, the memoranda in opposition, Plaintiffs’ reply memorandum, and the files and records herein, and for good cause shown, hereby GRANTS Plaintiffs’ Motion for the following reasons:

1. Plaintiffs filed the First Amended Complaint herein pursuant to Hawaii Revised Statutes (“HRS”) Chapter 343.
2. HRS §343-5(a)(1) requires an environmental assessment (“EA”) for “actions” which “[p]ropose the use of state or county lands.”
3. HRS §343-2 defines “action” to mean “any program or project to be initiated by any agency or applicant.” “Agency” means “any department, office, board, or commission of the state or county government which is a part of the executive branch of that government.” “Applicant” means “any person who, pursuant to statute, ordinance, or rule, officially requests approval for a proposed action.”

4. At issue in this lawsuit is the decision of the BLNR at its December 12, 2014 meeting to renew, *inter alia*, the following revocable permits (collectively, the “Revocable Permits”) for a one-year period:

- a. Revocable Permit No. S-7263, approved by the BLNR to A&B on July 1, 2000 for the right, privilege, and authority for the development, diversion, and use of water from the Honomanu license area at the monthly rental rate of \$1,698.32, expiring on June 30, 2001, and subject to extension for additional one-year periods by action of the BLNR;
- b. Revocable Permit No. S-7264, approved by the BLNR to A&B on July 1, 2000 for the right, privilege, and authority for the development, diversion, and use of water from the Huelo license area at the monthly rental rate of \$6,588.40, expiring on June 30, 2001, and subject to extension for additional one-year periods by action of the BLNR;
- c. Revocable Permit No. S-7265, approved by the BLNR to A&B on July 1, 2000 for the right, privilege, and authority for the development, diversion, and use of water from the Keanae license area at the monthly rental rate of \$3,476.22, expiring on June 30, 2001, and subject to extension for additional one-year periods by action of the BLNR; and
- d. Revocable Permit No. S-7266, approved by the BLNR to EMI on July 1, 2000 for the right, privilege, and authority for the development, diversion, and use of water from the Nahiku license area at the monthly rental rate of \$1,426.88, expiring on June 30, 2001, and subject to extension for additional one-year periods by action of the BLNR.

5. The State Defendants, DWS, and the A&B Defendants (collectively, “Defendants”) argue that the decision of the BLNR to “continue” the Revocable Permits in December 2014 on a holdover basis is not an “action” under HRS §343-5. Defendants argue that no EA was required. The BLNR’s December 2014 decision to continue the Revocable Permits does not constitute an “action” subject to the EA requirements of Chapter 343.

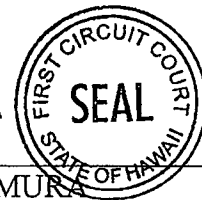
6. Nevertheless, pursuant to HRS §171-58(c), the BLNR authorized A&B’s use on a holdover basis. This holdover status has continued uninterrupted for the last 13 years. HRS §§171-10 and 171-55 authorize the “temporary” occupation of public lands. A&B’s continuous uninterrupted use of these public lands on a holdover basis for the last 13 years is not the “temporary” use that HRS Chapter 171 envisions. *See also* Black’s Law Dictionary, 10<sup>th</sup> edition. Otherwise, holdover tenants could arguably be allowed to occupy public lands almost in perpetuity for continuous, multiple one-year periods. Such a prospect is inconsistent with the public interest and legislative intent.

7. Plaintiffs’ Motion is GRANTED. Revocable Permit Nos. 7263, 7264, 7265, and 7266 are invalid.

DATED: Honolulu, Hawai`i, JAN - 8 2016

RHONDA A. NISHIMURA

RHONDA A. NISHIMURA  
Judge of the above-entitled Court



CERTIFICATE OF SERVICE

The foregoing "ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, FILED OCTOBER 21, 2015", has been entered and copies thereof served on the following parties via court jacket:

SUMMER L.H. SYLVA, ESQ.  
CAMILLE K. KALAMA, ESQ.  
DAVID KIMO FRANKEL, ESQ.  
Native Hawaiian Legal Corporation  
1164 Bishop Street, Suite 1205  
Honolulu, HI 96813  
Attorneys for PLAINTIFFS

DAVID SCHULMEISTER, ESQ.  
ELIJAH YIP, ESQ.  
Cades Schutte LLP  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813  
Attorneys for ALEXANDER & BALDWIN, INC., EAST MAUI IRRIGATION CO., LTD.  
AND HAWAIIAN COMMERCIAL AND SUGAR CO.

WILLIAM J. WYNHOFF, ESQ.  
LINDA L.W. CHOW, ESQ.  
Department of the Attorney General  
465 S. King Street, Room 300  
Honolulu, HI 96813  
Attorneys for BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND  
AND NATURAL RESOURCES, AND SUZANNE CASE

The following party was served via U.S. Mail:

CALEB ROWE, ESQ.  
KRISTIN TARNSTROM, ESQ.  
Department of the Corporation Counsel  
Kalana O Maui Building  
200 S. High Street, Fl. 3  
Wailuku, HI 96793  
Attorneys for COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY

DATED: JAN 0 8 2016

K. Otsuka

Clerk of the Court, 10<sup>th</sup> Division

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAI'I

PETITION TO AMEND INTERIM  
INSTREAM FLOW STANDARDS FOR  
HONOPOU, HUELO (PUOLUA),  
HANEHOI, WAIKAMOI, ALO,  
WAHINEPEE, PUOHOKAMOA,  
HAIPUAENA, PUNALAU/KOLEA,  
HONOMANU, NUAAILUA, PIINAAU,  
PALAUHULU, 'ŌHI'A (WAIANU),  
WAIOKAMILO, KUALANI, WAILUANUI,  
WEST WAILUAIKI, EAST WAILUAIKI,  
KOPILIULA, PUAKEA, WAIQHUE,  
PAAKEA, WAIATAKA, KAPAULA,  
HANAWI and MAKAPIPI STREAMS

CASE NO. CCH-MA13-01

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Original and seven (7) copies of Petitioner Nā Moku Aupuni O Ko'olau Hui, Lurlyn Scott and Sanford Kekahuna's Responsive Brief Regarding Re-Opened Hearing; Declaration of Lurlynn Scott; Exhibit "1", Dated January 6, 2017 was duly served on the following by hand delivery and Email on January 6, 2017.

Commission on Water  
Resource Management  
c/o Kathy Yoda  
Kalanimoku Building,  
1151 Punchbowl Street, Room 227  
Honolulu, HI 96813  
Email: [lmike@hawaii.rr.com](mailto:lmike@hawaii.rr.com)  
Email: [kathy.s.yoda@hawaii.gov](mailto:kathy.s.yoda@hawaii.gov)

The undersigned further certifies that a copy of the foregoing document was duly served on the following by U.S. mail postage pre-paid and Email on January 6, 2017:

David Schulmeister, Esq.  
Elijah Yip, Esq.  
Cades Schutte  
1000 Bishop Street, 10<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Attorneys for Hawaiian Commercial & Sugar  
Company  
Email: [dschulmeister@cades.com](mailto:dschulmeister@cades.com)  
Email: [eyip@cades.com](mailto:eyip@cades.com)

Patrick K. Wong  
Caleb P. Rowe  
Kristin Tarnstrom  
Department of the  
Corporation Counsel  
County of Maui  
200 S. High Street  
Wailuku, Hawaii 96793  
Email: [pat.wong@co.maui.hi.us](mailto:pat.wong@co.maui.hi.us)  
Email: [caleb.rowe@co.maui.hi.us](mailto:caleb.rowe@co.maui.hi.us)  
Email: [kristin.tarnstrom@co.maui.hi.us](mailto:kristin.tarnstrom@co.maui.hi.us)  
Attorneys for County of Maui, Department of  
Water Supply

Robert H. Thomas, Esq.  
Damon Key Leong Kupchak Hastert  
1003 Bishop Street  
Pauahi Tower, Suite 1600  
Honolulu, Hawaii 96813  
Email: [rht@hawaiiattorney.com](mailto:rht@hawaiiattorney.com)  
Attorneys for Hawai'i Farm Bureau Federation

Isaac Hall, Esq.  
2087 Wells Street  
Wailuku, Maui, Hawaii 96793  
Email: [idhall@maui.net](mailto:idhall@maui.net)  
Attorney for Maui Tomorrow

William J. Wynhoff, Esq.  
Linda L. Chow, Esq.  
Deputy Attorney General  
465 S. King Street, Room 300  
Honolulu, Hawaii 96813  
Email: [bill.j.wynhoff@hawaii.gov](mailto:bill.j.wynhoff@hawaii.gov)  
Email: [linda.l.chow@hawaii.gov](mailto:linda.l.chow@hawaii.gov)  
Attorney for CWRM




Jeffrey C. Paisner  
121 North 5<sup>th</sup> Street - Apt. RH  
Brooklyn, New York 11249  
[jeffreypaisner@mac.com](mailto:jeffreypaisner@mac.com)

Copies as necessary:  
John Blumer-Buell  
P.O. Box 787  
Hana, Hawai'i 96713  
Email: [blubu@hawaii.rr.com](mailto:blubu@hawaii.rr.com)

Nikhilananda  
P.O. Box 1704  
Makawao, Hawai'i 96768-1704  
Email: [nikhilananda@hawaiiantel.n](mailto:nikhilananda@hawaiiantel.n)

DATED: Honolulu, Hawai'i, January 6, 2017.



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SUMMER L. H. SYLVA  
CAMILLE K. KALAMA  
Attorneys for Petitioners  
Nā Moku Aupuni O Ko'olau Hui