

ISAAC HALL #2238  
2087 Wells Street  
Wailuku, Maui, Hawaii 96793  
Telephone: (808) 244-9017  
Attorney for Maui Tomorrow Foundation, Inc.,  
and its supporters

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

EXCEPTIONS/OBJECTIONS OF MAUI  
TOMORROW FOUNDATION, INC. AND  
ITS SUPPORTERS TO COUNTY OF MAUI,  
DEPARTMENT OF WATER SUPPLY'S  
PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
DECISION AND ORDER; CERTIFICATE  
OF SERVICE

mt/exctoMDWS

**EXCEPTIONS/OBJECTIONS OF MAUI TOMORROW FOUNDATION, INC.  
AND ITS SUPPORTERS TO COUNTY OF MAUI, DEPARTMENT OF WATER  
SUPPLY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECISION AND ORDER**

The Maui Tomorrow Foundation, Inc. and its Supporters ("MTF"), through Counsel, hereby submit their Exceptions and Objections to the County of Maui, Department of Water Supply's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, pursuant to Minute Order No. 27, as follows:

**I. INTRODUCTION**

The Proposed Findings of Fact, Conclusions of Law, and Decision and Order submitted by the County of Maui, Department of Water Supply ("MDWS") contain appealable errors which prejudice the substantial rights of the MTF. Chapter 91 recognizes four types of appealable errors: (1) errors of law ("EL"), (2) mixed errors of law and fact ("MELF"), (3) errors

of fact (“EF”), and (4) arbitrary and capricious actions or abuses of discretion (“ACAD”).<sup>1</sup> Errors of law are freely reviewable as are findings which are mixed when affected by an error of law.

These Exceptions and Objections refer by paragraph to the paragraphs listed in the Proposed Findings of Fact, Conclusions of Law, and Decision and Order submitted by MDWS. Citations to the record are provided by referring to the Proposed Findings of Fact (“FOF”), Conclusions of Law (“COL”) and Decision and Order (“D&O”) submitted by MTF which, for the sake of brevity, are hereby incorporated by reference. These citations are not intended to be exclusive. MTF has various general and specific exceptions to the Proposed Findings of Fact, Conclusions of Law, and Decision and Order submitted by MDWS.

## **II. GENERAL EXCEPTIONS AND OBJECTIONS**

Some of the appealable errors in the Proposed Findings of Fact, Conclusions of Law, and Decision and Order submitted by MDWS are of such a magnitude that they affect the whole structure of the Proposed Findings of Fact, Conclusions of Law, and Decision and Order submitted by MDWS or, at a minimum, large numbers of proposed findings, and are therefore best discussed, as they are below, as general exceptions.

### **A. Methodology**

MDWS has elected as its methodology in presenting its Proposed Findings of Fact, Conclusions of Law, Decision and Order for the Reopened Hearing the use as a base document the Hearings Officer’s Proposed Findings of Fact, Conclusions of Law, Decision and Order issued on January 15, 2016 with proposed “Amendments” in the form of redlined deletions and blue underlined proposed insertions. With respect to the Hearings Officer’s Proposed Findings of Fact, Conclusions of Law, Decision and Order filed with the Commission January 15, 2016 -- that MDWS has not modified -- MTF realleges and incorporates by reference its Exceptions taken to them filed with the Commission on February 29, 2016. MTF therefore files its Objections and Exceptions to the Amended Proposed Findings of Fact and Conclusions of Law

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<sup>1</sup> HRS §91-14(g) recognizes that decisions are reversible if the administrative findings, conclusions, decisions or orders contain errors of law which are “(1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority or jurisdiction of the agency; (3) made upon unlawful procedure; or (4) affected by other error of law.” The findings are also reversible if they contain errors of fact such that the findings are, as stated in HRS §91-14(g)(5), “clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.” Findings may be challenged if they are mixed and the factual finding has been affected by an error of law. Arbitrary and capricious actions or abuses of discretion may be challenged through HRS §91-14(g)(6).

submitted by MDWS, namely the redlined deletions and blue underlined proposed insertions contained within them, as Exceptions have already been taken to the remainder.

**B. Objection to Attempt by MDWS to Inject Major New “Bottom Line” Claim in Findings of Fact, Conclusions of Law, and Decision and Order of MDWS**

The Hearings Officer made it abundantly clear that MDWS would not be permitted to submit additional evidence during the re-opened contested case hearings and that the MDWS would be required to rely upon the evidence that it had already presented. In Minute Order No. 19 issued by the Hearings Officer on April 1, 2016 the Hearings Officer determined:

**During the discussion, counsel for MTF was of the opinion that, if Maui Department of Water Supply were to request additional water during the rehearing, then Na Moku and MTF should also be given that opportunity to enter additional evidence to support their claims.** The Hearings Officer responded that the impact on MDWS would be limited to the evidence already on the record, such as the waiting list for upcountry meters and the proposed reservoir at the Kamole water treatment plant. If MTF and Na Moku were not in agreement with the evidence that is presented by MDWS, MTF and Na Moku would be free to object at that time and also move to be allowed to introduce additional evidence for MTF and Na Moku ... (Emphasis added)

In its Motion on the Scope of the Rehearing dated June 9, 2016, the MDWS represented to the Commission:

MDWS anticipates a need of an additional 9.15 mgd to be able to meet future demands through 2030.

There was extensive Pre-Hearing Briefing so that the positions of the parties would be disclosed and debated before the evidentiary hearings commenced. This provided prior notice of the claims of the parties. Throughout the Pre-Hearing Briefing the MDWS took the position that its claim for future reasonable and beneficial uses was the same amount that it had requested in its Motion on the Scope of the Rehearing – 9.15 mgd. See, for example, MDWS Opening Brief, p. 4. Throughout the re-opened contested case evidentiary hearings, MDWS reiterated that the amount that it was claiming for future reasonable and beneficial uses was 9.15 mgd.

MTF based its examination of MDWS witnesses on this claim. Had MTF been alerted at any time during these proceedings that MDWS was claiming 16.0 mgd, MTF would have objected and, if the objection was not sustained, presented evidence on why this claim was not reasonable and beneficial and instead constituted waste. It would deny administrative due process to MTF to allow MDWS to inject a major new “bottom line” claim for the first time in

its Proposed Findings of Fact, Conclusions of Law, and Decision and Order. MTF objects on these grounds.

The Hearings Officer made it clear on the record that, as far as MDWS' future projections for its needs, "Those findings have already been made." Tr. 2/8/17 at 378: 12-20. Accordingly, MDWS' proposed revision to FOF 471 and the proposed revisions of MDWS to the Findings of Fact and Conclusions of Law listed below should be rejected.

Objection to MDWS Proposed Findings of Fact ("PFOF") 77, 82, 465, 471 and 492 and MDWS Proposed Conclusions of Law ("PCOL") 129, 269 – 276.

**C. MDWS Has No Ability to Use 16 mgd and Any Determination That This is a Reasonable and Beneficial Use Would Constitute Waste**

It is admitted by MDWS and found by the Hearings Officer that the Kamole Water Treatment Facility has a capacity of 6.0 mgd and an average production of 3.6 mgd. No matter how much water is delivered by the Wailoa Ditch, the Kamole WTF has a capacity of 6.0 mgd and an average production of 3.6 mgd. **Until and unless MDWS either increases the capacity of the Kamole WTF or constructs a reservoir there, the delivery of an amount greater than 6.0 mgd through the Wailoa Ditch to the Kamole WTF will not and cannot add to the drinking water available to Upcountry residents.** As such, the delivery of an additional 9.15 mgd or 16.0 mgd could not lead to the addition of 9.15 mgd or 16.0 mgd of drinking water to Upcountry water supplies.

MDWS's claim a full 16 mgd use of water from Wailoa Ditch as its reasonable and beneficial future use must be rejected because of MDWS's inability to process that much water at its Kamole WTF. The record does not support MDWS use of a full 16 mgd water from the Wailoa Ditch. Admittedly, it cannot currently treat 12.5 mgd at the Kamole WTF, which would amount to more than double its current capacity and over three times the amount of its current average production amount. As the Hearings Officer confirmed, the findings as to MDWS' future needs have been made. MDWS cannot establish on the existing record a reasonable beneficial use of 16 mgd from the Wailoa Ditch. Accordingly, any proposed facts or conclusions to that effect should be rejected.

Objection to MDWS COLs 269-276.

**D. MDWS Did Not Submit any Evidence, Reliable or Otherwise, Demonstrating that it was Ready, Willing or Able to Expand the Capacity of the Kamole WTF in the Near or Long-Term**

MDWS's proposed supplemental finding to the effect the Kamole Weir facility's capacity "could be expanded relatively quickly, however, should MDWS have assurances of greater access to water, as evidenced by recent upgrades to the 'Iao Surface Water Treatment Plant" is not supported by the record. The citations to the record provided by MDWS do not support this statement. The citations to the record for the addition to the finding simply refer to the facility's capacity and the additional water allocated to MDWS in the Na Wai Eha proceedings.

MDWS did not produce any evidence in the record of its ability to quickly expand its capacity at Kamole Weir or any of its water treatment facilities. At the re-opened hearings, MDWS' David Taylor testified that it had "no concrete plans to expand treatment plants that service the Upcountry service area." Taylor, Tr. 2/8/17 at 382:2-7. No Budget or Capital Improvement Budget for the next six years was ever introduced into evidence indicating any County commitment or even plan to expand the capacity of the Kamole WTF.

In Central Maui, Taylor explained that the 'Iao water treatment facility is currently under construction to expand its capacity from 1.5 mgd to 3 mgd a few years after an additional allocation to MDWS was settled on in the IIFS proceedings there, Taylor, Tr. 2/8/17 at 382:8-383:3, however, MDWS provided no information as to how much it could expand its water treatment facilities and under what time frame. Accordingly, MDWS' proposed addition to the Hearings Officer's FOF 77 must be rejected.

Objection to MDWS PFOF 77.

**E. MDWS Cannot Use East Maui Streams as Reservoirs**

MDWS claims that if 16.0 mgd is recognized as the MDWS future reasonable and beneficial use "it would help justify a capital expenditure to expand the Kamole Treatment Plant." MDWS PCOL 274. For factual support MDWS PFOF 77 is cited. MDWS PFOF 77 has only to do with the Iao Surface Water Treatment Plant and even with respect to this plant this statement is not made.

In any event, such a basis for recognizing a reasonable and beneficial use was rejected by

**Hawaii Supreme Court in *In re Water Use Permit Applications*, 94 Haw. 97, 9 P. 3d 409, 469 (2000) (“*Waiahole I*”).** In *Waiahole I* the Hawaii Supreme Court reviewed the Commission’s creation of a "non-permitted ground water buffer" of 5.39 mgd, intended for initial release in the windward streams, but available for offstream uses as a secondary source after the 1.58 mgd proposed reserve. Applicants for the buffer water would not be required to petition to amend the WIIFS. the Commission released into windward streams an Amended WIIFS amount of 6.0 mgd and then added to this amount, a "supplemental flow" of 6.97 mgd or more, consisting of the 5.39 mgd buffer, the 1.58 mgd proposed reserve, and any water authorized for use in water use permits but not actually used, which the Commission mandated would remain in windward streams "to avoid unlawful waste." *Id.* As the Hawaii Supreme Court described it in *Waiahole I*:

In all, of the 27 mgd total flow of the ditch, as measured at Adit 8, the Commission assigned 14.03 mgd to permitted leeward agricultural and nonagricultural uses and "system losses." For the near term, the Commission released 12.97 mgd in windward streams. However, 6.97 mgd of this 12.97 mgd remained available for offstream leeward uses as a "proposed agricultural reserve" or "non-permitted ground water buffer."

This “buffer” was described, in *Waiahole I*, as being for “unspecified future offstream uses.”

The Hawaii Supreme Court in *Waiahole I* **reversed** this scheme, as follows:

... we disagree with the Commission's designation of 5.39 mgd otherwise available for instream purposes as a "nonpermitted ground water buffer" that the Commission could use to satisfy future permit applications without amending the WIIFS. **Nothing in the Code authorizes such a measure. More fundamentally, the notion of a buffer freely available for unidentified offstream uses, while instream flow standards still await proper designation, offends the public trust and the spirit of the instream use protection scheme.** (Emphasis added)

On this subject matter, the *Waiahole I* Court concluded:

**We have rejected the idea of public streams serving as convenient reservoirs for offstream private use.** See *Robinson*, 65 Haw. at 676, 658 P.2d at 311 (maintaining that private parties do not have the unfettered right "to drain rivers dry for whatever purposes they s[ee] fit"). Nonetheless, the buffer achieves that very result, insofar as it reverses the constitutional and statutory burden of proof and establishes a working presumption *against* public instream uses.

MDWS wants the Commission to recognize future reasonable and beneficial uses in the amount of 16.0 mgd that the MDWS cannot prove that it has the ability to use, now or in the future. MDWS, thus, improperly seeks to use public streams [to serve] as convenient reservoirs for

offstream use in a manner that “offends the public trust and the spirit of the instream use protection scheme.” *Waiahole I*.

Objection to MDWS PCOL 274 and PFOF 77.

**F. MDWS Has Never Demonstrated That 9.15 mgd or 16.0 mgd is a Reasonable and Beneficial Future Use**

The Hearings Officer determined that the current reasonable and beneficial use of MDWS was 7.1 mgd. FOF 83, COL 265.

The Hearings Officer also found the following with respect to the reasonable and beneficial future uses of MDWS:

\* The Hearings Officer recommended a finding that there was evidence of a demand for 7.5 mgd to meet the needs of the applicants on the County’s waiting list for new water connections on the Upcountry System (FOF 472).

\* The Hearings Officer also recommended a finding that this demand was actually 3.75 mgd because one-half of the applicants would not actually proceed with their requests for service due to the costs involved. (FOF 471)

\* The MDWS also expected that the water demand in the Upcountry water system created by the 2030 population increases in the Upcountry area was 1.65 mgd. FOF 473.

\* **The MDWS anticipated that it will need to develop between 4.2 mgd and 7.95 mgd to meet these increased demands.** (Emphasis added). FOF 474.

In COL 115, the Hearings Officer determined that:

Current unmet demand is approximately 3.75 mgd, and by 2030, there is predicted additional need for 1.65 mgd. MDWS anticipates it will need to develop **between 4.2 mgd and 7.95 mgd to meet demands through 2030.** (Emphasis added).

The Hearings Officer recognized the current reasonable and beneficial use of MDWS in the amount of 7.1 mgd and did not recognize amounts requested by the MDWS for its proposed future reasonable and beneficial uses in his Proposed Findings of Fact, Conclusions of Law, Decision and Order. MDWS was left in the re-opened hearing to argue in favor of the amounts it had requested, and that had been recognized by the Hearings Officer, for MDWS’s future reasonable and beneficial uses – namely an amount between 4.2 mgd and 7.95 mgd. MTF objects to any request or determination that MDWS is entitled to any amount for its future reasonable and beneficial uses that exceeds 7.95 mgd.

The bottom line, based upon the evidence, is that **the reasonable and beneficial future uses of MDWS amounts to between 4.2 mgd and 7.95 mgd.** (Emphasis added). These are among the findings and determinations that are already made and that are not subject to re-opening. The Hearings Officer made clear on the record that, as far as MDWS' future projections for its needs, "Those findings have already been made." Tr. 2/8/17 at 378: 12-20.

Further, it would constitute waste to recognize as reasonable and beneficial future uses of the MDWS amounts that exceed the 6.0 mgd capacity of the Kamole WTF. When and if the MDWS expands the capacity of the Kamole WTF, it may seek to amend the amount for its reasonable and beneficial future use.

The calculations of MDWS are flawed. The only figures that the MDWS "balances" are a possible 18 mgd restoration, a possible average flow of 108.8 mgd in the Wailoa Ditch and 16 mgd for the MDWS. These figures leave out much other data that is critical to proper balancing.

MDWS has never provided additional evidence demonstrating that 9.15 mgd or 16.0 mgd is a reasonable and beneficial future use. MDWS's failure to provide additional evidentiary support for its anticipated need of an additional 9.15 mgd or 16.0 mgd dictates that the Commission err on the side of instream use protection in setting the IIFS.

Objection to MDWS COLs 269-276.

**G. Sharing of Wailoa Ditch Water Between HC&S and MDWS**

**a. MDWS Has No Authority to Withdraw 16 mgd from the Wailoa Ditch**

Any ability or right of the MDWS to withdraw water from the Wailoa Ditch is now subject to the terms and conditions contained within the Memorandum of Understanding ("MOU") dated April 13, 2000 between the MDWS and A&B. Exhibit E-105. The MDWS relies upon this MOU to support its claim that it may withdraw up to 16 mgd from the Wailoa Ditch. The MOU actually states, in pertinent part, that BWS's allotment from Wailoa Ditch may be increased to "...12 mgd with option for additional 4 mgd (**per original agreement**)." (Emphasis added). Exhibit E-105. The original agreement, dated December 31, 1973, provides, as is pertinent:

**An additional 4 million gallons of water per twenty-four hour period as needed by BWS will be provided by EMI to BWS upon one year's written notice to EMI.**



See Exhibit E-122, p. 4. This additional 4 mgd is only provided based upon a demonstration of need by the MDWS and is only supplied after advance written notice of one year. MDWS presented no proof of need for a total of 16 mgd in these proceedings or of a one year written demand to EMI for 16 mgd from the Wailoa Ditch. This term is of no aid to MDWS and the MDWS has no authority to withdraw 16 mgd from the Wailoa Ditch.

Objection to MDWS PFOF 492.

**b. How Low Flows Are Shared Between HC&S and MDWS**

MDWS has misstated that provisions of the MOU regarding low flows. The MOU states, in pertinent part:

When the ditch flow drops below the combined minimum needs of BWS and HC&S [8.2 mgd for the MDWS and 8.2 mgd for HC&S for a total of 16.4 mgd], then BWS and HC&S each shall be entitled to receive:

- (a) its respective direct contribution to ditch flow (i.e., BWS would be entitled to the portion of the ditch flow attributable to ground water it pumps into the ditch, and HC&S would be entitled to the portion of the ditch flow attributable to its East Maui lands (30%); and
- (b) 50% of the amount of the ditch flow remaining after deducting the parties' direct contributions from the total.

The MOU entitles the MDWS to whatever groundwater it may pump into the Wailoa Ditch. MDWS provided no proof of this amount. The MOA entitles HC&S to whatever ditch flow is attributable to the lands owned by EMI – estimated to be 30%. HC&S provided no proof of this amount. Thereafter, any remaining amounts in the Wailoa Ditch are shared equally. Exhibit E-105, pp. 1-2. Counsel for HC&S was wrong to claim that the water arising on EMI's land was irrelevant to these proceedings.

Objection to MDWS PFOF 492.

**H. Support for Agriculture in All Community Plans**

The Community Plans for all of the relevant areas contain provisions supporting diversified agriculture. County witnesses testified that use of the water to irrigate the former sugar plantation lands was consistent with the state and county land use plans and the public interest and that the County supported the use of the former sugar plantation lands for diversified agriculture. WDT of Michelle McLean, ¶¶ 4 and 5.

Community Plans already in the record demonstrate, however, that there are large areas of land in all of these Community Plan Districts that are likewise designated agriculture in the

Community plan map, located within the Agriculture District of the State Land Use Commission and zoned Agriculture by Maui County. Hana Community Plan (Exhibit E-142), Paia-Haiku Community Plan (Exhibit E-143), Makawao-Pukalani-Kula Community Plan (Exhibit E-144).

Large areas so designated – other than the former HC&S Sugar Plantation – are shown on Community Plan maps to be reasonably close to the EMI/State ditch transmission systems and likewise could benefit from “low-cost” agricultural irrigation water. Hana Community Plan (Exhibit E-142), Paia-Haiku Community Plan (Exhibit E-143), Makawao-Pukalani-Kula Community Plan (Exhibit E-144).

Use of the water for agricultural pursuits is also supported in the Hana Community Plan Region, the Paia-Haiku Community Plan Region and the Makawao-Pukalani-Kula Community Plan Region. Hana Community Plan (Exhibit E-142), Paia-Haiku Community Plan (Exhibit E-143), Makawao-Pukalani-Kula Community Plan (Exhibit E-144).

No notice or opportunity was provided to other potential agricultural users of this water to participate in these re-opened proceedings. It would constitute a breach in the management of these public trust water resources to include within the class of potential reasonable and beneficial users (other than the MDWS) only those who may execute a lease from A&B for portions of the 36,000 acres of former plantation lands, and that the Commission’s public trust responsibilities required the Commission to include within the class of potential reasonable and beneficial users entities or individuals who were so situated along or nearby the ditch system that they could currently benefit from, or benefit in the future from, the use of the diverted water, given that: (a) the HC&S sugar plantation had closed, (b) the former plantation lands are now mostly fallow, (c) A&B only possesses one (1) year revocable permits to divert and transmit water and (d) there is no certainty that A&B will prevail on any long-term disposition of East Maui water resources at a public auction conducted pursuant to Chapter 171. New and additional notice of the re-opened hearings, and an opportunity to participate in these proceedings, was required to be given. Without this new and additional notice, A&B is enabled to unlawfully “grandfather” these public trust water resources.

MTF objects to the suggestion that the former plantation lands are the only lands qualifying for reasonable and beneficial agricultural uses. Keanae-Wailuanui taro growers are also farmers whose lands require water. Objection to MDWS PFOF 503 - 537. See, MTF PFOF 94 – 98.

MTF therefore objects to MDWS PCOL 276 - 283. These conclusions were reached based upon the flawed MDWS PFOF 503 - 537.

### III. SPECIFIC EXCEPTIONS

#### A. To the Amended Proposed Findings of Fact Submitted by MDWS

47 – 50. Error of Fact (“EF”). These subject matters are covered more accurately in MTF Proposed Findings of Fact (“PFOF”) 1 – 22.

51 – 52. EF. This summary description is more accurately covered by the pleadings filed themselves.

77. EF. See, above.

82, 465, 492. EF. This addition fails to disclose the conditions under which the option for an additional 4 mgd can be exercised or that the Kamole WTF has a capacity of 6 mgd. The MOU states, as is pertinent, that BWS’s allotment from Wailoa Ditch may be increased to “...12 mgd with option for additional 4 mgd (per original agreement). Exhibit E-105. The original agreement, dated December 31, provides, as is pertinent:

**An additional 4 million gallons of water per twenty-four hour period as needed by BWS will be provided by EMI to BWS upon one year’s written notice to EMI.**

See Exhibit E-122, p. 4. This additional 4 mgd is only provided based upon a demonstration of need by MDWS and is only supplied after advance written notice of one year. MDWS presented no proof of need for a total of 16 mgd in these proceedings or of a one year written demand to EMI.

This occurs as an Error of Law in MDWS Proposed Conclusion of Law (“PCOL”) 129, 268 and 269 to which MTF also objects on these grounds.

471. The prior MDWS testimony cannot be modified by MDWS in the re-opened contested case. The Hearings Officer made clear on the record that, as far as MDWS’ future projections for its needs, “Those findings have already been made.” Tr. 2/8/17 at 378: 12-20. Accordingly, MDWS’ proposed revision to FOF 471 should be rejected.

475 – 482. EF. MDWS was ordered to present evidence on how much more water was being delivered due to the repair of the leaky Waikamoi Flume but neglected to do so.

#### B. To the Amended Proposed Conclusions of Law Submitted by MDWS

115. EF, EL. This is improperly characterized by MDWS as a Conclusion of Law. The Hearings Officer’s recommendation should remain the same. The Hearings Officer based

his determination that current unmet demand was 3.75 mgd on his FOF 471 that clearly makes this finding. MDWS has no basis for revising this FOF.

Likewise, there is no basis for the MDWS addition of “in new sources”. The Hearings Officer’s recommendation should remain the same. The Hearings Officer based this portion of his determination on his FOF 473-474. FOF 473 -474 acknowledges a need to develop between 4.2 mgd and 7.95 mgd through 2030, however there is no mention of how the MDWS is to develop these additional amounts. By other findings of the Hearings Officer, these needs could be met by increasing the capacity of the Kamole WTF, by constructing reservoirs at Kamole and/or through the additional amounts delivered through the repaired Waikamoi Flume. MDWS has no basis for revising this FOF.

129. See, above.

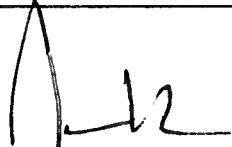
269 -276. EL, EF. See, above.

#### IV. JOINDER

MTF joins in the Objections or Exceptions to the Proposed Findings of Fact, Conclusions of Law, and Decision and Order submitted by MDWS filed by Petitioners Na Moku Aupuni o Ko’olau Hui, Lurlyn Scott, and Sanford Kekahuna (“Na Moku”) when the positions taken are otherwise not directly inconsistent with the positions set forth in the Objections or Exceptions to the Proposed Findings of Fact, Conclusions of Law, and Decision and Order submitted by MDWS filed by MTF.

DATED: Wailuku, Maui, Hawaii

6.19.17



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

**CERTIFICATE OF SERVICE**

I hereby certify that one copy of the foregoing document was duly served upon the parties listed below by email, on June 19, 2017.

Commission on Water Resource Management  
(via U.S. Mail and email  
c/o kathy.s.yoda@hawaii.gov)  
c/o Kathy S. Yoda  
P.O. Box 621  
Honolulu, HI 96809

Camille K. Kalama, Esq.  
(via email: camille.kalama@nhlchi.org)  
Summer L.H. Sylva, Esq.  
(via email: summer.sylva@nhlchi.org)  
Native Hawaiian Legal Corporation  
1164 Bishop Street, Suite 1205  
Honolulu, HI 96813  
Attorneys for Na Moku Aupuni O Koolau Hui

Robert H. Thomas, Esq.  
(via email: rht@hawaiilawyer.com)  
Damon Key Leong Kupchak Hastert  
1003 Bishop Street  
Pauahi Tower, Suite 1600  
Honolulu, HI 96813  
Attorneys for Hawaii Farm Bureau Federation

William J. Wynchhoff, Esq.  
(via email: bill.j.wynchhoff@hawaii.gov)  
Linda L.W. Chow, Esq.  
(via email: linda.l.chow@hawaii.gov)  
Department of the Attorney General  
465 South King Street, Room 300  
Honolulu, HI 96813

Lawrence Miike, Hearings Officer  
(via email: lmiike@hawaii.rr.com)  
c/o Commission on Water Resource Management  
P.O. Box 621  
Honolulu, HI 96809

Elijah Yip, Esq.  
(via email: eyip@cades.com)  
David Schulmeister, Esq.  
(via email: dschulmeister@cades.com)  
Cades Schutte, LLP  
1000 Bishop Street, 10<sup>th</sup> Floor  
Honolulu, HI 96813  
Attorneys for Alexander & Baldwin, Inc. and East  
Maui Irrigation Co., Ltd.

Patrick K. Wong, Esq.  
(via email: pat.wong@co.maui.hi.us)  
Caleb Rowe, Esq.  
(via email: Caleb.Rowe@co.maui.hi.us)  
Kristin Tarnstrom, Esq.  
(via email: Kristin.Tarnstrom@co.maui.hi.us)  
Department of the Corporation Counsel  
County of Maui,  
200 S. High Street  
Wailuku, HI 96793  
Attorneys for County Dept of Water Supply

Jeffrey C. Paisner  
(via email: jeffreypaisner@mac.com)  
121 North 5<sup>th</sup> Street, Apt. RH  
Brooklyn, New York 11249  
Pro Se

DATED: Wailuku, Maui, Hawaii

6.19.17  
  
Isaac Hall  
Attorney for Maui Tomorrow Foundation, Inc.,  
and its Supporters