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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

OBJECTIONS OF MAUI TOMORROW  
FOUNDATION, INC. AND  
ITS SUPPORTERS TO EXCEPTIONS OF COUNTY  
OF MAUI, DEPARTMENT OF WATER SUPPLY;  
CERTIFICATE OF SERVICE

mt/objtoexcofMDWS

**OBJECTIONS OF MAUI TOMORROW FOUNDATION, INC.  
AND ITS SUPPORTERS TO EXCEPTIONS OF  
COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY**

The Maui Tomorrow Foundation, Inc. and its Supporters ("MTF"), through Counsel, hereby submit their Objections to the Exceptions of the County of Maui, Department of Water Supply ("MDWS") to the Hearings Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order, pursuant to the Order of the Commission of Water Resource Management ("Commission") filed on August 31, 2017, as follows:

**I. INTRODUCTION**

The MDWS has filed a "Response" stating that it has "no substantive exceptions" to the Hearings Officer's Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

The MDWS is satisfied with the Hearings Officer's recommended finding that 16 mgd is the maximum requirement of the MDWS from the Wailoa Ditch for current and potential Upcountry Water system needs through the year 2030, even though this violates the Public Trust Doctrine, the State Constitution and the State Water Code. The Hearings Officer has, significantly and among other matters, failed to consider the practicable alternatives that exist to

diverting streams that supply Wailoa Ditch in determining that 16 mgd from Wailoa Ditch is the maximum requirement of the MDWS. This is an appealable error.

**II. THE RECORD CONTAINS AMPLE RELIABLE AND PROBATIVE EVIDENCE CONCERNING PRACTICABLE ALTERNATIVES THAT EXIST**

The Report gravely errs by assuming that the sole water source for the Upcountry Water System is the EMI Ditch System. Even if MDWS required 16 mgd for its Upcountry Water System for its present and future needs through the year 2030 (which MTF denies), these needs can be met through reasonable alternative sources, without taking any more than the current amount of 7.1 mgd from the Wailoa Ditch. The Hearings Officer has neglected to first subtract alternative sources reasonably available to the MDWS and sources currently available to the MDWS. The most obvious of the reasonably available alternative sources are:

- 4.2 mgd** Being met now by **the Upper and Lower Waikamoi Flumes**
- 3.4 mgd** Being met by the **three basal aquifer wells.**
- 7.6 mgd** **TOTAL**

If 7.6 mgd is first subtracted from 16.0 mgd, this leaves **8.4 mgd** that could theoretically be the MDWS potential need from the EMI Ditch system. However, testimony was received that MDWS is currently receiving between **6 – 8 mgd** from the EMI Ditch system. Testimony of Garret Hew, p. 24, l. 2-8. The Hearings Officer proposes finding that the average MDWS daily use of Wailoa Ditch for potable water is 3.6 mgd and for non-potable water is 3.5 mgd for a total of 7.1 mgd. See, FOF 96, 102. If the middle figure between these 6 and 8 mgd is used, 7.0 mgd, is subtracted from 8.4 mgd, that leaves **1.4 mgd**. Thus, after reasonable alternative sources and sources that are already available are subtracted, the only additional amount required is **1.4 mgd**. As will be demonstrated below, even **1.4 mgd** can be supplied through sources other than East Maui public trust streams. Neither the Report nor MDWS have factored in the water supply gains that could reasonably be obtained well before 2030 from:

- a. The Repaired Waikamoi Flume; and
- b. A 100 to 200-Million Gallon Reservoir at the KWTF ; and
- c. The additional groundwater wells coming on line prior to 2030.

These alternative sources are likely to supply any water needed by the MDWS for its Upcountry system by the year 2030 without relying on any further EMI Ditch flows.

**III. THE MDWS HAS ADMITTED THAT PRACTICABLE ALTERNATIVES EXIST TO THE DIVERSION OF STREAMS THAT SUPPLY WAILOA DITCH**

The Commission issued an Order Re Request to Adjust Flows dated May 31, 2017 in the Contested Case Hearing establishing deadlines for further Recommendations on protocol for the emergency release of stream flows from streams diverted by the Wailoa Ditch during County emergencies. The MDWS filed a brief recommendation in the form of a letter dated June 2, 2017.

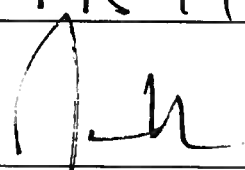
MTF and Na Moku filed a detailed “Joint Response” on June 16, 2017 depicting the components of the Upcountry Water system, the alternatives available to MDWS before relying upon the further diversion of streams by Wailoa Ditch and the regulatory framework that already exists establishing the steps to be taken by MDWS as water becomes progressively less available to MDWS as a drought progresses and the steps to be taken by MDWS in backing down from these measures as drought conditions dissipate.

The MDWS then filed its “Reply” on June 23, 2017 to the MTF and Na Moku “Joint Response” in which MDWS admitted the existence of the basic components of the Upcountry water system, the alternatives available to MDWS before relying upon the further diversion of streams by Wailoa Ditch and the regulatory framework that already existed regarding upcountry droughts.

**IV. JOINDER**

MTF joins in the Objections of Petitioners Na Moku Aupuni o Ko’olau Hui, Lurlyn Scott, and Sanford Kekahuna (“Na Moku”) to the Response of MDWS to the Hearings Officer’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

DATED: Wailuku, Maui, Hawaii

9.10.17  
  
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Isaac Hall  
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## CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing document was duly served upon the parties listed below by email, on September 15, 2017.

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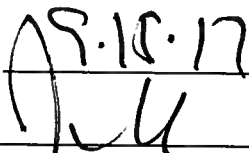
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DATED: Wailuku, Maui, Hawaii

09.15.17  
  
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