

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

PETITION TO AMEND INTERIM ) Case No.. CCH-MA13-01  
INSTREAM FLOW STANDARDS FOR )  
HONOPOU, HUELO (PUOLUA), )  
HANEHOI, WAIKAMOI, ALO, ) MINUTE ORDER NO. 19  
WAHINEPEE, PUOHOKAMOA, ) SUMMARY OF CONFERENCE AND  
HAIPUAENA, PUNALAU/KOLEA, ) ORDER ON RE-OPENED HEARING;  
HONOMANU, NUAAILUA, PIINAAU, ) CERTIFICATE OF SERVICE  
PALAUHULU, OHIA (WAIANU), )  
WAIOKAMILO, KUALANI, WAILUANUI, )  
WEST WAILUAIKI, EAST WAILUAIKI, )  
KOPILIULA, PUAKAA, WAIOHUE, )  
PAAKEA, WAIAAKA, KAPAULA, )  
HANAWI, AND MAKAPIPI STREAMS )  
\_\_\_\_\_)

**MINUTE ORDER NO. 19**

Summary of Conference and Order on Re-Opened Hearing

A conference was held at 10:00 a.m., Wednesday, March 23, 2016 at the Commission's office to discuss: 1) the scope of the rehearing, and 2) interim actions prior to the rehearing and subsequent final Decision and Order by the Commission. Present were counsel for Nā Moku Aupuni O Ko‘olau Hui (Nā Moku) and Alexander & Baldwin, Inc. (or alternatively HC&S) and East Maui Irrigation Co., Ltd. (EMI) (collectively A&B) in person, and counsel for Maui Tomorrow Foundation (MTF), County of Maui, Department of Water Supply (MDWS), and Jeffrey Paisner by telephone. Also present at the conference were Deputy Attorney General Linda Chow, Commission Deputy Director Jeff Pearson, and Rebecca Alakai, Commission staff.

Prior to the conference, Nā Moku, in an email dated March 22, 2016, requested that the discussion include: 1) the priority of reopening the hearing in the manner and scope proposed in Minute Order 18; 2) the legal authority on which the Presiding Officer, Suzanne D. Case, as

opposed to the entire Commission, relied on; and 3) the Commission's reasons for not immediately restoring the 18 million gallons per day (mgd) recommended in the Hearings Officer's Proposed Decision. All of these issues were addressed at the conference.

On the issue of interim actions, the current situation is that EMI is currently deciding how to reduce offstream diversions, and all parties agreed that restoring the 18 mgd recommended by the Hearings Officer's Proposed Decision should be effective immediately.

On the issue of the scope of the rehearing, the Hearings Officer identified the following areas which he anticipated taking additional evidence: 1) Hawaiian Commercial & Sugar Co. (HC&S)/A&B's current and future use of surface waters and the impact on the groundwater sources for its central Maui fields of HC&S's cessation of sugar operations; 2) the impact on MDWS' use of surface water; 3) Maui County's position on the future use of the central Maui fields; and 4) 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.

On question of the legal authority of Suzanne Case, as the presiding officer, to order the re-opening of the hearing to address A&B's decision of January 6, 2016, to change HC&S's business operations from farming sugar to a diversified agricultural model, under the chapter 13-167, Hawaii Administrative Rules, the presiding officer has wide latitude in the conduct of contested case hearings. It is clearly within her authority to re-open the hearings in this instance.

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 Nā 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 water meters and the proposed reservoir at the Kamole water treatment plant. If MTF and Nā Moku were not in agreement with the evidence that is presented by MDWS, MTF and Nā Moku would be free to object at that time and also move to be allowed to introduce additional evidence for MTF and Nā Moku. If dissatisfied with the Hearings Officer rulings, MTF and Nā Moku would have additional opportunities to have their objections/exceptions heard by the Commission when it votes on the Hearings Officer's proposed amended Decision, and again by the courts on any appeals.

On the issue of the legal authority on which the Presiding Officer, as opposed to the entire Commission, relied on to issue Minute Order 18, there was agreement that the interim releases would be subject to a hearing before, and vote by, the Commission, with the opportunity for all parties to be heard. It was also understood that if the parties did not agree with the proposed scope of the rehearing then any party could file a motion for the Commission to consider expansion of the scope of the re-opened hearing.

Therefore:

1. The Hearings Officer will forward a recommendation to the Commission on interim implementation consisting of immediate restoration of 18 mgd to be restored pursuant to the Hearings Officer's recommendation to the Commission.
2. The scope of the reopened hearing will include the following areas:
  - a. HC&S/A&B's current and future use of surface waters and the impact on the groundwater sources for its central Maui fields of HC&S's cessation of sugar operations;
  - b. the impact of HC&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

The parties may file motions with the Commission on the scope of the rehearing, as set forth herein.

3. The Commission may schedule a hearing on the Hearings Officer's recommendations regarding interim restoration of stream flows and any motions filed by the parties.

4. A schedule for the re-opened hearing will be set at a later time.

DATED: Honolulu, Hawaii, April 1, 2016.



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LAWRENCE H. MIIKE  
Hearings Officer

COMMISSION ON WATER RESOURCE MANAGEMENT

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CERTIFICATE OF SERVICE

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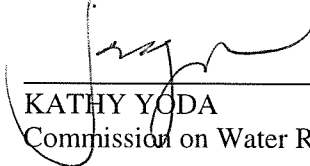
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