

LINDA LINGLE
GOVERNOR OF HAWAII



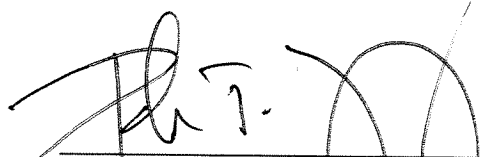
PETER T. YOUNG
CHAIRPERSON
MEREDITH J. CHING
JAMES A. FRAZIER
NEAL S. FUJIWARA
CHIYOME L. FUKINO, M.D.
LAWRENCE H. MIIKE, M.D., J.D.
STEPHANIE A. WHALEN

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

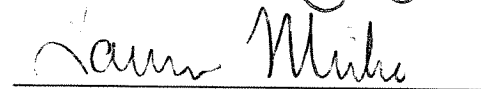
March 21, 2007

Dear Parties:

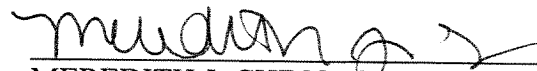
Attached is the Commission's Decision and Order on County of Maui, Department of Water Supply's Motion for Reconsideration, Clarification, and/or Correction of Findings of Fact, Conclusions of Law, and Decision and Order "In the Matter of Water Use Permit Applications for the 'Iao Ground Water Management Area Basal Source Contested Case Hearing (CCH-MA05-1)."



PETER T. YOUNG, Chairperson



LAWRENCE H. MIIKE, M.D., J.D.
Commissioner and Hearings Officer



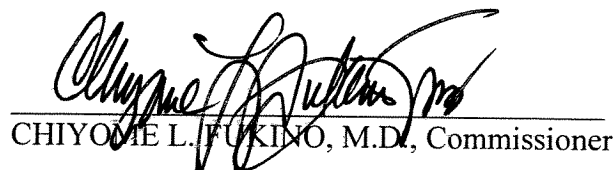
MEREDITH J. CHING, Commissioner



JAMES A. FRAZIER, Commissioner



NEAL S. FUJIWARA, Commissioner



CHIYOME L. FUKINO, M.D., Commissioner

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In the Matter of Water)	Case No. CCH-MA05-1
Use Permit Applications)	
For the Iao Ground Water)	
Management Area Basal Source)	
Contested Case Hearing)	
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CERTIFICATE OF SERVICE

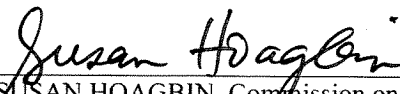
The undersigned hereby certifies that on this date a copy of the foregoing was served by U.S. mail, postage pre-paid to the following parties addressed as follows:

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Dated: Honolulu, HI MAR 21 2007



 SUSAN HOAGBIN, Commission on Water Resource Management

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In the Matter of Water)
Use Permit Applications)
For the `Iao Ground Water)
Management Area Basal Source)
Contested Case Hearing)
_____)

Case No. CCH-MA05-1

DECISION AND ORDER
ON COUNTY OF MAUI
DEPARTMENT OF WATER
SUPPLY'S MOTION FOR
RECONSIDERATION,
CLARIFICATION, AND/OR
CORRECTION OF FINDINGS
OF FACT, CONCLUSIONS OF
LAW, AND DECISION AND
ORDER

**DECISION AND ORDER ON COUNTY OF MAUI, DEPARTMENT OF WATER
SUPPLY'S MOTION FOR RECONSIDERATION, CLARIFICATION, AND/OR
CORRECTION OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DECISION AND ORDER**

1 **I. MDWS’s Motion and Commission’s Response**

2
3 On February 8, 2007, County of Maui, Department of Water Supply (hereinafter
4 “MDWS”) filed a motion for reconsideration, clarification, and or correction of the
5 Commission’s January 31, 2007, Findings of Fact, Conclusions of Law, and Decision and
6 Order (CCH-MA05-1).

7
8 CCH-MA05-1 involved new water-use permits for MDWS and Kehalani Mauka
9 (hereinafter “KM”). By July 21, 2004, some existing users did not meet the one-year
10 deadline for filing water use permit applications (hereinafter, “WUPA”). Among the
11 applications deemed incomplete and therefore not meeting the one-year deadline were
12 MDWS’s and KM’s for basal sources, so both applications were deemed new-use
13 applications.

14
15 MDWS’s motion requests that:

- 16 1. the 12-month moving average (12-MAV) at the time of designation be
17 changed from 4.904 mgd to 5.771 mgd;
- 18 2. the amount awarded to Kehalani Mauka (0.691 mgd) be reduced each time
19 MDWS provides a new water meter to newly-built residences or commercial
20 buildings in Kehalani Mauka’s project; and
- 21 3. all references to “Tao” be changed to “Iao.”

22
23 MDWS originally reported withdrawal from Shaft 33, the source at issue between
24 MDWS and KM, as 5.771 mgd at the time of groundwater designation. This was the best
25 figure at the time, but there had been some recalibration of the equipment by MDWS
26 itself, which resulted in the amount being revised to 4.904 mgd. (Lovell, Transcript, April
27 19, 2006, pp. 22-23) MDWS, referring to an exchange at the hearing between the
28 Hearings Officer and Commission staff, who cited the 4.9 mgd figure, states that “(t)here
29 was no evidence presented from any witness under oath in the evidentiary portion of the
30 contested case hearing, or from any document admitted into evidence, that established the
31 accuracy of this informal exchange between the hearings officer and CWRM staff
32 members Hardy and Ice.” (MDWS’s Motion, p. 3) However, as a matter of course in
33 contested case hearings, the Hearings Officer had submitted into evidence “all of the
34 related materials that took place in past Commission meetings and staff papers, et cetera,
35 so that you’re free to refer to those also. There will be some contradictions in those but
36 that’s an issue we all deal with in our argument. So all of the past documents are part of
37 the record and part of the evidence here.” (Miike, Transcript, April 19, 2006, p. 67)
38 Therefore, the revision from 5.771 mgd to 4.904 mgd at the time of designation is in the
39 evidence for the contested case hearing.

40
41 MDWS was issued a new-use permit for 5.771 mgd, the amount being asked for. Its
42 permit application was being treated as a new use and not an existing use. Thus, instead
43 of being limited to the amount in use at time of designation (4.904 mgd), as would be
44 required for an existing-use permit, MDWS was awarded what it asked for, or 5.771 mgd.
45 MDWS has suffered no detriment. Moreover, after correcting its error on the amount

1 being withdrawn at the time of designation, MDWS now asks the Commission not to
2 recognize that error.

3
4 MDWS also claims that replacing 4.904 mgd with 5.771 mgd is necessary “in order to
5 prevent a substantial injustice,” because “(i)n determining that the automatic trigger for
6 designation had been met, CWRM used the figure 5.771 mgd” and that “it could be
7 argued that the CWRM erred in designating the Iao Aquifer as a groundwater
8 management area in the first place.” (MDWS’s Motion, p. 4) Exceeding 90 percent of
9 the sustainable yield is only one of the criteria for designating a groundwater
10 management area. There are eight reasons listed in the Water Code, including the
11 presence of “serious disputes.” (HRS §174C-44) The fact that the use of 5.771 mgd plus
12 other withdrawals triggered automatic designation by exceeding 90% of the sustainable
13 yield does not invalidate the designation.

14
15 On MDWS’s request to reduce KM’s water-use permit by an equivalent amount each
16 time MDWS provides water, the Commission’s decision already pointed out that, under
17 HRS §174C-57(c), MDWS can place this requirement on KM and neither would have to
18 apply to the Commission for a modification in their water-use permits (although they
19 would have to report the changes in their respective permits). (Decision and Order, p. 19)
20 Moreover, the Commission will not set a precedent of micro-managing water-use permits
21 and will continue to rely on the non-use provisions of the Code to reduce the permitted
22 amounts only after periodic review of overall water use. Permitted water that is not used
23 is not wasted, because it would remain in the aquifer.

24
25 Finally, MDWS recommends that “Tao” be replaced by “Iao.” The latter is correct
26 according to Hawaiian dictionaries. (Pukui, M.K. & Elbert, S.H., *Hawaiian Dictionary*,
27 University of Hawaii Press: Honolulu, p. 93, 1986) However, MDWS does not follow its
28 own advice, because it refers to the aquifer’s name as “Iao” (without the okina) in its
29 Motion.

30 31 **II. Decision and Order**

32
33 MDWS’s Motion to change the 12-month moving average of the basal portion of the Iao
34 Aquifer System at the time of designation from 4.904 mgd to 5.771 mgd is denied.

35
36 MDWS’s Motion for the Commission to reduce KM’s water-use permit each time
37 MDWS provides a new water meter to newly-built residences or commercial buildings in
38 Kehalani Mauka’s project is denied.

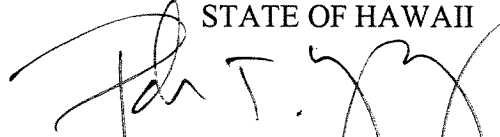
39
40 MDWS’s Motion to change all references in the Decision and Order from “Tao” to
41 “Iao” is granted.

42
43 The foregoing Decision and Order on County of Maui, Department of Water Supply’s
44 Motion for Reconsideration, Clarification, and/or Correction of Findings of Fact,
45 Conclusions of Law, and Decision and Order is hereby Adopted.

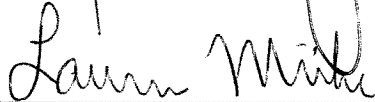
IT IS SO ORDERED.

Dated: Honolulu, Hawaii March 21, 2007.


COMMISSION ON WATER RESOURCE MANAGEMENT
STATE OF HAWAII



PETER T. YOUNG, Chairperson



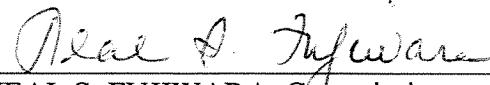
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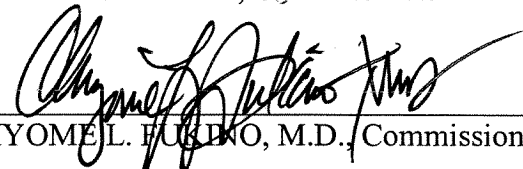
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