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BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In the Matter of:	)	Case No.: CCH-MA06-01
	)	
Iao Ground Water Management Area High-Level Source Water Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihee, Waiehu, Iao & Waikapu Streams Contested Case Hearing	)	WAILUKU WATER COMPANY, LLC's REMAND ANSWERING BRIEF; REMAND RESPONSIVE TESTIMONY OF CLAYTON SUZUKI; EXHIBITS "D-R11" - "D-R12"; CERTIFICATE OF SERVICE

WAILUKU WATER COMPANY, LLC's REMAND ANSWERING BRIEF

Wailuku Water Company, LLC ("WWC") agrees with Petitioners Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc. (collectively "Hui") Remand Opening Brief in one respect, the delay in concluding this matter continues to cause significant harm and losses. Albeit not specifically the harm alleged in the Hui's Remand Opening Brief. Rather than engage in repetitious rhetoric, WWC will be concise in its answering brief, addressing three points.

The Losses/Harm Incurred by the Delay. First, WWC has not profited from the delay in the proceeding as alleged by the Hui. As noted in WWC's Remand Opening Brief, WWC sustained losses on operations for each of the past seven years. Unless and until this matter is finally resolved, WWC is placed in the position of incurring continual losses. WWC cannot increase its revenues to stop the losses it sustains.

WWC cannot stop losses by gaining new users for two reasons. First, WWC is under an order from the Public Utilities Commission to not enter into new user agreements. As such, it cannot expand its user base to obtain a new revenue source. Second, even if no such Public Utilities Commission Order existed, seeking new users would be a questionable commercial practice as WWC might not be able to fulfill agreements for delivery of water since the amount of water available for delivery is not known. For these reasons, WWC cannot reverse the losses it has sustained.

Another way to stop losses would be to increase rates for deliveries to existing users and/or begin to charge users who have not heretofore paid for deliveries. Neither option is available to WWC. The Public Utilities Commission Order prevents WWC from changing the existing rate structure. This means that WWC cannot charge existing users for the costs of delivery. It also means that users such as those who receive water from those ditches identified as kuleana ditches cannot be charged for the deliveries. Essentially, about 30 users are paying all costs of maintaining and operating the water delivery system[1]. Whether this is equitable is not for this Commission to

[1] The surface water use permit applications reflect 132 applications for existing uses requesting 61.4 million gallons a day of surface water.

decide. However, WWC cannot change its existing rate structure so long as the IIFS and the surface water use permit application proceedings remain unresolved.

As a bottom line, instead of WWC profiting from its ability to deliver water to various users, including those identified by the Hui, WWC has sustained and will continue to sustain losses. This will be more so if the instream flow standards are changed for Iao Stream and Waikapu Stream. As noted in its Remand Opening Brief, changes to the instream flow standards for those two streams will result in a significant negative economic impact to WWC. Accordingly the bald assertion that WWC has profited from the delay in the proceedings is unsupported by the record.

Traditional and Cultural Practices: Stream by Stream Analysis. The second point deals with the record on traditional and cultural practices. In remanding this matter, the Hawaii Supreme Court directed the Commission to examine the impact of the instream flow standards on the traditional and cultural practices. The Court related a three step process under which the Commission must satisfy its duty regarding the feasibility of protecting Native Hawaiian rights. The first step is the identification of the scope of the traditional and customary Native Hawaiian practices. The court related this was satisfied in the Commission's findings and conclusions. Step 2 involves the articulation of the extent to which those resources will be affected or impaired by the proposed IIFS and step 3 was the identification of feasible action that can be taken to protect the Native Hawaiian rights. The Court related the steps 2 and 3 were not completed by the Commission. The Court related the Commission's analysis does not examine whether the amended IIFS would impact gathering rights of Native Hawaiians or whether any negative impact created by the amended IIFS could be avoided. This in

turn requires the Commission to consider traditional and cultural practices as instream uses on a stream-by-stream basis. The Hearings Officer directed the Hui and Petitioner Office of Hawaiian Affairs to provide information of uses on a stream-by-stream basis. In its remand opening brief, the Hui noted that evidence on uses existed but did not identify the uses on a stream-by-stream basis. Nor did the Hui identify the location(s) and scope of the use within each stream of the uses. Whether that record is adequate to make findings on specific uses at specific locations on specific streams ultimately is a Commission decision. However, if the record is not adequate, the Commission should so find that the traditional and cultural users, failed to provide information of the quantum necessary for the Commission to act.

Reliance on USGS Report. The third point to be addressed is the reliance on the USGS report on the Na Wai Eha Streams. The report was issued in 2010. The report did not include information that was provided during these proceedings, including the oral testimony of WWC and Hawaiian Commercial and Sugar Company witnesses expanding on the written testimonies of such witnesses. An understanding of the methodology upon which conclusions were derived is necessary. Similarly, an understanding of why certain information was included but not other information is important for the Commission to determine the reliability of the underlying assumptions in the report and ultimately the reliability of the conclusions in the report.

Conclusion. It is critical to WWC that this matter reach a conclusion sooner rather than later. WWC is caught in the unenviable position of operating at a loss and being prevented from adjusting rates or increasing users. Until it can do both or

either, WWC will continue to sustain losses. The future operations of WWC will be driven by the decision reached in this matter.

The flow of water in the streams varies hourly. When the flows are expansive, there is sufficient water to meet the needs of all. When the flows are lighter, both instream uses and offstream users are impacted. The State Water Code mandates a balancing of instream uses and offstream users which compete for the flows of water. It would be improper to direct that the instream uses be fully met under all flow conditions. Similarly, it would be improper to direct that offstream users receive all water desired under all flow conditions.

To achieve this balance of instream uses and offstream users, the Commission must weigh the information before it and reach conclusions that are based on fact. Conclusions upon which the Commission relies must be clear. If not clear, the Commission either should obtain the information necessary to make the conclusions clear or not rely on those conclusions.

DATED: Kahului, Maui, Hawaii JAN 23 2014.

PAUL R. MANCINI

One of the Attorneys for
WAILUKU WATER COMPANY, LLC

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STATE OF HAWAII

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	)	
Iao Ground Water Management Area High-Level Source Water Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihee, Waiehu, Iao & Waikapu Streams Contested Case Hearing	)	REMAND RESPONSIVE TESTIMONY OF CLAYTON SUZUKI; EXHIBITS "D-R11" - "D-R12"

REMAND RESPONSIVE TESTIMONY OF CLAYTON SUZUKI

My name is Clayton Suzuki.

I am the supervisor of maintenance and operations of the ditch system of Wailuku Water Company, LLC (the "Company"). As I testified in this matter before, I will not repeat my testimony on my background or on the Company's background. My remand testimony is provided in response to witness statements and exhibits provided in the remand and as a supplement to my earlier testimony.

My remand responsive testimony addresses two areas: 1) issues that arise with the implementation of an instream flow standard; and 2) changes in gate check settings made following the June 2010 Decision and Order of the Water Resource Commission.

In its June 2010 Decision & Order, the Commission directed the Company to take action to achieve stated instream flow levels at the diversions operated by the Company on the Waihee River and the North Waiehu Stream. In addition, the Commission directed the Company to modify each of its operating diversions to allow a set amount of water to pass over the diversion on each stream.

As explained in my earlier testimony, the Company's water distribution system is designed to take water from a stream, route the water through a control structure which determines the amount of water that will be allowed into the distribution system, and then return to the stream the water not required for delivery to the Company's customers. The Commission required the Company to modify each of its operating diversions to allow a pre-determined volume of water to pass over the diversions. The Company responded by modifying the diversions in one of two methods.

The first method was to cut into the diversion dam to allow water to flow over the diversion even at minimal flow levels. This method was used at the South Waikapu Intake on Waikapu Stream and the Waihee Ditch Intake on Waikapu Stream.

The second method was to bolt a channel iron over the diversion intake grate to allow water to pass over the intake grate. This method was used at the Waihee Ditch Diversion and Spreckles Ditch Diversion on Waihee Stream, Iao Stream diversion, and the Reservoir 6 Diversion on Waikapu Stream.

Examples of the modifications are shown in the photographs attached as Exhibit D-R11. I took these photographs to show the modifications made in the diversions. The photographs were provided to the Commission staff to show the work done by the Company. The photos accurately depict the work done by the Company on the diversions.

In addition to allowing water to flow over each operating diversion, the Company acted to achieve the instream flow standards that were adopted by the Commission on the North Waiehu Stream and the Waihee River.

For the North Waiehu Stream, CWRM personnel did stream and ditch flow measurements to establish the control gate opening to achieve the instream flows mandated by

the Commission. In October 2011, the diversion was vandalized. The vandalism was so great that the Company could not divert water into its ditch system at that point. The Company decided not to reopen the diversion because of the severe damage to the ditch and tunnel system.

In order to achieve the designated instream flows for the Waihee River, the Company looked at how waters might be passed through the diversion system to achieve the instream flows. At the Waihee and Spreckles ditch diversions, the structures include gravel traps that can be opened to allow water to return to the stream. The Company decided to use the gravel trap gates to return the required flows to the stream. The gravel trap gate at these ditches was opened to find a setting which would correlate to a constant flow of 10 million gallons per day. Since the gravel trap was not calibrated, the Company did not know the amount of water that would be returned to the stream based on the setting of the opening. Accordingly, the amount returned to the stream needed to be determined on a trial and error basis. Bolts and washers were installed at the gravel trap opening in order to create the control mechanism necessary for achieving the instream flow levels. The bolts and washers allowed for adjustments in the opening at ¼ inch increments. The gates were opened and adjustments were made to the size of the opening. After each adjustment, the amount of water that flowed in the Waihee River immediately below the diversion was measured by the Company's staff at a site selected by the Commission. Based on the stream flows measured, the setting of the gravel trap openings which achieved the desired stream flow was determined. This process took several months and was monitored by the Commission staff.

While the design of the diversion system for the Waihee River allowed the Company to achieve an instream flow below the diversion, the diversion structures at the other streams do not have gravel trap gates. As such, this method would not work at other streams.

Consideration was given to limiting the capacity of the diversion structures but the Company has not been able to design a mechanism that would work operationally. The streams flow at different rates. Fluctuations in stream flow exist almost each minute. During any given hour there will be low, medium and high flows. If the mechanism is set at a particular setting, there is no certainty that the proper amount of water will be flowing in a stream. If the control mechanism was set for medium flows, during periods of low flows, there would be no water passing through the diversion into the streams. As such, the control mechanisms would require adjustments every 15 minutes on a 24 hour basis every day of the year. It would be unrealistic to require the Company to staff the control mechanisms on a 24 hour basis.

In addition, calibration of a control structure would be difficult if not impossible. The control mechanism would require calibration to determine the amount of water flowing through the diversion to achieve instream flow standards. Calibration would depend on the shape of the control mechanism as well as the head pressure of the water at the structure. Head pressure is determined by the level of the water and the flow of the water. It would not be possible to calibrate a control structure due to the variations in flow rates.

Since 2007, the Company made changes to the control gate settings for diversions. Attached as Exhibit D-R12 is a chart showing the control gate settings for 2007 and again for 2013.

I, Clayton Suzuki, declare under penalty of law that the foregoing testimony is true and correct.

DATED: Wailuku, Hawaii, 11/28/14.

CLAYTON SUZUKI

EXHIBIT D-R11

Wailuku Water Company
Control Gate Settings

	Control Gate Settings 2007 MGD	Control Gate Settings 2014 MGD
Waihee River:		
Waihee Ditch	40.0	30.0
Spreckels Ditch	12.0	12.0
North Waiehu Stream		
North Waiehu Ditch	1.5	Shut Down
Iao Stream		
Iao-Maniania Ditch	2.0	0.5
Iao-Waikapu Ditch	18.0	18.0
Waikapu Stream:		
South Waikapu Ditch	3.0	3.0
Everett Ditch	0.0	0.0
Waihee Ditch	No Control Gate	No Control Gate
Reservoir 6 Intake	As Needed	Shut Down

EXHIBIT D-R12

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CERTIFICATE OF SERVICE

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

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DATED: Kahului, Maui, Hawaii, JAN 28 2014.

Paul R. Mancini

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