

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

<p>Surface Water Use Permit Applications,  Integration of Appurtenant Rights and  Amendments to the Interim Instream Flow  Standards, Na Wai Eha Surface Water  Management Areas of Waihee, Waiehu, Iao  and Waikapu Streams, Maui</p> <hr/>	<p>) Case No.: <u>          CCH-MA15-01          </u>  )  ) MINUTE ORDER # 21 – ORDER DENYING  ) MAHI PONO, LLC’S MOTION FOR  ) PARTIAL RECONSIDERATION OF  ) FINDINGS OF FACT, CONCLUSIONS OF  ) LAW, DECISION &amp; ORDER FILED ON  ) JUNE 28, 2021, AS AMENDED BY  ) ERRATA TO FINDINGS OF FACT,  ) CONCLUSIONS OF LAW, AND DECISION  ) &amp; ORDER FILED JUNE 30, 2021;  ) CERTIFICATE OF SERVICE  )  )  )  )  )</p>
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**MINUTE ORDER # 21 – ORDER DENYING MAHI PONO, LLC’S  
MOTION FOR PARTIAL RECONSIDERATION OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW, DECISION & ORDER FILED ON  
JUNE 28, 2021, AS AMENDED BY ERRATA TO FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION & ORDER FILED JUNE 30, 2021**

Permittee Mahi Pono, LLC filed a Motion for Partial Reconsideration of Findings of Fact, conclusions of Law, and Decision & Order filed on June 28, 2021, as Amended by Errata to Findings of Fact, Conclusions of Law, and Decision & Order filed June 30, 2021 (“Mahi Pono’s Motion”). Mahi Pono’s Motion asks the Commission to reconsider the Errata to the Decision & Order (“Errata”) which corrected the amount of the permit to be issued to Mahi Pono from 15.65 mgd to 4.98125 mgd. The main basis of Mahi Pono’s Motion is the Stipulation and Order Regarding SWUPA 2206 (“Stipulation”) that was filed by Mahi Pono jointly with Office of Hawaiian Affairs (“OHA”), Hui O Nā Wai ‘Ehā (“Hui”), and Maui Tomorrow Foundation (“Maui Tomorrow”) (collectively “Community Groups”) whereby Mahi Pono agreed to certain commitments and

conditions and OHA, the Hui, and Maui Tomorrow agreed to withdraw their exceptions to SWUPA 2206. *Mahi Pono's Motion*, at 3.

Mahi Pono's Motion is correct that the Commission encouraged Mahi Pono and the Community Groups to work together to arrive at an agreement regarding Mahi Pono's water needs. The Stipulation the parties arrived at encompassed many factors for both Mahi Pono and the Community Groups. The Commission commends the parties for coming together to forge the Stipulation and hopes that Mahi Pono will continue to stand by the commitments made in the Stipulation. The Commission, however, has to consider the larger picture and its trust responsibilities to balance water use amongst users, uses, and resource protection.

In arriving at the revised permit amount included in the Errata, the Commission felt it was important to treat all diversified agriculture equally, regardless of size, and to be consistent in the gallons per acre of water being allotted. In the stipulation, the parties agreed to allow Mahi Pono an initial allocation based on the water duty of 2,500 gallons/acre/day ("gad") and applied it to the 3,740 plantable acres under SWUPA 2206. The Commission found that there was no sufficient basis for using the figure of 3,740 acres instead of the 3,650 acres which the Commission has consistently recognized in its decisions since 2014.<sup>1</sup> The Stipulation also allows Mahi Pono an additional 500 gad over the same 3,740 acres if it meets certain commitments. That is not acceptable as no other diversified agricultural user is allowed to increase its per acre water usage.

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<sup>1</sup> The 2014 Mediated Agreement recognized that the Waihe'e-Hopoi fields consisted of 3,650 cultivated acres. FOF 480.b.

Although Well 7 is not part of the Mahi Pono's permit because it is not a surface water source, it is considered as an alternative source of water for Mahi Pono's use. The Commission also notes that in Conclusions of Law paragraph 144 permittees may be allowed to divert water in excess of their permitted amounts in order to fill their reservoirs. This would make additional water available for Mahi Pono.

Based on the above, Mahi Pono's Motion is hereby denied.

The Commission also takes this opportunity to make a correction to section 193.e. of Exhibit A of the Errata as it affects Mahi Pono so that it reads as follows:

- e. This existing use permit is limited to withdrawal of 3.98125 mgd (3,981,250 gpd) from Waihee Stream and 1.0 mgd (1,000,000 gpd) from South Waiehu Stream.

DATED: Honolulu, Hawaii,                     Sep 22, 2021                    .

*Suzanne Q. Case*

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SUZANNE CASE, Presiding Officer  
Commission on Water Resource  
Management

COMMISSION ON WATER RESOURCE MANAGEMENT

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Integration of Appurtenant Rights and )  
Amendments to the Interim Instream Flow )  
Standards, Na Wai Eha Surface Water )  
Management Areas of Waihee, Waiehu, Iao and )  
Waikapu Streams, Maui )  
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On September 23, 2021, a copy of the foregoing document was posted on the Commission on Water Resource Management's website and served on the parties that have opted for electronic service.

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