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COMMISSION ON WATER  
RESOURCE MANAGEMENT

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WAILUKU COUNTRY ESTATES IRRIGATION COMPANY  
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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Surface Water Use Permit Applications,	)	Case No. CCH-MA 15-01
Integration of Appurtenant Rights and	)	
Amendments to the Interim Instream Flow	)	WAILUKU COUNTRY ESTATES
Standards, Na Wai Eha Surface Water	)	IRRIGATION COMPANY'S AND
Management Areas of Waihee, Waiehu, Iao,	)	WAILUKU COUNTRY ESTATES
and Waikapu Streams, Maui.	)	COMMUNITY ASSOCIATION'S
	)	EXCEPTIONS TO HEARING OFFICER'S
	)	PROPOSED FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW, AND
	)	DECISION & ORDER; EXHIBIT "A";
	)	CERTIFICATE OF SERVICE
	)	
	)	Hearing Officer: Lawrence Miike

**WAILUKU COUNTRY ESTATES IRRIGATION COMPANY'S AND  
WAILUKU COUNTRY ESTATES COMMUNITY ASSOCIATION'S  
EXCEPTIONS TO HEARING OFFICER'S PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION & ORDER**

COME NOW Applicants WAILUKU COUNTRY ESTATES IRRIGATION  
COMPANY ("WCEIC" or "Irrigation Company") and WAILUKU COUNTRY ESTATES  
COMMUNITY ASSOCIATION ("WCECA" or "Association") (collectively, "WCE"), by and  
through their attorneys, and hereby respectfully submit their exceptions to the Hearing Officer's

Proposed Findings of Fact, Conclusions of Law, and Decision and Order filed November 1, 2017 (“HO’s Proposed FOF/COL”) in accordance with Minute Order No. 12 issued by the Hearing Officer on November 1, 2017.

The HO’s Proposed FOF/COL with respect to WCE’s existing and new surface water use permit applications (“SWUPA”) and claims for appurtenant rights are stated in proposed finding of fact (“FOF”) 399, and proposed conclusion of law (“COL”) 278. *See* HO’s Proposed FOF/COL at 146-157 (FOF 399) and 403-415 (COL 278). In addition, the Hearing Officer summarized these findings and conclusions as to the individual lots and common areas at WCE in Table 4, and the calculation of appurtenant rights acreage for the qualified lots at WCE in Table 5. *See* HO’s Proposed FOF/COL at Table 4 (“Summary of WCEIC Appurtenant Rights and Permits”) and Table 5 (“Calculation of Appurtenant Rights Acreage for WCEIC Lots”). Other proposed findings and conclusions also relate generally to WCE as well as other applicants in this proceeding. *See, e.g.*, HO’s Proposed FOF/COL at 56-60 (FOF 312-319 (possible alternative water sources shared by applicants)); 274-280 (COL 55-74 (current irrigation requirements and appurtenant rights)); 281-284 (COL 75-90 (preservation of appurtenant rights)); 284-286 (COL 91-96 (water duty for diversified agriculture)); and 286-291 (COL 97-114 (alternative water sources)).

WCE takes no exception to the Hearing Officer’s substantive proposed findings and conclusions as they apply to the individual lots, common areas and miscellaneous areas at WCE, but notes there appear to be minor typographical and mathematical errors in the data and calculations with respect to the water allocations for some of the 184 individual lots.

Attached as Exhibit “A” is a table showing: 1) the Hearing Officer’s proposed

recommendations for existing and new uses, appurtenant rights, and Category 2 and Category 3 allocations for the 184 lots at WCE (labeled as Column “A”); 2) WCE’s proposed corrected figures and calculations for the lots (labeled as Column “B”); and 3) WCE’s original figures for the acreage of each lot, and original requests for existing and new uses for the acres indicated (labeled as Column “C”).

The yellow highlights in Exhibit “A” compare the Hearing Officer’s calculations with WCE’s calculations for the lots indicated, and indicate apparent mathematical errors in the calculations. The orange highlights in Exhibit “A”, Column B show data that WCE believes should be used in place of the Hearing Officer’s data in Table 4 because the orange highlighted data properly reflects the gallons per day and acreage in WCE’s original requests. Where the mathematical errors and/or use of the incorrect data change the Hearing Officer’s proposed Category 2 and/or Category 3 allocations for any lot, the amount of those changes (in gallons per day) are shown in the “Crosscheck” columns in Exhibit “A”, Column B.

Given the foregoing, WCE requests the Commission on Water Resource Management (“Commission”) to revise Table 4 of the HO’s Proposed FOF/COL to correct these apparent mathematical and data entry errors, all as shown in the attached Exhibit “A”, Column B.

In addition, WCE reserves the right to respond to any exceptions raised by any other party in this matter that relate to any portion of the HO’s Proposed FOF/COL that impact or relate to WCE.

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DATED: Honolulu, Hawai'i, January 5, 2018.

A handwritten signature in black ink, appearing to read "Brian A. Kang", written over a horizontal line.

BRIAN A. KANG  
SUMMER H. KAIawe  
Attorneys for Applicants  
WAILUKU COUNTRY ESTATES IRRIGATION  
COMPANY and WAILUKU COUNTRY  
ESTATES COMMUNITY ASSOCIATION

EXHIBIT "A"

Comparative Analysis of Hearing Officers Recommendations & WCEIC Requests  
re: Appurtenant Rights and Permits (gpd)

Column A HEARING OFFICER'S (HO) RECOMMENDATIONS (figures shown in this section for Lots 1-184 were taken from HO Report)							Column B WCEIC COMPARISON / CALCULATIONS FOR CAT. 2 & 3 (yellow highlights compare HO recommendations & WCEIC calculations) (Items in Crosscheck Cat. columns below show amount of discrepancy) (orange highlighted items replace erroneous HO figures and uses actual WCEIC request)								Column C WCEIC COMPARISON OF ACREAGE, EXISTING & NEW WU/ACR (note: HO figures compared with Exh 2189-WCEIC-265 & 267) (yellow highlights compare HO report and WCEIC actual) (Items in Crosscheck columns below show amount of discrepancy)								
Lot	Acreage	Request (gpd/acreage)		Appt. rights (gpd)	Permit (gpd)		Requested (gpd/acreage) for Existing & New				Calculations for Existing & New				Crosscheck		Actual Requested Acreage	Crosscheck Acreage	Actual Requested Existing WU/ACR	Crosscheck Existing WU/ACR	Actual Requested New WU/ACR	Crosscheck New WU/ACR	
		Existing	New				Cat. 2	Cat. 3	Existing GPD	Existing Acreage	New GPD	New Acreage	Existing Acreage (2500xExisting ACR)	New Acreage (2500xNew ACR)	Cat. 2	Cat. 3							Cat. 2
* Existing and/or new use request(s) greater than 2600 gad.																							
1	2.309	1286/0.75	2500/1.00	0	1286	2500	1,286	0.75	2,500	1.00	1,875	2,500	1,286	2,500	0	0	2.309		1286/0.75		2500/1.00		
2	2.546	695/0.75	2250/1.25	0	695	2250	695	0.75	2,250	1.25	1,875	3,125	695	2,250	0	0	2.546		695/0.75		2250/1.25		
3	2.412	2236/1.0	1600/1.00	0	2236	1600	2,236	1.00	1,600	1.00	2,500	2,500	2,236	1,600	0	0	2.412		2236/1.00		1600/0.50		
4	2.451	18/0.25	3150/1.75	0	18	3150	18	0.25	3,150	1.75	625	4,375	18	3,150	0	0	2.451		18/0.25		3150/1.75		
5	2.193	682/0.50	2250/1.75	0	682	2250	682	0.50	2,250	1.75	1,250	4,375	682	2,250	0	0	2.193		682/0.50		2250/1.75		
6*	2.107	-----	4200/1.50	0	0	3750	0	0.00	4,200	1.50	0	3,750	0	3,750	0	0	2.107		0		4200/1.50		
7	2.611	841/0.50	3600/1.50	0	841	3600	841	0.50	3,600	1.50	1,250	3,750	841	3,600	0	0	2.606	0.005	841/0.50		3600/1.50		
8*	2.092	-----	3950/1.50	0	0	3750	0	0.00	3,950	1.50	0	3,750	0	3,750	0	0	2.092		0		3950/1.50		
9	2.149	1145/0.75	2200/1.00	0	1145	2200	1,145	0.75	2,200	1.00	1,875	2,500	1,145	2,200	0	0	2.149		1145/0.75		2200/1.00		
10	2.504	1876/1.25	1600/1.00	26,000	3476	0	1,876	1.25	1,600	1.00	3,125	2,500	3,476	0	0	0	2.504		1876/1.25		1600/1.00		
11	2.636	2197/1.50	1800/0.75	70,000	3997	0	2,197	1.50	1,800	0.75	3,750	1,875	3,997	0	0	0	2.636		2197/1.50		1800/0.75		
12	2.580	1883/1.25	2500/1.00	0	1883	2500	1,883	1.25	2,500	1.00	3,125	2,500	1,883	2,500	0	0	2.580		1883/1.25		2500/1.00		
13	2.524	3470/1.75	850/0.25	0	3470	850	3,470	1.75	850	0.25	4,375	625	3,470	625	0	(225)	2.524		3470/1.75		850/0.25		
14*	2.580	-----	3000/1.00	0	0	2500	0	0.00	3,000	1.00	0	2,500	0	2,500	0	0	2.580		0		3000/1.00		
15	2.221	2693/1.25	1200/0.50	0	2693	1200	2,693	1.25	1,200	0.50	3,125	1,250	2,693	1,200	0	0	2.221		2693/1.25		1200/0.50		
16	2.537	-----	3000/2.00	0	0	3000	0	0.00	3,000	2.00	0	5,000	0	3,000	0	0	2.537		0		3000/2.00		
17	2.369	26/0.25	2200/1.50	0	26	2200	26	0.25	2,200	1.50	625	3,750	26	2,200	0	0	2.369		26/0.25		2200/1.50		
18	2.203	1205/0.75	1850/1.0	0	1205	1850	1,205	0.75	1,850	1.00	1,875	2,500	1,205	1,850	0	0	2.203		1205/0.75		1850/1.00		
19	3.003	998/1.25	2200/1.25	0	998	2200	998	1.25	2,200	1.25	3,125	3,125	998	2,200	0	0	3.003		998/1.25		2200/1.25		
20*	2.128	3464/1.25	750/0.25	0	3125	625	3,464	1.25	750	0.25	3,125	625	3,125	625	0	0	2.128		3464/1.25		750/0.25		
21	2.128	134/0.25	3200/1.25	0	134	3200	134	0.25	3,200	1.25	625	3,125	134	3,125	0	(75)	2.128		134/0.25		3200/1.25		
22	2.868	-----	4325/2.25	0	0	4325	0	0.00	4,325	2.25	0	5,625	0	4,325	0	0	2.868		0		4325/1.25		
23	2.603	2713/1.25	1400/0.75	0	2713	1400	2,713	1.25	1,400	0.75	3,125	1,875	2,713	1,400	0	0	2.603		2713/1.25		1400/0.75		
24	2.819	2593/1.50	1150/0.75	0	2593	1150	2,593	1.50	1,150	0.75	3,750	1,875	2,593	1,150	0	0	2.819		2593/1.50		1150/0.75		
25	2.532	1764/1.25	1750/0.75	0	1764	1750	1,764	1.25	1,750	0.75	3,125	1,875	1,764	1,750	0	0	2.532		1764/1.25		1750/0.75		
26	2.632	2923/1.25	1200/0.75	0	2923	1200	2,923	1.25	1,200	0.75	3,125	1,875	2,923	1,200	0	0	2.632		2923/1.25		1200/0.75		
27	2.342	285/0.25	2560/1.50	0	285	2560	285	0.25	2,560	1.50	625	3,750	285	2,560	0	0	2.342		285/0.25		2560/1.50		
28	2.252	1744/1.25	1300/0.50	0	1744	1300	1,744	1.25	1,300	0.50	3,125	1,250	1,744	1,250	0	(50)	2.252		1744/1.25		1300/0.50		
29	2.395	1879/1.00	1800/1.00	0	1879	1800	1,879	1.00	1,800	1.00	2,500	2,500	1,879	1,800	0	0	2.395		1879/1.00		1800/1.00		
30	2.360	1083/0.50	2100/1.25	92,000	3183	0	1,083	0.50	2,100	1.25	1,250	3,125	3,183	0	0	0	2.360		1083/0.50		2100/1.25		
31	2.399	2554/1.50	1000/0.50	131,000	3554	0	2,554	1.50	1,000	0.50	3,750	1,250	3,554	0	0	0	2.399		2554/1.50		1000/0.50		
32	2.173	-----	3000/1.75	92,000	3000	0	0	0.00	3,000	1.75	0	4,375	3,000	0	0	0	2.173		0		3000/1.75		
33	2.147	1176/0.50	1850/1.00	0	1176	1850	1,176	0.50	1,850	1.00	1,250	2,500	1,176	1,850	0	0	2.147		1176/0.50		1850/1.00		
34*	2.095	-----	4025/1.50	0	0	3750	0	0.00	4,025	1.50	0	3,750	0	3,750	0	0	2.095		0		4025/1.50		
35	2.783	800/0.50	2500/1.75	0	800	2500	800	0.50	2,500	1.75	1,250	4,375	800	2,500	0	0	2.783		800/0.50		2500/1.75		
36	2.728	1868/1.50	1600/0.75	0	1868	1600	1,868	1.50	1,600	0.75	3,750	1,875	1,868	1,600	0	0	2.728		1868/1.50		1600/0.75		









Column A HEARING OFFICER'S (HO) RECOMMENDATIONS (figures shown in this section for Lots 1-184 were taken from HO Report)							Column B WCEIC COMPARISON / CALCULATIONS FOR CAT. 2 & 3 (yellow highlights compare HO recommendations & WCEIC calculations) (Items in Crosscheck Cat. columns below show amount of discrepancy) (orange highlighted items replace erroneous HO figures and uses actual WCEIC request)										Column C WCEIC COMPARISON OF ACREAGE, EXISTING & NEW WU/ACR (note: HO figures compared with Exh 2189-WCEIC-265 & 267) (yellow highlights compare HO report and WCEIC actual) (Items in Crosscheck columns below show amount of discrepancy)					
Lot	Acreage	Request (gpd/acreage)		Appt. rights (gpd)	Permit (gpd)		Requested (gpd/acreage) for Existing & New				Calculations for Existing & New				Crosscheck		Actual Requested Acreage	Crosscheck Acreage	Actual Requested Existing WU/ACR	Crosscheck Existing WU/ACR	Actual Requested New WU/ACR	Crosscheck New WU/ACR
		Existing	New				Cat. 2	Cat. 3	Existing GPD	Existing Acreage	New GPD	New Acreage	Existing Acreage (2500xExisting ACR)	New Acreage (2500xNew ACR)	Cat. 2	Cat. 3						
* Existing and/or new use request(s) greater than 2600 gad.																						
160*	2.584	3601/1.25	1800/0.75	0	3125	1800	3,601	1.25	1,800	0.75	3,125	1,875	3,125	1,800	0	0	2,584	3601/1.25	1800/0.75			
161*	2.588	3771/1.25	1600/0.75	0	3125	1600	3,771	1.25	1,600	0.75	3,125	1,875	3,125	1,600	0	0	2,588	3771/1.25	1600/0.75			
162*	2.588	3647/1.25	1000/0.75	0	3125	1000	3,647	1.25	1,000	0.75	3,125	1,875	3,125	1,000	0	0	2,588	3647/1.25	1000/0.75			
163	2.882	-----	4750/2.25	0	0	4750	0	0.00	4,750	2.25	0	5,625	0	4,750	0	0	2,882	0	4750/2.25			
164*	2.010	-----	4000/1.50	0	0	3750	0	0.00	4,000	1.50	0	3,750	0	3,750	0	0	2,010	0	4000/1.50			
165*	2.072	-----	4500/1.50	0	0	3750	0	0.00	4,500	1.50	0	3,750	0	3,750	0	0	2,072	0	4500/1.50			
166*	2.122	591/0.25	3600/1.25	0	591	3125	591	0.25	3,600	1.25	625	3,125	591	3,125	0	0	2,122	591/0.25	3600/1.25			
167*	2.132	2370/1.00	1650/0.50	0	2370	1250	2,370	1.00	1,650	0.50	2,500	1,250	2,370	1,250	0	0	2,132	2370/1.00	1650/0.50			
168*	2.073	315/0.25	3950/1.25	0	315	3125	315	0.25	3,950	1.25	625	3,125	315	3,125	0	0	2,073	315/0.25	3950/1.25			
169*	2.02	3731/1.25	1000/0.25	0	3125	625	3,731	1.25	1,000	0.25	3,125	625	3,125	625	0	0	2,020	3731/1.25	1000/0.25			
170	2.783	-----	4700/2.25	179,000	4700	0	0	0.00	4,700	2.25	0	5,625	4,700	0	0	0	2,783	0	4700/2.25			
171*	2.046	6237/1.50	-----	104,000	3750	0	6,237	1.50	0	0	3,750	0	3,750	0	0	0	2,046	6237/1.50	0			
172*	2.074	-----	3900/1.50	65,000	3750	0	0	0.00	3,900	1.50	0	3,750	3,750	0	0	0	2,074	0	3900/1.50			
173	2.253	1932/1.00	2000/1.00	0	1932	2000	1,932	1.00	2,000	1.00	2,500	2,500	1,932	2,000	0	0	2,253	1932/1.00	2000/1.00			
174*	2.087	4248/1.25	800/0.25	0	3125	625	4,248	1.25	800	0.25	3,125	625	3,125	625	0	0	2,087	4248/1.25	800/0.25			
175*	2.015	-----	4500/1.50	0	0	3750	0	0.00	4,500	1.50	0	3,750	0	3,750	0	0	2,015	0	4500/1.50			
176*	2.118	344/0.25	3500/1.25	0	344	3125	344	0.25	3,500	1.25	625	3,125	344	3,125	0	0	2,118	344/0.25	3500/1.25			
177	2.226	-----	4150/1.75	0	0	4150	0	0.00	4,150	1.75	0	4,375	0	4,150	0	0	2,226	0	4150/1.75			
178*	2.460	1017/0.25	3750/1.75	0	625	3750	1,017	0.25	3,750	1.75	625	4,375	625	3,750	0	0	2,460	1017/0.25	3750/1.75			
179	2.253	-----	4200/1.75	0	0	4200	0	0.00	4,200	1.75	0	4,375	0	4,200	0	0	2,253	0	4200/1.75			
180	2.338	-----	4450/1.75	0	0	4450	0	0.00	4,450	1.75	0	4,375	0	4,375	0	(75)	2,338	0	4450/1.75			
181*	2.180	1112/0.50	3500/1.00	0	1112	2500	1,112	0.50	3,500	1.00	1,250	2,500	1,112	2,500	0	0	2,180	1112/0.50	3500/1.00			
182*	2.154	3561/1.00	1150/0.50	0	2500	1150	3,561	1.00	1,150	0.50	2,500	1,250	2,500	1,150	0	0	2,154	3561/1.00	1150/0.50			
183	2.441	-----	4700/2.00	0	0	4700	0	0.00	4,700	2.00	0	5,000	0	4,700	0	0	2,441	0	4700/2.00			
184*	2.118	1886/0.75	2500/0.75	1,000	1886	1875	1,886	0.75	2,500	0.75	1,875	1,875	1,886	1,875	0	0	2,118	1886/0.75	2500/0.75			
Actual Total from this spreadsheet:				4,014,000	307,440	376,310																
Total Shown on Hearing Officer's Report:				4,014,000	307,440	(372,560)																
Discrepancy Difference:						3,750																
Recalculated Total for Cat. 2 & 3:													313,666	366,610	6,226	(9,700)						

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 5, 2018, a copy of the foregoing document was served on the following via electronic service. For those parties that have not agreed to electronic service, those parties will be responsible to review filings on the Commission website or at the county office once the deadline for filings has passed.

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