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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

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

CASE NO. CCH-MA 15-01

COUNTY OF MAUI, DEPARTMENT OF
WATER SUPPLY'S OPENING BRIEF;
DECLARATION OF DAVID TAYLOR;
DECLARATION OF MICHELE
MCLEAN; CERTIFICATE OF SERVICE

COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY'S OPENING BRIEF

Comes now, COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY, ("MDWS"),
by and through its attorneys, PATRICK K. WONG, Corporation Counsel, and CALEB P.
ROWE and KRISTIN K. TARNSTROM, Deputies Corporation Counsel, and hereby submits its
Opening Brief pursuant to the Minute Order issued in this contested case.

I. INTRODUCTION

This opening statement and opening brief, the Declarations of David Taylor, Michele McLean, and Craig Lekven, DWS's witness list, and DWS's exhibit list and Exhibits "2178-County-1" through "2178-County-16" are submitted on behalf of the County of Maui, Department of Water Supply ("MDWS").

DWS will be represented at this remand hearing by David Taylor, its Director; as well as present evidence from Michele McLean, Deputy Director of the Department of Planning; and Craig Lekven, P.E., of Brown and Caldwell.

a. Procedural History

On March 13, 2008, the Commission on Water Resources Management ("CWRM") designated Iao, Waikapu, Waihee and Waiehu streams ("Na Wai Eha") as a Surface Water Management Area, thus requiring parties seeking to divert surface water from the streams to submit Surface Water Use Permit Applications ("SWUPA") to CWRM pursuant to Hawaii Revised Statutes ("HRS") §§ 174C-48 through 174C-51. CWRM subsequently set a deadline of April 30, 2009, for existing users to submit SWUPAs related to existing uses. The County of Maui Department of Water Supply ("MDWS") subsequently filed an existing use permit to divert 1.784 million gallons per day ("MGD") and a new use permit to divert 1.416 MGD from the Iao Stream on March 31, 2009. Exhibits "2178-County-1"; "2178-County-2." In total, MDWS requests amount to 3.2 MGD. On April 23, 2009, CWRM sent a letter to MDWS acknowledging receipt of the SWUPAs. CWRM subsequently authorized a contested case hearing and designation of a hearings officer on January 28, 2015. Exhibit "2178-County-3."

b. The Central Maui System

MDWS is the sole municipal water source for the County of Maui and consists of three major water systems for the island of Maui. Declaration of David Taylor (“Taylor Dec.”) ¶¶ 5, 6. The largest water system in the County is the Central Maui System, which services the communities of Kuau, Paia, Sprecklesville, Kahului, Puunene, Kihei, Wailea, Makena, Waikapu, Wailuku, Waiehi and Waihee. Taylor Dec. ¶ 7. The population being served by the Central Maui System is projected to be approximately 101,525 people as of 2015.¹ Declaration of Michele McLean (“McLean Dec.”) ¶ 4; Exhibit “2178-County-4,” Table 1-2. This population is expected to grow by 24,264 through 2030, for a total of approximately 125,789 people.² McLean Dec. ¶ 5; Exhibit “2178-County-4,” Table 1-2.

The Central Maui System receives water from a variety of sources, including the Kepaniwai Well, Iao Tunnel, Iao Water Treatment Plant, Mokuahau Wells 1 and 2, Shaft 33, Waiehu Heights Wells 1 and 2, Waihee Wells 1, 2, and 3, North Waihee Wells 1 and 2, Kanoa Wells 1 and 2, and Maui Lani Wells 5, 6, and 7. Taylor Dec. ¶ 8; Exhibit “2178-County-11,” Table 6. Currently, the Central Maui System’s total peak available source is 25.696 MGD, with an average daily use of 20.5 MGD. Taylor Dec. ¶ 13; Exhibit “2178-County-11,” Table 6, 4. By 2030, the growth in population for Central Maui is projected to increase the demands of the Central Maui System by between 7.7 MGD and 19.4 MGD, with a baseline of 13.6 MGD being used for water planning purposes. Taylor Dec. ¶ 14; Exhibit “2178-County-11,” Table 4.

¹ This number reflects the number of people projected for 2015 in the Maui General Plan adopted on December 28, 2012. It includes the community plan areas for Kihei-Makena, Wailuku-Kahului and Paia-Haiku. This number is slightly higher than the actual number of people served by the Central Maui System since Haiku is included in the Community Plan area in the General Plan but is not part of the Central Maui Area.

² See n. 1.

Water from the Iao Stream is diverted by Wailuku Water Company (“WWC”) into its Iao-Waikapu Ditch System and then delivered to DWS’ Iao Water Treatment Plant (“Iao WTP”), where it is treated and then distributed throughout the Central Maui System. Taylor Dec. ¶¶ 15, 16. This water is delivered to DWS by WWC³ pursuant to an Agreement Concerning Withdrawal from the Iao/Waikapu Ditch, dated June 9, 2004, and allows MDWS to withdraw up to 3.2 MGD. *Id.* ¶¶ 16, 17; Exhibit “2178-County-5.” This agreement for delivery of 3.2 MGD was continued through February 2018 by way of amendments dated November 29, 2007, February 27, 2008, and January 30 2014. Taylor Dec. ¶¶ 18, 19, 21; Exhibits “2178-County-6” through “2178-County-8.”

II. APPLICABLE LAW

The conditions for obtaining a permit for use of surface water within a designated water management area is set forth by HRS § 174C-49(a) as follows:

To obtain a permit pursuant to this part, the applicant shall establish that the proposed use of water:

- (1) Can be accommodated with the available water source;
- (2) Is a reasonable-beneficial use as defined in section 174C-3;
- (3) Will not interfere with any existing legal use of water;
- (4) Is consistent with the public interest;
- (5) Is consistent with state and county general plans and land use designations;
- (6) Is consistent with county land use plans and policies; and
- (7) Will not interfere with the rights of the department of Hawaiian home lands as provided in section 221 of the Hawaiian Homes Commission Act .

HRS § 174C-49(a). A use is “reasonable and beneficial” where it is used “in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with state and county land use plans and the public interest.”

³ Then Wailuku Agribusiness, Co.

III. DISCUSSION

a. HRS § 174C-49(a)(1) and (3): IIFS Proceedings

Prior to the present contested case hearing, MDWS participated both in the initial and the remanded contested case hearings setting the Interim Instream Flow Standards (“IIFS”) for the Na Wai Eha streams. In CWRM’s June 10, 2010 *Findings of Fact, Conclusions of Law, and Decision and Order in Iao Ground Water Management Area High-Level Source Water-Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihee River and Waiehu, Iao & Waikapu Streams Contested Case Hearing, CCH-MA06-01*, CWRM found that DWS’ use of 3.2 MGD of surface water from the Iao Stream was a reasonable use. Exhibit “2178-County-9,” p. 36 ¶¶238-239; p. 121, ¶ 62; p. 172, ¶ 232. Appeals were filed by Maui Tomorrow, Hui o Na Wai Eha and the Office of Hawaiian affairs, and the Hawaii Supreme Court remanded the case back to CWRM for further proceedings. In Re Iao Ground Water Management Area High-Level Source Water-Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihee River and Waiehu, Iao & Waikapu Streams Contested Case Hearing, 128 Haw. 228 (2012). Following briefing, the parties entered into a stipulated findings of fact and conclusions of law, which were adopted by CWRM on April 17, 2014. Exhibit “2178-County-10.” Again, MDWS’ use of 3.2 MGD was determined to be reasonable. *Id.* at p. 18 ¶¶68 – 71; p. 24 ¶ 18.

While these findings do not automatically mandate acceptance of MDWS’s SWUPAs, they do demonstrate that the MDWS’s SWUPAs meet many of the requirement of HRS §174C-49(a). At the very least, CWRM’s findings show that MDWS’ requests for an existing and a new use SWUPA “can be accommodated with the available water source,” and “will not interfere with any existing legal use of water,” as required by HRS §§ 174C-49(a)(1) and (3).

Likewise, they demonstrate that the MDWS's SWUPAs have been examined "in relation to other public and private uses and the particular water source in question" as required by the Supreme Court. In re Water Use Permit Applications, 94 Haw. 97, 160-161 (2000) ("Waiahole I").

b. HRS § 174C-49(a)(2): Reasonable and Beneficial Use

The Hawaii Supreme Court, in interpreting the "reasonable and beneficial use" requirement of HRS §174C-49(a)(2), has stated that

"The Code's "reasonable-beneficial use" standard allows use only 'in such a quantity as is *necessary* for economic and efficient utilization.' HRS § 174C-3. Furthermore, besides advocating the social and economic utility of their proposed uses, permit applicants must also demonstrate the absence of practicable mitigating measures, including the use of alternative water sources. Such a requirement is intrinsic to the public trust, the statutory instream use protection scheme, and the definition of "reasonable-beneficial" use, and is an essential part of any balancing between competing interests.

Waiahole I, at 161-162.

i. Economic and Efficient Utilization

The amount of water diverted by MDWS is directly related to the demands of the users within the Central Maui system. Taylor Dec. ¶ 13. The population being served by the Central Maui System is projected to be approximately 101,525 people as of 2015. McLean Dec. ¶ 4; Exhibit "2178-County-4," Table 1-2. This population is expected to grow by 24,264 through 2030, for a total of approximately 125,789 people. McLean Dec. ¶ 5; Exhibit "2178-County-4," Table 1-2. This is projected to increase the demands of the Central Maui Service area by between 7.7 MGD and 19.4 MGD, with 13.6 a baseline of MGD being used for water planning purposes. Taylor Dec. ¶ 14; Exhibit "2178-County-11," Table 4. While the current system meets the needs of the Central Maui System, MDWS will need to develop new sources of water to meet future needs. Taylor Dec. ¶ 14; "2178-County-12," p. 6.

MDWS water is used in a variety of ways that benefit the entire population of the Central Maui Service Area. A breakdown of water used per various water use categories within the Central Maui Service Area for MDWS's existing use permit can be seen in the chart below:

Water Use Category	# Active Meters per 4/30/08	AVG Monthly Use per 1000 gal in 4/30/08	AVG GPD/Water Use Category	AVG GPD/Meter	Water Use/Total Use	Requested Amount GPD
AGRICULTURE	19	6,410.01	210,164.26	11,061.28	1.051%	18,754.44
GOVERNMENT	203	55,033.67	1,804,382.62	8,888.58	9.026%	161,017.76
COMMERCIAL	874	72,327.85	2,371,404.92	2,713.28	11.862%	211,617.15
GOLF PRIVATE	2	14,562.5	477.46	238.73	0.002%	42.61
HOTEL	71	57,992.66	1,901,398.77	26,780.26	9.511%	169,675.20
INDUSTRIAL	149	24,392.97	799,769.34	5,367.58	4.001%	71,369.05
IRRIGATION PRIVATE	42	5,815.25	190,663.85	4,539.62	0.954%	17,014.28
MULTI FAMILY	512	101,409.28	3,324,894.34	6,493.93	16.631%	296,703.73
MULTI FAMILY LOW RISE	9	5,933.82	194,551.48	21,616.83	0.973%	17,361.20
RELIGIOUS	84	3,322.02	108,918.77	1,296.65	0.545%	9,719.59
SCHOOL PRIVATE	1	107.195	3,514.59	3,514.59	0.018%	313.63
SINGLE FAMILY	16,830	275,727.31	9,040,239.75	537.15	45.220%	806,724.23
UNKNOWN	19	1,260.22	41,318.52	2,174.66	0.207%	3,687.14
TOTAL	18,815	609,746.81	19,991,698.69		100.000%	1,784,000.00

Taylor Dec. ¶ 26; Exhibit "2178-County-1." In addition, a breakdown of the water used per various water use categories within the Central Maui Service Areas for the MDWS' new use permit can be seen below.

Water Use Category	# Active meters per 12/31/08	AVG Use GPD per 12/31/08	AVG GPD/ service	# Inactive meters per 12/31/08	AVG Monthly Inferred Use per 12/31/08	AVG GPD/ service	Class Use /Total use in %	Requested amount GPD
AGRICULTURE	19	212,515	11,185				1.07%	15,093.50
GOVERNMENT	208	1,688,281	8,117	1	48,000	48,000	871.00%	123,316.28
COMMERCIAL	881	2,235,767	2,538	17	86,222	5,072	1165.00%	164,915.15
GOLF PRIVATE	2	357	179				0.00%	25.36
HOTEL	72	1,680,498	23,340				843.00%	1,119,354.39
INDUSTRIAL	149	720,981	4,839	3	13,700	4,567	368.00%	52,179.41
IRRIGATION PRIVATE	46	201,962	4,390	7	57,300	8,186	130.00%	18,413.62
MULTI FAMILY	512	3,032,910	5,924	8	114,411	14,301	1579.00%	223,532.89
MULTI FAMILY LOW RISE	9	175,340	19,482				88.00%	12,453.21
RELIGIOUS	84	100,826	1,200				51.00%	7,160.99
SCHOOL PRIVATE	1	3,637	3,637				2.00%	258.31
SINGLE FAMILY	17005	9,083,415	534	362	319,759	883	4716.00%	667,843.75
UNKNOWN	15	37,659	2,511	9	123,600	13,733	81.00%	11,453.13
TOTAL:	19,003	19,174,148		407	762,992		100.00%	1,416,000.00

Taylor Dec. ¶26; Exhibit “2178-County-2.”⁴

In addition, MDWS has made strides to increase efficiency by pursuing conservation. Taylor Dec. ¶ 27; Exhibit “2178-County-13.” These efforts include leak detection and repair, preventative and predictive maintenance, back-up sources, watershed and resource protection,⁵ low-flow fixture distribution,⁶ water audits, direct fixture retrofits, water conservation pricing, regulations related to water conservation, and public education and outreach activities. Id.

ii. Alternative Sources

MDWS has commissioned studies to look at alternative sources of water for use in the Central Maui system both currently and in order to fulfill future demands. In evaluating alternative sources, five final candidate strategies have been identified that would allow MDWS to meet current and future needs for the Central Maui system, including northward basal groundwater development, eastward basal groundwater development, desalination of brackish groundwater, maximization of recycled water use/conservation, and expanded use of Na Wai Eha Surface Water. Taylor Dec. ¶ 28; Exhibits “2178-County-11;” “2178-County-12.” Brown and Caldwell were commissioned by MDWS to undertake an engineering and cost analysis of these five strategies, and determined that, with the exception to increased use of Na Wai Eha

⁴ Please note that many of the percentages on this table contain typographical errors that existed on the SWUPAs. Under the column “Class use/Total Use in %,” all percentages after the first row for Agriculture have a misplaced decimal that should be moved two digits to the left (or, put another way, divided by 100). Likewise, under “requested amount GDP” column, the number for the “hotel” row has a misplaced decimal that should be moved one digit to the left (or, put another way, divided by 10) for a total of 111,935.43.

⁵ DWS has provided financial support to seven watershed partnerships on Maui and Molokai to ensure upland watershed are full functioning so fresh water resources can be utilized enjoyed by the people of Hawaii in perpetuity. From 1997 through 2014, DWS has provided \$17.3 million in funding. Exhibit “2178-County-13,” Table 1.

⁶ For the Central Maui Service Area, MDWS has given away 23,000 showerheads, 24,768 bath faucet aerators, 15, 687 kitchen faucet aerators, 14,251 garden hose nozzles and 2,478 toilet tank bags. Exhibit “2178-County-13,” Table 2.

surface water, these alternatives were either not viable, not cost effective, or unable to meet MDWS' source capacity needs in the immediate future. Taylor Dec. ¶ 29; Exhibit "2178-County-11." Because expanded use of Na Wai Eha Surface water would merely require a greater allotment of stream water than what is currently being asked for, it is not really an alternative to MDWS's new or existing use permits and will not be discussed herein.

1. Northward Basal Ground Water Development

The northward basal groundwater development strategy consists of adding new wells in the north side of the Waihee aquifer and in the Kahakuloa aquifer. Exhibits "2178-County-1;" "2178-County-12." This strategy is not desirable, however, because CWRM has asked MDWS to limit its withdrawals from the Waihee Aquifer and the USGS has stated that indicated that new wells in the Kahakuloa aquifer may not be as productive or cost-effective as hoped. Taylor Dec. ¶ 30; Exhibits "2178-County-9," p. 59 ¶ 370; "2178-County-11," p. 6; "2178-County-12," pp. 30-32.

2. Eastward Basal Ground Water Development

Development of eastward basal ground water is limited by both monetary and legal constraints. Exhibits "2178-County-9," p. 59 ¶¶ 372-373; "2178-County-11," p. 6; "2178-County-12," pp. 33-42. Cost-wise, eastward basal ground water development would require not only high capital costs associated with transmission improvements, but also would require high life-time costs for electricity related to pumping due to the high elevation of the proposed wells, the most cost-effective of which would be at 1,000 feet above sea level. "2178-County-11," p. 6; "2178-County-12," pp. 30-32. In all, the estimated life-cycle costs for this strategy for meeting future demands would be \$604 million, and the increased life-cycle costs for replacing MDWS's current allocation would be between \$230 million and \$242 million. Exhibit "2178-County-11,"

tables 12, 14. Legally, the ability of MDWS to utilize eastward basal groundwater is restricted by the consent decree entered between MDWS and the Plaintiffs in Coalition to Protect East Maui Water Resources v. Board of Water Supply, County of Maui, Civ. No. 03-1-0008(3). Taylor Dec. ¶31; Exhibits “2178-County-9,” p. 59 ¶¶ 372 -373. Plaintiffs in that case continue to use the Consent Decree to prevent MDWS from building any wells in the proposed region, recently bringing an action to prevent MDWS from even developing test wells. Taylor Dec. ¶31.

3. Desalination

Desalination of brackish groundwater is also not a viable alternative source of water for current or future needs because of the high energy costs associated with the desalination process. Exhibits “2178-County-11,” pp. 6-7; “2178-County-12,” pp. 67-68. Additionally, Maui’s dependence on imported energy and the uncertainty associated with future energy prices adds a significant implementation risk to this strategy. Exhibits “2178-County-11,” pp. 6-7; “2178-County-12,” pp. 67-68. Accordingly, use of desalination to meet future needs has an expected life cycle cost of \$598 million, and the increased life-cycle costs for replacing MDWS’s current allocation would be between \$230 million and \$242 million. Exhibit “2178-County-11,” tables 12, 14.

4. Maximization of Recycled Water and Conservation

Use of recycled water and additional conservation would not be sufficient to either replace existing water usage or meet the future needs of MDWS. Exhibits “2178-County-11,” pp. 6-7; “2178-County-12,” pp. 69-74. This is primarily because recycled water can only be used for non-potable uses such as agriculture and dust control. Exhibit “2178-County-11,” table 7. Additionally, increased use of recycled water would require significant capital expenses, including the expansion of existing waste water treatment plants, construction of storage tanks,

and extended transmission lines. Exhibit “2178-County-11,” table 10. Finally, the amount of water that could conceivably be displaced by use of treated water is extremely limited, and is estimated at a maximum of 1.601MGD and an average of 1.01 MGD. Exhibit “2178-County-11,” table 11. Accordingly, use of recycled water to meet future needs has an expected life cycle cost of \$578 million, and the increased life-cycle costs for replacing MDWS’s current allocation would be between \$230 million and \$242 million. Exhibits “2178-County-11,” tables 12, 14.

As stated above, MDWS has already undertaken significant water conservation efforts. Increased measures, however, would be reliant on customer behavior changes and it is impossible for MDWS to estimate their effectiveness or determine their use by new users. Taylor Dec. ¶ 27; Exhibits “2178-County-11,” p. 11. If the behavior changes are not permanent, MDWS could end up being short of water. *Id.* Therefore, some conservation savings can be used to replace existing and future needs, but those are difficult for MDWS to quantify with any sort of certainty or permanence. *Id.*

c. HRS § 174C-49(a)(4): Consistency with the Public Interest

HRS §174C-49(a)(4) requires that a proposed use be in the public interest. The State Water Code specifically states certain categories of use to be in the public interest as follows:

Adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for **municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.**

Hawaii Revised Statutes (“HRS”) § 174C-2(c)(emphasis added). Furthermore, MDWS does not make any profit in providing water to the public, as the amount charged to customers is directly

related to the costs to DWS to supply the water. Taylor Dec. ¶ 5. These costs include planning, design, construction, operation and maintenance costs. Id.

As stated above, MDWS, as the municipal water supplier for the County of Maui, serves 101,525, and provides water for a variety of purposes as will be discussed below. As will be discussed in the next section, the heaviest use amongst these is domestic household use, including drinking water. Dating back to the Kuleana Act, in which the Kingdom of Hawaii guaranteed that “the people shall have a right to drinking water and running water,” the state of Hawaii recognizes “domestic water use as a purpose of the state water resources trust.” Waiahole I, 94 Hawaii at 137.

d. HRS § 174C-49(a)(5) and (6): Compliance with Land Use Regulations

The requirements set forth in HRS § 174C-49(a)(5) and (6) requiring consistency with state and county general plans and land use designations and with county land use plans and policies respectively, are difficult to address for a municipal user such as MDWS, who does not use water in relation to a specific parcel of land, but rather delivers it to others for use on their land. Taylor Dec. ¶ 13. Accordingly, current land use regulations cannot be identified for all existing parcels that receive water from MDWS. However, building permits for new homes and businesses require underlying appropriate zoning and state land use district for approval, assuring that the ultimate use is consistent. McLean Dec. ¶ 7.

e. HRS § 174C-49(a)(7)

HRS § 174C-49(a)(7) requires a showing that a proposed use of water “will not interfere with the rights of the department of Hawaiian home lands.” As the provider of domestic water to the Hawaiian Homelands at Paukukalo and Waiehu Kou, the needs of the Department of Hawaiian Homelands are incorporated into the MDWS’ supply commitments, and the water

allocated to them is included in MDWS' SWUPAs. Taylor Dec. ¶ 32; Exhibit "2178-County-14."

f. Additional Water

The recent news of HC&S impending closure will have a dramatic effect on the availability of water from the Na Wai Eha system. Exhibit "2178-County-15." As stated in MDWS' new use application, any additional water that may be taken from WWC's Iao/Waikapu ditch would "allow for less reliance on the South Waihee aquifer and increased [M]DWS compliance with system standards." Exhibit "2178-County-2." Furthermore, MDWS recently put out to bid a request for improvements to the Iao Treatment Plant in order to increase production capacity to accommodate the full amount deemed reasonable in CCH-MA06-01M. Taylor Dec. ¶¶ 34, 35; "2178-County-16." MDWS could easily put out another bid for additional expansion of the Iao Treatment Plant, or for the development of a new treatment plant in the near vicinity to further increase MDWS' capacity to treat Iao Stream surface water. *Id.* Accordingly, MDWS requests that CWRM consider increasing MDWS' allocation above the 1.416 MGD requested in their new use permit should additional water be available due to any changed needs of HC&S for water from Iao Stream. Further, MDWS reserves the right to request additional water from this source at a later date.

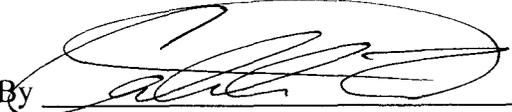
IV. CONCLUSION

Both the existing use and new use SWUPAs submitted by MDWS fulfill all of the requirements of HRS § 174C-49(a). Furthermore, this Commission's decision in CCH-MA06-01M was issued upon the assumption that MDWS would get the full 3.2 MGD included in MDWS' SWUPAs. Accordingly, MDWS asks this Commission to rule consistently with CCH-

MA06-01M, and grant MDWS' existing use and new use SWUPAs for a total allotment of 3.2 MGD.

DATED: Wailuku, Maui, Hawaii, February 5, 2016.

PATRICK K. WONG
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DEPARTMENT OF WATER SUPPLY

By 

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and Waikapu Streams, Maui

CASE NO. CCH-MA 15-01

DECLARATION OF DAVID TAYLOR

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I, DAVID TAYLOR, do hereby declare:

1. I am the duly appointed Director of the Department of Water Supply of the County of Maui (“DWS”). I have served in this capacity since January 2, 2011. Prior to my appointment, I served as Wastewater Division Chief for the Department of Environmental Management of the County of Maui (“DEM”), First Assistant to the Managing Director of the County of Maui, and Civil Engineer IV for the Department of Public Works of the County of Maui.

2. I am a registered professional civil engineer, duly licensed in the State of Hawaii.

3. I have personal knowledge of the facts stated in this Declaration, except as to matters stated on information and belief, and as to those matters, I believe them to be true. If called upon, I could testify competently thereto.

4. This written testimony in the form of a declaration is submitted on behalf of the County of Maui, Department of Water Supply (“MDWS”).

5. MDWS is the only municipal water supplier for the County of Maui and has a mission and duty to provide adequate water supply for the present and future population of the County of Maui. The cost of water delivered by MDWS is directly related to the costs of MDWS to supply water, including planning, design, construction, operation and maintenance costs.

6. MDWS has three major water systems serving the island of Maui. The three systems are the Central Maui System, the Upcountry System, and the Lahaina System.

7. MDWS’s Central Maui System is the largest of the three systems, and serves the communities of Kuau, Paia, Sprecklesville, Kahului, Puunene, Kihei, Wailea, Makena, Waikapu, Wailuku, Waiehu and Waihee.

8. Water from the Central Maui System is derived from multiple sources, including the Kepaniwai Well, Iao Tunnel, Iao Water Treatment Plant, Mokuhaul Wells 1 and 2, Shaft 33, Waiehu Heights Wells 1 and 2, Waihee Wells 1, 2, and 3, North Waihee Wells 1 and 2, Kanoa Wells 1 and 2, and Maui Lani Wells 5, 6, and 7.

9. On March 31, 2009, MDWS submitted both a Surface Water Use Permit Application “SWUPA”) for an existing use of 1.784 million gallons per day (“MGD”) and a

SWUPA for new use for 1.416 MGD. The Commission on Water Resources Management (“CWRM”) acknowledged receipt of MDWS’ two SWUPAs on April 23, 2009.

10. Attached to MDWS’ Exhibit List as Exhibit “2178-County-1” is a true and correct copy of MDWS’s existing use SWUPA filed March 31, 2009.

11. Attached to MDWS’ Exhibit List as Exhibit “2178-County-2” is a true and correct copy of MDWS’s new use SWUPA filed March 31, 2009.

12. Attached to MDWS’ Exhibit List as Exhibit “2178-County-3” is a true and correct copy of a letter dated April 23, 2009 sent by CWRM to MDWS’s acknowledging receipt of MDWS’ two SWUPAs.

13. The County’s total peak available source for the Central Maui System is 25.696 MGD, with an average daily use of 20.5 MGD. The amount of water used by MDWS is directly related to the amount of demand by customers in the Central Maui System service area, who use the water on their own properties in a variety of ways.

14. The anticipated demand for water for areas served by the Central Maui System is expected to increase with projected population growth to between 28.2 MGD and 39.9 MGD, with a baseline of 34.1 MGD used for planning purposes. This amounts to an increase in demand of between 7.7 MGD and 19.4 MGD with a baseline of 13.6 MGD. While MDWS currently has enough water to service the Central Maui System, it will need to develop new courses in order to accommodate this need.

15. Water diverted from the Iao Stream is an important component of MDWS’ integrated system for Central Maui. Water from the Iao Stream is delivered to MDWS’ Iao Water Treatment Plant where it is treated and then distributed throughout the Central Maui System.

16. Currently, MDWS gets water from Iao Stream through the Iao-Waikapu Ditch System owned and operated by Wailuku Water Company (“WWC”). This water is delivered pursuant to a series of agreements between MDWS and WWC.

17. The initial agreement between MDWS and WWC (then Wailuku Agribusiness Co.) was finalized on June 9, 2004 and allows MDWS to withdraw up to 3.2 MGD. Attached to MDWS’ Exhibit List as Exhibit “2178-County-5” is a true and correct copy of the *Agreement Concerning Withdrawal From the Iao/Waikapu Ditch* signed between MDWS and Maui Agribusiness Co. on June 9, 2004.

18. An *Amendment to Agreement Concerning Withdrawal From the Iao/Waikapu Ditch* extending the term of the agreement through February 29, 2008 was signed on November 29, 2007. Attached to MDWS’ Exhibit List as Exhibit “2178-County-6” is a true and correct copy of the *Amendment to Agreement Concerning Withdrawal From the Iao/Waikapu Ditch* signed between MDWS and Maui Agribusiness Co. on November 29, 2007.

19. A *Second Amendment to Agreement Concerning Withdrawal From the Iao/Waikapu Ditch* extending the term of the agreement through March 1, 2011 was signed on February 27, 2008. Attached to MDWS’ Exhibit List as Exhibit “2178-County-6” is a true and correct copy of the *Second Amendment to Agreement Concerning Withdrawal From the Iao/Waikapu Ditch* signed between MDWS and Maui Agribusiness Co. on February 27, 2008.

20. Between March 1, 2011 and January 30, 2014, MDWS and WWC verbally agreed to continue the terms of the agreement.

21. A *Third Amendment to Agreement Concerning Withdrawal From the Iao/Waikapu Ditch* extending the term of the agreement through February 28, 2018 was signed on January 30, 2014. Attached to MDWS’ Exhibit List as Exhibit “2178-County-6” is a true and

correct copy of the *Third Amendment to Agreement Concerning Withdrawal From the Iao/Waikapu Ditch* signed between MDWS and Maui Agribusiness Co. on January 30, 2014.

22. MDWS participated in a contested case hearing regarding interim instream flow standards (IIFS) for Waihee, Waikapu, Waiehu and Iao Streams (“Na Wai Eha”) before CWRM in CCH-MA06-01. CWRM issued its findings of fact, conclusions of law, and decision and order on June 10, 2010.

23. Attached to MDWS’ Exhibit List as Exhibit “2178-County-9” is a true and correct copy of excerpts concerning MDWS of CWRM’s *Findings of Fact, Conclusions of Law, and Decision and Order* in CCH-MA06-01 dated June 10, 2010.

24. MDWS also participated in the remanded contested case hearing for CCH-MA06-01 before CWRM. CWRM issued an *Order Adopting (1) Hearing Officer’s Recommendation on the Mediated Agreement Between the Parties and (2) Stipulation Re Mediator’s Report of Joint Proposed Findings of Fact, Conclusions of Law and Decision and Order* on April 17, 2014.

25. Attached to MDWS’ Exhibit List as Exhibit “2178-County-10” is a true and correct copy of excerpts concerning MDWS of CWRM’s *Order Adopting (1) Hearing Officer’s Recommendation on the Mediated Agreement Between the Parties and (2) Stipulation Re Mediator’s Report of Joint Proposed Findings of Fact, Conclusions of Law and Decision and Order* in CCH-MA06-01 dated April 17, 2014.

26. Water delivered by MDWS is used by customers in a variety of ways, including domestic, commercial, hotel and agricultural. The charts on pages 7 and 8 of MDWS’ Opening Brief is taken from MDWS’ SWUPAs, and was determined by applying information on the number of meters per use type and the average water used by those types of meters per day, and applying it to the amount of water requested in the SWUPAs.

27. MDWS has undertaken several efforts to increase efficiency and reduce wastes both on the supply side and on the demand side. These efforts are set forth in MDWS Water Conservation Efforts Report, a true and correct copy of which is attached to MDWS' Exhibit List as "2178-County-13." The progress of many of these efforts, however, is unknowable as many rely on human behavior, and thus any effect they might have on water demand is speculative at best.

28. On November 16, 2010, the Maui County Council adopted the Maui County Water Use Development Plan Central DWS District Plan Update ("WUDP"). The WUDP identified five potential strategies to help MDWS meet future water demands for the Central Maui System, including northward basal groundwater development, eastward basal groundwater development, desalination of brackish groundwater, maximization of recycled water use/conservation, and expanded use of Na Wai Eha Surface Water. These candidate strategies were investigated based on costs as well as other impediments. A true and correct copy of excerpts from the Maui County Water Use Development Plan Central DWS District Plan Update are attached to MDWS's Exhibit List as Exhibit "2178-County-12."

29. In preparation for CCH-MA06-01, MDWS hired Brown and Caldwell to perform an engineering and cost analysis of alternatives to using Na Wai Eha surface water to meet current and future needs. Attached hereto as Exhibit "2178-County-11" is a true and correct copy of the report they issued dated December 27, 2013.

30. One of those strategies, calling for Northward Basal Ground Water development, is not desirable because, amongst other reasons, CWRM has already verbally asked MDWS to limit withdrawals from the Waihee Aquifer, and thus is unlikely to approve of additional extractions.

31. Since 2003, MDWS has been prevented from developing ground water sources in east Maui for use in the Central Maui System by litigation in Coalition to Protect East Maui Water Resources v. Board of Water Supply, County of Maui, Civ. No. 03-1-0008(3). That litigation ended in a consent decree whereby MDWS agreed to consult with Plaintiffs on the development of ground water in the region. Plaintiffs, however, have used the consent decree to completely block any attempts to develop ground water sources in east Maui, most recently bringing a court action against MDWS to prevent the development of test wells.

32. MDWS also acts as the domestic water source for the Department of Hawaiian Homelands (“DHHL”) at Paukukalo and Waiehu Kou by way of agreement, as described in the Department of Hawaiian Homelands Regional Plan for Paukukalo and Waiehu Koa. Excerpts of this regional plan, as available online from DHHL at <http://dhhl.hawaii.gov/wp-content/uploads/2011/06/Waiehu-Kou-Paukukalo-Regional-Plan.pdf>, are attached to MDWS’ Exhibit List as Exhibit “2178-County-14.”

33. On January 6, 2016, Alexander and Baldwin announced the closure of HC&S at the end of the year, stating that this year would be their last harvest. A true and correct copy of the news release from Alexander and Baldwin announcing this closure is attached to MDWS’s Exhibit List as Exhibit “2178-County-15.”

34. On January 7, 2016, MDWS issued a request for bids for upgrade to the Iao Surface Water Treatment plant to allow it to treat the full 3.2 MGD allotment provided by WWC and deemed reasonable by CWRM during the IIFS proceedings in CCH-MA06-01M. MDWS could easily put out another bid for additional expansion of the Iao Treatment Plant, or for the development of a new treatment plant in the vicinity.

35. Attached to MDWS' Exhibit List as Exhibit "2178-County-16" is a true and correct copy of the "Notice To Bidders" for "Sealed Bids for Iao Surface Water Treatment Plant Upgrades available on MDWS' website at www.co.maui.hi.us/bids.aspx?bidid=1442.

I declare under penalty of law that the foregoing is true and correct of my own personal knowledge and that this Declaration was executed on February 5, 2016 in Wailuku, Maui, Hawaii.


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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

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

CASE NO. CCH-MA 15-01

DECLARATION OF MICHELE MCLEAN

DECLARATION OF MICHELE MCLEAN

I, Michele McLean, do hereby declare:

1. I am the duly appointed Deputy Director of the Department of Planning of the County of Maui. I have served in this capacity since January 4, 2011.
2. I have personal knowledge of the facts stated in this Declaration, except as to matters stated on information and belief, and as to those matters, I believe them to be true. If called upon, I could testify competently thereto.

3. This written testimony in the form of a declaration is submitted on behalf of the Department of Water Supply of the County of Maui (“MDWS”).

4. According to the Maui Island Plan/General Plan 2030, in 2015 there were approximately 101,525 people living in Community Plan Areas that are served by the Central Maui Water System (Kihei-Makena, Wailuku-Kahului and Paia-Haiku).

5. By 2030, the residential population of the Community Plan Areas served by the Upcountry Maui System is estimated to grow by 24,624 for a total of 125,789 residents.

6. The Maui Island Plan/General Plan 2030 was prepared by the County of Maui Planning Department, was adopted by Ordinance No. 4004, and took effect on December 28, 2012. A true and correct copy of Chapter 1 (Population) of the Maui Island Plan/General Plan 2030 is marked as Exhibit “2178-4.”

7. Generally, building permits for new homes and businesses require that the proposed use complies with the relevant zoning and state land use designation in order to gain approval.

I declare under penalty of law that the foregoing is true and correct of my own personal knowledge and that this Declaration was executed on February 5, 2016 in Wailuku, Maui, Hawaii.



MICHELE MCLEAN

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Surface Water Use Permit Applications,) Case No.. CCH-MA15-01
Integration of Appurtenant Rights and)
Amendments to the Interim Instream Flow) CERTIFICATE OF SERVICE
Standards, Na Wai Eha Surface Water)
Management Areas of Waihee, Waiehu, Iao and)
Waikapu Streams, Maui)
_____)

CERTIFICATE OF SERVICE

On February 5, 2016, a copy of the foregoing document was served on the following parties

by U.S. mail, postage prepaid, or electronic service, as indicated below:

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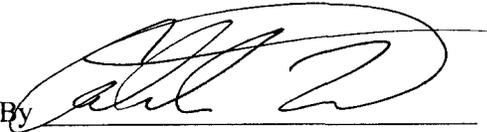
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