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COMMISSION ON WATER
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BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

OF THE STATE OF HAWAII

In the Matter of) SWUPA-E (NA WAI EHA, MAUI)
) NO. 2157
Na Wai Eha Surface Water Use)
Permit Application of WAILUKU) WAILUKU WATER COMPANY LLC'S
WATER COMPANY LLC) RESPONSE TO OBJECTIONS OF
) COUNTY OF MAUI DEPARTMENT OF
) WATER SUPPLY TO SWUPA-E (NA
) WAI EHA, MAUI) NO. 2157
)
_____)

WAILUKU WATER COMPANY LLC'S RESPONSE TO OBJECTIONS
OF COUNTY OF MAUI DEPARTMENT OF WATER SUPPLY
TO SWUPA-E (NA WAI EHA, MAUI) NO. 2157

On May 26, 2009, County of Maui Department of Water Supply ("MDWS") submitted an objection to the above-referenced Surface Water Use Permit Application ("SWUPA") of Wailuku Water Company, LLC ("Wailuku Water"). Pursuant to H. Admin. R. § 13-171-18[©], Wailuku Water files and serves this response to the

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objection.

A. Objection That Action on SWUPA Must Await Pending IIFS Proceedings.

Wailuku Water previously objected to SWUPAs on the ground that it would be premature for the Commission on Water Resource Management (the "Commission") to process the applications until it has adopted amended interim instream flow standards ("IIFS") for the Na Wai Eha streams. MDWS made a blanket objection to all applications to "assure that all competing applications are considered together." Wailuku Water, however, does not adopt the rationale utilized by MDWS as a basis for the objection.

This Commission's rules require that competing existing use applications which in the aggregate exceed the established instream flow standards shall be addressed in "a hearing to determine the quantity of water that may be consumed and the conditions to be imposed on each existing use." H. Admin. R. § 13-171-14[©].¹ Whether this Commission must hold a combined hearing only can be determined after the amended IIFS are established. As such, it is premature for this Commission to act on any of the SWUPAs for the Na Wai Eha surface water management

¹The section directing the Commission to hold a single hearing on competing existing use applications refers to water being drawn from the same "hydrologically controllable area," which term is not defined in Chapter 171. While the terms "water management area" and "hydrologic unit" are defined, it is unclear whether "hydrologically controllable area" was meant to refer to a "water management area" or a "hydrologic unit."

area and the objection based on a request to consider all competing applications together and in relation to one another is likewise premature.

Further, it is unclear that MDWS would have standing to object to an application for water use that involves any stream other than Iao Stream. MDWS's SWUPA-E 2156 (and the apparently duplicate SWUPA-E 2178), only seeks a permit for use of water from "the Iao Stream to the Iao-Waikapu ditch." As such, MDWS would not be a completing application with that of Wailuku Water which seeks use from other streams or other applicants who seek use from streams other than Iao Stream.

B. Conclusion.

For each of the foregoing reasons, the objections of MDWS to Wailuku Water's SWUPA is premature and as such should be overruled by the Commission.

DATED: Kahului, Hawai'i,

June 8 2009

Paul R. Mancini

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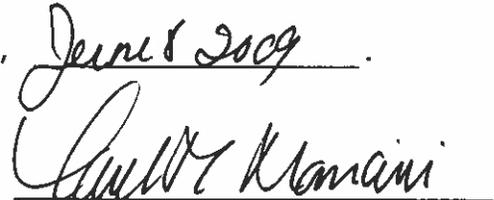
CERTIFICATE OF SERVICE

I hereby certify that on the date hereof I caused a copy of the foregoing to be duly served by depositing same in the United States mail, postage prepaid, to the following at their last known address:

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DATED: Kahului, Hawai'i,

June 8 2009

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