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COMMISSION ON WATER
RESOURCE MANAGEMENT

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June 19, 2009

Laura H. Thielen, Chairperson
Ken C. Kawahara, Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

-via fax (808) 587-0219 & US Mail First Class

Re: MTP Operating Company LLC, D.B.A. Maui Tropical Plantation's response to objections of Hui o Na Wai Eha, Maui Tomorrow Foundation, Inc., and Office of Hawaiian Affairs to SWUPA-E no. 2203

Dear Chairperson Thielen and Deputy Director Kawahara;

By letter dated June 4, 2009 the Office of Hawaiian Affairs, through its counsel Pamela W. Bunn, submitted objections to the Surface Water Use Permit Application of MTP Operating Company LLC, D.B.A. Maui Tropical Plantation (the "Tropical Plantation") which was given file number SWUPA-E no. 2203 ("SWUPA 2203"). By letter dated June 4, 2009, Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc. submitted similar objections to SWUPA 2203. On behalf of the Tropical Plantation, please file this letter in response to the objections under Hawaii Administrative Rule § 13-171-18(c). By copy of this letter, I am serving this response to the objections on the representatives of the objecting parties as shown below.

First, the Tropical Plantation questions the right of the Office of Hawaiian Affairs, Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc. to participate in SWUPA 2203. The Commission's rules only authorize a party to object to a SWUPA. Hawaii Administrative Rule § 13-171-18(a) ("a party may file with the commission"). Party means each person or agency admitted as a party or each person or agency that seeks and is entitled of right to be admitted as a party. Hawaii Administrative Rule § 13-167-2(a). As the applicant, the Tropical Plantation is a party. Other permit applicants could be parties if they had a competing existing use with the Tropical Plantation's existing use. There is no statement within the June 4, 2009 letters by which the Office of Hawaiian Affairs, Hui O Na Wai Eha or Maui Tomorrow Foundation, Inc. claim that any of them has filed or has pending an application for an existing surface water use from any of the four streams. Likewise, the SWUPA does not state that any of the objecting parties are a "party" to the proceeding. Finally, while the Administrative Rules concerning water use permit applications indicate that the Mayor and the water board of the affected county would be a party to the proceeding, there is no similar statement that the administrative rules do not indicate that the Office of Hawaiian Affairs, Hui O Na Wai Eha or Maui tomorrow Foundation, Inc. are or should be a party to a water use permit application. As

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such, the objections of these parties to the Tropical Plantation's SWUPA should be denied as these entities do not have standing in this matter.

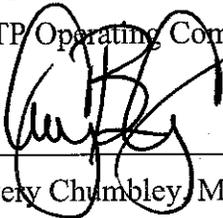
Second, should the objections be considered, they are not well founded. The ownership of the Tropical Plantation changed and the present owners embarked on an increased program which included cultivation of additional acreage and more crops. The application was based on actual water used, as measured by a water meter, for the 12 months from May, 2007 through April, 2008. Over that 12 month period, the average daily use in gallons ranged from a low of 32,416 in December to a high of 233,460 in June. The average use over that 12 month period was 124,532 gallons per day. Based on the records of metered use, the actual use is as stated in the application.

As to alternative source analysis, the Tropical Plantation was aware the following information. The nearest wastewater treatment plant is about 7 miles away from the property. The cost to obtain easements to allow the Tropical Plantation to install transmission lines, coupled with the cost of installation and maintenance, combined with the cost of the source water would be millions of dollars under a best case scenario and thus is cost prohibitive. No desalinization plant exists on the island of Maui. Even if property could be obtained upon which such a plant could be built, it would be almost as far from the Tropical Plantation property as the nearest wastewater treatment plant. The same cost issues of transmission of desalinated water exist, making this a cost prohibitive alternative. Municipal service is not an alternative as the County of Maui has neither the source nor the infrastructure necessary to deliver the water to the Tropical Plantation property. As to groundwater, the existing and presently permitted wells would meet or exceed the currently established sustainable yield of the aquifer, making this alternative unavailable.

Thank you for this opportunity to provide a response, should you need additional information please feel free to contact me.

Respectfully,

MTP Operating Company, LLC



Avery Chumbley, Managing Member

Copies to:

D. Kapua Sproat
Isaac H. Moriwake
Earthjustice
223 South King Street Suite 400
Honolulu, Hawaii 96813-4501

-via fax (808) 521-6841 & US Mail First Class

Pamela W. Bunn
Suite 1300 American Savings Bank Tower
1001 Bishop Street
Honolulu, Hawaii 96813

-via fax (808) 528-1654 & US Mail First Class