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**Sent:** Wednesday, April 15, 2020 7:46 PM  
**To:** [oeqchawaii@doh.hawaii.gov](mailto:oeqchawaii@doh.hawaii.gov); Onaona P. Thoene  
**Subject:** Comment KDOW Exemption List

To whom it may concern:

Please accept this comment in response to the exemption list filed by Kauai Department of Water (KDOW), published March 23 in the OEQC Environmental Notice. This comment is filed on behalf of Friends of Maha`ulepu and Kia`i Wai `o Wai`ale`ale who are currently in litigation with KDOW. We hereby request the Environmental Council to withdraw its concurrence pursuant to its right of periodic review (HAR §11-200.1-16), if a concurrence has been made, and/or to deny concurrence to the specific proposed exempt actions identified below as KDOW is now seeking to exempt actions that are the subject of existing litigation between Friends of Maha`ulepu, Kia`i Wai `o Wai`ale`ale and KDOW. We were unable to determine if the EC has made a concurrence for the KDOW exemption list. If so, we request review and reconsideration for the 2 exempt actions identified below pursuant to EC's right to reconsider a recent agenda item (HAR §11-200.1-16).

A copy of our complaint, objecting to KDOW's EA, and our opposition to KDOW's pending Summary Judgement Motion (now set for hearing May 12, 2020) and KDOW's Reply is attached. A review of these documents will reveal that KDOW is now seeking to exempt specific activities that are the subject of the pending lawsuit. The lawsuit attached seeks court review of KDOW's EA regarding proposed actions that KDOW now seeks to exempt:

[http://oeqc2.doh.hawaii.gov/Agency\\_Exemption\\_Lists/Kauai-Department-of-Water-Exemption-List-Draft-2020-03-23.pdf](http://oeqc2.doh.hawaii.gov/Agency_Exemption_Lists/Kauai-Department-of-Water-Exemption-List-Draft-2020-03-23.pdf)

"2. Installation or modification of:

15. Installation of pressure regulating equipment such as booster pumps, pressure reducers, pressure relief, etc.: where the intent is to route water from one pressure zone to the next." Page 4 KDOW proposed action offered for exemption

"Part 2: General types of actions eligible for exemption

2. Replacement of waterlines and appurtenances where no change in purpose is intended. Replacement may be size for size, or may involve an increase in pipe diameter if the existing waterline is inadequate to meet current Water System Standards and current zoning requirements." Page 6 KDOW proposed action offered for exemption

Clearly, neither of these actions proposed for exemption comply with the limitations for exempt actions under the Environmental Rules:

"(2) Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced;"  
HAR §200.1-16

In the pending lawsuit, KDOW claims to have completed an adequate EA for the 5,000 feet of a new 18" main intended to carry waters diverted from Wai`ale`ale and Waikoko streams, State land streams located on Conservation Land in a State Forest Reserve, the waters source, which were not considered in the EA. KDOW's failure to consider an impact to the waters source but rather focus the EA on wells and a reservoir fed by the source waters is the basis for our current litigation. We contend that adding 5,000 feet of a new larger 18" main in addition to an existing 16" main requires environmental consideration of the source waters, as non has ever been done. KDOW filed an EA with OEQC that failed to address the environmental impact for actions they are now seeking to exempt. Other aspects of the lawsuit also challenge KDOW's lack of revocable permit or lease for the diverted stream waters which travel 5 miles from origin to the reservoir that will feed the 18" main. Among other things, our lawsuit also challenges KDOW's failure to consider the impact to wildlife and endangered species known to habitat the State land streams and Kapaia Reservoir.

Hopefully the EC will be able to give this comment its full consideration notwithstanding the Governor's Covid guidelines.

Mahalo nui loa,

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