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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

PETITION TO AMEND INTERIM  
INSTREAM FLOW STANDARDS FOR  
HONOPOU, HUELO (PUOLUA),  
HANEHOI, WAIKAMOI, ALO,  
WAHINEPEE, PUOHOKAMOA,  
HAIPUAENA, PUNALAU/KOLEA,  
HONOMANU, NUAAILUA, PIINAU,  
PALAUHULU, 'ŌHI'A (WAIANU),  
WAIOKAMILO, KUALANI, WAILUANUI,  
WEST WAILUAIKI, EAST WAILUAIKI,  
KOPILIULA, PUAKAA, WAIOHUE,  
PAAKEA, WAIAAKA, KAPAULA,  
HANAWI and MAKAPIPI STREAMS

CASE NO. CCH-MA13-01

PETITIONERS NĀ MOKU AUPUNI O  
KO'OLAU HUI'S, LURLYN SCOTT'S  
AND SANFORD KEKAHUNA'S  
MOTION TO RECONSIDER  
ORDER REGARDING THE SCOPE OF  
THE RE-OPENED HEARING TO  
ADDRESS THE CESSATION OF  
SUGAR OPERATIONS BY HC&S;  
CERTIFICATE OF SERVICE

PETITIONERS NĀ MOKU AUPUNI O KO'OLAU HUI'S, LURLYN SCOTT'S AND  
SANFORD KEKAHUNA'S MOTION TO RECONSIDER  
ORDER REGARDING THE SCOPE OF THE RE-OPENED HEARING TO ADDRESS THE  
CESSATION OF SUGAR OPERATIONS BY HC&S

Pursuant to Hawai'i Administrative Rule (HAR) Section 13-167-64 and Order Regarding the Scope of the Re-Opened Hearing to Address the Cessation of Sugar Operations by HC&S, so ordered by Chairperson Suzanne Case on August 18, 2016 (the "Order"), Petitioners Nā Moku Aupuni O Ko'olau Hui, Lurlyn Scott and Sanford Kekahuna (hereinafter, collectively, "Nā Moku"), by and through their undersigned counsel, hereby request that the Commission

reconsider the Order to prevent a substantial injustice from occurring if the Order, as drafted, is effectuated.

Nā Moku hereby joins in and incorporates by reference the Motion to Reconsider filed by Maui Tomorrow Foundation, Inc., and its Supporters on August 26, 2016 (“Maui Tomorrow Motion”).

Nā Moku further requests that the Commission reconsider its summary statement of arguments contained in the Motions on the Scope of the Reopened hearing filed by the County of Maui (“County”) and Nā Moku, including Maui Tomorrow’s joinder thereto, to obviate the risk of the Hearings Officer or the parties in the re-opened contested case hearing ascribing any binding effect to such statements. *See* Order at 1-2. To be clear, the Order issued by the Commission with respect to the scope of the re-opened hearings determined two things: (1) that “the Hearing Officer’s recommendation regarding the scope of the re-opened contested case hearing” is limited to the four (4) categories enumerated on pages 3 and 4 of Minute Order No. 19; and (2) that any “new information available regarding streamflows in East Maui where diversions have been ceased, either temporarily or permanently, should be incorporated into the re-opened hearing.” Order at 2. All other summary statements contained in the Order should be eliminated or otherwise amended for the reasons detailed in the Maui Tomorrow Motion in which Nā Moku joins. Maui Tomorrow Motion at 5 (request to reconsider “the statement concerning the potential amounts of water saved by [HC&S] converting from cane production to diversified agriculture”); at 6 (request to reconsider “the statement concerning the needs of the MDWS”); and at 7 (request to reconsider “the statements concerning the ‘EMI’ ditch”).


Two of the four scoping categories recommended by the Hearings Officer are relevant to the County. Nā Moku wishes to address only the first category, which seeks to determine “the impact of HC&S’s cessation of sugar operations on Maui Department of Water Supply’s use of surface water.” As the County acknowledged in its June 9, 2016 Motion on the Scope of Re-Opened Hearing (“County Motion”), **all** information concerning its current needs and anticipated future demands through 2030 was previously “presented in the filings of MDWS, as well as in testimony during the contested case hearing” such that “the information can be considered without the need for reopening the evidentiary portion of the hearing.” County Motion at 4. And in fact, the Hearings Officer, after reviewing all of the County’s evidence and the other parties’ rebuttals, recommended a finding of fact and conclusion of law that calculated the County’s

anticipated need through 2030 and inclusive of its “present use, expected increased demand due to population growth, and a percentage of new connections from the current priority list for meters” to be 4.2 mgd to 7.95 mgd (FOF #474; COL #115); **not** an additional 9.15 mgd as the County argued in its Motion. County Motion at 4. Importantly, the County does not see a need for reopening the evidentiary portion of the hearing to address this issue. Neither does Nā Moku or Maui Tomorrow. And the other parties have been completely silent on the matter.

Accordingly, the Commission’s decision to insist otherwise is baseless, an arbitrary and capricious exercise of its discretion, and plain error. Likewise, any reliance by the Commission on evidence proffered in an entirely separate contested case hearing (to which the petitioners and intervenors in this contested case are not parties) to inform its scoping decision in this contested case is irrelevant and wholly improper. *See* Order at 1 (“according to filing by Hawaiian Commercial & Sugar (HC&S) in the Nā Wai ‘Ehā contested case ...”); County Motion at 2-3.

Based upon the foregoing, Nā Moku respectfully moves for reconsideration of the Commission’s Order and for amendment as requested by Nā Moku and Maui Tomorrow.

DATED: Honolulu, Hawai‘i, August 26, 2016.

  
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon the following parties in the manner indicated at their last known address:

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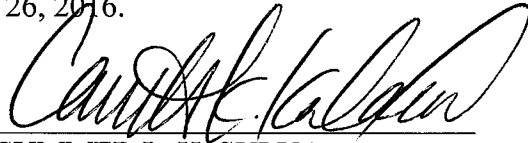
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DATED: Honolulu, Hawai'i, August 26, 2016.



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