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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In re Petitions to Amend Interim
Instream Flow Standards for
Honopou, Huelo (Puolua), Hanehoi,
Waikamoi, Alo, Wahinepe'e,
Puohokamoa, Haipua'ena,
Punalau/Kōlea, Honomanu, Nu'ailua,
Pi'ina'au, Palauhulu, Ohia (Waiānu),
Waiokamilo, Kualani, Wailuanui, West
Wailuaiki, East Wailuaiki, Kopili'ula,
Puaka'a, Waiohue, Pa'akea, Waiaka'a,
Kapa'ula, Hanawī and Makapipi
streams.

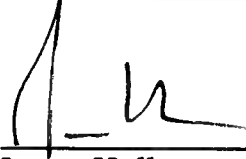
Case No. CCH-MA13-01

DECLARATIONS OF MAUI TOMORROW
FOUNDATION, INC. AND ITS
SUPPORTERS FOR RE-OPENED HEARING
CERTIFICATE OF SERVICE

mt/decs

**DECLARATIONS OF MAUI TOMORROW FOUNDATION, INC. AND ITS
SUPPORTERS FOR RE-OPENED HEARING**

DATED: Wailuku, Maui, Hawaii 10-17-11



Isaac Hall
Attorney for Maui Tomorrow Foundation,
Inc., and its Supporters

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

<p>In re Petitions to Amend Interim Instream Flow Standards for Honopou, Huelo (Puolua), Hanehoi, Waikamoi, Alo, Wahinepe'e, Puohokamoā, Haipua'ena, Punalau/Kōlea, Honomanu, Nu'ailua, Pi`ina`au, Palauhulu, Ohia (Waiānu), Waiokamilo, Kualani, Wailuanui, West Wailuaiki, East Wailuaiki, Kopili'ula, Puaka`a, Waiohue, Pa`akea, Waiaka`a, Kapa`ula, Hanawī and Makapipi streams.</p>	<p>Case No. CCH-MA13-01</p> <p>DECLARATION OF LUCIENNE DE NAIE</p>
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DECLARATION OF LUCIENNE DE NAIE

1. My name is Lucienne de Naie. I am a resident of Huelo, Maui County in the State of Hawaii. I am a board member and supporter of Maui Tomorrow.
2. This Declaration is based upon my personal knowledge, except where otherwise stated.
3. I submitted a Declaration for the earlier phase of this contested case in 2015 and incorporate my earlier testimony from that Declaration
4. I have lived on TMK No. (II) 2-9-007:48 ("my property") since 1985 and have been the co-owner of this land since 1989. My property is located in the ahupua'a of Puolua, being a portion of Royal Patent Grant 2079, Apana 3 to

Samuel Kaiewe. Its location is represented in TMK Map No. (II) 2-9-007, Exhibit E-42.

5. My well, State well No. 5413-15, is entirely dependent upon the overall health of the Hanehoi Hydrological unit of the Honopou Aquifer and the surface water systems that are part of it. Many of the wells drilled on surrounding properties have relatively high levels of chlorides (salt), even though they are drilled deeply enough to contact what is viewed by hydrologists as the “basal aquifer.”

6. My well, and others, depend upon the interface of the Honopou aquifer and Hanehoi stream and its numerous tributaries. Hanehoi stream and its tributaries have been heavily diverted by Alexander and Baldwin (“A&B”) subsidiary, East Maui Irrigation (“EMI”) for over 100 years, and only recently, in April of 2016, has A&B informed the State Commission on Water Resource management (“CWRM”) of its intention to “fully and permanently” restore water to eight “priority taro streams” including Hanehoi and its tributary Puolua. It is important that the streams of Hanehoi and Puolua have sufficient flows to recharge the aquifer and that the restoration promised by A&B and EMI is fully implemented in a timely manner.

7. Since that announcement, I and others who depend upon the Hanehoi and Puolua stream flows and the aquifer they recharge, have documented the progress of the restoration efforts on our streams.

8. I wish to offer information pertinent to the scope of this Contested Case regarding: “How EMI is managing the decrease in diversions, how it would

manage the interim restorations, and any issues concerning the integrity of the EMI ditch system with the current and any future changes in off stream diversions.”

A&B’s Restoration Plan: Delays in Planning for Full and Permanent Restoration of Hanehoi Stream Tributaries and Monitoring for IIFS

9. On the topic of EMI management of the interim restorations, I and other Huelo community members dependent on the streams are concerned that although our streams: Hanehoi and Puolua, have been promised to be “fully and permanently” restored, it appears that due to the number of diversions at different elevations, our “priority streams” will have only limited “interim restoration” for a number of years until all needed permits are obtained.

10. During the time delay waiting for permits and modifications of intakes, there is no discussion regarding any monitoring of stream flows that would be done. Without this oversight by the Commission, our community has no guarantee that flows would meet even the minimum revised IIFS set forth in Dr. Miike’s January 1 and April 1, 2016 April 1, 2016 recommendations regarding immediate implementation of amended IIFS of “Restoration Streams,” including Hanehoi and Puolua. This fact is not discussed in any of the A&B/EMI restoration plans, but the Commission and hearings officer should address it. Each successive communication from A&B/EMI has revealed a completion timeline extended further into the future, or with dates unknown.

A&B’s Restoration Plan: Lack of Accurate Information Delays Planning for Full and Permanent Restoration of Hanehoi Stream Tributaries

11. I reviewed A&B's letter to CWRM Deputy Director Pearson, dated May 12, 2016, which was received on May 25, 2016 by Maui Tomorrow Foundation. This letter included a chart specifying the proposed restoration efforts on the eight East Maui "priority" streams proposed to be "fully and permanently" restored. As a long time resident of the Huelo area, and as a person very familiar with the streams and watershed lands from firsthand experience, it was apparent that this plan omitted any restoration information about the major tributaries of Hanehoi stream: West Hanehoi stream and Huelo Stream on Lowrie Ditch as well as minor tributaries on Lowrie and New Hamakua Ditches.

12. A&B's June 6, 2016 follow-up letter to Pearson: "Additional Stream Diversion Modifications on Hanehoi Stream" included a vague unnamed reference to these tributaries in the "revised plan," however, it did not accurately describe them or the actions needed to restore their flows.

13. A&B's June 6, 2016 letter informed the Deputy Director: "We inadvertently omitted diversions on some small tributaries of Hanehoi stream from the implementation plan."

It then went on to mischaracterize the diversions stating:

"These intermittent tributaries are actually small gullies that normally have water in them only during high rainfall events. On most of these small tributaries there are no concrete diversion structures, intake gratings and sluice gates..."

14. A&B/EMI completed the Lowrie Ditch in 1900, one hundred and sixteen years ago, and constructed the grated intakes for West Hanehoi and

Huelo streams at that time. It would be assumed that the company and its consultants had accurate information on these longstanding intake structures and what needed to be done to seal them to restore stream flow. Both intakes are located on well developed stream beds, not “small gullies that normally have water in them only during high rainfall events” as A&B asserted in their June 6, 2016 letter. Both provide substantial stream flow input to the main branch of Hanehoi stream (“East Hanehoi”) and their timely restoration is important to our community.

15. The chart accompanying A&B/EMI’s June 6, 2016 A&B letter to CWRM did not acknowledge that West Hanehoi and Huelo diversions on Lowrie ditch have substantial concrete structures and steel grates to be sealed. Instead it referred to the fact that the “Ditch is cut into stream bed, so would need to install a pipe or box culvert with wing walls in the stream bed through which the ditch can pass beneath the stream.” In actuality, the West Hanehoi and Huelo stream Lowrie diversions both have existing concrete structures that elevate the stream over the Lowrie ditch and allow stream water to enter through a grate. According to A&B/EMI’s September 16, 2016 letter to DLNR Chair Case, (See Exhibit E-165) West Hanehoi and Huelo Diversions were both registered with CWRM as “major diversions” in 1989. As of June, 2016, both these major diversions were completely mischaracterized in the A&B/EMI communications to CWRM and DLNR. We can only believe that this did not help to expedite the consultation process on permits needed for stream restoration.

16. As a Huelo resident I am concerned that the failure of A&B/EMI to properly identify their Hanehoi stream tributary diversion system structures to CWRM and other agencies in a timely manner has, and will, result in unneeded delays in meeting the company's pledge to "fully and permanently" restore our "priority streams" – Hanehoi and Puolua. I will note that it was not until five months after the initial A&B/EMI restoration plan was submitted in May, 2016, that an "updated" plan was presented in the September 16, 2016 A&B/EMI letter to DLNR Chair Case acknowledging the need to cover the grates on West Hanehoi and Huelo stream intakes at Lowrie ditch. Meanwhile, the flows of all the streams along the Lowrie ditch continue to be diverted while A&B/EMI "waits to submit its plans for permits."

A&B's Restoration Plan: Lack of Consultation with the Huelo Community Depending on Hanehoi and Puolua Streams

17. The A&B/EMI restoration plan for Hanehoi and Puolua Streams and their tributaries has been a unilateral process involving no community consultation with the Huelo community that depends upon the streams. As Maui Tomorrow Foundation stated in its '**Objections to Hearings Officer's Amended Recommendation Re Interim Restoration of Stream Flow:**' "The plan to restore these streams was formulated on a one-sided basis. EMI met with CWRM officials on May 5, 2016 to discuss the "proposed diversion modification plan" which is the subject of EMI's letter dated May 12, 2016 to the CWRM. This letter was not sent to downstream users until May 25, 2016. The "proposed diversion modification plan" does not reflect any collaboration among affected parties. This plan is simply EMI's suggestion." As

noted earlier, this lack of direct consultation resulted in an inaccurate assessment of existing diversions and their needed modifications.

18. Terms used in the proposed stream flow restoration plan are not well defined, and our community that is affected by the diversions have had very little specific information given as to exactly what will be removed, how the ditch system will be bypassed, and the overall timing of events. A&B/EMI has made no effort to meet with our community and present their plans even though many community members have intimate knowledge of the EMI system and how it can effect their properties. Without adequate information and consultation, it is difficult for communities to weigh in on possible impacts of the proposed plan and help improve it.

19. This lack of consultation has meant that A&B/EMI has also made no effort to offer permitted access to Huelo community members to maintain intakes for the community water pipe on Hanehoi stream and the Kalo flow bypass pipes on Puolua streams. Community members have no access to EMI gate codes or keys and must often walk uphill 1 mile or more to maintain their water source infrastructure.

Community Monitoring of Current Stream Flows and EMI Diversions Indicates Hanehoi and Puolua Stream Waters Diverted With no Beneficial Purpose

20. Myself and other Huelo residents have been monitoring the diversion status and restoration levels of Puolua, Hanehoi, West Hanehoi and Huelo streams since the April 20th A&B/HC&S announcement that the streams would be “fully and permanently” restored.

21. I personally have monitored and photographed the stream flow conditions and diversion status of various East Maui streams on the following dates: May 2, 2016; May 7, 2016; June 12, 2016; July 9, 2016; July 10, 2016; October 6, 2016 and October 8, 2016.

22. During those visits I did not observe any modifications to the Hanehoi stream New Haiku Ditch intake until after early June, 2016. My May 7th visit to Hanehoi stream at New Haiku Ditch found the intake sluice gate almost completely shut and a small flow in the stream below the diversion dam structure. (See Exhibit 163; MT Photos #25 and #26) Likewise, the Puolua Stream at New Haiku Ditch intake was not opened until June, 2016. I question why it took a month before EMI opened the New Haiku Ditch sluice gates?

23. At the current pace observed, the HC&S/A&B pledge to “fully and permanently” restore Hanehoi and Puolua streams could take many years. Meanwhile, my monitoring efforts indicate that from May to October, 2016, stream water from Hanehoi, West Hanehoi and Puolua streams continues to be diverted at the Lowrie, Wailoa and New Hamakua ditches.

24. This water does not appear to be actually needed for HC&S irrigation operations. A&B/EMI acknowledged this themselves in their June 15, 2016 “status report” which noted that “sluice gates were fully open on seven “Restoration Streams” “essentially releasing 100% of flow”. The company noted that EMI was only able to do this:

” due to combined effect of relatively abundant rainfall and orderly winding down by A&B of its sugar operations.”

25. Since HC&S’s irrigation needs have admittedly decreased and the EMI system is allowed to continue diverting from at least 35 additional East Maui and Haiku streams that are not the subject of the East Maui contested case, it is difficult to understand what beneficial purpose the water that continues to be diverted from Hanehoi and Puolua Streams and their tributaries serves in the EMI system?

26. I have observed that this diverted water is being transported in the New Hamakua and Wailoa Ditches to the end point of the EMI–State of Hawaii Water License area at Honopou stream and being “dumped” there. This would not seem to comply with the direction of hearing officer Miike that unneeded stream water diverted by EMI/HC&S should be returned and apportioned among the 27 streams named in the East Maui contested case IIFS petition.

27. I am further concerned that this water may be creating unnatural constant “high water” conditions in Honopou stream that are not desirable for local residents and traditional stream uses.

28. Huelo community members, particularly those who are affected by the Hanehoi and Puolua stream diversions, ask the Commission to consider granting “temporary” or expedited permits to allow water diverted from Hanehoi and its tributaries to be released back into the streams where they have originated.

Effect of High Rainfall on Current Mauka–Makai Stream Flows

29. From June until September, 2016 there have been continuous flows in Hanehoi and Puolua stream. There has been no attempt to determine if these flows are the result of:

- a) the two New Haiku Ditch diversion sluice gates being opened on Hanehoi and Puolua streams; or
- b) the 100.2 inches of rain that fell on Huelo area during April to September 2016 period, which is usually the drier part of the year in East Maui; or
- c) some combination of the two factors.

30. Several Huelo residents have kept rain gauge records for over a decade. These indicate that the rainfall during the past three years for the six month period between April and September: 2015 (52.03 inches), 2014 (54.15 inches), and 2013 (45.34in) was around 50% less than this year’s total of 100.2 for the same period. The same rainfall trend was evident during the previous ten years: Huelo rainfall for the April–September drier period only exceeded 50 inches over those six months in 2009 (53.11 in) and 2004 (50.6 in). April–September rainfall totals were 49 inches or less in the remaining years between 2004 and 2013. In short, this year’s 100 inches of rain during the six month “dry period” in Huelo is vey unusual over the last thirteen years.

31. As mentioned above, HC&S/EMI also noted the “relatively abundant recent rainfalls” in their August 10, 2016 letter to Chairperson Case. If the exceptional rainfall amounts had not been present, it is very likely that the opening of just the lowest diversion (New Haiku Ditch) would not have been

adequate to restore some level of continuous stream flows below the diversions, and Huelo residents would still be waiting for the first phase of “fully and permanently” restored streams to be implemented.

32. If the current abundant rainfall conditions cease over the next year while restoration activities are proposed to be undertaken, the Commission must ensure that there are adequate flows in the Hanehoi and Puolua Streams and their tributaries to meet the most current IIFS standards while the full and permanent restoration is being implemented to meet community and public trust needs.

Additional Water Allotments for County of Maui Should be Subject to Full and Permanent Restoration of Priority Streams

33. Huelo community members, particularly those who are affected by the Hanehoi and Puolua stream diversions, support the water allocation Hearing’s Officer Miike gave to the County of Maui in his Decision and Order. With the end of HC&S’s sugarcane crop, the County of Maui is asking for additional water from the EMI system to meet the present and future needs of the Upcountry system. Given the slow nature of the HC&S/ EMI restoration of full flows to streams in the Hanehoi hydrological unit the County’s request could be implemented before full flows were restored to our streams, or other “priority” or “restoration” streams, If that were the case, there is a chance that the argument would be made that our community should just live with what ever flow levels had been achieved from the lower ditches, in order to

accommodate the County's requests for Wailoa ditch flows and also meet the future needs of HC&S farming leases.

34. Any additional allocation of East Maui stream water to the County of Maui, should be contingent upon full and permanent restoration of Hanehoi and Puolua streams and their tributaries and all other "priority streams," to the satisfaction of the communities involved.

Need to Provide Pathways Over Diversions for Streamlife, Stream Ecology and Stream Health

35. The Division of Aquatic Resources (DAR) report on Hanehoi Stream prepared for the Commission in June, 2008 noted that current diversion structures on the streams create conditions where it is difficult or impossible for native stream life to migrate and survive.

36. Above the highest diversions on Hanehoi stream, DAR found a completely different stream with a rich variety of native insects, including the endangered *Megalagrion pacificum* damselfly. Unfortunately, since a stream flow pathway to the undiverted reaches of the stream does not exist most of the time, native stream life that could migrate, such as O'opu ("*Lentipes concolor*") and (Hihiwai ("*Neritina granosa*"), have no way to reach these upper reaches of the stream where they may survive.

37. The stream flow restoration plan for Hanehoi and Puolua streams makes no effort to address the connectivity needs of native streamlife. The plan does not address removal of portions of dams and impediments to streamlife migration that maybe needed. The Commission should insist on a plan that

clearly meets the biological needs of the native streamlife and insects that once lived in Hanehoi and Puolua stream. These biota are part of our responsibility to care for as Public Trust resources.

Ongoing Maintenance of Surface Water Diversion Systems

38. Any surface water collection system requires constant maintenance. The EMI system was created nearly a century ago, or longer. The A&B/EMI plan for restoration of IFS is not clear about whose ongoing responsibility it will be to maintain the already crumbling concrete of the aging diversion structures once they are permanently “abandoned.” Stream restoration of Hanehoi and Puolua Streams and their tributaries, without a maintenance plan or removal plan for these structures can create risk for streamlife (entrapment), public health (stagnant waters that breed mosquitos), public safety (chunks of debris transported in streams) and water quality (entrapment of dead animal carcasses.)

Conclusion

39. At this point local Huelo residents depending upon the Hanehoi and Puolua streams have had no consultation process in the stream restoration plan; no clear plan has been presented to maintain the EMI structures that are proposed to be “abandoned”; residents have no clear idea if any portions of diversion structures will be removed and where; residents know of no proposed monitoring to determine if stream flow levels are adequate to meet public trust purposes prior to the time that the streams are “fully and permanently” restored; and residents have no clear idea of how long complete restoration will

take. As a Huelo resident I ask the Hearings Officer and the Commission to require A&B/EMI to address these gaps in the proposed restoration plan for Hanehoi and Puolua Stream and their tributaries.

I declare under penalty of law that the foregoing is true and correct.

Executed this _____ day of _____.

LUCIENNE DE NAIE

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In re Petitions to Amend Interim Instream Flow Standards for Honopou, Huelo (Puolua), Hanehoi, Waikamoi, Alo, Wahinepe'e, Puohokamoa, Haipua'ena, Punalau/Kōlea, Honomanu, Nu'ailua, Pi'ina'au, Palauhulu, Ohia (Waiānu), Waiokamilo, Kualani, Wailuanui, West Wailuaiki, East Wailuaiki, Kopili'ula, Puaka'a, Waiohue, Pa'akea, Waiaka'a, Kapa'ula, Hanawī and Makapipi streams.	Case No. CCH-MA13-01 DECLARATION OF ALBERT PEREZ
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DECLARATION OF ALBERT PEREZ

1. My name is Albert Perez. I am a resident of the County of Maui, State of Hawaii. I am the Executive Director of Maui Tomorrow Foundation, Inc.
2. This Declaration is based upon my personal knowledge, except where otherwise stated.
3. A true copy of my Curriculum Vitae containing relevant material about my background is submitted as Exhibit E-159 in this case.
4. I earned a Bachelor of Arts Degree in Economics from the University of Hawai'i at Mānoa in 1981. Work for this degree involved the acquisition, organization, assimilation, synthesis and interpretation of various sources of information.
5. I earned a Masters Degree in Urban and Regional Planning from the University of Hawai'i at Mānoa in 1987. Work for this degree involved the acquisition, organization, assimilation, synthesis and interpretation of various sources of information. In addition, I was

trained in specific methods to critically evaluate information, develop processes to identify and characterize problems, and develop appropriate solutions.

6. As a Geographic Information Systems (GIS) Analyst for the Washington State Department of Transportation, I worked with experts from various disciplines to learn their business processes, become familiar with their data needs, and to develop quality control systems to ensure data accuracy and eliminate errors. I performed analysis, consulting, design, programming, maintenance, documentation and support for major GIS projects that impacted multiple agencies, business units, and functions. I served as the project lead for the Sensitive Groundwater Mapping Project, the Source Water Protection Project, and the Yakima LiDAR Data Acquisition Project. I was also the GIS Lead for four separate Watershed Characterization Projects. I conducted analysis, implemented data verification procedures, and co-wrote two reports with scientists from the Oak Ridge National Laboratory. I developed and implemented specifications, codes, testing and data quality control plans for major GIS projects.

7. I have been qualified as an expert in Urban and Regional Planning in administrative land use proceedings.

8. In November, 2015, the Maui Tomorrow Foundation contracted with Permaculture Design International, LLC to produce the report, Mālama `Āina: A Conversation About Maui's Farming Future. The initial report was published on March 8, 2016. This report is intended to be a "living document" that can change as new information becomes available. Information in the report is updated as necessary and appropriate.

9. I will testify about the contents of Malama Aina: A Conversation About Maui's Farming Future, a true copy of which is being submitted as Exhibit E - 160 in this case. I will not repeat the contents of the Malama Aina study in this Declaration.

10. The initial intent of the Mālama `Āina report was to explore alternatives to the chemically based sugar cane farming that would reduce/eliminate the use of toxic herbicides and pesticides in central Maui, while preserving agriculture and its associated jobs.

11. As the study was being prepared, it became clear to me that the regenerative agriculture methods being recommended by the report would also significantly reduce water needs while increasing productivity.

12. I will also testify about the contents of a Maui News article dated August 28, 2016 about prospective uses of HC&S Plantation lands, a true copy of which is submitted as Exhibit E-161.

I declare under penalty of law that the foregoing is true and correct.

Executed this 17th day of October, 2016.


Albert Perez

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties listed below by
on October 17, 2016.

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10.17.16


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