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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, PIINAAU,
PALAUHULU, OHIA (WAIANU),
WAIKAMILO, KUALANI, WAILUANUI,
WEST WAILUAIKI, EAST WAILUAIKI,
KOPILIULA, PUAKEA, WAIOHUE,
PAAKEA, WAIAAKA, KAPAUULA,
HANAWI, and MAKAPIPI STREAMS

CASE NO. CCH-MA13-01

COUNTY OF MAUI, DEPARTMENT OF
WATER SUPPLY'S REBUTTAL
REOPENING BRIEF; SECOND
SUPPLEMENTAL DECLARATION OF
DAVID TAYLOR ON REOPENING;
CERTIFICATE OF SERVICE

**COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY'S
REBUTTAL REOPENING BRIEF**

I. INTRODUCTION

This Rebuttal Reopening Brief, Second Supplemental Declaration of David Taylor, and Exhibits "B-075" – "B-076," are hereby submitted on behalf of the County of Maui, Department of Water Supply ("MDWS"). MDWS is consolidating its rebuttal to the responsive briefs filed by

Maui Tomorrow (“MT”) and Na Moku Aupuni O Ko’olau Hui (“Na Moku”) in this single brief. All prior filings by MDWS are incorporated herein.

II. MDWS’ FUTURE NEEDS

MT argues that MDWS “has filed an Opening Brief asserting interests that exceed the scope permitted by the Hearings Officer and the CWRM” which has “restricted the MDWS to the already existing evidentiary record in the re-opened contested case.” *Responsive Statement of Maui Tomorrow Foundation and Its Supporters for Re-Opened Hearing*, (“MT’s Responsive Reopening Brief”) p. 9-10. It is unclear how MDWS could have exceeded the scope as properly identified by MT by merely citing the existing record, including Minute Order 21, the hearing officer’s proposed *Findings of Fact, Conclusions of Law, and Decision and Order* (“*FoF, CoL and D&O*”). MDWS has offered no evidence regarding its future needs other than what has already been placed in the record and subject to cross-examination.

In stark contrast to MT’s untenable argument that MDWS is attempting to supplement the record by citing the record, Na Moku rightly states that “the County of Maui provides no additional evidence.” *Petitioner Na Moku et. al’s Responsive Brief Regarding Re-Opened Hearing* (“Na Moku Responsive Reopening Brief”), p. 3. There seems to be some confusion, however, over what the evidence and arguments made by MDWS reflect. The 9.15 figure referenced in the *MDWS’ Reopening Opening Brief* is the addition of the 1.65 MGD increase **above average usage** anticipated for population growth and the 7.5 MGD increase **above average usage** anticipated for fulfillment of the upcountry water meter priority list. Both of these figures were recognized by the Hearings Officer in Findings of Fact 471 through 473 in the *FoF, CoL and D&O*. The 4.2 – 7.95 figures cited by Na Moku reflect the anticipated increase

from MDWS' **reliable capacity**. MDWS average usage, as reflected by the record, is 7.9 MGD, while its reliable capacity is 9.1 MGD.¹ See *FoF, CoL and D&O*, Findings of Fact #s 469, 470. Regardless of whether the starting point for determining the increased need is average usage or maximum capacity, however, the total amount of water remains unchanged at a total of "17.05 MGD by 2030." See *Na Moku's Responsive Opening Brief*, p. 4, citing *County of Maui, Department of Water Supply's Opening Statement and Opening Brief*, p. 11, Exhibit "B-16" Table 3, 4. MDWS apologizes for any confusion caused by its reliance on figures reflecting an increase from average usage as opposed to maximum capacity.

III. MDWS INFRASTRUCTURE

As discussed in MDWS' *Response to the Opening Brief of Maui Tomorrow Foundation and Its Supporters for Re-Opened Hearing*, MT's arguments regarding MDWS' infrastructure are circular, and adherence to them would effectively prevent MDWS from ever expanding surface water treatment capacity. In *MT's Responsive Reopening Brief*, however, MT adds that "MDWS has not yet constructed a large reservoir at Kamole Weir that would increase capacities." *MT's Responsive Reopening Brief* p. 10. Such an argument seems to suggest that the construction of a reservoir is some sort of precursor to increased service capacity. This is clearly incorrect. A reservoir is a storage facility for water. Second Supplemental Declaration of David Taylor on Reopening ("Second Supp. Taylor Reopening Dec.") ¶ 7. A reservoir does not treat surface water. *Id.* ¶ 8. Accordingly, the existence of a reservoir has no impact whatsoever

¹ The use of reliable capacity versus average actual use as the starting point accounts for the discrepancy between the 9.15 MGD figure referenced by MDWS, and the 7.95 MGD mentioned by Na Moku. The difference between the average use of 7.9 MGD and the reliable capacity of 9.1 MGD is 1.2 MGD. The difference between the 7.95 MGD figure cited by Na Moku, and the 9.15 MGD figure referenced by MDWS is also 1.2 MGD.

on the treatment capacity of a treatment plant, and MDWS' lack of such a reservoir has no impact on its ability to increase treatment and delivery capacity. *Id.*

Both Na Moku and MT also question MDWS' statements regarding its potential operation of the EMI system should EMI cease operations. In the *Rebuttal Declaration of Lucienne De Naie*, MT suggests that the mayor's recent announcement of the County's intention to buy Wailuku Water Company, is in "direct contradiction" to MDWS' arguments regarding financial and operational obstacles to MDWS' operating the EMI system. *Rebuttal Declaration of Lucienne De Naie*, ¶ 35. Wailuku Water Company, however, is a completely separate system that is in no way connected to the EMI system. Second Supp. Taylor Reopening Dec. ¶ 6. The current status of this "acquisition" of Wailuku Water Company is limited to the submission of a proposed budget amendment to the Maui County Council, seeking funds for "an appraisal of property and infrastructure owned by Wailuku Water Company." See Exhibit "B-075;" Exhibit "B-076;" Second Supp. Taylor Reopening Dec. ¶ 3. Before it can be considered concrete county policy, the agreement would have to actually be executed,² the Council would need to vote on the acquisition, and funds would have to be appropriated for the purchase. Neither MT nor Ms. De Naie explain how the mayor's statement of an intention, not yet realized, to purchase a completely separate, distinct and unrelated water system, which is completely outside the scope of the water sources covered by this contested case, is somehow indicative of MDWS having the infrastructure and expertise to buy and operate the EMI system.

² MT attaches as its Exhibit "E-170," an unsigned draft of a proposed agreement, which has been referred to as a "working document" rather than a final proposal. See Exhibit "B-075," Second Supp. Taylor Reopening Dec. ¶ 4.

The comments cited by Ms. De Naie regarding the EMI system are even more tenuous: there is not even a proposed agreement, just a vague statement that discussions have taken place. If, as MT seems to suggest, the acquisition of Wailuku Water Company can be used as a barometer of the County's policies regarding EMI, then the timeline between initial discussions and draft agreements is approximately "11 years." See Exhibit "B-075," Second Supp. Taylor Reopening Dec. ¶ 5.

IV. ALTERNATIVE SOURCES OF WATER FOR MDWS

Both MT and Na Moku argue that MDWS has failed to show that alternative sources are unavailable or otherwise untenable. MDWS would suggest the parties refer to the *FoF, CoL and D&O* contained in Minute Order 21, in which the Hearings Officer addresses the issue of alternative sources for MDWS. Specifically, the hearings officer's proposed Conclusions of Law state, in relevant part:

126. New reservoirs, which would be fed by streams in times of water surplus for use during times of low flows are not alternatives to using stream waters but a means of mitigating the impacts of reduced availability of stream waters. Reservoirs mitigate fluctuations in both stream flow and consumer demand, and mitigation in fluctuations in stream flow allow more of it to be used at the proper time. (FOF 484, 486)

127. New production wells are not an alternative to serve the Upcountry area in the immediate and intermediate future. Water is heavy, so moving it to higher elevations such as where much of the Upcountry System is located, at 1,000-4,000 feet, from basal aquifers at sea level is projected to cost \$1.64 per thousand gallons for distribution from the Kamole-Weir WTP, \$4.07 per thousand gallons at the Piiholo WTP, and \$5.93 per thousand gallons at the Olinda WTP. MDWS's current charges for water only average about \$4 per thousand gallons, so just the electrical costs to pump the water is more than what MDWS charges overall for its entire operation. On top of pumping costs, there would be substantial initial capital expenditures and on-going maintenance. (FOF 483).

128. MDWS has also entered into a Consent Decree, which requires that MDWS conduct vigorous cost/benefit analyses of other water source options before developing ground water in the East Maui region, and has tried unsuccessfully on several occasions to work within the framework of the consent decree to develop new ground water sources. (FOF 483).

FoF, CoL and D&O, pp. 113-114 Conclusions of Law 126-128.

V. MDWS' POSITION ON THE FUTURE NEEDS OF HC&S

Na Moku's Responsive Reopening Brief suggests that MDWS' only reason for support of Hawaiian Commercial and Sugar/ Alexander & Baldwin's ("HC&S/A&B") continued use of surface water for development of diversified agriculture is "blind loyalty" resulting from "expired agreements, extensions, and a more than decades old memorandum of understanding on which a water delivery system that serves 35,000 Upcountry Maui Residents depends." *Na Moku Responsive Reopening Brief*, p. 3. As demonstrated in *MDWS' Reopening Opening Brief*, however, MDWS' position on the importance of continuing agriculture in the central isthmus is a consistent County-wide policy that is not limited to agreements between MDWS and HC&S/A&B or to the needs of MDWS in the upcountry service area. As set forth more fully in *MDWS' Reopening Opening Brief*, MDWS' position is largely premised on the policies set forth in Maui Island Plan/General Plan 2030, the Countywide Policy Plan, and the various Community Plans, which promote a variety of interests including economic diversity, maintenance of view planes, open space and fire protection.

DATED: Wailuku, Maui, Hawaii, January 20, 2017.

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CASE NO. CCH-MA13-01

SECOND SUPPLEMENTAL
DECLARATION OF DAVID TAYLOR
ON REOPENING

SECOND SUPPLEMENTAL DECLARATION OF DAVID TAYOR ON REOPENING

I, DAVID TAYLOR, declare as follows:

1. I hereby attest that the statements made in my October 17, 2016 and January 5, 2017 Declarations are accurate and true and hereby incorporate it by reference.

2. Exhibit "B-075" as referenced in MDWS' Exhibit list is a true and correct copy of an article appearing in the Maui News on December 15, 2016, detailing the mayor's December 14, 2016 press conference on the County's proposed purchase of Wailuku Water Company. This article was printed from the Maui News website on January 19, 2017 and can be found at the following link: <http://www.mauinews.com/news/local-news/2016/12/county-working-to-buy-ditch-system-watershed-lands-for-9-5-million/>.

3. The above referenced article states that the initial step for the proposed acquisition of Wailuku Water Company is limited to a "budget amendment to council members, seeking their approval for funding to appraise the property and infrastructure owned by Wailuku Water." A true

and correct copy of this proposed budget amendment as submitted to the Maui County Council is attached hereto as Exhibit "B-076."

4. The attached article further makes clear that the proposal is a "working document" rather than a "signed agreement."

5. The above referenced article also states the proposed acquisition of Wailuku Water Company by the County of Maui was "first floated 11 years ago."

6. The Wailuku Water Company System provides water to MDWS for use in the Central Maui Service Area. It does not provide any water, nor is it in any way connected, to the Upcountry Service Area.

7. MDWS uses reservoirs for water storage. In the Upcountry Service Area, reservoirs are used to mitigate potential disruptions of water delivery during dry periods where surface water cannot meet the demands of the Upcountry Service Area.

8. Reservoirs do not, and cannot increase the production capacity of a water treatment plant, which treats water for distribution.

I declare under penalty of law that the foregoing is true and correct of my own personal knowledge and that this Declaration was executed on January 20, 2017 in Wailuku, Maui, Hawaii.



DAVID TAYLOR, P.E.
Director
Department of Water Supply
County of Maui

COMMISSION ON WATER RESOURCE MANAGEMENT

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served, via email to the following, with hard copies to follow via U.S. mail, pursuant to the Minute Order, upon the following individuals as follows:

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DATED: Wailuku, Maui, Hawaii, January 20, 2017.

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