

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT

2019 JUL -5 PM 2: 37

ASHFORD & WRISTON
A Limited Liability Law Partnership LLP

BENJAMIN A. KUDO 2262-0
JAE B. PARK 8172-0
First Hawaiian Center
999 Bishop Street, Suite 1400
Honolulu, Hawaii 96813
TELEPHONE: (808) 539-0400
Attorneys for MAHI PONO, LLC

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Surface Water Use Permit Applications,)	Case No. CCH-MA 15-01
Integration of Appurtenant Rights and)	
Amendments to the Interim Instream Flow)	MAHI PONO, LLC'S OMNIBUS REPLY TO
Standards, Na Wai Eha Surface Water)	RESPONSES FILED TO HAWAIIAN
Management Areas of Waihee, Waiehi, Iao)	COMMERCIAL & SUGAR COMPANY'S
and Waikapu Streams, Maui)	AND MAHI PONO, LLC'S JOINT MOTION
)	FOR WITHDRAWAL AND SUBSTITUTION
)	OF PARTIES FOR SWUPA 2206 FILED ON
)	MAY 14, 2019; CERTIFICATE OF SERVICE
)	
)	

**MAHI PONO, LLC'S OMNIBUS REPLY TO RESPONSES
FILED TO HAWAIIAN COMMERCIAL & SUGAR COMPANY'S AND
MAHI PONO, LLC'S JOINT MOTION FOR WITHDRAWAL AND
SUBSTITUTION OF PARTIES FOR SWUPA 2206 FILED ON MAY 14, 2019**

Mahi Pono, LLC ("Mahi Pono"), by and through its counsel, Ashford & Wriston, LLLP, pursuant to the Commission on Water Resource Management's ("Commission") Minute Order #14: Order Regarding Responses to and Hearing on Hawaiian Commercial & Sugar Company's ("HC&S") and Mahi Pono, LLC's Joint Motion for Withdrawal and Substitution of Parties for SWUPA 2206 ("Substitution Motion"), submits its omnibus reply to: (1) Office of Hawaiian Affairs' ("OHA") Response to Hawaiian Commercial & Sugar Company and Mahi Pono, LLC's

Joint Motion for Withdrawal and Substitution of Parties for SWUPA 2206, Filed May 14, 2019, filed on June 21, 2019; (2) Wailuku Water Company LLC's ("WWC") Statement of No Position to Hawaiian Commercial & Sugar Company's and Mahi Pono, LLC's Joint Motion for Withdrawal and Substitution of Parties for SWUPA 2206; (3) Division of State Parks' ("State") Statement of No Position to Hawaiian Commercial & Sugar Company's and Mahi Pono, LLC's Joint Motion for Withdrawal and Substitution of Parties for SWUPA 2206 filed on June 20, 2019; (4) MMK Maui, LP's ("MMK") Response to Hawaiian Commercial & Sugar Company and Mahi Pono, LLC's Joint Motion for Withdrawal and Substitution of Parties for SWUPA 2206, Filed May 14, 2019, filed on June 25, 2019; and (5) Hui O Nā Wai 'Ehā's and Maui Tomorrow Foundation, Inc.'s (collectively the "Community Groups") Response to Hawaiian Commercial & Sugar Company's and Mahi Pono, LLC's Joint Motion for Withdrawal and Substitution of Parties for SWUPA 2206 (collectively the "Responses"). OHA, the State, WWC, MMK and Community Groups are collectively referred to as the "Responding Parties."

The Responding Parties do not dispute any of the factual declarations of Grant Nakama of Mahi Pono and Jerrod Schreck of HC&S. The Responses do evidence that the parties have questions as to how this contested case proceeding was evaluated. They also had comments on how the exceptions had not been addressed to this point. All Responses expressed a desire to resolve this proceeding as soon as possible. The purpose for the proposed continuation is to allow the parties time to try to reach a resolution in this proceeding. Given the parties' mutual inclination to conclude this contested case hearing sooner rather than later, and the current status of the case procedurally, Mahi Pono respectfully suggests that it would be beneficial to postpone the hearing on the Substitution Motion for a time period of three (3) months so that the parties can

discuss a possible stipulation that would address the parties' concerns and allow the parties an opportunity to amicably and expeditiously resolve this contested case proceeding.¹

Mahi Pono is willing to participate in settlement discussions with interested parties. Mahi Pono has reached out to some parties regarding settlement. They have expressed an interest in such a process. Proceeding in this manner will avoid re-opening this proceeding, and will allow this contested case to reach a resolution in a timely fashion without protracted litigation.

As to the merits of the Substitution Motion, Mahi Pono should be allowed to substitute in for HC&S since Responding Parties do not explicitly oppose Mahi Pono's entry into this contested case proceeding. As previously stated, Haw. Admin. R. § 13-168-30 allows the Commission to permit the substitution of parties for "good cause shown." Mahi Pono and HC&S have demonstrated that there is good cause for such a substitution in this proceeding since substantially all of the land consisting of HC&S's lands in the Waihee-Hopoi Fields (that is subject to SWUPA 2206) was sold to Mahi Pono. Mahi Pono plans to cultivate these same lands with a full range of agricultural operations and related land uses. *See* Declaration of Grant Nakama at ¶ 5, Substitution Motion. As such, Mahi Pono is the proper party of interest to this contested case proceeding.

Mahi Pono would also like to reserve its rights to respond to other concerns raised by the parties to this contested case hearing at the appropriate time.

DATED: Honolulu, Hawaii, July 5, 2019.



BENJAMIN A. KUDO
JAE B. PARK

Attorneys for MAHI PONO, LLC

¹ Some of the parties participated in a mediation in CCH-MA06-01 that resulted in a settlement agreement.

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Surface Water Use Permit Applications,) Case No. CCH-MA15-01
Integration of Appurtenant Rights and)
Amendments to the Interim Instream Flow)
Standards, Na Wai Eha Surface Water)
Management Areas of Waihee, Waiehu, Iao)
Waikapu Streams, Maui)
_____)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this date, a true and correct copy of the Mahi Pono, LLC's Omnibus Reply to Responses Filed to Hawaiian Commercial & Sugar Company's and Mahi Pono, LLC's Joint Motion for Withdrawal and Substitution of Parties for SWUPA 2206 Filed on May 14, 2019 was duly served on the following parties by hand delivery or electronic service, as indicated below.

SERVICE BY HAND DELIVERY

Commission on Water Resources Management
1151 Punchbowl Street, Room 227
Honolulu, HI 96813
(also sent via email: Kathy.s.yoda@hawaii.gov)

ELECTRONIC SERVICE

Noelani & Alan Almeida alana89@juno.com
Gordon Almeida
P.O. Box 1005
Wailuku, HI 96793

Douglas Bell puna.papabell@gmail.com
1420 Honua Place
Waikapu, HI 96793

Doyle Betsill teresa@bbcmaui.com
c/o Betsill Brothers
P.O. Box 1451
Wailuku, HI 96793

Francisco Cerizo
P.O. Box 492
Wailuku, HI 96793

cerizof@gmail.com

Heinz Jung and Cecilia Chang
P.O. Box 1211
Wailuku, HI 96793

cici.chang@hawaiiantel.net

Jordanella (Jorrie) Ciotti
484 Kalua Road
Wailuku, HI 96793

jorrieciotti@gmail.com

Fred Coffey
1271 Malaihi Road
Wailuku, HI 96793

hawaii50peleke@yahoo.com

James Dodd
P.O. Box 351
Wailuku, HI 96793

jimdodd47@gmail.com

Kathy De Hart
P.O. Box 1574
Wailuku, HI 96793

kdehart17@gmail.com

John V. & Rose Marie H.
Duey
Hooululahui LLC
575 A Iao Valley Rd.
Wailuku, HI 96793
cc: Nani Santos

jduey@maui.net

nanisantos808@gmail.com

Stanley Faustino
c/o Kanealoha Lovato-Rodrigues
384 Waihee Valley Road
Wailuku, HI 96793

kanealoha808@gmail.com

William Freitas
c/o Kapuna Farms LLC
2644 Kahekili Highway
Wailuku, HI 96793

kapunafarms@gmail.com

Diannah Goo

c/o April Goo
2120 C Kahekili Hwy.
Wailuku, HI 96793

ag2517@aol.com

Nicholas Harders on behalf of:
Karl & Lee Ann Harders
1422 Nuna Pl.
Wailuku, HI 96793

waikapu@me.com

Theodore & Zelig Harders
T&Z Harders FAM LTD PTNSHP
Theodore and Zelig Harders Family Ltd. Partnership
1415 Kilohi St.
Wailuku, HI 96793

Greg Ibara
227 Kawaipuna Street
Wailuku, HI 96793

gregibara56@gmail.com

Evelyn Kamasaki
Cynthia Ann McCarthy
Claire S. Kamasaki
1550 Nukuna Place
Wailuku, HI 96793

cmcmaui@live.com

Charlene E. and Jacob H. Kana, Sr.
P.O. Box 292
Wailuku, HI 96793

char1151@hawaii.rr.com

Kimberly Lozano
P.O. Box 2082
Wailuku, HI 96793

pauahi808@aol.com

Renee Molina
P.O. Box 1746
Wailuku, HI 96793

myoheo@yahoo.com

Douglas Myers
1299 Malaihi Road
Wailuku, HI 96793

upperwaiehu@yahoo.com

Nelson Okamura
Kihei Gardens & Landscaping Co. LLP
P.O. Box 1058
Puunene, HI 96784

nokamura@kiheigardens

Lorrin Pang
166 River Road
Wailuku, HI 96793

pangk005@hawaii.rr.com

Victor and Walette Pellegrino
c/o Hokuao Pellegrino
213 West Waiko Road
Waikapu, HI 96793

hokuao.pellegrino@gmail.com

L. Ishikawa
Piko Ao, LLC
2839 Kalialani Circle
Pukalani, HI 96768

lorilei@hawaii.edu

Michael Rodrigues
2518 W. Main Street
Wailuku, HI 96793

mikerodmaui@yahoo.com

Waldemar & Darlene Rogers
1421 Nuna Place
Wailuku, HI 96793

rogersw001@hawaii.rr.com

Burt Sakata
107 Waihee Valley Rd.
Wailuku, HI 96793

waihee89@yahoo.com

Bryan Sarasin, Sr.
c/o Bryan Sarasin, Jr.
P.O. Box 218
Wailuku, HI 96793

mauifishfarm@hawaiiantel.net

Duke & Jean Sevilla & Christina Smith
702 Kaae Road
Wailuku, HI 96793

sevillad001@hawaii.rr.com

Jeff and Ramona Lei Smith
P.O. Box 592
Wailuku, HI 96793

ohianui.ohana@gmail.com

Murray and Carol Smith
P.O. Box 11255
Lahaina, HI 96761

murray@jps.net

Crystal Smythe
John Minamina Brown Trust
727 Wainee Street, Suite 104
Lahaina, HI 96761

nalanismythe@yahoo.com

Clayton Suzuki
Linda Kadosaki
Reed Suzuki
Scott Suzuki
P.O. Box 2577
Wailuku, HI 96793

csuzuki@wailukuwater.com

John Varel
191 Waihee Valley Road
Wailuku, HI 96793

jvarel@fusionstorm.com

Michele and Leslie Vida, Jr.
135 Pilikana Place
Wailuku, HI 96793

mikievida@hotmail.com

Leslie Vida, Sr.
c/o Donna Vida
125 Pilikana Street
Wailuku, HI 96793

dmlavida@yahoo.com

Roger Yamaoka
Kevin Yamaoka
1295 Old Waikapu Road
Wailuku, HI 96793

rryamaoka@aol.com

kty@hawaii.rr.com

Caleb Rowe, Esq.
Kristin Tarnstrom, Esq.
County of Maui
Department of the Corporation Counsel
200 South High Street
Wailuku, HI 96793
(County of Maui, Department of Water Supply)

caleb.rowe@co.maui.hi.us

kristin.tarnstrom@co.maui.hi.us

susan.pacheco@co.maui.hi.us

Colin J. Lau, Esq.
465 S. King Street, Room 300
Honolulu, Hawaii 96813
cc: Russell Kumabe

colin.j.lau@hawaii.gov

russell.p.kumabe@hawaii.gov

Holly McEldowney
(Department of Land and Natural Resources,
Division of State Parks)

holly.mceldowney@hawaii.gov

Yvonne Izu, Esq.
Wayne E. Costa, Jr., Esq.
Kris N. Nakagawa, Esq.
Morihara Lau & Fong LLP
400 Davies Pacific Center
841 Bishop Street
Honolulu, HI 96813

yizu@moriharagroup.com
wcosta@moriharagroup.com
knakagawa@moriharagroup.com

cc: Garret Hew
(Hawaiian Commercial & Sugar Co. (HC&S))

ghew@hcsugar.com

Tina Aiu, Esq.
Oahu Island Director
Hawaiian Islands Land Trust, HILT
P.O. Box 965
Wailuku, HI 96793
cc: Scott Fisher
Penny Levin

christina@hilt.org

scott@hilt.org
pennysfh@hawaii.rr.com

Isaac Moriwake, Esq.
Summer Kupau-Odo
Earthjustice
850 Richards Street
Suite 400
Honolulu, HI 96813
(Hui O Na Wai Eha and
Maui Tomorrow Foundation)

imoriwake@earthjustice.org
skupau@earthjustice.org
jbrown@earthjustice.org
jparks@earthjustice.org

Avery & Mary Chumbley
363 West Waiko Road
Wailuku, HI 96793
(Makani Olu Partners LLC)

abc@aloha.net

Jodi Yamamoto, Esq.
Wil Yamamoto, Esq.
Yamamoto Caliboso
1100 Alakea Street
Suite 3100
Honolulu, HI 96813
(MMK Maui, LP, The King Kamehameha
Golf Club, Kahili Golf Course)

jyamamoto@ychawaii.com
wyamamoto@ychawaii.com

Judy Tanaka, Esq.
Pamela Bunn, Esq.
Dentons US LLP
1001 Bishop Street, Suite 1800 Honolulu, HI
96813
(Office of Hawaiian Affairs)

judy.tanaka@dentons.com
pamela.bunn@dentons.com

Craig Nakamura, Esq.
Catherine L.M. Hall, Esq.
Carlsmith Ball LLP
2200 Main Street, Suite 400
Wailuku, HI 96793
(Wahi Hoomalu Limited Partnership)

cnakamura@carlsmith.com
chall@carlsmith.com

Peter A. Horovitz, Esq.
Kristine Tsukiyama, Esq.
Merchant Horovitz LLLC
2145 Wells Street, Suite 303
Wailuku, HI 96793
(Waikapu Properties, LLC and
MTP (Maui Tropical Plantation)
Operating Company, LLC)
cc: Albert Boyce

pah@mhmaui.com
kkt@mhmaui.com

albertboyce@gmail.com

Brian Kang, Esq.
Emi L.M. Kaimuloa
Watanabe Ing, LLP
First Hawaiian Center
999 Bishop Street, 23rd Floor
Honolulu, HI 96813
(Wailuku Country Estates Irrigation
Company (WCEIC))

bkang@wik.com
ekaimuloa@wik.com

Paul R. Mancini, Esq.
James W. Geiger, Esq.
Paul Mancini, Esq.
Mancini, Welch, & Geiger LLP
RSK Building
305 Wakea Avenue, Suite 200
Kahului, HI 96732
cc: Avery Chumbley
(Wailuku Water Company, LLC)

pmancini@mrwlaw.com
jgeiger@mrwlaw.com

Tim Mayer, Ph.D.
Supervisory Hydrologist
Water Resources Branch
US Fish and Wildlife Service
911 NE 11th Avenue
Portland, OR 97232-4181
cc: Frank Wilson

tim_mayer@fws.gov

frank.wilson@sol.doi.gov

Earleen Tianio
Takitani, Agaran & Jorgensen, LLLP
24 North Church Street, Suite 409
Wailuku, HI 96793
(Ken Ota, Saedence Ota, Kurt Sloan,
Elizabeth Sloan, Anthony Takitani,
Audrey Takitani, Kitagawa
Motors, Inc., SPV Trust and
Gerald W. Lau Hee)

earleen@tonytlaw.com

Lawrence H. Miike
Hearings Officer
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813

lhmiike@hawaii.rr.com

Linda L.W. Chow, Esq.
Deputy Attorney General
465 S. King Street, Room 300
Honolulu, Hawaii 96813

linda.l.chow@hawaii.gov

DATED: Honolulu, Hawaii, July 5, 2019.



BENJAMIN A. KUDO
JAE PARK

Attorneys for MAHI PONO LLC