

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAI'I

Surface Water Use Applications,)
Integration of Appurtenant Rights) Case Number CCH-MA 15-01
and Amendments to the Interim Instream)
Flow Standards, Nā Wai 'Ehā Surface)
Water Management Areas of Waihe'e)
River, Waiehu Stream, Wailuku River)
(previously known as 'Īao Stream))
and Waikapū Stream, Maui)
_____)

ERRATA TO

FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND DECISION & ORDER

The Commission hereby amends Findings of Fact, Conclusions of Law, and Decision & Order filed in this case on June 28, 2021, to make the following revisions to the Decision and Order section 193:

1. Mahi Pono's total irrigation requirement is amended to reflect the correct calculated amount;
2. Allowed system losses are reduced to be consistent with the system losses claimed by Wailuku Water Company of approximately five percent (5%);
3. The amount of water available from Well No. 7 as an alternative source is increased, including additional justification for the increased amount;
4. Correct the stated amount for the existing use permit based, in part, on changes noted above and correction of calculation errors; and
5. Specify the sources of the withdrawals for the existing use permit.

Attached hereto as Exhibit "A" is a document showing the revisions to the Decision and Order section 193 in redline. Attached hereto as Exhibit "B" is a clean version of the amended section which should replace the original Decision and Order section 193.

This decision shall be effective immediately upon filing.

DATED: Jun 30, 2021.

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SUZANNE D. CASE, CHAIRPERSON

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KEITH E. KAWAOKA

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EXHIBIT A

193. **SWUPA 2206-Mahi Pono** (FOF 480.)

- a. Mahi Pono's total irrigation requirement is ~~46.609~~125 mgd.
- b. System losses of 2.15 mgd is excessive and unsubstantiated. Other system losses by the other large water diverter, Wailuku Water Company, were able to be reduced to approximately five percent of water diverted. System losses by Mahi Pono of five percent (5%) of water diverted are reasonable. Mahi Pono's system losses are 2.15 mgd 5% of water diverted or 456,250 gpd.
- c. Mahi Pono's alternative sources are:
 - i. 0.1 mgd from Mahi Pono's 'Īao Tunnel.
 - ii. 34.5 mgd from Well No. 7.
 - a. The Commission, in considering nonpotable resources for irrigation, must balance between competing interests. Operationally, this may mean the use of both non-potable resources, which can only be determined by an analysis of the specific circumstances of each case to determine the amount of each competing resource which is not "practicably available," *supra*, COL 110.
 1. Surface water would be available for Mahi Pono's Waihe'e-Hopoi fields only after the IIFS are met, offstream uses of higher priority are met, and water is allocated between offstream uses of equal priority.
 2. For water from Well No. 7, water would be available after considering costs, technology, and logistics, and the sustainable yield of the aquifer.

3. After determining the amount of water that is reasonable and beneficial to irrigate the Waihe'e-Hopoi fields, surface water must be offset by the contribution from other sources that are practicably available.
- b. Cost is the only consideration that Mahi Pono cites as making water from Well No. 7 not "practicably available," as logistics and technology are already in place; i.e., a new pump and pipeline. But Mahi Pono only cites costs for 18.5 mgd or 9 mgd, which, when used, would mean that the Waihe'e-Hopoi fields would be in complete or at least in substantial production and producing income. Currently, less than 200 acres are in experimental plantings, which would be using only approximately 0.955 mgd (200 acres x 4,776 gad), which Mahi Pono estimates would cost \$178 per million gallons of water. There is no indication at what point pumping costs for Well No. 7, without offsetting income, would cause Mahi Pono to cease activities on the 3,650 acres of the Waihe'e-Hopoi fields if surface water was not available.
 - c. What limits the practical availability of brackish water from Well No. 7 is the sustainable yield for the underlying Kahului Aquifer, which is 3 mgd from natural recharge.
 - d. Recharge from irrigation is currently unknown but the Commission had determined, and Mahi Pono had confirmed, that total yield was a maximum of 18.5 mgd on a sustainable daily basis when sugar cane was being irrigated at rates determined by the Commission to have been excessive.
 - e. Currently, only a few hundred acres are being irrigated and at about 80% of the

reasonable and necessary irrigation rate determined by the Commission for sugar cane. Thus, while research and testing are being conducted and expansion of acres under cultivation proceeds gradually, irrigation recharge will be minimal or even non-existent.

- f. As acres under active cultivation increases, recharge is expected to increase in some direct proportion to irrigation—though at rates significantly less than under sugar cane irrigation—making more brackish water available from Well No. 7. But as more brackish water is used from Well No. 7 to offset surface waters, there will be less recharge. Therefore, the contribution of Well No. 7 to irrigation requirements would be constantly changing, and the equilibrium point between the two may never be known, much less achieved.

g. Mahi Pono is expected to contribute at a minimum approximately half of its primary irrigation need from Well No. 7.

- d. Mahi Pono is issued an existing use permit for 15.654.98125 mgd⁺ (4,981,250 gpd) which consists of is determined by adding 13.59.125 mgd for irrigation of 3,650 acres of the Waihe'e-Hopoi fields (3,650 ac x 2,500 gpd = 9,125,000 gpd) and 2.15456,250 mgd gpd in system losses minus 0.1 mgd from Mahi Pono's 'Īao Tunnel and 4.5 mgd from Well No. 7.
- e. This existing use permit is limited to withdrawal of 3,981,250 mgd from Waihe'e Stream and 1,000,000 mgd from Wailuku River.

⁺ Total irrigation requirements of 16.609.125 mgd are reduced by 0.1 mgd from Mahi Pono's 'Īao Tunnel and 34.5 mgd from Well No. 7's natural sustainable yield.

f. In addition to the standard conditions, the permit is subject to the following special conditions:

- i. Mahi Pono will coordinate its and other down-ditch permittees' day-to-day water requirements such that Mahi Pono will utilize water in the Waihe'e Ditch (through the Hopoi Chute, which drops water down to the Spreckels Ditch near the latter's terminus) without negatively impacting down-ditch permittees' allocations.
- ii. To prevent waste, Mahi Pono is permitted to use any and all waters that reach the terminus of the Spreckels Ditch (previously ending in the Waialae Reservoir, which is now being bypassed).

~~iii. Although Mahi Pono is permitted 13.5 mgd of surface waters to irrigate its Waihe'e Hopoi fields, when Mahi Pono's use of surface water reaches half of its permitted amount, or approximately 7 mgd, it will be required to use Well No. 7 to the point that the brackish well water becomes unusable for irrigation.~~

~~Without significant recharge from irrigation, the yield from Well No. 7 cannot be expected to be significantly higher than the natural recharge. The permitted amount of 13.5 mgd already contains the discount from 3 mgd of the Kahului Aquifer's natural recharge. Thus, if significant increase in recharge is to occur, significant overlying irrigation has to occur. There is a new, lower, and unknown yield from Well No. 7 than what was historically achieved.~~

iiiv. As a condition of this permit, Mahi Pono is required to gage and continuously monitor with the installation of a parshall flume or a Commission staff approved water meter, at the following locations:

1. Spreckels Ditch at South Waiehu Stream (CWRM gage 6-63)
2. Spreckels Ditch Intake at Wailuku (CWRM gage 6-18)

3. South Waiehu 'Auwai

EXHIBIT B

193. **SWUPA 2206-Mahi Pono** (FOF 480.)
- a. Mahi Pono's total irrigation requirement is 9.125 mgd.
 - b. System losses of 2.15 mgd is excessive and unsubstantiated. Other system losses by the other large water diverter, Wailuku Water Company, were able to be reduced to approximately five percent of water diverted. System losses by Mahi Pono of five percent (5%) of water diverted are reasonable. Mahi Pono's system losses are 5% of water diverted or 456,250 gpd.
 - c. Mahi Pono's alternative sources are:
 - i. 0.1 mgd from Mahi Pono's 'Īao Tunnel.
 - ii. 4.5 mgd from Well No. 7.
 - a. The Commission, in considering nonpotable resources for irrigation, must balance between competing interests. Operationally, this may mean the use of both non-potable resources, which can only be determined by an analysis of the specific circumstances of each case to determine the amount of each competing resource which is not "practicably available," *supra*, COL 110.
 - 1. Surface water would be available for Mahi Pono's Waihe'e-Hopoi fields only after the IIFS are met, offstream uses of higher priority are met, and water is allocated between offstream uses of equal priority.
 - 2. For water from Well No. 7, water would be available after considering costs, technology, and logistics, and the sustainable yield of the aquifer.

3. After determining the amount of water that is reasonable and beneficial to irrigate the Waihe'e-Hopoi fields, surface water must be offset by the contribution from other sources that are practicably available.
- b. Cost is the only consideration that Mahi Pono cites as making water from Well No. 7 not "practicably available," as logistics and technology are already in place; i.e., a new pump and pipeline. But Mahi Pono only cites costs for 18.5 mgd or 9 mgd, which, when used, would mean that the Waihe'e-Hopoi fields would be in complete or at least in substantial production and producing income. Currently, less than 200 acres are in experimental plantings, which would be using only approximately 0.955 mgd (200 acres x 4,776 gad), which Mahi Pono estimates would cost \$178 per million gallons of water. There is no indication at what point pumping costs for Well No. 7, without offsetting income, would cause Mahi Pono to cease activities on the 3,650 acres of the Waihe'e-Hopoi fields if surface water was not available.
- c. What limits the practical availability of brackish water from Well No. 7 is the sustainable yield for the underlying Kahului Aquifer, which is 3 mgd from natural recharge.
- d. Recharge from irrigation is currently unknown but the Commission had determined, and Mahi Pono had confirmed, that total yield was a maximum of 18.5 mgd on a sustainable daily basis when sugar cane was being irrigated at rates determined by the Commission to have been excessive.
- e. Currently, only a few hundred acres are being irrigated and at about 80% of the reasonable and necessary irrigation rate

determined by the Commission for sugar cane. Thus, while research and testing are being conducted and expansion of acres under cultivation proceeds gradually, irrigation recharge will be minimal or even non-existent.

- f. As acres under active cultivation increases, recharge is expected to increase in some direct proportion to irrigation—though at rates significantly less than under sugar cane irrigation—making more brackish water available from Well No. 7. But as more brackish water is used from Well No. 7 to offset surface waters, there will be less recharge. Therefore, the contribution of Well No. 7 to irrigation requirements would be constantly changing, and the equilibrium point between the two may never be known, much less achieved.
 - g. Mahi Pono is expected to contribute at a minimum approximately half of its primary irrigation need from Well No. 7.
- d. Mahi Pono is issued an existing use permit for 4.98125 mgd (4,981,250 gpd) which is determined by adding 9.125 mgd for irrigation of 3,650 acres of the Waihe‘e-Hopoi fields ($3,650 \text{ ac} \times 2,500 \text{ gad} = 9,125,000 \text{ gpd}$) and 456,250 gpd in system losses minus 0.1 mgd from Mahi Pono’s ‘Īao Tunnel and 4.5 mgd from Well No. 7.
- e. This existing use permit is limited to withdrawal of 3,981,250 mgd from Waihe‘e Stream and 1,000,000 mgd from Wailuku River.
- f. In addition to the standard conditions, the permit is subject to the following special conditions:
- i. Mahi Pono will coordinate its and other down-ditch permittees’ day-to-day water requirements such that Mahi Pono will utilize water in the Waihe‘e Ditch (through the Hopoi Chute, which drops water down to the Spreckels Ditch near the latter’s terminus)

without negatively impacting down-ditch permittees' allocations.

- ii. To prevent waste, Mahi Pono is permitted to use any and all waters that reach the terminus of the Spreckels Ditch (previously ending in the Waialae Reservoir, which is now being bypassed).
- iii. As a condition of this permit, Mahi Pono is required to gage and continuously monitor with the installation of a parshall flume or a Commission staff approved water meter, at the following locations:
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 - 2. Spreckels Ditch Intake at Wailuku (CWRM gage 6-18)
 - 3. South Waiehu 'Auwai

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 and)
Waikapu Streams, Maui)
_____)

CERTIFICATE OF SERVICE

On June 30, 2021, a copy of the foregoing document was posted on the Commission on Water Resource Management's website and served on the parties that have opted for electronic service.

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