

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 ) MINUTE ORDER # 19 – ORDER  
Standards, Na Wai Eha Surface Water ) GRANTING IN PART AND DENYING IN  
Management Areas of Waihee, Waiehu, Iao ) PART THE OFFICE OF HAWAIIAN  
and Waikapu Streams, Maui ) AFFAIRS, HUI O NĀ WAI ‘EHĀ and MAUI  
) TOMORROW FOUNDATION, INC.’S JULY  
) 6, 2021 MOTION FOR PARTIAL  
) RECONSIDERATION OF FINDINGS OF  
) FACT, CONCLUSIONS OF LAW, AND  
) DECISION AND ORDER FILED JUNE 28,  
) 2021; CERTIFICATE OF SERVICE  
)  
)  
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**MINUTE ORDER # 19 – ORDER GRANTING IN PART AND DENYING IN PART THE OFFICE OF HAWAIIAN AFFAIRS, HUI O NĀ WAI ‘EHĀ and MAUI TOMORROW FOUNDATION, INC.’S JULY 6, 2021 MOTION FOR PARTIAL RECONSIDERATION OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER FILED JUNE 28, 2021**

The OFFICE OF HAWAIIAN AFFAIRS (“OHA”), HUI O NĀ WAI ‘EHĀ (“the Hui”) and MAUI TOMORROW FOUNDATION, INC. (“Maui Tomorrow”) filed a “Motion for Partial Reconsideration of Findings of Fact, Conclusions of Law, and Decision and Order Filed June 28, 2021” (“OHA Motion”) with the Commission on Water Resource Management on July 6, 2021 in which they asked for the Commission’s June 28, 2021 Decision to be modified in two ways. First, they asked that paragraph 198 of the Decision and Order (“D&O”) section of the Commission’s June 28, 2021 Decision be deleted. Second, they asked that the Findings of Fact, Conclusions of Law, and Decision and Order (“FOFs, COLs, and D&O”) and appendices in the Commission’s June 28, 2021 Decision pertaining to the appurtenant rights of Wailuku Country Estates Irrigation Company and Wailuku Country Estates Community Association (collectively

“WCEIC”) be corrected due to the appurtenant rights having been extinguished by a reservation of water rights in the Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Wailuku Country Estates, which was incorporated by reference in the deeds from Wailuku Agribusiness Co., Inc.

Applicants WCEIC filed a Memorandum in Opposition to the second requested modification in the OHA Motion on August 5, 2021. In its Memorandum in Opposition, WCEIC argued that the OHA Motion did not meet the standard for reconsideration under Hawai‘i Administrative Rule (“HAR”) § 13-167-64.

Based on the records and filings in this case, and the arguments contained in the OHA Motion and the Memorandum in Opposition, the Commission hereby grants in part and denies in part the OHA Motion without prejudice.

With respect to the OHA Motion’s first request, that paragraph 198 of the D&O section of the Commission’s June 28, 2021 Decision be deleted, the Commission declines to delete the paragraph but will modify said paragraph to read as follows:

198. All permittees that have been awarded water based on appurtenant rights will be required to provide copies of deeds for their properties to confirm that no reservation of water rights have been made in their chain of title.

The deeds shall be submitted by all appurtenant rights holders within six months of this order.

This deadline shall be incorporated into awarded permits and may be extended by the Chairperson for good cause.

With respect to the OHA Motion’s second request, related to WCEIC’s appurtenant rights, the motion is denied. The procedure to confirm or deny the appurtenant rights of permittees, including the rights of WCEIC, will be as set out in the revised paragraph 198 of the

D&O, as indicated above. When all pertinent deeds are received by the Commission, a determination will be made at that time if WCEIC's appurtenant rights were extinguished.

DATED: Honolulu, Hawaii,           Sep 23, 2021          .

*Suzanne Q. Case*

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SUZANNE CASE, Presiding Officer  
Commission on Water Resource Management

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Management Areas of Waihee, Waiehu, Iao and )  
Waikapu Streams, Maui )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

On September 23, 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.

Joseph Alueta  
P.O. Box 785  
Wailuku, HI 96793

David & Anne Brown  
2525 Kahekili Hwy.  
Wailuku, HI 93793-9233

Pauline Kanegai Curry  
P.O. Box 3172  
Wailuku, HI 96793

Michael Bailie  
PO Box 1433  
Wailuku, HI 96793

Regino Cabacungan  
2192 Mokuhan Road  
Wailuku, HI 96793

Charles Dando, Sr. & Jr.  
85 E. Kanamele Loop  
Wailuku, HI 96793

Vernon Bal  
230 Koeli Street  
Wailuku, HI 96793

Thomas Cerizo  
1740 Kamamalu Place  
Wailuku, HI 96793

Alfred & Patricia DeMello  
El Ranchitos DeMello  
P.O. Box 1394  
Lockeford, CA 95237

Dorothy Bell  
1419 Nuna Place  
Waikapu, HI 96793

Cordell Chang  
2315 Kahekili Hwy.  
Wailuku, HI 96793

Michael Doherty  
41 Waihee Valley Road  
Wailuku, HI 96793

Alan Birnie  
175 W. Waiko Road  
Wailuku, HI 96793

Joshua Chavez  
P.O. Box 6240  
Kahului, HI 96733

Richard Emoto  
2032 B Ulei Lane  
Wailuku, HI 96793

Gary & Evelyn Brito  
2160A Puuohala Road  
Wailuku, HI 96793

Winifred and Gordon Cockett  
1159 Piihana Road  
Wailuku, HI 96793

Patricia Federcell  
88 S Papa Avenue, Apt. 404  
Kahului, HI 96732-3307

Rudy & Perlita Fernandez  
P.O. Box 330808  
Kahului, HI 96733

Roderick Fong  
Fong Construction Company  
Inc.  
495 Hukilike Street, Bay 4  
Kahului, HI 96732

Dave Gomes  
Hawaiian Cement - Maui  
Concrete and Aggregate  
Division  
P.O. Box 488  
Kahului, HI 96732

Russel Gushi  
185 West Waiko Road  
Wailuku, HI 96793

Valentine Haleakala  
2160 Puuohala Road  
Wailuku, HI 96793

Robert Hanusa  
895 Malaihi Road  
Wailuku, HI 96793

Darrell Higa  
918 Kanakea Loop  
Lahaina, HI 96761

George & Yoneko Higa  
592 S. Papa Avenue  
Kahalui, HI 96732

Paul and Jennifer Higashino  
P.O. Box 239  
Wailuku, HI 96793

Hiolani Ranch LLC  
P.O. Box 34167  
San Diego, CA 92163

Brian Ige  
RCFC Kehalani, LLC  
2005 Main Street  
Wailuku, HI 96793

Ronald Jacintho  
Pohakulepo Recycling, LLC  
150 Pakana Street  
Wailuku, HI 96790

Ronald Jacintho  
ROJAC Trucking, Inc.  
150 Pakana Street  
Wailuku, HI 96793

Amanda Jones  
Spencer Homes Inc.  
P.O. Box 97  
Kihei, HI 96753

Kaanapali Kai, Inc.  
P.O. Box 910  
Wailuku, HI 96793

Kauai Kahalekai  
202 Waihee Valley Road  
Wailuku, HI 96793

Kenneth Kahalekai  
240 Waihee Valley Road  
Wailuku, HI 96793

Alfred Kailiehu Sr.  
Alfred Kailiehu, Jr.  
3660 Kahekili Hwy.  
Wailuku, HI 96793

Leinaala Kihm  
1415 Honua Place  
Wailuku, HI 96793  
Sterling Kim

Hale Mua Properties, LLC  
250 Alamaha Street, Suite  
N18  
Kahului, HI 96732

Clifford & Cristal Koki  
P.O. Box 442  
Wailuku, HI 96793

Lawrence Koki  
2585 Kahekili Highway  
Wailuku, HI 96793

Mary Jane Kramer  
Na Mala o Waihee Private  
Water Co. Inc.  
c/o Commercial Properties of  
Maui Management, Inc.  
1962-B Wells Street  
Wailuku, HI 96793

Donald Kuemmeler  
RCFC Kehalani, LLC  
555 California Steet  
Suite 3450  
San Francisco, CA 94104

Living Waters Land  
Foundation, LLC  
P.O. Box 7  
Santa Barbara, CA 93102

Jane Laimana  
45-520 Alokahi Street  
Kaneohe, HI 96744

Cindy Lee, Managing Agent  
Waiolani Mauka Community  
Association, Inc.  
c/o Scott Nunokawa  
P.O. Box 946  
Wailuku, HI 96793

David & Katherine Lengkeek  
128 River Road  
Wailuku, HI 96793

Nadao Makimoto  
374 Nihoa Street  
Kahului, HI 96732

Glenn McLean  
350 West Waiko Road  
Wailuku, HI 96793

Kenneth Mendoza  
2160 B Puuohala Road  
Wailuku, HI 96793-0463

Lawrence Miyahira  
Jason Miyahira  
P.O. Box 762  
Wailuku, HI 96793

Jerri Jane K. Young  
1455 Miloiki Street  
Honolulu, HI 96825-3229

Jinsei Miyashiro Trust  
P.O. Box 235  
Wailuku, HI 96793

Lester Nakama  
Aloha Poi Factory, Inc.  
800 Lower Main Street  
Wailuku, HI 96793

David Niehaus  
1630 Piihola Road  
Makawao, HI 96768

Nobriga's Ranch Inc.  
P.O. Box 1170  
Wailuku, HI 96793

Kalani & Tera Paleka  
P.O. Box 342  
Wailuku, HI 96793

Robert Pinto  
c/o Claire Pinto  
130 Pilikana Place  
Wailuku, HI 96793

Milla Richardson  
94 Laukahi Street  
Kihei, HI 96753

Isabelle Rivera  
c/o Regino Cabacungan  
2192 Mokuhaui Road  
Wailuku, HI 96793

Katherine Riyu  
P.O. Box 696  
Wailuku, HI 96793

Peter Fritz  
107 Waihee Valley Rd.  
Wailuku, HI 96793

Alfred Santiago & Colin  
Kailiponi  
2445C Vineyard St.  
Wailuku, HI 96793

Ione Shimizu  
219-K West Waiko Road  
Wailuku, HI 96793

Donnalee & David Singer  
P.O. Box 3017  
Wailuku, HI 96793

Kurt & Betsy Sloan  
P.O. Box 310  
Kihei, HI 96753

Warren Soong  
245A West Waiko Road  
Wailuku, HI 96793

Yoshie Suehiro  
Natalie Hashimoto  
915 Malaihi Road  
Wailuku, HI 96793

Noel & Katherine Texeira  
P.O. Box 2846  
Wailuku, HI 96793-7846

Thomas & Patricia Texeira &  
Denise Texeira  
205 Waihee Valley Road  
Wailuku, HI 96793

Waldo Ullerich  
Emmanuel Lutheran Church  
& School  
P.O. Box 331194  
Kahului, HI 96733

Melvin Riyu & Judith  
Yamanoue  
PO Box 696  
Wailuku, HI 96793

ELECTRONIC SERVICE

Noelani & Alan Almeida  
Gordon Almeida  
P.O. Box 1005  
Wailuku, HI 96793

alana89@juno.com

Douglas Bell  
1420 Honua Place  
Waikapu, HI 96793

puna.papabell@gmail.com

Doyle Betsill  
c/o Betsill Brothers  
P.O. Box 1451  
Wailuku, HI 96793

teresa@bbcmaui.com

Francisco Cerizo  
PO 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

Steve Haller  
1060 East Kuiaha Road  
Haiku, HI 96708

hallerlandscapes@gmail.com

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

kdehart17@gmail.com

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

[jduey@maui.net](mailto:jduey@maui.net)

[nanisantos808@gmail.com](mailto:nanisantos808@gmail.com)

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

[kanealoha808@gmail.com](mailto:kanealoha808@gmail.com)

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

[kapunafarms@gmail.com](mailto:kapunafarms@gmail.com)

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

[ag2517@aol.com](mailto:ag2517@aol.com)

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

[waikapu@me.com](mailto: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](mailto:gregibara56@gmail.com)

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

[cmcmaui@live.com](mailto:cmcmaui@live.com)



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

char1151@hawaii.rr.com

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

pauahi808@aol.com

Downey Rughtiv Manoukian TTEE  
POB 1609  
Waianae, HI 96792

[downrm@yahoo.com](mailto:downrm@yahoo.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

Francis Ornellas  
340 Iao Valley Road  
Wailuku, HI 96793

kumuwiliwili@gmail.com

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	cssuzuki@hawaiiantel.net
John Varel 191 Waihee Valley Road Wailuku, HI 96793	jvarel@fusionstorm.com

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

[MikielivedaVida@gmail.com](mailto:MikielivedaVida@gmail.com)

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

[dmlavida@yahoo.com](mailto:dmlavida@yahoo.com)

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

[rryamaoka@aol.com](mailto:rryamaoka@aol.com)  
[kty@hawaii.rr.com](mailto: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](mailto:caleb.rowe@co.maui.hi.us)  
[kristin.tarnstrom@co.maui.hi.us](mailto:kristin.tarnstrom@co.maui.hi.us)  
[susan.pacheco@co.maui.hi.us](mailto:susan.pacheco@co.maui.hi.us)

Colin J. Lau, Esq.  
465 S. King Street, Room 300  
Honolulu, Hawaii 96813

[colin.j.lau@hawaii.gov](mailto:colin.j.lau@hawaii.gov)

cc: Russell Kumabe  
Holly McEldowney

[russell.p.kumabe@hawaii.gov](mailto:russell.p.kumabe@hawaii.gov)  
[holly.mcelandowney@hawaii.gov](mailto:holly.mcelandowney@hawaii.gov)

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

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](mailto:yizu@moriharagroup.com)  
[wcosta@moriharagroup.com](mailto:wcosta@moriharagroup.com)  
[knakagawa@moriharagroup.com](mailto:knakagawa@moriharagroup.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](mailto:christina@hilt.org)

[scott@hilt.org](mailto:scott@hilt.org)  
[pennysfh@hawaii.rr.com](mailto: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](mailto:imoriwake@earthjustice.org)  
[skupau@earthjustice.org](mailto:skupau@earthjustice.org)  
[jbrown@earthjustice.org](mailto:jbrown@earthjustice.org)  
[jparks@earthjustice.org](mailto:jparks@earthjustice.org)

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

[abc@aloha.net](mailto: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](mailto:jyamamoto@ychawaii.com)  
[wyamamoto@ychawaii.com](mailto: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](mailto:judy.tanaka@dentons.com)  
[pam.bunn@dentons.com](mailto:pam.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](mailto:cnakamura@carlsmith.com)  
[chall@carlsmith.com](mailto:chall@carlsmith.com)

Peter A. Horovitz, Esq. [pah@mhmaui.com](mailto:pah@mhmaui.com)  
Kristine Tsukiyama, Esq. [kkt@mhmaui.com](mailto:kkt@mhmaui.com)  
Merchant Horovitz LLC  
2145 Wells Street, Suite 303  
Wailuku, HI 96793  
(Waikapu Properties, LLC and MTP (Maui Tropical Plantation) Operating Company, LLC)  
cc: Albert Boyce [albertboyce@gmail.com](mailto:albertboyce@gmail.com)

Brian Kang, Esq. [bkang@wik.com](mailto:bkang@wik.com)  
Emi L.M. Kaimuloa [ekaimuloa@wik.com](mailto:ekaimuloa@wik.com)  
Watanabe Ing, LLP  
First Hawaiian Center  
999 Bishop Street, 23rd Floor  
Honolulu, HI 96813  
(Wailuku Country Estates Irrigation Company (WCEIC))

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

Tim Mayer, Ph.D. [tim\\_mayer@fws.gov](mailto:tim_mayer@fws.gov)  
Supervisory Hydrologist  
Water Resources Branch  
US Fish and Wildlife Service  
911 NE 11<sup>th</sup> Avenue  
Portland, OR 97232-4181  
cc: Frank Wilson [frank.wilson@sol.doi.gov](mailto:frank.wilson@sol.doi.gov)

Earleen Tianio [earleen@tonytlaw.com](mailto:earleen@tonytlaw.com)  
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)

David Schulmeister, Esq.  
Trisha H.S.T. Akagi, Esq.  
Cades Schutte  
1000 Bishop Street, Suite 1200  
Honolulu, HI 96813  
(Mahi Pono LLC)

[dschulmeister@cades.com](mailto:dschulmeister@cades.com)  
[takagi@cades.com](mailto:takagi@cades.com)

Mahi Pono, LLC  
c/o Grant Nakama  
PO Box 1104  
Puunene, HI 96784

[grant.nakama@mahipono.com](mailto:grant.nakama@mahipono.com)

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

[lhmiike@hawaii.rr.com](mailto: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](mailto:linda.l.chow@hawaii.gov)

\_\_\_\_\_  
/s/ Kathy Yoda  
Kathy Yoda  
Commission on Water Resource Management