

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 #5 – EXTENSION OF
Standards, Na Wai Eha Surface Water) PREHEARING DEADLINES,
Management Areas of Waihee, Waiehu, Iao) PREHEARING CONFERENCE AND
and Waikapu Streams, Maui) PETITION TO AMEND THE IIFS AND
) MOTION TO CONSOLIDATE;
) CERTIFICATE OF SERVICE

Minute Order #5:

**Extension of Prehearing Deadline, Prehearing Conference
and Petition to Reduce Water Available for Offstream Uses**

The contested case hearing is scheduled to begin on **July 11, 2016**, at 9:00 a.m., at **Pilina Multipurpose Room at the Maui College**, 310 W. Kaahumanu Avenue, Kahului, Hawaii.

In Minute Order No. 4, the deadline to submit reply briefs, reply witness lists, reply written witness statements, responsive exhibit lists and responsive exhibits (collectively “reply documents”) was set for May 20, 2016. Because the responsive documents that were due on April 29, 2016 were not posted on the CWRM website until May 10, 2016, the deadline for filing of reply documents is extended from May 20, 2016 until **May 31, 2016**.

A prehearing conference will be held on **June 27, 2016**, at **5:00 p.m.** at **Pilina Multipurpose Room at the Maui College**, 310 W. Kaahumanu Avenue, Kahului, Hawaii, to discuss the following:

1. The order of witness testimonies and introduction of evidence; and
2. The Petition to Amend Upward the Interim Instream Flow Standards for Waihee River, North and South Waiehu Stream, Wailuku River and Waikapu Stream and their Tributaries and Motion to Consolidate or Consider in Parallel with Case No. CCH-MA 15-01 filed on March 9, 2016, with the Commission on Water Resource Management by Hui O Nā Wai Ehā and Maui Tomorrow Foundation, Inc. (*Petition*) which requests:

- a) Increase the IIFS for Waihe`e River, North and South Waiehu Streams, Wailuku River (previously `Īao Stream), and Waikapū Stream; and
- b) Either consolidate the IIFS hearing or conduct it in parallel with the current proceeding on appurtenant rights and surface water-use permit applications.

The *Petition* stated that the closure of HC&S will result in major changes in actual water needs, significantly altering the circumstances for the current IIFS under the Commission's April 27, 2014 Decision and Order, which adopted the Hearing Officer's Recommendation on the Mediated Agreement Between the Parties and the Stipulation Re Mediator's Report of Joint Proposed Findings of Fact, Conclusions of Law, Decision and Order (“*Stipulated FOF*”) (Case No. CCH-MA 06-01), filed on April 27, 2014 (*Commission-Approved Settlement*).

Furthermore, the *Petition* moves to consolidate or consider in parallel the IIFS Petition and the current proceeding on appurtenant rights and surface water-use permit applications, stating that the Commission must designate proper instream flow standards based on HC&S's closure as early as possible, particularly before authorizing permits for offstream diversions, citing *In re Water Use Permit Applications*, 94 Haw. 97, 148, 9 P.3d 409, 460 (2001)(*Waiāhole*).

The *Commission-Approved Settlement* returned 25.4 mgd (million gallons per day) to the following streams: 1) 10 mgd to Waihe`e River; 2) 2.5 mgd to North and South Waiehu Streams; 3) 10 mgd to Wailuku River; and 4) 2.9 mgd to Waikapū Stream.

The *Commission-Approved Settlement* also recognized HC&S irrigation requirements and system losses as 29.96 mgd to 32.01 mgd total irrigation needs, with a net from stream sources as 11.46 mgd to 13.51 mgd, because 18.5 mgd was available from an alternative source, Well No. 7. (*Commission-Approved Settlement*; Findings of Fact, Conclusions of Law, and Decision and Order, June 10, 2010, COL 231 (“*2010 D&O*”), *Stipulated FOF*, FOF 50.)

Other recognized users totaled 13.97 mgd: 1) kuleanas:6.84 mgd; 2) Maui Department of Water Supply (“MDWS”): 3.2 mgd; and Wailuku Water Company (“WWC”): 3.93 mgd. (*Commission-Approved Settlement*; *2010 D&O*.)

Therefore, total offstream uses were 13.97 mgd + (11.46-13.51 mgd) = 25.43-27.48 mgd.

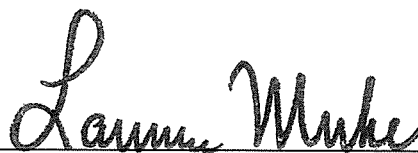
The *Petition* requests that the IIFS be amended upward, because most, if not all, of the 11.46 mgd to 13.51 mgd previously used to irrigate sugar are no longer being used.

However, at the time of the hearing leading to the 2010 D&O, none of the kuleana had petitioned for appurtenant rights, and the current list of existing use applicants includes more than the kuleana identified in the 2010 D&O. In addition, there are more than one hundred (100) new-use applicants, requesting a total of more than 25 mgd. (*Summary Table of Findings, CCH-MA 15-01, updated 02/25/2016, available on the Commission's website.*)

If the *Petition* is approved by the Commission, all of the changes which have taken place since the evidentiary phase of the 2010 D&O would be addressed.

The current hearing on appurtenant rights and surface water-use permit applications will begin as scheduled on July 11, 2016. If the Commission approves the *Petition*, the current evidentiary hearing will continue until its conclusion. After the evidentiary hearing is concluded, the *Petition* will be addressed, either through a continuation of the hearing or in a parallel hearing. At the completion of both the evidentiary hearing and the hearing on the *Petition*, decisions and order will be issued that first address the *Petition* and amended IIFS, if appropriate, then the appurtenant rights and water-use permits.

DATED: Honolulu, Hawaii, May 16, 2016 .



LAWRENCE H. MIIKE, Hearings Officer
Commission on Water Resource Management

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STATE OF HAWAII

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Standards, Na Wai Eha Surface Water)
Management Areas of Waihee, Waiehu, Iao and)
Waikapu Streams, Maui)
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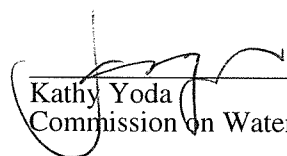
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