

RECEIVED  
COMMISSION ON WATER  
RESOURCE MANAGEMENT

2018 JAN -5 PM 2: 01

JODI S. YAMAMOTO 6757  
WIL K. YAMAMOTO 7817

YAMAMOTO CALIBOSO  
A Limited Liability Law Company  
1100 Alakea Street, Suite 3100  
Honolulu, Hawaii 96813  
Phone No. (808) 540-4500  
Facsimile No. (808) 540-4530  
Emails: [iyamamoto@ychawaii.com](mailto:iyamamoto@ychawaii.com)  
[wyamamoto@ychawaii.com](mailto:wyamamoto@ychawaii.com)

Attorneys for MMK MAUI, LP

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

|   |   |                               |
|---|---|-------------------------------|
| Surface Water Use Permit Applications,  | ) | Case No. <u>CHH-MA15-01</u>   |
| Integration of Appurtenant Rights and   | ) |                               |
| Amendments to the Interim Instream Flow | ) | MMK MAUI, LP'S EXCEPTIONS TO  |
| Standards, Na Wai Eha Surface Water     | ) | THE HEARING OFFICER'S         |
| Management Areas of Waihee, Waiehu, Iao | ) | PROPOSED FINDINGS OF FACT,    |
| and Waikapu Streams, Maui               | ) | CONCLUSIONS OF LAW, AND       |
|   | ) | DECISION & ORDER, CERTIFICATE |
|   | ) | OF SERVICE                    |

**MMK MAUI, LP'S EXCEPTIONS TO THE HEARING OFFICER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION & ORDER**

**AND**

**CERTIFICATE OF SERVICE**

**MMK MAUI, LP'S EXCEPTIONS TO THE HEARING OFFICER'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION & ORDER**

Pursuant to Minute Order 12, MMK Maui, LP ("MMK") submits the following exceptions to the Hearing Officer's ("HO") Recommended Findings of Fact, Conclusions of Law, and Decision and Order, filed November 1, 2017 ("Recommendation").

While MMK appreciates the HO's recommended allocation of water to MMK in the amount of 1.037 mgd, MMK disagrees with the HO's Recommendation insofar as the amount of water allocated to MMK was not based on MMK's existing use as of the date of surface water management area designation on April 30, 2008. As the HO acknowledged, MMK's existing use as of April 30, 2008 was 1.29 mgd (based on a standard 12-month moving average from May 2007 through April 2008),<sup>1</sup> and yet MMK had requested a lesser amount of 1.25 mgd. Therefore, MMK respectfully submits that it should have been allocated at least 1.25 mgd. Instead, the HO, without explanation, applied a different standard to MMK, calculating MMK's existing use on a 115-month moving average from June 2006 through December 2015 in the amount of 1.037 mgd. MMK respectfully submits that the 12-month moving average as of April 30, 2008 that applied to other existing use applicants should likewise apply to MMK. Accordingly, MMK should be allocated to up to 1.29 mgd based on this calculation or, at minimum, the 1.25 mgd MMK requested.

MMK reserves the right to respond, either in writing, orally, or both, to any other party's exceptions that may impact MMK's interests.

---

<sup>1</sup> See Hearing Officer's Proposed Findings of Fact, Conclusions of Law, Decision & Order, filed November 1, 2017, at 254:7-9 and 510:14-15.

DATED: HONOLULU, HAWAII, January 5, 2018.

A handwritten signature in black ink, appearing to read 'Jodi S. Yamamoto', written over a horizontal line.

JODI S. YAMAMOTO  
WIL K. YAMAMOTO

Attorneys for MMK MAUI, LP

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

Surface Water Use Permit Applications, ) Case No. CHH-MA15-01  
Integration of Appurtenant Rights and )  
Amendments to the Interim Instream Flow ) MMK MAUI, LP'S CERTIFICATE  
Standards, Na Wai Eha Surface Water ) OF SERVICE  
Management Areas of Waihee, Waiehu, Iao )  
and Waikapu Streams, Maui )  
)  
)  
)

---

**CERTIFICATE OF SERVICE**

Pursuant to Minute Order #9, issued on November 29, 2016, as amended by Minute Order #11, issued on February 10, 2017, the original and three (3) copies of the foregoing document will be hand-delivered to Kathy Yoda at the Commission on Water Resource Management on January 5, 2018, as well as an electronic copy by email. In addition, pursuant to Minute Order #4, issued on March 7, 2016, copies will be emailed to the following parties who requested service by email, as set forth below, and service on parties who have not agreed to electronic service is via the Commission website:

**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  
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 Road  
Wailuku, HI 96793  
cc: Nani Santos

jduey@maui.net

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

nanisantos808@gmail.com

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 Highway  
Wailuku, HI 96793

ag2517@aol.com

|  |                             |
|--|-----------------------------|
| Nicholas Harders on behalf of:<br>Karl & Lee Ann Harders<br>1422 Nuna Place<br>Wailuku, HI 96793<br>Theodore & Zelig Harders<br>T&Z Harders FAM LTD PTNSHP<br>Theodore and Zelig Harders Family<br>Ltd. Partnership<br>1415 Kilohi Street<br>Wailuku, HI 96793 | waikapu@me.com              |
| Greg Ibara<br>227 Kawaipuna Street<br>Wailuku, HI 96793  | gregibara56@gmail.com       |
| Evelyn Kamasaki<br>Cynthia Ann McCarthy<br>Claire S. Kamasaki<br>1550 Nukuna Place<br>Wailuku, HI 96793  | cmcmaui@live.com            |
| Charlene E. and Jacob H. Kana, Sr.<br>P.O. Box 292<br>Wailuku, HI 96793  | char1151@hawaii.rr.com      |
| Kimberly Lozano<br>P.O. Box 2082<br>Wailuku, HI 96793  | pauahi808@aol.com           |
| Renee Molina<br>P.O. Box 1746<br>Wailuku, HI 96793   | myoheo@yahoo.com            |
| Douglas Myers<br>1299 Malahi Road<br>Wailuku, HI 96793   | upperwaiehu@yahoo.com       |
| Nelson Okamura<br>Kihei Gardens & Landscaping Co. LLP<br>P.O. Box 1058<br>Puunene, HI 96784  | nokamura@kiheigardens.net   |
| Lorrin Pang<br>166 River Road<br>Wailuku, HI 96793   | pangk005@hawaii.rr.com      |
| Victor and Walleto Pellegrino<br>c/o Hokuao Pellegrino<br>213 West Waiko Road<br>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 Road  
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, Dept. 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, HI 96813  
cc: Russell Kumabe  
Holly McEldowney  
(DLNR, Division of State Parks)

colin.j.lau@hawaii.gov

Yvonne Izu, Esq.  
Wayne E. Costa, Jr., Esq.  
Kris N. Nakagawa, Esq.  
Moriwaka Lau & Fong LLP  
400 Davies Pacific Center  
841 Bishop Street  
Honolulu, HI 96813  
cc: Garret Hew  
(Hawaiian Commercial & Sugar Co.)

russell.p.kumabe@hawaii.gov  
holly.mcelandowney@hawaii.gov

yizu@moriwaka.com  
wcosta@moriwaka.com  
knakagawa@moriwaka.com

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

ghew@hcsugar.com

christina@hilt.org

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

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

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

Pamela Bunn, Esq.  
Alston, Hunt, Floyd & Ing  
1001 Bishop Street, Suite 1800  
Honolulu, HI 96813  
(Office of Hawaiian Affairs)

pbunn@ahfi.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

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))

albertboyce@gmail.com

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 11<sup>th</sup> Avenue  
Portland, OR 97232-4181  
Cc: Frank Wilson

tim\_mayer@fws.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)

frank.wilson@sol.doi.gov

earleen@tonytlaw.com

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

lhmiike@hawaii.rr.com

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

linda.l.chow@hawaii.gov

DATED: Honolulu, Hawaii, January 5, 2018.



JODI S. YAMAMOTO  
WIL K. YAMAMOTO

Attorneys for MMK MAUI, LP