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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	)	WAILUKU WATER COMPANY LLC'S
Management Areas of Waihee, Waiehu,	)	PROPOSED FINDINGS OF FACT,
Iao and Waikapu Streams, Maui	)	CONCLUSIONS OF LAW,
	)	DECISION AND ORDER; CERTIFICATE
	)	OF SERVICE
	)	

WAILUKU WATER COMPANY LLC'S PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, DECISION AND ORDER

Wailuku Water Company LLC submits the following proposed Findings of Fact,  
Conclusions of Law, Decision and Order.

**I. BACKGROUND**

1. On December 6, 2006, Hui o Na Wai Eha ("Hui") and Maui Tomorrow Foundation, Inc. ("MTF") filed a petition requesting that the Commission on Water Resource Management ("Commission") designate the Waihee, Waiehu, Iao and Waikapu Surface Water Hydrologic Units (collectively "Na Wai Eha") as a surface water management area.

2. On March 13, 2008, the Commission designated the Na Wai Eha Surface Water Hydrologic Units as a water management area.

3. On April 30, 2008, the Commission provided Public Notice of the designation of the surface water hydrologic units of Na Wai Eha and directing that persons

interested in using surface waters of Na Wai Eha submit applications for water use permits to continue existing uses by April 30, 2009.

4. By April 30, 2009, 115 applications for water use permits for existing uses were submitted to the Commission and 72 applications for water use permits for new uses were submitted to the Commission.

5. On September 27, 2011, the Commission adopted a 3-step process to determine appurtenant rights for applicants for surface water use permits of the Na Wai Eha streams.

6. On August 15, 2012, the Commission delegated authority to its Chairperson to appoint a Hearings Officer for Appurtenant rights claims for surface water use permit applications; Lawrence Miike was selected as the Hearings Officer by the Commission's Chairperson.

7. On December 31, 2014, the Commission entered its Provisional Order on Claims That Particular Parcels Have Appurtenant Rights in Case No. CCH-MA 13-02, adopting the Hearings Officer's proposed findings and conclusions, as amended.

8. On June 25, 2015, the Hearings Officer issued Minute Order 1 informing the applicants for surface water use permits that a prehearing conference would be held on August 11, 2015 to establish timetables and schedules for the contested case hearing on the surface water use permits, among other things.

9. On October 6, 2015, the Hearings Officer issued Minute Order 2 that directed, among other things, that evidence from the Na Wai Eha interim instream contested case hearing (CWRM Case No. CCH-MA06-01) will be admissible in this matter if the evidence reflects current conditions.

10. On January 15, 2016, the Hearing Officer issued Minute Order 3 setting a schedule for filing of briefs, witness lists, direct written witness statements, exhibits, responsive briefs, responsive witness lists, responsive written witness statements, responsive exhibits, reply briefs, reply witness lists, reply written witness statements, and reply exhibits.

11. The applicants and other parties filed opening, responsive, and rebuttal submissions consisting of briefs, written testimony, and exhibits. Some of the applicants and other parties submitted supplemental submissions.

12. On March 9, 2016, Hui and MTF filed a Petition to Amend Upward the Interim Instream Flow Standards for the Waihee River, North and South Waiehu Streams, Wailuku River and Waikapu Streams and their Tributaries ("Petition to Amend") and also filed a Motion to Consolidate or Consider in Parallel the Petition to Amend with Case No. CCH-MA-15-01 ("Motion to Consolidate").

13. On July 7, 2016, the Commission granted Petitioner's Motion to Consolidate the Petition to Amend with Contested Case No. CCH-MA-15-01.

14. On July 8, 2016, the Hearings Officer issued a Notice of Contested Case Hearing by which the Contested Case No. CCH-MA-15-01 was to begin on July 11, 2016.

15. The Hearing Officer conducted the Contested Case Hearing on the consolidated matters from July 11, 2016 through October 14, 2016.

16. During the Contested Case Hearing, about 90 witnesses provided oral testimony.

## II. FINDINGS OF FACT

### A. Wailuku Water Company LLC's Surface Water Use Permits.

17. On April 22, 2009, Wailuku Water Company LLC ("WWC") filed its Application For Surface Water Use Permit for an Existing Use ("WWC SWUPA-E") with the Commission. (SWUPA-E 2157).

18. The WWC SWUPA-E was assigned SWUPA No. 2157. (SWUPA-E 2157).

19. In WWC SWUPA-E, WWC sought a permit for existing uses for system losses. The amount sought for system losses was equal to 7.34 % of total diversions as measured from seven stream diversions. (SWUPA-E 2157).

20. The system losses were determined based on study conducted by Edward Broadbent in 1988. At that time, Mr. Broadbent determined that system losses were about 11.6 % of total diversions from the streams. (Written Direct Testimony of Avery B. Chumbley dated February 2, 2016 ("Chumbley Written") at p. 1, incorporating Remand Direct Testimony of Avery B. Chumbley dated January 7, 2014 ("Chumbley Remand") at p. 2) and Oral Testimony of Avery B. Chumbley on July 22, 2016 ("Chumbley Oral") TR 6:85:25 to 86:18).

21. In response to Mr. Broadbent's report and suggestions, WWC repaired structures and ditches which resulted in a reduction of system losses to about 7.34 % of the total diversions from the streams. (Chumbley Remand at p. 2).

22. After the Commission's June 2010 Decision and Order in the interim instream contested case hearing (CWRM Case No. CCH-MA06-01), WWC took further steps to address system losses. (Chumbley Remand at p. 2).

23. In 2010, WWC made repairs to structures in the Spreckels Ditch at Field 25, the Iao-Waikapu Ditch near Kukahi Drive, the Waihee Ditch at the South Waiehu Stream, and Reservoir 10. (Chumbley Remand at p. 2).

24. In 2011, WWC repaired the intake on South Waikapu Stream, the Waihee Ditch at Field 8, and shut down the North Waiehu Stream diversion. (Chumbley Remand at pp. 2-3).

25. In 2012, WWC repaired structures at the Spreckels Ditch intake on Waihee River, the Waihee Ditch where water is dropped to the Spreckels Ditch, sealed the Reservoir 27 intake from Waihee Ditch, closed Reservoir 27, and made modifications to the intake and Reservoir 27 ditch. (Chumbley Remand at p. 3).

26. In 2013, WWC repaired structures at the Waihee Ditch intake on Waihee River, the Waihee Ditch at Field 97, the Waihee ditch in Maalaea, the Spreckels Ditch intake on the Waihee River and the Reservoir 97 intake ditch. (Chumbley Remand at p. 3).

27. Additionally WWC closed Reservoirs 6, 8, 13, 14 and 29. (Chumbley Remand at p. 3).

28. By repairing structures, removing reservoirs from service and removing the North Waiehu ditch from service, WWC reduced system losses to about 4.97 % of the total diversions from the streams. (Chumbley Remand at p. 3 and Chumbley Oral at 86:18).

29. The Soil and Conservation Service of the United States Department of Agriculture issued a National Engineering Handbook that indicates that a carefully managed, manually operated irrigation water delivery system should have system losses of 10 % or less. (Chumbley Remand at p. 4 and Chumbley Oral at 87:2-6).

30. The American Water Works Association which provides information and standards for potable water systems indicates that system losses for such a system should be 10 % or less. (Chumbley Remand at p. 4 and Chumbley Oral at 87:7-10).

31. Paul Reppun, who provided testimony on the cultivation of kalo and the water needs of kalo, stated that the system losses for taro cultivation are in the neighborhood of 10 %. (Oral Testimony of Paul Reppun on July 11, 2016 TR 1:122:22 - 123:1).

32. David Taylor, who provided testimony for the County of Maui Department of Water Supply, stated that system losses of 10 to 15 % for open distribution systems are typical. (Oral Testimony of David Taylor on July 19, 2016 TR 5:37).

33. WWC's system losses of 4.97 % are less than each of these standards. (FOF 28 to 32 and Chumbley Oral at 87:11-14).

34. WWC analyzed whether further reductions in system losses could be achieved by modifications to the system and determined that the cost of reasonable modifications would far outweigh any reductions that might be achieved by such modifications. (Chumbley Oral at 87:15-88:4).

35. WWC cannot use recycled water as a replacement for system losses because the cost of obtaining about 600,000 gallons per day would be about \$40,000,000, before the cost of obtaining easements to transmit the recycled water is considered. (Chumbley Oral at 89:1-90:6).

36. WWC cannot use groundwater as a replacement for system losses because the existing withdrawals from the Waihee aquifer are at sustainable yield, the Iao aquifer is a designated groundwater management area with withdrawals at sustainable yields and the WWC lands within the Waikapu aquifer are at an elevation which are too far above the basal aquifer and because the Waikapu aquifer has a sustainable yield of 3.2 million gallons per day with eight existing permitted wells, all of which prevent WWC from using such groundwater as a replacement for system losses. (Chumbley Oral at 90:7-91:9).

37. WWC system losses of 4.97 % of total stream diversions by WWC are reasonable. (FOF 33 – 36).

38. WWC SWUPA-E 2157 should be granted and a permit issued to conform to the proof which reflects an amount equal to 4.97 % of total stream diversions.

**B. Petition to Amend.**

39. On April 17, 2014, the Commission after considering stream flows, instream values and non-instream uses, and after balancing instream values with Native Hawaiian practices and non-instream uses, established Interim Instream Flow Standards for the Na Wai Eha Streams. (Commission Order of April 17, 2014 at pp. 43-45).

40. On January 6, 2016, Alexander & Baldwin, Inc. ("A&B") announced it would stop production of sugar by Hawaiian Commercial & Sugar Co. ("HC&S") in 2016 and transition to diversified agriculture. (Petition to Amend at p. 1).

41. Based on the A&B announcement, Hui and MTF asked the Commission to amend upwards the IIFS for the Na Wai Eha Streams. (Petition to Amend at p. 2).

42. HC&S in support of its permit applications sought a water duty equal to 80 % of the water duty for sugar cane. (HC&S Reply Brief at p. 6).

43. On October 3, 2016, Commission staff provided a report summarizing the work conducted by the Commission in establishing, implementing and monitoring measurable IIFS for the Na Wai Eha. (Commission Staff Report of October 3, 2016 ("Staff Report")).

44. The Staff Report did not assess IIFS compliance on a 12-month rolling average basis. (Oral Testimony of Ayron Strauch on October 14, 2016 ("Strauch Oral") TR 11: 126:3-7)

45. The Staff Report did not address the impact of stream flows on stream life and species in the stream. (Strauch Oral TR 11:126:14-17).

46. The Staff Report did not assess the impact of stream flows on wildlife in and around the streams. (Strauch Oral TR 11:126:18-21).

47. The Staff Report did not assess the aesthetic qualities of the streams. (Strauch Oral TR 11:126:22-24).

48. The Staff Report did not assess the impact of stream flows on the recreational qualities of the streams. (Strauch Oral TR:126:25 to 127:3).

49. The Staff Report did not assess the impact of stream flows on the water quality in the streams. (Strauch Oral TR:127:4-7).

50. The Staff Report did not assess the impact of stream flows and the ecology of the streams. (Strauch Oral TR:127:8:11).

**C. Appurtenant Rights.**

51. As of September 27, 2011, the Commission had not adopted administrative rules to implement the appurtenant rights provisions in the State Water Code. (Commission Staff Submittal for September 27, 2011 Meeting ("2011 Staff Submittal") at p. 3).

52. On September 27, 2011, the Commission adopted a 3-step process to determine appurtenant rights of surface water permit applicants for the Na Wai Eha Streams. (Commission Minutes of September 27, 2011 Meeting ("September 2011 Minutes") at pp. 2-3).

53. The 3-step process involved a) providing notice to potential claimants of an intent to determine appurtenant rights; b) the Commission's review of information provided by a claimant to determine whether appurtenant rights exist; and c) the Commission's determination of the amount of water required for use, when the use is needed and what conditions, if any, should apply to the use. (2011 Staff Submittal at pp. 4-6).

54. WWC SWUPA-E 2157 sought appurtenant rights. (SWUPA-E 2157).

55. In its Provisional Order, the Commission denied WWC's request for appurtenant rights without prejudice based on a lack of documentation. (Commission Provisional Order dated December 31, 2014 ("Provisional Order") at p. 153).

56. In its Provisional Order, the Commission determined that appurtenant rights were not treated as an incident of land ownership but attached to the land in the same manner as riparian rights attached to the land. (Provisional Order at p. 16).

57. In its Provisional Order, the Commission determined that reservations of appurtenant rights in instruments transferring ownership of land after 1978 did not effect a severance of the appurtenant rights from the land. (Provisional Order at p. 16).

**D. Miscellaneous.**

58. The only permit applicants that have addressed system losses and included system losses in a permit application are WWC and HC&S.

59. To the extent that a Finding of Fact should be deemed a Conclusion of Law, such finding shall be so deemed.

**III. CONCLUSIONS OF LAW**

**A. Water Use Permits.**

1. Existing uses of water in a designated water management area, unless exempt from regulation by HRS Chapter 174C, may be continued after the designation only with a permit issued in accordance with HRS §§ 174C-51, 174C-52 and 174C-53(b). HRS § 174C-50(a).

2. The Commission shall issue a permit for the continuation of an existing use if an application is made in accordance with HRS § 174C-51, if notice is given in accordance with HRS § 174C-52, if the Commission in accordance with HRS § 174C-53(b) considers any objections to such application filed by a person with a property interest in land within the hydrologic unit or filed by a person who will be directly and immediately affected by the water use proposed in the application, and if the applicant establishes that the existing use is reasonable and beneficial. HRS § 174C-50(b).

3. A use is reasonable and beneficial if the use is in such quantity as is necessary for economic and efficient utilization, is for a purpose, and is in a manner that is both reasonable and consistent with the state and county land use plans and the public interest. HRS § 174C-3.

4. System losses that arise from the transmission of water from the streams to the end user who holds a permit for the use of surface water in a designated water management area is a reasonable and beneficial use of water.

5. WWC SWUPA-E for system losses was made in accordance with HRS Section 174C-51, notice concerning the application was given in accordance with HRS Section 174C-52, objections to such application were considered by the Commission in accordance with HRS Section 174C-53(b) and the use is reasonable and beneficial.

6. WWC SWUPA-E, which was assigned SWUPA 2157, is approved in an amount equal to 4.97 % of the total amounts of water diverted from the streams by WWC.

**B. Amendment of IIFS.**

7. The Commission, in adopting the IIFS on April 17, 2014, followed and complied with the statutory criteria for setting an instream flow standard.

8. A decision and order, adopted following and in compliance with statutory criteria, is presumed to be valid and not subject to change or revision.

9. As applied to an IIFS, an instream flow standard adopted by the Commission that followed and complied with statutory criteria is presumed to establish the instream flows necessary to meet the statutory requirements for stream flows.

10. The presumption that an IIFS adopted by the Commission establishes the stream flows necessary to meet statutory requirements may be rebutted by a showing that the adopted IIFS in some manner does not meet the statutory requirements.

11. The burden of rebutting the presumption of validity is placed upon the party that seeks to amend the IIFS.

12. The Petition to Amend maintains that the Decision and Order of the Commission in CCH-MA06-01 filed on April 17, 2014 assumed HC&S's reasonable water use to be approximately 21.75 million gallons a day and that any permit granted to HC&S under CCH-MA-15-01 would result in an amount that is less than the assumed reasonable water use.

13. Accordingly, the Petition to Amend requested that the IIFS be amended upward to include the difference between the amount that was assumed as a reasonable water use and the amount that was determined to be reasonable and beneficial in the permit.

14. The Petition to Amend does not assert that the existing IIFS must be modified to satisfy instream needs or that the existing IIFS is inadequate to satisfy the standards for instream needs under HRS Chapter 174C.

a) Instream Flow Standards.

15. "Instream flow standard" means a quantity of water or depth of water which is required to be present at a specific location in a stream system at certain specified times of the year to protect fishery, wildlife, recreational, aesthetic, scenic, and other beneficial instream uses". HRS § 174C-3.

16. The (instream flow standard) is the surface water corollary to the ground water "sustainable yield" in that both perform the function of guiding water planning and regulation by prescribing responsible limits to the development and use of public water resources. In Re: Water Permit Applications, 94 Haw. 97, 148; 9 P.3d 409, 460 (2000) ("Waiahole I").

17. In establishing an interim instream flow standard, the Commission weighs the importance of the present or potential instream values with the importance of the present or potential uses of water for noninstream purposes, including the economic impact of restricting such uses. HRS § 174C-71(2); HAR § 13-169-40.



18. "Instream use" means beneficial uses of stream water for significant purposes which are located in the stream and which are achieved by leaving the water in the stream. Instream uses include, but are not limited to:

- (1) Maintenance of fish and wildlife habitats;
- (2) Outdoor recreational activities;
- (3) Maintenance of ecosystems such as estuaries, wetlands, and stream vegetation;
- (4) Aesthetic values such as waterfalls and scenic waterways;
- (5) Navigation;
- (6) Instream hydropower generation;
- (7) Maintenance of water quality;
- (8) The conveyance of irrigation and domestic water supplies to downstream points of diversion; and
- (9) The protection of traditional and customary Hawaiian rights.

HRS § 174C-3.

19. "Noninstream use" means the use of stream water that is diverted or removed from its stream channel and includes the use of stream water outside of the channel for domestic, agricultural, and industrial purposes. HRS § 174C-3.

b) Analysis of Criteria for Amendment of IIFS.

20. To revise an IIFS adopted by the Commission, the party requesting revision must provide information to the Commission so that it must conclude that the beneficial instream uses are not adequately protected under the existing IIFS. HAR § 13-169-40.

21. The beneficial uses to be protected include the maintenance of fish and wildlife habitats, outdoor recreational activities, maintenance of eco systems such as estuaries, wetlands, and stream vegetation; aesthetic values such as water fall and scenic waves, conveyance of irrigation and domestic water supply to downstream points of diversion. HRS § 174C-3.

22. If a need exists to amend the IIFS, such need must be weighed with the importance of the present or potential uses of water for noninstream uses. HRS § 174C, 174C-71(2)(d).

23. The Commission is obligated to weigh the competing water uses and accommodate both instream and offstream uses where feasible. Waiahole I, 94 Haw. 97, 142, 9 P.3d 409, 454 (2000).

24. In amending an IIFS, existing noninstream and future noninstream uses must be evaluated. A collective finding of noninstream uses must be established in order to address the duties of balancing instream and noninstream uses.

25. No evidence was presented in support of the Petition to Amend to rebut the presumptive validity of the IIFS adopted by the Commission in April, 2014.

26. The record in the Petition to Amend is inadequate to make an amendment to the IIFS.

c) Surface Water in Excess of Permits Granted Will Remain in the Streams.

27. The Commission must determine (1) the amount of surface water available from stream flows for non-instream use; (2) the collective quantification of reasonable beneficial uses of water to be allocated to each stream; and (3) whether the stream flows available per stream exceeds the reasonable and beneficial uses of non-instream water required for the permits.

28. The first step is the determination of stream flows.

29. Stream flow consists of: (1) direct runoff, or overland flow and subsurface storm flow (or interflow) that rapidly returns infiltrated water to the stream following a period of rainfall; (2) groundwater discharge, or base flow, where the stream intersects the water table; (3) water returned from stream bank storage; (4) rain that falls directly on streams; and (5) any additional water, including excess irrigation water, discharged to the stream by humans.

30. Because ground water levels vary over time, base flow also varies: base flow is higher during periods when the ground water level is high; lower during periods when the ground water level is low; and may cease if the ground water level is lowered below the water level in the stream.

31. Although measurement of flow in a stream on any given day will reflect the total flow in the stream, separating base flow from total flow is helpful to indicate the ground water contribution to a stream.

32. Whether the IIFS should be amended upward, would depend upon whether the collective permits issued by the Commission for each stream are less than the existing IIFS stream flows for each stream.

31. By way of example, the existing Iao Stream (Wailuku River) IIFS is 10 million gallons a day. Permits for noninstream uses from the Iao Stream can be issued only to the extent that the stream flows for Iao Stream are in excess of the 10 million gallons per day.

32. On the basis of USGS estimate, the minimum daily flow ( $Q_{100}$ ) was 7.1 million gallons a day for Iao Stream, the  $Q_{90}$  flow was 13 million gallons a day; the  $Q_{70}$  flow was 18 million gallons a day and the  $Q_{50}$  flow was 25 million gallons a day (Oki, WDT 9/14/07, paragraphs 26 and 61).

33. Utilizing  $Q_{100}$  and  $Q_{90}$ , the IIFS may not be reasonably be adequate to satisfy the IIFS and the offstream use, that is, such stream flow and there would be inadequate surface to accommodate offstream reasonable and beneficial uses.

32. The USGS has concluded in general, the  $Q_{70}$  discharge could be an appropriate of mean base flow for Hawaii streams. USGS did not apply its model specifically to the Na Wai Eha streams. FOF 102 page 18.

33. The  $Q_{50}$  flow or median flow, is the flow that is equaled or exceeded 50% of the time and is "reflective of typical flow conditions". (Oki WDT, 9/14/07, paragraph 21) Oki TR 12/6/07, page 78, LL17 through 21.

34. The flow of Iao Stream was 25 million gallons a day or more for half of the measurements of the stream flow and less than 25 million gallons a day for the other half of the measured flow during the specific period in 1985 through 2000.

35. Assuming the  $Q_{50}$  of 25 million gallons a day is used as the stream flow for Iao Stream, then 15 million gallons a day would be available for the allocation of permits from Iao Stream.

36. If  $Q_{50}$  of 25 million gallons a day is utilized as the stream flow for permit purposes for Iao Stream and assuming that the permits provisionally issued and allocated to Iao Stream for reasonable and beneficial uses exceed 15 million gallons a day, the differential would need to be deducted from the provisional permits to be issued.

37. If the provisional permits issued for Iao Stream are less than 15 million gallons a day stream flow, the differential can be used as a reserve for new future uses but the IIFS would not be amended upward as the statutory criteria for establishing instream flow standards was not met.

38. Considering the use of  $Q_{50}$  for stream flow, the flashy nature of the Na Wai Eha Streams, the need to address periods when stream flows are below the  $Q_{50}$  flow, and the future applicants for non-instream use at this time, the IIFS will not be amended upward for the Na Wai Eha Streams.

### **C. Appurtenant Rights.**

39. The Commission shall issue a permit for water use based on an existing appurtenant right upon application. HRS § 174C-63.

40. Permits for water use based on appurtenant rights are subject to the permitting, reporting and revocation provisions of HRS §§ 174C-26, 174C-27 and 174C-58 to 174C-62. HRS §174C-63.

41. While the Commission adopted administrative rules concerning the processing of water use permits, such administrative rules did not address, determine or affect claims for appurtenant rights. HAR §§ 13-171-1 and 13-171-27.

42. A statement of general or particular applicability that implements, interprets or prescribes law or policy is an administrative rule. HRS § 91-1.

43. Section 91-4 through 91-5, HRS, provide for the procedure under which an administrative agency must adopt, compile, index and publish administrative rules.

44. The 3-step process to determine appurtenant rights adopted by the Commission was a statement of general or particular applicability that implements, interprets, or prescribes law or policy.

45. The 3-step process to determine appurtenant rights adopted by the Commission was not adopted in accordance with the provisions of HRS §§ 91-4 through 91-5.

46. An administrative rule that was not adopted in accordance with the provisions of HRS §§ 91-4 through 91-5 is invalid.

47. The 3-step process to determine appurtenant rights, and the decision of the Commission concerning appurtenant rights, having not been adopted in accordance with the provisions of HRS §§ 91-4 through 91-5 is invalid and void.

48. Appurtenant rights are based on common law contractual rights.

49. The Hawaii Constitution of 1978 did not act to amend common law contractual rights.

50. If the grantor, in an instrument transferring ownership of land to the grantee, reserves appurtenant rights, the appurtenant rights are severed from the land. *Reppun v. Board of Water Supply*, 65 Haw. 531, 656 P.2d 57 (1982).

51. By reserving appurtenant rights, a grantor in an instrument transferring ownership of land to a grantee, effected a severance of appurtenant rights.

**D. Miscellaneous.**

52. To the extent that a Conclusion of Law should be deemed to be a Finding of Fact, such conclusion is so deemed.

#### **IV. DECISION AND ORDER**

This Decision and Order is issued in accordance with the foregoing Findings of Fact and Conclusions of Law.

**A. Surface Water Use Permit Application of WWC.**

The Surface Water Use Permit Application of WWC for existing and new uses for the Na Wai Eha Surface Water Management Area of Waihe'e, Waiehu, Iao and Waikapu Streams is granted in an amount equal to 4.97 % of the total amounts of water diverted from the streams by WWC.

**B. Petition To Amend Upward Instream Flow Standards.**

The current IIFS for the Waihe'e, Waiehu, Iao, (Wailuku River) and Waikapu Streams shall remain as adopted by the Commission on April 17, 2014 with an effective date of April 17, 2015. The Petition to Amend Upward the Instream Flow Standards is denied.

**C. Applications For Appurtenant Rights.**

The current application for appurtenant rights, including the Provisional Recognition of Appurtenant Rights Na Wai Eha Surface Water Management Area, Waihe'e, Waiehu, Iao and Waikapu Streams, Maui, Hawaii is deferred and stayed pending adoption and publication of administrative rules to process the determination of appurtenant rights pursuant to Sections 91-4 and 91-5, Hawaii Revised Statutes.

**D. Implementation.**

The Commission retains jurisdiction to oversee the implementation, monitoring and compliance with the terms of this Decision and Order and to resolve disputes concerning implementation, monitoring and compliance.

DATED: Kahului, Hawaii, February 17, 2017.



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CERTIFICATE OF SERVICE

I hereby certify that on the date hereof, a copy of the foregoing document was served on the following by filing with the Commission on Water Resource Management, per Minute Order 4, dated March 7, 2016, or by electronic service, as indicated below:

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