DEPARTMENT OF THE CORPORATION COUNSEL

PATRICK K. WONG
Corporation Counsel
CALEB P. ROWE
KRISTIN K. TARNSTROM
Deputies Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793
Telephone No.: (808) 270-7740
Facsimile No.: (808) 270-7152
E-mail: caleb.rowe@co.maui.hi.us
E-mail: kristin.tarnstrom@co.maui.hi.us

Attorneys for COUNTY OF MAUI,
DEPARTMENT OF WATER SUPPLY

COMMISSION ON WATER RESOURCE MANAGEMENT
STATE OF HAWAII

Surface Water Use Permit Applications,
Integration of Appurtenant Rights and
Amendments to the Interim Instream Flow
Standards, Na Wai Eha Surface Water
Management Areas of Waiheee, Waiehu, Iao,
and Waikapu Streams, Maui

CASE NO. CCH-MA 15-01
COUNTY OF MAUI, DEPARTMENT OF
WATER SUPPLY’S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER;
CERTIFICATE OF SERVICE

COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY’S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER

Comes now, COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY (“MDWS”),
by and through its attorneys, PATRICK K. WONG, Corporation Counsel, and CALEB P.
ROWE and KRISTIN K. TARNSTROM, Deputies Corporation Counsel, and hereby submits its
Proposed Findings of Fact, Conclusions of Law, and Decision and Order pursuant to Minute
Order #s 9 and 10, filed on November 29, 2016 and January 31, 2017, respectively. MDWS has
only compiled Findings of Fact and Conclusions of Law relevant to its interests, and this submission is not intended to be complete or exclusive.

FINDINGS OF FACT

1. Any conclusion of law erroneously designated as findings of fact shall be deemed to be conclusions of law. Any findings of fact erroneously designated as conclusions of law shall be deemed to be findings of fact.

A. PROCEDURAL HISTORY

2. These findings of fact, conclusions of law, and decision and order are the final adjudication by the Commission on Water Resources Management (the “CWRM”) of the Surface Water Use Permit Applications submitted in CCH-MA-15-01.

3. These Surface Water Use Permit Applications (“SWUPA”), and the subsequent contested case hearing, were necessitated by CWRM’s March 13, 2008 designation of the Iao, Waikapu, Waihee and Waiehu hydrological units (collectively, “Na Wai Eha”) as a Surface Water Management Area.

4. As a result of this designation, all parties that were currently diverting surface water, or who sought to divert surface water in the future, were required to submit a Surface Water Use Permit Application (“SWUPA”) to CWRM pursuant to Hawaii Revised Statutes (“HRS”) §§ 174C-48 through 174C-51.

5. CWRM subsequently set a deadline of April 30, 2009, for existing users to submit SWUPAs related to existing uses.

7. Prior to the present contested case hearing, MDWS participated both in the initial and the remanded contested case hearings setting the Interim Instream Flow Standards ("IIFS") for the Na Wai Eha streams.

8. In CWRM’s June 10, 2010 Findings of Fact, Conclusions of Law, and Decision and Order in Iao Ground Water Management Area High-Level Source Water-Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihee River and Waiehu, Iao & Waikapu Streams Contested Case Hearing, CCH-MA06-01, CWRM found that DWS’ use of 3.2 MGD of surface water from the Iao Stream was a “reasonable-beneficial” use. Exhibit “2178-County-9,” p. 36 ¶¶ 238-239; p. 121, ¶ 62; p. 172, ¶ 232.

9. Appeals were filed by Maui Tomorrow, Hui o Na Wai Eha and the Office of Hawaiian affairs, and the Hawaii Supreme Court remanded the case back to CWRM for further proceedings. In Re Iao Ground Water Management Area High-Level Source Water-Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihee River and Waiehu, Iao & Waikapu Streams Contested Case Hearing, 128 Hawaii 228 (2012).

10. Following briefing, the parties entered into a stipulated Findings of Fact, Conclusions of Law, and Decision and Order, which was adopted by CWRM on April 17, 2014. Exhibit “2178-County-10.”

11. Again, MDWS’ use of 3.2 MGD was determined to be reasonable, even in low flow conditions. Exhibit “2178-County-10,” p. 3, ¶ 4; p. 18, ¶¶ 68-71; p. 24, ¶ 18.

B. MDWS’ SWUPAs

12. The County of Maui Department of Water Supply ("MDWS") filed an existing use permit to divert 1.784 million gallons per day ("MGD") and a new use permit to divert 1.416


14. On April 23, 2009, CWRM sent a letter to MDWS acknowledging receipt of the SWUPAs. Exhibit “2178-County-3.”

C. THE CENTRAL MAUI SYSTEM

15. MDWS is the sole municipal water source for the County of Maui and consists of three major water systems for the island of Maui. Declaration of David Taylor (“Taylor Dec.” ¶¶ 5, 6; Trans. V5, 17:11-14.


17. MDWS’ Central Maui System also provides water to the Hawaiian Homelands at Paukukalo and Waiehu Kou. Taylor Dec. ¶ 32; Exhibit “2178-County-14.”

18. The population being served by the Central Maui System is projected to be approximately 101,525 people as of 2015. This number reflects the number of people projected for 2015 in the Maui General Plan adopted on December 28, 2012. It includes the community plan areas for Kihei-Makena, Wailuku-Kahului and Paia-Haiku. This number is slightly higher than the actual number of people served by the Central Maui System since Haiku is included in the Community Plan area in the General Plan but is not serviced by the Central Maui System. Declaration of Michele McLean (“McLean Dec.”) ¶ 4; Exhibit “2178-County-4,” Table 1-2.
19. This population is expected to grow by 24,264 through 2030, for a total of approximately 125,789 people. Like the current population figures, this growth projection includes the community plan areas for Kihei-Makena, Wailuku-Kahului and Paia-Haiku and would be slightly higher than the actual number of people served by the Central Maui System since Haiku is included in the Community Plan area in the General Plan but is not serviced by the Central Maui System. McLean Dec. ¶¶ 4-5; Exhibit “2178-County-4,” Table 1-2.

20. The Central Maui System receives water from a variety of sources, including the Kepaniwai Well, Iao Tunnel, Iao Water Treatment Plant, Mokuau Wells 1 and 3, Waiehu Heights Wells 1 and 2, Waihee Wells 1, 2, and 3, North Waihee Wells 1 and 2, Kanoa Wells 1 and 2, and Maui Lani Wells 5, 6, and 7. Taylor Dec. ¶ 8; Exhibit “2178-County-11,” Table 6; Trans. V5, 18:20-22.


22. This water is delivered to MDWS by WWC pursuant to an Agreement Concerning Withdrawal from the Iao/Waikapu Ditch, dated June 9, 2004, and allows MDWS to withdraw up to 3.2 MGD. Taylor Dec., ¶¶ 16-17; Exhibit “2178-County-5”; Trans. V5, 22:7-13.


25. By 2030, the growth in population for Central Maui is projected to increase the demands of the Central Maui System by between 7.7 MGD and 19.4 MGD, with a baseline of 13.6 MGD being used for water planning purposes. Taylor Dec. ¶ 14; Exhibit “2178-County-11,” Table 4; Trans. V5, 21:11-15.


D. MDWS’ WATER USAGE

27. The amount of water used by MDWS for the Central Maui System is directly related to the demands of the users within the Central Maui system. Taylor Dec. ¶ 13.

28. MDWS does not make any profit in providing water to the public, as the amount charged to customers is directly related to the costs incurred by MDWS to supply the water. These costs include planning, design, construction, operation, and maintenance costs. Taylor Dec. ¶ 5; Trans. V5, 17:5-10.

29. MDWS does not use water in relation to a specific parcel of land, but rather delivers it to others for use on their land. However, building permits for new homes and businesses which are customers of MDWS require compliance with zoning and state land use regulations. McLean Dec. ¶ 7; Taylor Dec. ¶ 13.

30. MDWS water is used in a variety of ways that benefit the entire population of the Central Maui Service Area. These include uses in single and multi-family homes, agricultural
uses, commercial uses, hotel usage and private irrigation, as well as public and government uses at the airport, harbor, County Building, public schools and hospital. Taylor Dec. ¶ 26; Exhibit “2178-County-1”; Trans. V5, 18:10-14.

31. Water use by category for the Central Maui System and proportionate amount served by the Iao/Waikapu Ditch for MDWS’ existing use permit as of April 30, 2008, can be seen in the chart below:

<table>
<thead>
<tr>
<th>Water Use Category</th>
<th># of Active Meters</th>
<th>Avg. use per mo. (1000 gals.)</th>
<th>Avg. use in GPD</th>
<th>Avg. GPD per Meter</th>
<th>% of Total Water Use</th>
<th>Requested Amnt (GPD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>19</td>
<td>6,401.01</td>
<td>210,164.26</td>
<td>11,601.28</td>
<td>1.051%</td>
<td>18,754.44</td>
</tr>
<tr>
<td>Government</td>
<td>203</td>
<td>55,033.67</td>
<td>1,804,382.62</td>
<td>8,888.58</td>
<td>9.206%</td>
<td>161,017.76</td>
</tr>
<tr>
<td>Commercial</td>
<td>874</td>
<td>72,327.85</td>
<td>2,371,404.92</td>
<td>2,713.28</td>
<td>11.826%</td>
<td>211,617.15</td>
</tr>
<tr>
<td>Golf (private)</td>
<td>2</td>
<td>14,562.5</td>
<td>477.46</td>
<td>238.73</td>
<td>0.002%</td>
<td>42.61</td>
</tr>
<tr>
<td>Hotel</td>
<td>71</td>
<td>57,992.66</td>
<td>1,901,398.77</td>
<td>26,780.25</td>
<td>9.511%</td>
<td>169,675.20</td>
</tr>
<tr>
<td>Industrial</td>
<td>149</td>
<td>24,392.97</td>
<td>799,769.34</td>
<td>5,367.58</td>
<td>4.001%</td>
<td>71,369.05</td>
</tr>
<tr>
<td>Irrigation (private)</td>
<td>42</td>
<td>5,815.25</td>
<td>190,663.85</td>
<td>4,539.62</td>
<td>0.954%</td>
<td>17,014.28</td>
</tr>
<tr>
<td>Multi-Family Low Rise</td>
<td>9</td>
<td>5,933.82</td>
<td>194,551.48</td>
<td>21,616.83</td>
<td>0.973%</td>
<td>17,361.20</td>
</tr>
<tr>
<td>Religious</td>
<td>84</td>
<td>3,322.02</td>
<td>108,918.77</td>
<td>1,296.65</td>
<td>0.545%</td>
<td>9,719.59</td>
</tr>
<tr>
<td>School (private)</td>
<td>1</td>
<td>107.195</td>
<td>3,514.59</td>
<td>3,514.59</td>
<td>0.018%</td>
<td>313.63</td>
</tr>
<tr>
<td>Single Family</td>
<td>16,830</td>
<td>275,727.31</td>
<td>9,040,239.75</td>
<td>537.15</td>
<td>45.220%</td>
<td>806,724.23</td>
</tr>
<tr>
<td>Unknown</td>
<td>19</td>
<td>1,260.22</td>
<td>41,318.52</td>
<td>2,174.66</td>
<td>0.207%</td>
<td>3,687.14</td>
</tr>
<tr>
<td>Total</td>
<td>18,815</td>
<td>609,746.81</td>
<td>19,991,698.69</td>
<td></td>
<td>100%</td>
<td>1,784,000.00</td>
</tr>
</tbody>
</table>

32. A similar breakdown of projected uses by category within the Central Maui System to be serviced by the Iao/Waikapu Ditch as set forth in MDWs’ new use permit application is as follows:

<table>
<thead>
<tr>
<th>Water Category</th>
<th># of Active Meters</th>
<th>Avg. use in GPD</th>
<th>Avg. GPD per Meter</th>
<th># of Inactive Meters</th>
<th>Projected Monthly AVG GPD</th>
<th>Projected GPD Per Meter</th>
<th>% of Total Water Use</th>
<th>Requested Amnt (GPD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>19</td>
<td>212,515</td>
<td>11,185</td>
<td></td>
<td></td>
<td></td>
<td>1.07%</td>
<td>15,093.50</td>
</tr>
<tr>
<td>Government</td>
<td>208</td>
<td>1,688,281</td>
<td>8,117</td>
<td>1</td>
<td>48,000</td>
<td>48,000</td>
<td>8.71</td>
<td>123,316.28</td>
</tr>
<tr>
<td>Commercial</td>
<td>881</td>
<td>2,235,787</td>
<td>2,538</td>
<td>17</td>
<td>86,222</td>
<td>5,072</td>
<td>11.65</td>
<td>164,915.15</td>
</tr>
<tr>
<td>Golf (private)</td>
<td>2</td>
<td>357</td>
<td>179</td>
<td></td>
<td></td>
<td></td>
<td>0</td>
<td>25.36</td>
</tr>
<tr>
<td>Hotel</td>
<td>72</td>
<td>1,680,498</td>
<td>23,340</td>
<td></td>
<td></td>
<td></td>
<td>8.43</td>
<td>111,935.44</td>
</tr>
<tr>
<td>Industrial</td>
<td>149</td>
<td>720,981</td>
<td>4,839</td>
<td>3</td>
<td>13,700</td>
<td>4,567</td>
<td>3.68</td>
<td>52,179.41</td>
</tr>
<tr>
<td>Irrigation (private)</td>
<td>46</td>
<td>201,962</td>
<td>4,390</td>
<td>7</td>
<td>57,300</td>
<td>8,186</td>
<td>1.30</td>
<td>18,413.62</td>
</tr>
<tr>
<td>Multi-Family</td>
<td>512</td>
<td>3,032,910</td>
<td>5,924</td>
<td>8</td>
<td>114,411</td>
<td>14,301</td>
<td>15.79</td>
<td>223,532.89</td>
</tr>
<tr>
<td>Multi-Family Low Rise</td>
<td>9</td>
<td>175,340</td>
<td>19,482</td>
<td></td>
<td></td>
<td></td>
<td>0.88</td>
<td>12,453.21</td>
</tr>
<tr>
<td>Religious</td>
<td>84</td>
<td>100,826</td>
<td>1,200</td>
<td></td>
<td></td>
<td></td>
<td>0.51</td>
<td>7,160.99</td>
</tr>
<tr>
<td>School (private)</td>
<td>1</td>
<td>3,637</td>
<td>3,637</td>
<td></td>
<td></td>
<td></td>
<td>0.02</td>
<td>258.31</td>
</tr>
<tr>
<td>Single Family</td>
<td>17,005</td>
<td>9,083,415</td>
<td>534</td>
<td>362</td>
<td>319,759</td>
<td>883</td>
<td>47.16</td>
<td>667,843.75</td>
</tr>
<tr>
<td>Unknown</td>
<td>15</td>
<td>37,659</td>
<td>2,511</td>
<td>9</td>
<td>123,600</td>
<td>13,733</td>
<td>0.81</td>
<td>11,453.13</td>
</tr>
<tr>
<td>Total</td>
<td>19,003</td>
<td>19,174,148</td>
<td>407</td>
<td>762,992</td>
<td></td>
<td></td>
<td>1.416,000.00</td>
<td></td>
</tr>
</tbody>
</table>


33. MDWS has made investments to increase efficiency and conservation on both the supply side and the demand side. Taylor Dec. ¶ 26; Exhibit “2178-County-13”; Trans. V5, 24:21-26:22.


36. In terms of low-flow fixture distribution, MDWS has given away approximately 23,000 showerheads, 24,768 bath faucet aerators, 15,687 kitchen faucet aerators, 14,251 garden hose nozzles, and 2,478 toilet tank bags. Exhibit “2178-County-13,” Table 2; Trans. V5, 26:8-13.

37. In addition, the County has partnered with and provided funding for seven watershed partnerships on Maui and Molokai which serve to educate the public on water use, as well as to ensure that upland watersheds are fully functioning. Between 1997 and 2014, MDWS has provided $17.3 million in funding for these efforts. Taylor Dec. ¶ 26; Exhibit “2178-County-13,” Table 1; Trans. V5, 26:14-21.

E. MDWS ALTERNATIVE SOURCES

38. MDWS has commissioned studies to look at alternative sources of water for use in the Central Maui system both currently and in order to fulfill future demands. These studies include an engineering and cost analysis report commissioned by the County from Brown and Caldwell, and the Maui County Water Use and Development Plan, Central DWS District Plan Update. Exhibits “2178-County-11”; “2178-County-12”; Trans. V5 26:22-27:11.

39. In evaluating alternative sources, five final candidate strategies have been identified that would allow MDWS to meet current and future needs for the Central Maui system, including northward basal groundwater development, eastward basal groundwater development, desalination of brackish groundwater, maximization of recycled water

1. **Northward Basal Ground Water Development**

40. The northward basal groundwater development strategy consists of adding new wells in the north side of the Waihee aquifer and in the Kahakuloa aquifer. A total of sixteen wells, plus transmission pipelines, storage tanks, and booster pump stations would be added. Exhibits “2178-County-11” p. 6; “2178-County-12,” pp. 30-32; Trans. V5, 28:4-29:2, 41:18-23.

41. CWRM has asked MDWS to limit its withdrawals from the Waihee Aquifer and the USGS has indicated that new wells in the northern portion of Waihee aquifer and the Kahakuloa aquifer may not be as productive or cost-effective as hoped. Taylor Dec. ¶ 30; Exhibits “2178-County-9,” p. 59 ¶ 370; “2178-County-11,” p. 6; “2178-County-12,” pp. 30-32; Trans. V5, 28:4-29:2, 42:3-9.

2. **Eastward Basal Ground Water Development**

42. The eastward basal groundwater development strategy consists of adding a series of new wells in the Haiku aquifer. Several scenarios were evaluated, with the most cost effective being a series of wells at an elevation of 1,000 feet, transmission pipelines, storage tanks, and booster pump stations. Exhibits “2178-County-11,” p. 6; “2178-County-12,” pp. 33-42; Trans. V5, 29:3-17, 42:10-16.

43. Eastward basal ground water development would require both capital costs associated with transmission improvements, and life-time costs for electricity related to pumping due to the high elevation of the proposed wells, the most cost-effective of which would be at 1,000 feet above sea level. “2178-County-11,” p. 6; “2178-County-12,” pp. 33-43.
44. The estimated life-cycle costs for this strategy for meeting future demands would be $604 million, and the increased life-cycle costs for replacing MDWS’ current allocation of surface water from the Wailuku River would be between an additional $230 million and $242 million. Exhibit “2178-County-11,” Tables 12, 14; Trans. V5, 43:9-24.

45. MDWS’ ability to utilize eastward basal groundwater is restricted by the Consent Decree entered between MDWS and the Plaintiffs in Coalition to Protect East Maui Water Resources v. Board of Water Supply, County of Maui, Civ. No. 03-1-0008(3). Plaintiffs in that case continue to use the Consent Decree to prevent MDWS from developing any wells in the proposed region, recently bringing an action to prevent MDWS from even developing test wells. Taylor Dec. ¶ 31; Exhibit “2178-County-9,” p. 59 ¶¶ 372 -373; Trans. V5, 29:3-17.

3. Desalination


47. The desalination strategy would require both capital costs associated with building the desalination facility, and operational costs associated with the high intensity energy needs of the desalination process. Exhibits “2178-County-11,” pp. 6-7; “2178-County-12,” pp. 67-68; Trans. V5, 44:9-11.

48. Maui’s dependence on imported energy and the uncertainty associated with future energy prices adds a significant implementation risk to this strategy. Exhibits “2178-County-11,” pp. 6-7; Trans. V5, 44:9-11.

49. Use of desalination to meet future needs has an expected life cycle cost of $598 million, and the increased life-cycle costs for replacing MDWS’ current use of surface water
from Wailuku River would be between an additional $230 million and $242 million. Exhibit “2178-County-11,” Tables 12, 14; Trans. V5, 44:21-45:8.

4. **Maximization of Recycled Water and Conservation**

50. Use of recycled water is limited to non-potable uses such as agriculture and dust control. Exhibit “2178-County-11,” Table 7; Trans. V5, 46:23-47:15.

51. The amount of water that could conceivably be replaced by use of treated water is limited, with an estimated maximum of 1.601 MGD and an average of 1.01 MGD, 0.6 of which would be from the Wailuku-Kahului Wastewater Treatment Plant. Exhibit “2178-County-11,” Table 11; Trans. V5, 47:14-48:1.

52. Increased use of recycled water would require significant capital expenses, including the expansion of existing waste water treatment plants, construction of storage tanks, and extended transmission lines. Exhibit “2178-County-11,” Table 10; Trans. V547:21-48:13.

53. Accordingly, use of recycled water to meet future needs has an expected life cycle cost of $578 million, and the increased life-cycle costs for replacing MDWS’ current use of water from the Wailuku River would be between $230 million and $242 million. Exhibits “2178-County-11,” Tables 12, 14; Trans. V5, 48:2-13.

54. On the conservation side, increased conservation of water over efforts that have already been undertaken as described above would be reliant on consumer behavior. If the behavior changes are not permanent, MDWS could end up being short of water. Taylor Dec. ¶ 27, Exhibit “2178-County-11,” p. 11; Trans. V5, 46:8-18.
CONCLUSIONS OF LAW

1. The conditions for obtaining a permit for use of surface water within a designated water management area is set forth by Hawaii Revised Statutes (“HRS”) § 174C-49(a) as follows:

   To obtain a permit pursuant to this part, the applicant shall establish that the proposed use of water:
   (1) Can be accommodated with the available water source;
   (2) Is a reasonable-beneficial use as defined in section 174C-3;
   (3) Will not interfere with any existing legal use of water;
   (4) Is consistent with the public interest;
   (5) Is consistent with state and county general plans and land use designations;
   (6) Is consistent with county land use plans and policies; and
   (7) Will not interfere with the rights of the department of Hawaiian home lands as provided in section 221 of the Hawaiian Homes Commission Act.

HRS § 174C-49(a).

2. “If two or more applications which otherwise comply with section 174C-49 are pending for a quality of water that is inadequate for both or all, or which for any other reason are in conflict, the commission shall first, seek to allocate water in such a manner as to accommodate both applications if possible; second, if mutual sharing is not possible, then the commission shall approve the application which best serves the public interest.” HRS § 174C-54.

A. HRS § 174C-49(a)(1)

3. MDWS participated in both the initial and remanded contested case hearings setting the Interim Instream Flow Standards (“IIFS”) for the streams that are the subject of this contested case hearing. Findings of Fact, (“FOF”) ¶ 7.

4. In setting the IIFS, the Commission is charged with balancing “the importance of present or potential instream values with the importance of the present or potential uses of water for non-instream uses of water for non-instream purposes.” HRS 174C-71(2)(D).
5. In weighing these values, the Commission has twice determined that, in concert with both instream values and other non-instream uses, MDWS’ use of 3.2 MGD was a “reasonable-beneficial use,” including in low flow conditions. FOF, ¶¶ 8-11.

6. Accordingly, it has been previously determined the MDWS’ existing use of 1.784 MGD and new use of 1.416 MGD, for a total use of 3.2 MGD, “can be accommodated with the available water source,” and the commission has found no reason to disturb the finding as it applies to HRS § 174C-49(1).

B. HRS 174C-49(2)

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

8. The Hawaii Supreme Court, in interpreting the “reasonable and beneficial use” requirement of HRS §174C-49(a)(2), has stated that

“The Code’s “reasonable-beneficial use” standard allows use only ‘in such a quantity as is necessary for economic and efficient utilization.’ HRS § 174C–3. Furthermore, besides advocating the social and economic utility of their proposed uses, permit applicants must also demonstrate the absence of practicable mitigating measures, including the use of alternative water sources. Such a requirement is intrinsic to the public trust, the statutory instream use protection scheme, and the definition of “reasonable-beneficial” use, and is an essential part of any balancing between competing interests.


9. The amount of water requested in MDWS’ permits is directly related to the amount of water MDWS actually supplies to customers. This assures that the amount requested conforms to the amount necessary for economic and efficient utilization. FOF, ¶ 27.
10. MDWS has undertaken several efforts to ensure that water from the Wailuku River is used efficiently on both the supply side and demand side, including conservation, leak prevention, and resource protection. FOF, ¶¶ 33-37.

11. MDWS has identified several potential alternative sources of water which do not serve as a practicable alternative to use of water from the Wailuku River. FOF, ¶¶ 38-54.

12. MDWS investigated development of Northward Basal Ground Water sources as an alternative to use of water from the Wailuku River. This alternative is not a practicable mitigating measure due to high costs associated with development of infrastructure, the anticipated low yield, and the limitations CWRM has placed on use of water from the Waihee Aquifer. FOF, ¶¶ 40-41.

13. MDWS investigated development of Eastward Basal Ground Water sources as an alternative for use of water from the Wailuku River. This alternative is not a practicable mitigating measure due to high costs associated with development of infrastructure, and legal constraints which prevent MDWS from developing wells in east Maui. FOF, ¶¶ 42-45.

14. MDWS investigated development of desalination of brackish water in the Kahului Aquifer as an alternative for use of water from the Wailuku River. This alternative is not a practicable mitigating measure due to high costs associated with development of infrastructure, and the uncertainty of ongoing costs due to high energy usage. FOF, ¶¶ 46-49.

15. MDWS investigated maximization of recycled water and conservation as an alternative for use of water from the Wailuku River. This alternative is not a practicable mitigating measure due to high costs associated with development of infrastructure, limitations on the availability and use of recycled water, and increased conservation's reliance on human behavior, the changing nature of which makes planning difficult. FOF, ¶¶ 50-54.
16. In addition, MDWS already utilizes several alternative sources of water to service the Central Maui Service Area, indicating that MDWS makes efforts to minimize reliance on water from the Wailuku River to the extent practicable. FOF, ¶ 20.

17. Accordingly, MDWS’ existing use of 1.784 MGD from the Wailuku River is a “reasonable-beneficial use as defined in section 174C-3,” and therefore satisfies the requirements of HRS § 174C-49(a)(2).

18. In addition, MDWS’ new use of 1.416 MGD from the Wailuku River is a “reasonable-beneficial use as defined in section 174C-3,” and therefore satisfies the requirements of HRS § 174C-49(a)(2).

C. **HRS 174C-49(3)**

19. MDWS participated in both the initial and remanded contested case hearings setting the Interim Instream Flow Standards (“IIFS”) for the streams that are the subject of this contested case hearing. FOF, ¶ 7.

20. In setting the IIFS, the Commission is charged with balancing “the importance of present or potential instream values with the importance of the present or potential uses of water for non-instream uses of water for non-instream purposes.” HRS 174C-71(2)(D).

21. In undertaking the weighing of these values, the Commission has twice determined that, in concert with both instream values and other non-instream uses, MDWS’ use of 3.2 MGD was a “reasonable-beneficial use.” FOF, ¶¶ 8-11.

22. Accordingly, it has been previously determined the MDWS’ existing use of 1.784 and new use of 1.416, for a total use of 3.2 MGD, “will not interfere with any existing legal use of water,” and the commission has found no reason to disturb the finding as it applies to HRS § 174C-49(3).
D. HRS § 174C-49(a)(4)

23. The State Water Code specifically states certain categories of use to be in the public interest as follows:

Adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest.

Hawaii Revised Statutes ("HRS") § 174C-2(c)(emphasis added).

24. "States have uniformly recognized domestic uses [of water], particularly drinking, as among the highest uses of water resources," including in Hawaii where domestic use of water is recognized "as a purpose of the state water resources trust." Waiahole I, 94 Hawaii at 137.

25. "The public trust, by its very nature, does not remain fixed for all time, but must conform to changing needs and circumstances." Waiahole I, 97 Hawaii at 135.

26. MDWS provides water for municipal use and public water supply, both of which are specifically recognized as uses that are in the public interest. FOF, ¶ 15, 30.

27. The majority of water delivered by MDWS is for domestic use in single and multi-family homes. FOF, ¶¶ 30-32.

28. Because MDWS is the only Municipal provider of water, and the vast majority of the population of Maui receives water for domestic use from MDWS, water that is used for domestic use by MDWS’ customers is a public trust use. FOF, ¶¶ 15, 30-32.

29. Accordingly, MDWS’ existing use of 1.784 MGD from the Wailuku River is consistent with the public interest and satisfies the requirements of HRS § 174C-49(a)(4).
30. In addition, MDWS’ new use of 1.416 MGD from the Wailuku River is consistent with the public interest and satisfies the requirements of HRS § 174C-49(a)(4).

E. **HRS §§ 174C-49(a)(5) and (6)**

31. Because MDWS does not use water in relation to a specific project or parcel of land, but instead delivers water to others for use on their land, the requirements set forth in HRS § 174C-49(a)(5) and (6) requiring consistency with “state and county general plans and land use designations” and with “county land use plans and policies” respectively, are difficult to address. FOF, ¶ 29.

32. Further, because of the number of consumers, land use regulations cannot be identified for all existing parcels that receive water from MDWS to assure that those users are compliant with land use plans, designations, and policies. FOF, ¶ 29.

33. However, because building permits for new homes and businesses require that those projects are compliant with land use plans, designations and policies, there is reasonable assurance that the ultimate use of the land receiving water is consistent with land use plans, designations and policies. FOF, ¶ 29.

34. Accordingly, MDWS’ existing use of 1.784 MGD from the Wailuku River is consistent with state and county general plans, state and county land use designations, and county land use plans and policies and satisfies the requirements of HRS §§ 174C-49(5) and (6).

35. In addition, MDWS’ new use of 1.416 MGD from the Wailuku River is consistent with state and county general plans, state and county land use designations, and county land use plans and policies and satisfies the requirements of HRS §§ 174C-49(5) and (6).
F. **HRS § 174C-49(a)(7)**

36. As the provider of domestic water to the Hawaiian Homelands at Paukukalo and Waiehu Kou, the needs of the Department of Hawaiian Homelands are incorporated into the MDWS’ supply commitments, and the water allocated to them is included in MDWS’ SWUPAs. FOF, ¶ 17.

37. Accordingly, MDWS’ existing use of 1.784 MGD from the Wailuku River will not interfere with the rights of the Department of Hawaiian Homelands and satisfies the requirements of HRS § 174C-49(7).

38. In addition, MDWS’ new use of 1.416 MGD from the Wailuku River will not interfere with the rights of the Department of Hawaiian Homelands and satisfies the requirements of HRS § 174C-49(7).

G. **HRS § 174C-54**

39. There being insufficient water to meet the demands of the all the SWUPAs submitted in this case, CWRM is tasked with determining which permits best serve the public interest. HRS § 174C-54.

40. MDWS provision of water, primarily for domestic use, is both a recognized public interest use and a public trust use. FOF, ¶¶ 30-32, COL, ¶¶ 26-30.

41. Further, MDWS’ use of surface water from the Wailuku River currently benefits approximately 101,525 people directly (with that number expected to grow to 125,789 people by 2030), and the entire population of Maui indirectly through it provision of water to institutions including schools, government buildings, and the hospital. FOF, ¶¶ 18, 19, 30.

42. Accordingly, MDWS’ existing use of 1.784 MGD better serves the public interest than all other existing use applications.
43. Furthermore, MDWS’ new use of 1.416 MGD better serves the public interest than all other new use applications.

DECISION AND ORDER

1. Parties who submitted SWUPAs but failed to file opening briefs are in violation of Minute Orders 1 and 4, and accordingly have failed to provide CWRM with sufficient information to grant their SWUPAs. Those SWUPAs are hereby DENIED.

2. To the extent that parties’ appurtenant rights are granted, those rights are limited to the specific parcel to which that right is appurtenant. Entities supplying water to users based on an appurtenant right may not use excess water associated with that right on other properties within their system.

3. MDWS’ Existing Use SWUPA for 1.784 MGD is hereby GRANTED.

4. MDWS’ New Use SWUPA for 1.416 MGD is hereby GRANTED.


PATRICK K. WONG
Corporation Counsel
Attorney for COUNTY OF MAUI
DEPARTMENT OF WATER SUPPLY

By
CALEB P. ROWE
KRISTIN K. TARNSTROM
Deputies Corporation Counsel
COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAI'I

Surface Water Use Permit Applications, Integrations 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

Case No. CCH-MA15-01

CERTIFICATE OF SERVICE

Minute Order 4, dated March 4, 2016, amended the service requirements in these proceedings. This certificate of service notifies all parties that the foregoing document was electronically served and submitted for posting to the Commission on Water Resource Management website as per the requirements of Minute Order 4.

On February 17, 2017, an original and five copies of the foregoing document was served by U.S. mail, postage prepaid, on the Commission for Water Resource Management at:

Commission on Water Resource Management
1151 Punchbowl Street, Room 227
Honolulu, Hawaii 96813
(by email: kathy.s.yoda@hawaii.gov)

On February 17, 2017, a copy of the foregoing document was served via electronic service on the parties listed below at their last known email address:

BY ELECTRONIC SERVICE

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
Diannah Goo  ag2517@aol.com
c/o April Goo
2120 C Kahekili Hwy.
Wailuku, HI 96793

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

Theodore & Zelie Harders
T&Z Harders FAM LTD PTNSHP
Theodore and Zelie Harders Family Ltd. Partnership
1415 Kilohi St.
Wailuku, HI 96793

Greg Ibara  gregibara56@gmail.com
227 Kawaipuna Street
Wailuku, HI 96793

Evelyn Kamasaki  cmcmau@live.com
Cynthia Ann McCarthy
Claire S. Kamasaki
1550 Nukuna Place
Wailuku, HI 96793

Charlene E. and Jacob H. Kana, Sr.  char1151@hawaii.rr.com
PO Box 292
Wailuku, HI 96793

Kimberly Lozano  pauahi808@aol.com
P.O. Box 2082
Wailuku, HI 96793

Renee Molina  myoheo@yahoo.com
P.O. Box 1746
Wailuku, HI 96793
Douglas Myers  
1299 Malaihi Road  
Wailuku, HI 96793  
upperwaiehu@yahoo.com

Lorrin Pang  
166 River Road  
Wailuku, HI 96793  
pangk005@hawaii.rr.com

Victor and Wallette Pellegrino  
c/o Hokuo Pellegrino  
213 West Waiko Road  
Wailuku, 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

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

cytl@maui.net

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
Colin J. Lau, Esq.  
465 S. King Street, Room 300  
Honolulu, Hawaii 96813  
colin.j.lau@hawaii.gov

c: Russell Kumabe  
Holly McEldowney  
(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  
cc: Garret Hew  
yizu@moriharagroup.com  
wcosta@moriharagroup.com  
knakagawa@moriharagroup.com  
ghew@hcsugar.com
(Hawaiian Commercial & Sugar Co. (HC&S))

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

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

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

abc@aloha.net
Jodi Yamamoto, Esq.
Wil Yamamoto, Esq.
Yamamoto Caliboso
1099 Alakea Street
Suite 2100
Honolulu, HI 96813
(MMK Maui, LP, The King Kamehameha Golf Club, Kahili Golf Course)

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

Craig Nakamura, Esq.
Catherine L.M. Hall, Esq.
Carlsmith Ball LLP
2200 Main Street, Suite 400
Wailuku, HI 96793
(Wahi Hoomalu Limited Partnership)

Peter A. Horovitz, Esq.
Kristine Tsukiyama, Esq.
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

Albert Boyce

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))
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)

Tim Mayer, Ph.D.
Supervisory Hydrologist
Water Resources Branch
US Fish and Wildlife Service
911 NE 11th Avenue
Portland, OR 97232-4181
cc: Frank Wilson

Takitani Agaran & Jorgensen
Wailuku Executive Center
24 N. Church Street, Suite 409
Wailuku, HI 96793
(Ken Ota, Saedene Ota, Kurt Sloan, Elizabeth Sloan,
Anthony Takitani, Audrey Takitani, Kitagawa Motors, Inc.,
SPV Trust and Gerald W. Lau Hee)

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

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

PATRICK K. WONG
Corporation Counsel
Attorney for COUNTY OF MAUI
DEPARTMENT OF WATER SUPPLY

By

CALEB P. ROWE
KRISTIN K. TARNSTROM
Deputies Corporation Counsel