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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 Waihee, 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.

6. On January 28, 2015, CWRM authorized a contested case hearing on the SWUPAs filed for Na Wai Eha, and designated a hearings officer on January 28, 2015.

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

MGD from the Iao Stream on March 31, 2009. Exhibits “2178-County-1”; “2178-County-2;” Transcript, Volume 5, dated July 19, 2016, (“Trans. V5”), 20:9-10.

13. In total, MDWS requests amount to 3.2 MGD. Exhibits “2178-County-1”; “2178-County-2;” Trans. V5, p. 20, ¶ 9.

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.

16. The largest water system in the County is the Central Maui System, which services the communities of Kuau, Paia, Sprecklesville, Kahului, Puunene, Kihei, Wailea, Makena, Waikapu, Wailuku, Waiehi and Waihee. Taylor Dec. ¶ 7; Trans. V5, 18:4-6.

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, Mokuahau 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.

21. Water from the Iao Stream is diverted by Wailuku Water Company (“WWC”) into its Iao-Waikapu Ditch System and then delivered to MDWS’ Iao Water Treatment Plant (“Iao WTP”), where it is treated and then distributed throughout the Central Maui System. Taylor Dec. ¶¶ 15-16; Trans. V5, 22:1-6.

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.

23. This agreement for delivery of 3.2 MGD was continued through February 2018 by way of amendments dated November 29, 2007, February 27, 2008, and January 30 2014. Taylor Dec. ¶¶ 18, 19, 21; Exhibits “2178-County-6”; “2178-County-7”; “2178-County-8”; Trans. V5, 22:16-22.

24. Currently, the Central Maui System's total peak available source is 25.696 MGD, with an average daily use of 20.5 MGD. Taylor Dec., ¶ 13; Exhibit "2178-County-11," Tables 6, 4; Trans. V5, 18:25-19:5.

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.

26. While the current system meets the needs of the Central Maui System, MDWS will need to develop new sources of water to meet future needs. Taylor Dec. ¶ 14; "2178-County-12," p. 6; Trans. V5, 21:20-22.

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:

Water Use Category	# of Active Meters	Avg. use per mo. (1000 gals.)	Avg. use in GPD	Avg. GPD per Meter	% of Total Water Use	Requested Amnt (GPD)
Agriculture	19	6,401.01	210,164.26	11,601.28	1.051%	18,754.44
Government	203	55,033.67	1,804,382.62	8,888.58	9.206%	161,017.76
Commercial	874	72,327.85	2,371,404.92	2,713.28	11.826%	211,617.15
Golf (private)	2	14,562.5	477.46	238.73	0.002%	42.61
Hotel	71	57,992.66	1,901,398.77	26,780.25	9.511%	169,675.20
Industrial	149	24,392.97	799,769.34	5,367.58	4.001%	71,369.05
Irrigation (private)	42	5,815.25	190,663.85	4,539.62	0.954%	17,014.28
Multi-Family	512	101,409.28	3,324,894.34	6,493.93	16.631%	296,703.73
Multi-Family Low Rise	9	5,933.82	194,551.48	21,616.83	0.973%	17,361.20
Religious	84	3,322.02	108,918.77	1,296.65	0.545%	9,719.59
School (private)	1	107.195	3,514.59	3,514.59	0.018%	313.63
Single Family	16,830	275,727.31	9,040,239.75	537.15	45.220%	806,724.23
Unknown	19	1,260.22	41,318.52	2,174.66	0.207%	3,687.14
Total	18,815	609,746.81	19,991,698.69		100%	1,784,000.00

Taylor Dec. ¶ 26; Exhibit “2178-County-1”; Trans. V5, 24:1-20.

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:

Water Use Category	# of Active Meters	Avg. use in GPD	Avg. GPD per Meter	# of Inactive Meters	Projected Monthly AVG GPD	Projected GPD Per Meter	% of Total Water Use	Requested Amnt (GPD)
Agriculture	19	212,515	11,185				1.07%	15,093.50
Government	208	1,688,281	8,117	1	48,000	48,000	8.71	123,316.28
Commercial	881	2,235,787	2,538	17	86,222	5,072	11.65	164,915.15
Golf (private)	2	357	179				0	25.36
Hotel	72	1,680,498	23,340				8.43	111,935.44
Industrial	149	720,981	4,839	3	13,700	4,567	3.68	52,179.41
Irrigation (private)	46	201,962	4,390	7	57,300	8,186	1.30	18,413.62
Multi-Family	512	3,032,910	5,924	8	114,411	14,301	15.79	223,532.89
Multi-Family Low Rise	9	175,340	19,482				0.88	12,453.21
Religious	84	100,826	1,200				0.51	7,160.99
School (private)	1	3,637	3,637				0.02	258.31
Single Family	17,005	9,083,415	534	362	319,759	883	47.16	667,843.75
Unknown	15	37,659	2,511	9	123,600	13,733	0.81	11,453.13
Total	19,003	19,174,148		407	762,992			1,416,000.00

Taylor Dec. ¶ 26; Exhibit "2178-County-2"; MDWS Opening Brief, p. 7 n. 4; Trans. V5, 24:1-20.

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.

34. On the supply side, conservation and efficiency efforts include increased staffing for leak detection and repair, preventative and predictive maintenance of the system, and back-up sources. Taylor Dec. ¶ 26; Exhibit "2178-County-13," pp. 1-3; Trans. V5, 25:23-26:7.

35. On the demand side, conservation and efficiency efforts include water conservation pricing, low-flow fixture distribution, direct fixture retrofits, water auditing, regulations related to water conservation, and public education and outreach activities. Taylor Dec. ¶ 26; Exhibit “2178-County-13,” pp. 3-10; Trans. V5, 25:2-21, 26:8-13.

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

use/conservation, and expanded use of Na Wai Eha Surface Water. Taylor Dec. ¶ 28; Exhibits “2178-County-11,” pp. 6-11; “2178-County-12,” pp. 6, 26; Trans. V5, 27:1-28:3, 41:5-17..

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

46. The desalination of brackish groundwater strategy consists of the development of a 5 MGD reverse osmosis desalination facility in the Kahului aquifer. Exhibits "2178-County-11," pp. 6-7; "2178-County-12," pp. 67-68; Trans. V5, 44:5-8.

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 1.601MGD 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.

In re Water Use Permit Applications, ("Waiahole I") 94 Hawaii 97, 161-162 (2000).

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 its 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.

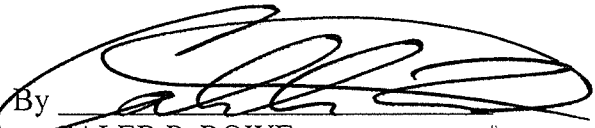
2. To the extent that parties' appurtenant rights are granted, those rights are limited to the specific parcel to which that right is appurtenant. Entities supplying water to users based on an appurtenant right may not use excess water associated with that right on other properties within their system.

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

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

DATED: Wailuku, Maui, Hawaii, February 17, 2017.

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DEPARTMENT OF WATER SUPPLY

By 

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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) CERTIFICATE OF SERVICE
Water Management Areas of Waihee,)
Waiehu, Iao and Waikapu Streams, Maui)
_____)

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
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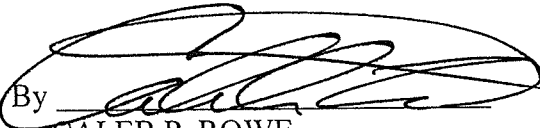
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