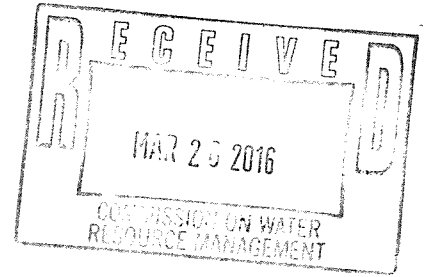


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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In the Matter of the Contested Case Hearing
on the Water Use Permit Application
Originally Filed by Kukui (Molokai), Inc.,
Now Refiled as a New Ground Water Use
by Molokai Public Utilities, LLC

CASE NO. CCH-MO-97-14

COUNTY OF MAUI, DEPARTMENT OF
WATER SUPPLY'S INITIAL BRIEF;
CERTIFICATE OF SERVICE

**COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY'S
INITIAL BRIEF**

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 Initial Brief pursuant to the Minute Order regarding the potential dismissal of the contested case.

I. PROCEDURAL HISTORY

The Commission on Water Resources Management (CWRM) designated the island of Moloka'i as a water management area effecting July 15, 1992. Accordingly, pursuant to Hawaii Revised Statutes ("HRS") § 174C-50(c), existing users of water needed to file water use permits by July 15, 1993, one year following the designation, or they would be presumed to have abandoned their pre-existing use. Petitioner Kukui (Moloka'i), Inc. filed a Ground Water Use Permit Application ("GWUPA") for an existing use on December 15, 1993. On appeal of CWRM's decision to grant Kukui (Moloka'i)'s existing water use permit, the Hawai'i Supreme Court ruled the Kukui (Moloka'i)'s application was untimely pursuant to HRS § 174C-50(c), and vacated CWRM's order granting petitioner's application. See In re Contested Case Hearing on Water Use Permit Application Filed by Kukui (Molokai), Inc., 116 Haw. 481, 501, 174 P.3d 320, 340 (2007). Kukui (Moloka'i)'s successor in interest, Moloka'i Public Utilities ("MPU"), filed a New GWUPA on June 27, 2014.

II. ARGUMENT

The Contested Case Hearing MO-97-14 has been rendered moot by the Supreme Court's 2007 Decision in In re Contested Case Hearing on Water Use Permit Application Filed by Kukui (Molokai), Inc., 116 Haw. 481, 501. In that case, the Supreme Court found that the petitioner's application for an existing use Ground Water Use Permit was untimely, that any existing use was presumed abandoned pursuant to HRS § 174C-50(c), and that Kukui (Moloka'i) needed to apply for a new use permits under HRS § 174C-51 in order to "revive its expired uses." Id. at 503. Subsequent to this decision, petitioner's successor interest MPU, filed a GWUPA for 1.0265 MGD on June 27, 2014.

Because petitioner's GWUPA was determined to be untimely and Molokai Public Utilities has filed a completely new GWUPA, the Contested Case Hearing on Kukui (Moloka'i)'s 1997 GWUPA has been rendered moot. Quite simply, there are no issues that remain unresolved regarding Kukui (Moloka'i)'s 1993 permit. While new GWUPAs have been submitted by several other parties, those GWUPAs are separate and distinct from the permit at issue in CCH-MO-97-14, and CWRM should treat and process them accordingly. For the sake of administrative efficiency, the County does not object to consolidation of the remaining permits into a new contested case hearing.

III. CONCLUSION

The underlying permit in this case has been rendered moot and effectively abandoned. Accordingly, CWRM should dismiss this Contested Case Hearing and process the recently filed GWUPA's a separate matter under a separate heading and case number.

DATED: Wailuku, Maui, Hawaii, March 24, 2016.

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

By 

CALEB P. ROWE
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COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

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CASE NO. CCH-MO-97-14

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a true and correct copy of the foregoing document was duly served, via email to the following, with hard copies to follow U.S mail, postage prepaid, upon the following individuals as follows:

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