



WAILUKU WATER CO.

WAIKAPU IAO WAIHEHU WAIHEE

Na Wai Eha

Agenda Item B.2
Wailuku Town Kuleana Pipeline
Na Wai Eha Surface Water Management Area

Wailuku Water Company, LLC
February 11, 2022

Chairperson Case and Commissioners,

In the agenda published for its February 15, 2022 meeting, the Commission listed “Approve Interim Water Use Permits to Mary Ann Velez (Higa) (SWUPAs 2241/2242N), Jordanella Ciotti (SWUPAs 2247/2248N), and Greg Ibarra (SWUPAs 2245/2245N) on the Wailuku Town Kuleana `Auwai and Order Wailuku Water Company and Mahi Pono, LLC to Implement Certain Actions for Commission Staff to Assess Water Loss, Na Wai Eha Surface Water Management Area, Wailuku, Maui” CWRM February 15, 2022 Agenda, Item B.2, page 2. The staff report was not posted on this agenda item as of the time that this submittal was prepared. If a staff report is provided before the meeting, Company reserves the right to comment on the staff report.

As understood by Company, the action proposed by staff that impacts Company will be to change the amount of water at the Wailuku Town Kuleana Pipeline delivery point from the amount stated in the Decision & Order of 0.088mgd. Company initially raises the issue of whether the Commission can amend the Decision and Order. The Decision and Order was appealed and the appeal is pending. As such, it would be prudent for the Commission to confirm from its legal advisor that it retains the ability to amend the Decision and Order while the appeal is pending.

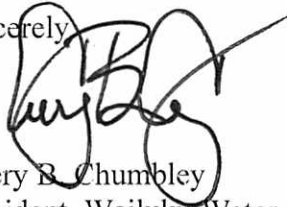
A secondary issue is whether the Commission has the authority to modify permits granted under the Decision and Order. Modification of permits, even on an interim basis,

should be based on evidence to support changes to existing factual findings. In turn, a modification of permits would result in changes to the record which is presently on appeal. As with the first issue, it would be prudent for the Commission to receive confirmation from its legal advisor that it can modify orders of the Commission that involve rights granted under the Decision and Order while the appeal is pending.

Assuming the Commission determines it has the ability to amend the Decision & Order, Company suggests that the Commission specify the period of time that the change in amount of water to be delivered will be in effect. Additionally, Company suggests that Commission address efforts of self-help from users so that a water loss assessment can be performed efficiently and in a manner that will provide accurate results. Without having the proposed actions to assess water loss, Company cannot provide further comment at this time.

Should you have any questions please let me know.

Sincerely,



Avery B. Chumbley
President, Wailuku Water Company LLC

Cc: Paul R. Mancini & Jim W. Geiger

