



Agenda Item B.3
Delegation of Implementation Authority
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 “Delegation of Authority to the Chairperson to Modify Any Orders of the Commission in CCH-MA 15-01, Surface Water Use Permit Applications, Integration of Appurtenant Rights and Amendments to the Instream Flow Standards, Na Wai Eha Surface Water Management Area, Wailuku, Maui for the Purpose of Allowing for Implementation of the Decision and Order” CWRM February 15, 2022 Agenda, Item B.3, page 2.

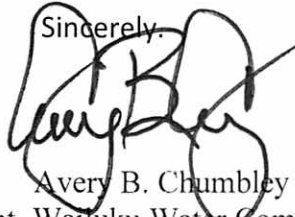
Company initially raises the issue of whether the Commission can amend the Decision and Order. The Decision and Order was appealed and the appeal is pending. As such, it would be prudent for the Commission receive confirmation from its legal advisor that it retains the ability to amend the Decision and Order while the appeal is pending.

A secondary issue is whether the Commission has the authority to delegate the power to modify any order of the Commission in Docket CCH-MA 15-01. The State Water Code and the Administrative Rules adopted by the Commission delegate certain functions to the Chairperson. None of the functions include modification of orders of the Commission. As with the first issue, it would be prudent for the Commission to receive confirmation from its legal advisor that it can delegate the power to modify orders of the Commission that involve rights granted under the Decision and Order without any direction or input from the Commission.

A final issue is whether the Commission can delegate the power to modify orders when the Decision & Order is under appeal. If the Commission does not have the ability to modify the Decision & Order while it is under appeal, it surely cannot authorize another to do that which it cannot do itself. Again, the Commission should consult with its counsel to determine the scope of its ability to take action.

Should you have any questions, please feel free to contact me.

Sincerely,



Avery B. Chumbley
President, Wailuku Water Company LLC

Cc: Paul R. Mancini & Jim W. Geiger

