



WAILUKU WATER CO.

WAIKAPU IAO WAIHEHU WAIHEE

Na Wai Eha

Application for SWUP – Mundy
Agenda Item B.3

Wailuku Water Company, LLC
September 19, 2023

Chairperson Chang and Commissioners,

In the agenda published for its September 19, 2023 meeting, the Commission listed Approval of Surface Water Use Permit Application (SWUP.5880.6) for New Use and Special Conditions, Wesley and Jodie Mundy for 153,125 gpd; and Find that Amendment to SWUP.2157.6 issued to the Wailuku Water Company is Not Required, Waihe`e Stream, Waihe`e Surface Water Management Area, Maui as Action Item B.3. CWRM September 19, 2023 Agenda, page 2.

As with its previous testimony when the item was considered by the Commission at its August 15, 2023 meeting, the Company is not taking a position concerning the quantity of water being requested. The Company recognizes that Commission staff recently met with staff from the Public Utilities Commission (PUC) to discuss overlapping jurisdictional issues. While the Company asked that it be allowed to participate in the discussions, it was not afforded that opportunity and therefore continues to be concerned that the Commission's action on this application will result in an adverse action by the PUC that was not intended by the Commission.

For example, although the staff submittal reflects that the Company's May 18, 2022 PUC Amended Application might be further amended to include the Mundys' within the number of customers or users to whom service will be provided, nothing was stated about the Suspense Order that remains in effect. The Company's expressed concern was, and remains, that the Suspense Order exists directing the Company to maintain the status quo and directing that it not provide service to new customers.

Staff correctly noted that the Company's May 18, 2022 PUC Amended Application proposed categories that included "users" and "customers". To date, the PUC has not acted on the Company's request. Accordingly, the proposed category of "users" is not in effect. While

the Company believes that its request to establish a category of “users” is reasonable, the request may not be approved and the Commission’s action on this application may result in a violation of PUC rules and orders.

Additionally, the Company seeks clarification on the scope of Standard Condition No. 3. That condition states “The permittee shall comply with all other applicable statutes, ordinances, and regulations of the Federal, State and County government.” Standard Surface Water Use Permit Conditions For New and Existing Uses (Approved November 15, 2022), Condition 3. The Company believes the condition requires compliance with PUC regulations, rules and orders. However, for clarity, a statement to that effect should be included in the permit when it is approved by the Commission. The Company suggests adding the following to the end of Condition 3: “, including compliance with the applicable rules, regulations and orders of the Public Utilities Commission.”

Company repeats that it raised this issue in the SWUPA contested case and in the appeal that is pending before the Hawaii Supreme Court. Oral arguments on the appeal were rescheduled for December 5, 2023. At a minimum the Commission must consider the overlapping jurisdictional issue in its review of the application and deferral of a final decision on the SWUPA until a decision on the appeal is issued should be considered.

Sincerely;



Avery B. Chumbley

President, Wailuku Water Company

