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Attorneys for Applicant

COUNTY OF MAUI

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of a Contested Case
Regarding the Continuation of Revocable
Permits (RPs) for Tax Map Key Nos. (2) 1-
1-001:004 & 050; (2) 2-9-014:001, 005,
011, 012 & 017; (2) 1-1-002:002 (por.) and
(2) 1-2-004:005 & 007 for Water Use on
the Island of Maui to Alexander &
Baldwin, Inc. (A&B) and East Maui
Irrigation Company, LLC (EMI) for the
remainder of the 2021 RPs, if applicable,
and for their continuation through the end
of 2022

DLNR File No.: CCH-LD-21-01

NON-PARTY COUNTY OF MAUI'S
APPLICATION TO BE ADMITTED AS A
PARTY; MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF CALEB P.
ROWE; EXHIBIT "A" – "B"; CERTIFICATE
OF SERVICE

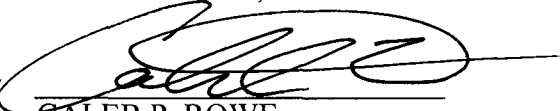
NON-PARTY COUNTY OF MAUI'S APPLICATION TO BE ADMITTED AS A PARTY

Comes now, COUNTY OF MAUI ("County"), a non-party to this action, appearing specially by and through its attorneys, MOANA M. LUTEY, Corporation Counsel, and CALEB P. ROWE and KRISTIN K. TARNSTROM, Deputies Corporation Counsel, and hereby moves the Board of Land and Natural Resources ("Board") to allow the County to intervene as a Party

Appellee in the above-referenced action. This motion is made pursuant to §§ 13-1-31(b) and (c) of the Hawaii Administrative Rules (“HAR”) and is based on the accompanying memorandum in support, declarations, exhibits, and all pleadings and records in the Board’s file of this action.

DATED: Wailuku, Maui, Hawaii, October 21, 2021.

MOANA M. LUTEY
Corporation Counsel
Attorneys for Applicant
COUNTY OF MAUI,

By 
CALEB P. ROWE
KRISTIN K. TARNSTROM
Deputies Corporation Counsel

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of a Contested Case
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MEMORANDUM IN SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION

The County of Maui has been actively involved in litigation concerning water resources arising from the Honomanu, Huelo, Keanae, and Nahiku license areas at issue in this contested case hearing for decades. This includes the various contested case hearings before the Board of Land and Natural Resources (“BLNR”)¹ and Commission on Water Resources Management (“CWRM”)², and circuit court proceedings, including but not limited to Civil No. 03-1-0289-02, Civil No. 14-1-0918-04 RAN, Civil No. 15-1-0650-04 RAN, Civil No. 16-1-0052-01 JHC, 19-1-0019-01 JPC, and most recently, 20-1-1541-01 JPC. The County has also been involved in various appellate proceedings, particularly Carmichael v. BLNR, et al, SCWC 16-0000071. The County now requests permission from this Board to participate as a party to this contested case hearing as well.

¹ Including DLNR File No. 01-05-MA, See Exhibit “A.”

² Including CCH-MA13-01, See Exhibit “B.”

I. LEGAL STANDARD

A party shall be admitted to participate in a contested case hearing as of right pursuant to HAR § 13-1-31(b) under two circumstances:

- (1) All government agencies whose jurisdiction includes the land in question shall be admitted as parties upon timely application.
- (2) All persons who have some property interest in the land, who lawfully reside on the land, who are adjacent property owners, or who otherwise can demonstrate that they will be so directly and immediately affected by the requested action that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application.

A party who does not qualify to be admitted as a party under HAR § 13-1-31(b) may nevertheless be admitted pursuant to HAR § 13-1-31(c) where that party “can show a substantial interest in the matter” and the Board “finds that the requestor’s participation will substantially assist the board in its decision making.”

II. ARGUMENT

A. The County’s Application is Timely

On October 12, 2021, this Board issued its *Minute Order No. 4, Order Setting Pre-Hearing Conference* (“Minute Order No. 4”). Pursuant to this order, a pre-hearing conference was scheduled for October 29, 2021 at 9:00 am “to discuss the scope of the contested case and set the dates for the contested case hearing and all pre-trial deadlines.” *Minute Order No. 4*. The County filed this application within ten days of the issuance of *Minute Order No. 4*, and more than a week in advance of the pre-hearing conference. Further, as indicated by *Minute Order No. 4*, no pre-trial deadlines have been set. Accordingly, no party would be prejudiced by the County’s admission at this juncture. See *Su Duk Kim v. H.V. Corp.*, 5 Haw. App. 298, 301-302, 688 P.2d 1158, 1161 (1984)[“when deciding the question of timeliness, all circumstances must be considered, but two are especially relevant: 1) the lapse of time between when the applicant should

have sought intervention and when it actually did and 2) the prejudice caused to the existing parties by that lapse of time.”]

B. The County’s Jurisdiction Includes the Land in Question

As recognized by Minute Order No. 4, the revocable permits at issue in this Contested Case hearing concern “water use on the Island of Maui,” and concern several TMKs on the island of Maui. The County has general jurisdiction over all lands comprising the island of Maui, including those owned by the State. See Hawaii Revised Statutes (“HRS”) § 46-1.5. Accordingly, the County may participate in the Contested Case Hearing as a matter of right as a body with jurisdiction over the land encompassing the revocable permit areas.

C. The County Will Be Affected by the Requested Action

The County’s interest in the continuation of surface water diversions from the license areas that are the subject of this Contest Case Hearing have previously been recognized by this Board in DLNR File No. 01-05-MA, which made the following finding of fact:

“Upcountry Maui, the second largest water system in Maui, relies on water from East Maui streams and ditches for its public water supply. The upcountry system includes the communities of Kula, Pukalani, Makawao and Haiku. The population served by this system is approximately 30,891³ people. The Upcountry system serves Kamehameha Schools Maui Campus, Hawaiian Homelands at Waiohuli/Keokea, as well as many businesses, churches, healthcare and government facilities. Treated surface water is the primary source of water for Upcountry Maui.

See Exhibit “A,” pp. 14-15, ¶ 38(b). Similarly, the BLNR recognized that the water supply for the County came primarily from the license areas that are the subject of this cause of action, finding “the water collected and transported by EMI arising on the land covered by these four licenses

³ This decision was rendered in 2007. As demonstrated by the findings of the Commission on Water Resources Management (“CWRM”) in CCH-MA13-01, the population has increased to over 35,000 in the decade between the two decisions. See Exhibit “B,” pp. 210-211, ¶¶ 796-797.

averages 70% of the total water collected and transported by EMI, although this percentage can vary considerably during the course of any given year.” *Id.* at p. 9, ¶ 24.

Further, this Board has also recognized that the cessation of water deliveries from these license areas to the County could have severe consequences, finding:

Maui County depends heavily on water received through EMI’s ditch system. Upcountry has a high demand for water. If Upcountry Maui’s main source of water supply were curtailed, the deficit could not be made up by other portions of DWS’s water system because the Upcountry system is separate and distinct from the water systems serving other regions of Maui. **Cutting off Upcountry Maui’s main public water supply completely would result in a public health crisis and economic catastrophe.** Even relatively small cutbacks in the amount of water delivered to the County for use in Upcountry Maui would severely impact homes, businesses, schools, churches, farms, health care facilities, and others who rely on this water for their basic needs.

See Exhibit “A”, pp. 17-18, ¶ 44 (emphasis added). Accordingly, the County may participate in the Contested Case Hearing as a matter of right due to its substantial interest in the outcome of these proceedings.

D. The County’s Participation Will Substantially Assist the Board

Even if the Board does not agree that the County is entitled to participate in this Contested Case Hearing as a matter of right, it should still permit the County to participate as the County’s participation will substantially assist the Board in its decision-making process. This is especially true with regards to the public trust, which the Board must consider in all of its decision-making. See *In re Water Use Permit Applications*, 94 Haw. 97, 143, 9 P.3d 409, 455 (2000)(agencies “must take the initiative in considering, protecting, and advancing” the public trust in water resources “at every state of the planning and decision making process”).

The Supreme Court has recognized three “valid trust purposes” of water, namely:

1) water resource protection, which includes “the maintenance of waters in their natural state” as “a distinct use” and “disposes of any portrayal of retention of waters in their natural state as ‘waste’”; (2) **domestic use protection, particularly drinking water**; and (3) the exercise of native Hawaiian and traditional and customary rights.

In re Waiola O Molokai, Inc., 103 Haw. 401, 429, 83 P.3d 664, 692 (2004)(emphasis added). As “the sole municipal water provider for the County of Maui” in the Upcountry Service Area, the County’s Department of Water Supply “is a purveyor of domestic water uses of the general public, particularly drinking.” See Exhibit “B,” p. 210, ¶ 796, p. 252, ¶ 94. Accordingly, the County is in the best position to provide this Board with information regarding one of its public trust responsibilities and thus should be admitted as a party to these proceedings.

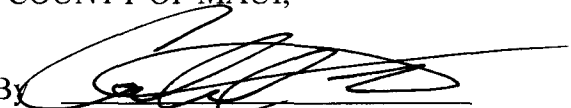
IV. CONCLUSION

For the foregoing reasons, the County requests that its *Application to be Admitted as a Party* be granted.

DATED: Wailuku, Maui, Hawaii, October 21, 2021.

MOANA M. LUTEY
Corporation Counsel
Attorneys for Applicant
COUNTY OF MAUI,

By


CALEB P. ROWE
KRISTIN K. TARNSTROM
Deputies Corporation Counsel

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of a Contested Case
Regarding the Continuation of Revocable
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of 2022

DLNR File No.: CCH-LD-21-01

DECLARATION OF CALEB P. ROWE

DECLARATION OF CALEB P. ROWE

I, CALEB P. ROWE, do hereby declare the following:

1. I am a duly appointed Deputy Corporation Counsel for the County of Maui and am one of the attorneys assigned to represent the County in the above-entitled action.
2. I make this declaration based on personal knowledge and am competent to testify to the matters stated herein.
3. Attached hereto as Exhibit "A" is a true and correct copy of excerpts from the Findings of Fact, Conclusions of Law, and Decision and Order filed by the Board and Land of Natural Resources, State of Hawaii in DLNR File No. 01-05-MA.
4. Attached hereto as Exhibit "B" is a true and correct copy of excerpts from the Findings of Fact, Conclusions of Law, & Decision and Order filed by the Commission on Water Resources Management, State of Hawaii in CCH-MA13-01.

I declare under penalty of law the foregoing is true and correct.

DATED: Wailuku, Maui, Hawaii, October 21, 2021

A handwritten signature in black ink, appearing to read 'Caleb P. Rowe', is written over a horizontal line.

CALEB P. ROWE

EXHIBIT A

BOARD OF LAND AND NATURAL RESOURCES

RECEIVED
MARCH 23 2005

STATE OF HAWAII

MAR 23 2 1:40

In the Matter of the Contested) DLNR File No. 01-05-MA
Case Hearing Regarding Water)
Licenses at Honomanu, Keanae,) FINDINGS OF FACT, CONCLUSIONS
Nahiku and Huelo, Maui,) OF LAW, AND DECISION AND ORDER
))
))

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION AND ORDER

The subject of this contested case is a long term lease of water from the State for the areas of Honomanu, Keanae, Nahiku and Huelo in East Maui. The purpose of this hearing was to determine whether current diversions should be decreased to provide interim relief in the form of increased water in the streams for the protection of the constitutional or legally protected rights of the parties. This decision is not intended to be a foreshadowing of this Board's final decision in this case. Any relief granted hereunder is intended for interim relief only and is based solely on the evidence introduced in this hearing.

PROCEDURAL BACKGROUND

In a Prehearing Order Regarding Petitioners' Motions For Summary Relief (Filed Mar. 18, 2005) ("Summary Relief Order"), the Hearings Officer denied Petitioners' motions for summary relief to the extent they sought a declaratory ruling that the

24. In the aggregate, on an annual basis, the water collected and transported by EMI arising on the land covered by these four licenses averages 70 % of the total water collected and transported by EMI, although this percentage can vary considerably during the course of any given year. Hew Decl. at ¶ 8; Tr. 11/15/05 at 97:23-98:7.

25. The delivery capacity of the EMI system is 450 million gallons per day ("mgd") and its average delivery is 165 mgd. Hew Decl. at ¶ 10.

C. Water Needs of EMI and HC&S

26. HC&S is the larger of Hawaii's two remaining sugar plantations, growing 77% of the state's 2004 raw cane sugar crop, generating gross revenues in the State of Hawaii of \$112,000,000 and an operating profit of \$4,800,000. HC&S generally employs approximately 800 full-time workers on Maui, and EMI employs another 17 workers. Declaration of G. Stephen Holaday ("Holaday Decl.") at ¶¶ 3, 6.

27. HC&S' plantation consists of approximately 43,300 acres of land. HC&S cultivates sugar on approximately 37,000 acres. Of these 37,000 acres, approximately 30,000 acres are irrigated by EMI delivered water. Of these, approximately 5,000 acres are irrigated solely by EMI water and approximately 25,000 acres are irrigated with a combination of EMI water and groundwater pumped by HC&S when EMI ditch flows are inadequate

County of Maui Department of Water Supply ("DWS Written Testimony") at ¶¶ 1-2.

a. The largest surface water treatment facility ("WTF") on Maui is the Kamole Weir WTF in Haliimaile, which relies on flows from the Wailoa Ditch. Treated water from that facility goes to 6,440 water service connections and can supply water to almost the entire Upcountry region (9,523 water service connections) if necessary. Kamole Weir WTF supplements the water supplied to this area by the Haiku and Kuapakalua wells and is the primary source in the event of pump failure. The Kamole Weir WTF is also the primary source of water for nearly all of Upcountry Maui during times of drought. Kamole Weir WTF's average daily production is 2.5 mgd. The facility can process approximately 8 mgd at maximum capacity. DWS plans to add 2.3 mgd capacity to the Kamole WTF in 2015. DWS Written Testimony at ¶ 3.

b. Upcountry Maui, the second largest water system in Maui, relies on water from East Maui streams and ditches for its public water supply. The Upcountry system includes the communities of Kula, Pukalani, Makawao, and Haiku. The population served by this system consists of approximately 30,891 people. The Upcountry system serves Kamehameha Schools Maui campus, Hawaiian Homelands at Waiohuli/Keokea, as well as many businesses, churches, health care and government

facilities. Treated surface water is the primary source of water for Upcountry Maui. For places in Upcountry Maui that are primarily served by well water, the surface water system is the backup in the event the well should go out of service. DWS Written Testimony at ¶ 2.

c. The water source for the Piiholo WTF is the Waikamoi Forest, delivered through EMI's Piiholo intake system. This WTF, located in the Makawao Forest Reserve adjacent to and east of the 50 million gallon Piiholo Reservoir, serves the Lower Kula Service Area. Piiholo WTF's average daily production is 3.0 mgd. DWS Written Testimony at ¶ 4.

d. The Olinda/Upper Kula WTF also relies on water from the Waikamoi Forest, delivered through the Waikamoi Flume intake system. Water treated in this facility is stored in the 30 million gallon Waikamoi Reservoirs and the 100 million gallon Kahakapao Reservoirs. The area served by this treatment facility is Upper Kula, Ulupalakua, and Kanaio. These reservoirs will also supply the non-potable agricultural line that will provide untreated surface water to farmers in Upper Kula, which is currently under construction. The average daily production at the Olinda/Upper Kula WTF is presently 1.3 mgd. This treatment plant is slated to add 0.7 mgd capacity in 2006. DWS Written Testimony at ¶ 5.

collected from the Wailoa Ditch per 24-hour period. Maui County had the option of receiving an additional 4 million gallons of water from this source after giving one year's written notice to EMI. DWS Written Testimony at ¶ 7; Exhibit F-1.

42. The 1973 Agreement expired in 1993, but was extended on several occasions. The last extension expired on April 30, 2000. Since that time, EMI has been delivering water to the County pursuant to a document entitled "Memorandum of Understanding Concerning Settlement of Water and Related Issues" ("MOU") executed on April 13, 2000. Hew Decl. at ¶ 11; DWS Written Testimony at ¶ 9; Exhibits F-2 to F-9.

43. That MOU provides that Maui County may receive 12 mgd from the Wailoa Ditch, with an option of an additional 4 mgd, as in the 1973 agreement. However, it provides that during periods of low flow, Maui County will have a minimum allotment of 8.2 mgd. The MOU also provides that HC&S will have a minimum flow of 8.2 mgd, or 9.4 mgd if fire flow should be required. If these minimum amounts cannot be delivered, then Maui County and HC&S are to receive prorated shares. DWS Written Testimony at ¶ 9; Exhibit F-9.

44. Maui County depends heavily on water received through EMI's ditch system. Upcountry Maui has a high demand for water. If Upcountry Maui's main source of water supply were curtailed, the deficit could not be made up by other portions of DWS's

water system because the Upcountry system is separate and distinct from the water systems serving other regions of Maui. Cutting off Upcountry Maui's main public water supply completely would result in a public health crisis and economic catastrophe. Even relatively small cutbacks in the amount of water delivered to the County for use in Upcountry Maui would severely impact homes, businesses, schools, churches, farms, health care facilities, and others who rely on this water supply for their basic needs. DWS Written Testimony at ¶ 10.

45. The community of Nahiku is also dependent on EMI ditch water for its public water supply. EMI collects and delivers up to 20,000 gallons of water per 24-hour period to serve the Nahiku community. DWS Written Testimony at ¶ 11.

E. MLP's Water Needs

46. MLP is America's largest grower, processor and shipper of Hawaiian pineapple. MLP currently cultivates approximately 6,000 acres of pineapple on Maui, over 2,800 of which are in East Maui in proximity to the EMI system. MLP has entered into negotiations for long-term leases of approximately 400 additional acres of agricultural lands in the Haliimaile, East Maui area, which will be converted to use for pineapple cultivation. Hew Decl. at ¶ 12; Nohara Testimony at ¶¶ 4, 5.

47. Taking into consideration the water needs of pineapple, the number of MLP's pineapple fields that lie fallow

A&B/EMI to show that the continued diversion will not harm previously established rights.

B. Public Trust Duties and Purposes

2. As a trustee of the public trust in water, the State must balance public and private water uses on a case-by-case basis. In re Water Use Permit Applications, 94 Hawaii 97, 142, 9 P.3d 409, 454 (2000) ("Waiāhole").

3. The State has a public trust duty to "duly consider the significant public interest in continuing reasonable and beneficial existing offstream uses." Waiāhole, at 150, 9 P.3d at 462.

4. Water served to the public for domestic uses is not only consistent with, but is the highest and best use of public resources. Waiāhole, 94 Haw. at 137, 9 P.3d at 449.

5. The use of water for private commercial gain is not a purpose of the public trust in water. Waiāhole, 94 Haw. at 138, 9 P.3d at 450.

6. Public trust principles require that adequate provision 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. Waiāhole, 94 Haw. at 145, 9 P.3d at 457.

7. The precautionary principle provides that the lack of full scientific certainty does not extinguish the presumption in favor of public trust purposes or vitiate the State's duty to protect such purposes wherever feasible. Waiāhole, 94 Haw. at 155, 9 P.3d at 467.

C. Immediate Cessation of Diversions

8. The immediate cessation of EMI's diversions would be contrary to the public interest inasmuch as:

a. It would greatly diminish or cut off Maui County DWS's water service to the Upcountry Maui and Nahiku communities, thereby resulting in public health and economic crises.

b. It would render MLP's East Maui pineapple business economically unviable because MLP would lose its only feasible source of water for its East Maui pineapple fields.

c. It would render HC&S and EMI economically unviable because HC&S depends on water delivered by EMI's ditch system, and EMI's economic value is derived from its contribution to the profitability of HC&S' sugar cultivation. Rendering HC&S and EMI economically unviable would result in the loss of over 800 jobs in Maui and the termination of the larger of the two remaining sugar companies in the State of Hawaii.

EXHIBIT B

RECEIVED
COMMISSION ON WATER
RESOURCE MANAGEMENT

2018 JUN 20 AM 8: 22

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

PETITION TO AMEND INTERIM) Case No. CCH-MA13-01
INSTREAM FLOW STANDARDS FOR)
HONOPOU, HANEHOI/PUOLUA (HUELO),)
WAIKAMOI, ALO, WAHINEPEE,)
PUOHOKAMOA, HAIPUAENA,)
PUNALAU/KOLEA, HONOMANU,)
NUAAILUA, PIINAAU, PALAUHULU,)
OHIA (WAIANU), WAIOKAMILO,)
KUALANI (HAMAU), WAILUANUI,)
WAIKANI, WEST WAILUAIKI, EAST)
WAILUAIKI, KOPILIULA, PUAKAA,)
WAIOHUE, PAAKEA, WAIAAKA,)
KAPAUULA, HANA WI, AND MAKAPIPI)
STREAMS)

FINDINGS OF FACT, CONCLUSIONS OF LAW, &
DECISION AND ORDER

I hereby certify that the foregoing
is a true and correct photocopy of the
original document on file in the office of the
Commission on Water Resource Management.

Dated JUN 20 2018 By 
Deputy for Water Resource
Management

EXHIBIT B

60.93 mgd required for the 17,853 acres, 100 percent of irrigation requirements would come from brackish well water, *supra*, FOF 790-791.

ii. For fields with access to both surface and brackish water, the amounts of brackish water that would represent lower percentages than the 33.90 mgd, which represents 38 percent of total water and 48 percent on fields with access to surface and well water when sugarcane was being irrigated would be: 1) 26.76 mgd, which represents 30 percent of total water and 44 percent on fields with access to both surface and well water; and 2) 17.84 mgd, which represents 20 percent of total water and 29 percent on fields with access to both surface and well water, *supra*, FOF 792-794.³⁵

2. MDWS

a. Uses

796. MDWS is the sole municipal water provider for the County of Maui. The MDWS Upcountry Water System serves the communities of Kula, Haiku, Makawao, Pukalani, Haliimaile, Waiakoa, Keokea, Waiohuli, Ulupalakua, Kanaio, Olinda, Omaopio, Kula Kai, and Pulehu. (David Taylor, WDT, David Taylor, Tr., March 11, 2015, p. 41.) [MDWS FOF 13.]

797. The population served by the MDWS upcountry system is projected at 35,251 people and includes several businesses, churches, Kamehameha Schools, Hawaiian Homelands, and government facilities. By 2030, the population is anticipated to grow by about 8,424 to a total of 43,675. (Michele McLean, WDT, ¶5; Exh. B- David Taylor, WDT, ¶ 6; David Taylor, Tr., March 11, 2015, p. 41; Michele McLean, Tr., March 12, 2015, pp. 120-127; Exhs. B-1, B-18, B-58.) [MDWS FOF 15, 34.]

798. Approximately 60 percent of MDWS's system is used domestically, and the remaining 40 percent for agricultural purposes. (David Taylor, WDT, ¶ 17; Exh. B-2, pp. 1-2; David Taylor, Tr., March 11, 2015, pp. 44-47.) [MDWS FOF 21.]

³⁵ These estimates do not include system losses.

2. Maui Department of Water Supply (MDWS)

a. Municipal use

92. MDWS provides two types of surface water to its users: 1) potable water from its Olinda, Piiholo, and Kamole WTPs, with a combined capacity of 13 mgd and an average daily production of 7.7 mgd; and 2) non-potable water from HC&S's Hamakua Ditch at Reservoir 40 for the Kula Agricultural Park, with two reservoirs with a total capacity of 5.4 million gallons and average daily use of 3.5 mgd. (FOF 90, 92-93, 96, 98, 102.)

93. Current unmet demand is approximately 3.75 mgd, and by 2030, there is a predicted additional need for 1.65 mgd. MDWS anticipates it will need to develop between 4.2 mgd and 7.95 mgd to meet demands through 2030. (FOF 437, 439-440.)

94. MDWS is a purveyor of domestic water uses of the general public, particularly drinking. In this capacity, MDWS serves one of the purposes of the public trust, *supra*, COL 46.

95. "Domestic use" as defined in the Code is distinct from "domestic uses of the general public." In the Code, "'(d)omestic use' means any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, noncommercial gardening, and sanitation (emphasis added)." (HRS § 174C-3.) The purpose of this definition in the Code is to exempt individual users from the permit provisions of the Code: "(N)o permit shall be required for domestic consumption of water by individual users..." (HRS § 174C-48 (a).) On the other hand, "domestic uses of the general public" acknowledges "the general public's need for water," and "the public trust applies with equal impact upon the control of drinking water reserves (quotation marks in original deleted)." *Waiāhole I*, 94 Hawai'i at 136-138; 9 P.3d at 448-450.

BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

In the Matter of a Contested Case
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of 2022

DLNR File No.: CCH-LD-21-01

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 upon the following individuals at their last known address as follows by email
and by depositing same via U.S. Mail, postage pre-paid at the last known address:

DAVID KIMO FRANKEL, ESQ.
1638-A Mikahala Way
Honolulu, Hawaii 96816

(davidkimofrankel@hawaiiantel.net)

Attorney for Plaintiff
SIERRA CLUB

DAVID SCHULMEISTER, ESQ.
TRISHA H. S. T. AKAGI ESQ.
MALLORY T. MARTIN, ESQ.
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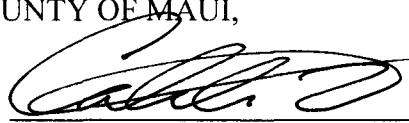
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