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2022 MAY 18 PM 3:50  
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STATE OF HAWAII

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

COUNTY OF MAUI'S RESPONSE TO  
SIERRA CLUB'S EXCEPTIONS TO THE  
HEARING OFFICER'S PROPOSED  
FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND DECISION AND ORDER;  
CERTIFICATE OF SERVICE

**ORAL ARGUMENT:**

Dates: May 26, 2022  
Time: 10:30 a.m.

**COUNTY OF MAUI'S RESPONSE TO SIERRA CLUB'S EXCEPTIONS TO THE  
HEARING OFFICER'S PROPOSED FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION AND ORDER**

Pursuant to Minute Order No. 25, the County of Maui (“County”) hereby submits its Response to the Sierra Club’s Exceptions to the Hearing Officer’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order.

In Section VIII(A) of its *Exceptions*, The Sierra Club argues that the “FOF 18 and footnote 17 are misleading,” but fails to explain how an accurate statement on the population of people in upcountry Maui is “misleading.” *Sierra Club’s Exceptions to the Hearing Officer’s Proposed Findings of Fact, Conclusions of Law, and Decision and Order* (“Exceptions”), p. 15. Instead Sierra Club merely stating that “only a small portion of the water that is diverted from east Maui streams actually is used by them.” Those two statements are not conflicting and the later does not render the former “misleading.” Further, the statement that “only a small portion of water” is not supported. As Sierra Club notes<sup>1</sup>, Circuit Court recently decreased diversions allowed under Revocable Permits S-7263, S-7264, S-7265 and S-7265 (“RPs”) to 20 million gallons a day (“MGD”). However, Sierra Club then states that the County has previously used up to 4.02 MGD (as averaged monthly) for upcountry domestic uses and no more than 1.08 MGD for the Kula Agricultural Park.” *Exceptions*, p. 15. This amounts to over 5 MGD, which accounts, or a quarter of the water allowed. A quarter can hardly be considered a “small portion.”

Sierra Club also argues that “FOF 104 is not supported by any evidence in the record,” noting that “Maui County Water Treatment Plants Division Chief testified that the County does not need more than 7 million gallons of water daily, not 7.5 mgd.” *Sierra Club’s Exceptions*, p. 16. However, this statement is taken out of context. FOF 104 does not state that the County

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<sup>1</sup> “A&B has been limited to diverting less than 25 million gallons of stream water per day (as averaged monthly), *id.*, recently reduced further to 20 million gallons per day.” *Exceptions*, p. 2.

needs to use more than 7 million gallons a day, but rather, that that amount of water “needs to be made available” to support operation of the treatment plant. This is supported by the testimony of Tony Linder, who testified that “the registered flow in the Wailoa ditch gets to 7 million, that becomes – that’s what they consider to be **a low point operationally** ... so 7 million is pretty much the number that **we hope to not go below than as operators.**” *Tony Linder Testimony*, December 13, 2021 Audio at 2:18:31 – 2:24:35. That 7 MGD would be the “a low point operationally” justifies the 7.5 MGD recognized as needing to be made available by the Hearings Officer in Finding of Fact 104. For the same reason, the County disagrees with Sierra Club’s suggestion that only 7 MGD should be included in determining the total reasonable off-stream uses on page 25 of its *Exceptions*.

Finally, Sierra Club suggests an edit to condition 19 that is unnecessary. Specifically, Sierra Club suggestions that the condition should state “the County shall provide to DLNR by October 1, 2022 a plan that describes what the Fire Department requires....” *Exceptions*, p. 36. The Condition as currently written, however, already provides for that information to be gathered. Further, it is not legally sound to make a permit conditioned on the actions of a person other than the permittee.

DATED: Wailuku, Maui, Hawaii, May 18, 2022.

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COUNTY OF MAUI

By /s/ Caleb P. Rowe  
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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 via email at their last known address as follows:

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Hearings Officer

DATED: Wailuku, Maui, Hawaii, May 18, 2022.

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