

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

PETITION TO AMEND INTERIM ) Case No.. CCH-MA13-01  
INSTREAM FLOW STANDARDS FOR )  
HONOPOU, HUELO (PUOLUA), ) ORDER RE INTERIM RESTORATION OF  
HANEHOI, WAIKAMOI, ALO, ) STREAM FLOW; CERTIFICATE OF  
WAHINEPEE, PUOHOKAMOA, ) SERVICE  
HAIPUAENA, PUNALAU/KOLEA, )  
HONOMANU, NUAAILUA, PIINAAU, )  
PALAUHULU, OHIA (WAIANU), )  
WAIOKAMILO, KUALANI, WAILUANUI, )  
WEST WAILUAIKI, EAST WAILUAIKI, )  
KOPILIULA, PUAKAA, WAIOHUE, )  
PAAKEA, WAIAAKA, KAPAULA, )  
HANAWI, AND MAKAPIPI STREAMS )  
\_\_\_\_\_ )

**ORDER RE INTERIM RESTORATION OF STREAM FLOW**

On April 1, 2016, the Hearing Officer in this contested case, recommended interim restoration of stream flow for certain streams based on the findings of fact and conclusions of law contained in his proposed decision, filed with the Commission on Water Resource Management (Commission) on January 15, 2016, and the agreement of the parties. The recommendation for interim restoration of stream flow was made in light of the reopened contested case hearing that was ordered by the Commission to receive further information regarding the cessation of sugar cane operations by Hawaii Commercial & Sugar Co. (HC&S) and HC&S' continuing water needs and its effect on the amended interim instream flow standards (amended IIFS). The interim restoration was intended to take effect immediately and last until a decision is made by the Commission on the amended IIFS in this case.

On May 31, 2016, the Hearing Officer filed an Amended Recommendation Re Interim Restoration of Stream Flow (Amended Recommendation) to incorporate the announcement made

by Alexander & Baldwin, Inc. and East Maui Irrigation Co., Ltd. (collectively A&B) to permanently abandon all diversions on and restore certain of the streams for which the amendment of the IIFS is the subject of this contested case. On June 15, 2016, EMI sent a letter with an update of the status of the restoration of certain streams in East Maui. Based on the information submitted, the following streams are currently not being diverted:

STREAM	STATUS
Waiokamilo	All diversions closed and sealed in 2007.
Wailuanui (East and West)	Sluice gates removed on Koolau Ditch. Stream intake gates closed.
Makapipi	Sluice gate fully opened on Koolau Ditch.
Hanawi	Sluice gate fully opened on Koolau Ditch.
Waiohue	Sluice gate removed on Koolau Ditch. Stream intake gate closed.
East Wailuaiki	Sluice gate fully opened on Koolau Ditch. Stream intake gate closed
West Wailuaiki	Sluice gate fully opened on Koolau Ditch. Stream intake gate closed
Waikamoi	Sluice gate fully opened on Center Ditch
Kopiliula	Sluice gate fully opened on Koolau Ditch. Ditch control gate closed on Koolau Ditch
Puakaa	Sluice gate fully opened on Koolau Ditch.

In addition, A&B has committed to abandon all diversions on the following streams, subject to satisfaction of all permitting requirements: Honopou, Puolua, Hanehoi, Pi'ina'au, and Palauhulu. *Hawaiian Commercial & Sugar Co.'s Response to Hearing Officer's Recommendation re Interim Restoration of Stream Flow*, filed April 21, 2016.

On June 2, 2016, the County of Maui, Department of Water Supply filed a response to the Amended Recommendation and took no position. Petitioner Nā Moku Aupuni O Ko'olau Hui, Lurlyn Scott and Sanford Kekahuna (collectively Nā Moku) filed a response to the Amended Recommendation in which Na Moku did not object to idea of immediate restoration,

but instead requested that the Commission order A&B and EMI to take additional steps in connection with its diversion modification proposal dated May 12, 2016 by requiring A&B to identify all major and minor diversions, to identify specific dates by which each of the planned phases of the diversion abandonment will be completed, ensure that diversion modifications permanently restore stream flows in a manner that enables upstream migration and life cycles for native species, and remove all discarded, unutilized, or surplus debris, equipment and infrastructure and to restore these stream habitats to their natural, undiverted conditions to the extent possible.

On June 10, 2016, Maui Tomorrow (MT) submitted Objections, in Part, of Maui Tomorrow to Hearings Officer's Amended Recommendation re Interim Instream Restoration of Stream Flow (Objections). In its objections, MT concentrated on the streams within the Hanehoi watershed. In general, MT requested more accurate and detailed study of the diversions within this watershed and the plan for removal or abandonment of diversions. Specifically, MT urged the clarification of affected streams and diversions, greater specificity regarding permitting requirements, greater specificity as to implementation deadlines, need for removal of structures to allow for full restoration of stream flow and movement of stream species, need to facilitate access by community members for watershed and watercourse maintenance, and the need for monitoring of progress through the appointment of a monitor. MT also submitted a letter dated June 16, 2016 regarding the update letter provided by Mr. Schulmeister. MT reiterated the urgent need for A&B to provide greater flows downstream as quickly as possible.


The Commission, having reviewed the submissions from the various parties and the recommendation and amended recommendation of the Hearing Officer, orders that the streams that are no longer being diverted shall remain undiverted unless and until further ordered by the

Commission. These streams are: Waiokamilo, East and West Wailuanui, Makapipi, Hanawi, Waiohue, East Wailuaiki, West Wailuaiki, Waikamoi, Kopiliula, and Puakaa.

The Commission understands the urgency to restore stream flow to the streams and to provide connectivity mauka to Makai as soon as possible. Balanced against this urgency is the need for A&B to follow all applicable laws in connection with the restoration of the following streams: Honopou, Puolua, Hanehoi, Pi'ina'au, and Palauhulu. The Commission orders that A&B coordinate its efforts to permanently abandon or remove all diversion structures on the above identified streams with the Commission staff to ensure that all diversions are appropriately identified and addressed in A&B's plans to abandon or remove the diversion structures. Whenever possible and practical, A&B should attempt to remove all diversions. Within thirty (30) days A&B should provide a more detailed plan for restoration of stream flow for the above identified streams and with a more exact projected time frame for completion of permit processing and completion of construction.

The Commission understands that some of the permits required by A&B will be stream diversion works abandonment permits which would be requested from the Commission. Any request that comes to the Commission shall require modification that would result in full connectivity in the streams except where connectivity is affected by natural conditions.

DATED: Honolulu, Hawaii, July 18, 2016.

  
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SUZANNE D. CASE  
Chairperson

COMMISSION ON WATER RESOURCE MANAGEMENT

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CERTIFICATE OF SERVICE

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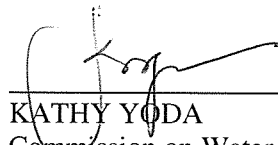
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