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PROPOSED INTERIM INSTREAM FLOW STANDARDS WEST MAUI AND LEEWARD OAHU STREAM

Statement for
Commission on Water Resource Management
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The Environmental Center of the University of Hawaii has undertaken a review of the proposed interim instream flow standards for Leeward Oahu and West Maui Streams. We offer supporting comments on the value of the "status quo flow" proposal and call attention to the need for formalization of criteria to be used in evaluating petitions to modify the interim standards and the procedures that will be followed by the Commission with regard to relaxation of enforcement actions.

Background: An instream flow standard is defined as "a quantity or flow of water or depth of water which is required to be present at a specific location in a stream system at certain specified times of the year to protect fishery, wildlife, recreational, aesthetic, scenic and other beneficial instream uses". As appropriately recognized in the background information distributed for review, an instream use is a beneficial use of stream water for significant purposes specific to the stream and which are achieved by leaving the water in the stream. Some nine beneficial instream uses are cited and the recognition that others may exist is noted.

Status Quo Flow vs. Median Stream Flow: The proposed interim instream flow standards are based on retaining the present amount of water flowing in each stream on the effective date of the standard, the so called, "status quo flow". Pending the necessary hydrologic data to substantiate a more definitive instream flow standard, maintenance of the "status quo

flow" is proposed. The "status quo flow" standard is reasonable and measurably superior to the previously proposed "percent of the median" interim stream flow standard. In Hawaiian streams, the median stream flow is often lower than the mean stream flow hence diversion of a percent of the median could well stress the stream environment to the point where significant and potentially irreparable ecological stress would result. It must also be recognized that during the dry months of the year many of Hawaii's streams have flows too low to support any diversion. The uses to be protected could not be achieved if the interim standards were based on a percentage of the median stream flows. Given the hydrologic uncertainties and minimal data base for the development of environmentally rational final stream flow standards, the "status quo flow" approach for interim standards is probably the best that one can accomplish at this time. Such an interim standard will ensure that a level of protection is achieved, albeit one that is administratively rather than environmentally based, and that the basic intent of the State Water Code is addressed.

Proposed Modifications to Interim Standards: According to the notice for the proposed interim standards, a need for flexibility in applying the interim standard was recognized by the Commission. Therefore, conditions will be provided to: (1) allow individuals to petition the Commission to amend the standard to allow future diversion, restoration or other utilization of streamflow; (2) allow the Commission on its own motion to modify the standard or establish a new standard; (3) relax the enforcement of the standard in cases where enforcement would create a substantial hardship for an existing use or interfere with a person's legal right, title, or interest in the use of stream water; and (4) exempt from the standard projects that have obtained all discretionary permits prior to July 1, 1987, the effective date of the State Water Code.

We recognize and concur with the need for flexibility and possible exceptions to the interim standards. However, it is equally imperative that the basis for any modification to the standard is clearly defined. There is a need to established statewide, systematic, generic, procedures and methods on which the Commission on Water Resource Management will consider and evaluate any petition or administratively proposed change in the standards or their enforcement. Such procedures should define methods for evaluation, initiation or relaxation of interim standards. Actual modifications must be considered on a site/stream specific, case-by-case basis, with appropriate site/stream specific data. To this end, we suggest that the Commission consider use of a modified, highly focused version of the Environmental Assessment/Impact Statement statute as the basis for environmental evaluation of both the effects of diminution of flows on a stream as well as to assess the benefits of any proposed diversions. Of particular importance is the need to provide a mechanism for the expression of public opinions relevant to stream flow diversion decisions and to publicize action of the Commission so that informed opinions can be considered.

Assuming that adequate procedures are subsequently developed for administering the interim standards, the "status quo flow" standard can serve two functions for the State: first, it will avoid negative impacts

from diversions during the interim, before the final standards are enacted and second, it can require potential water diverters to undertake the necessary stream flow assessment studies (at private expense) to examine both the environmental implications and costs of the diversion as well as the benefits of the diversion.

Interim vs. Final Stream Flow Standards: The State Water Code mandated a time schedule for establishment of Interim Stream Flow Standards. No such schedule was set for the designation of Final Stream Flow Standards. Thus, it is particularly important that the interim standards be set conservatively so as to avoid the risk of irreversible degradation of streams in the interim period before final standards are adopted. The proposed "status quo flow" should serve that purpose.

Definitions: The term "diversion" and the language surrounding its use needs to be clearly defined. Some attempt to define terms such as "substantial hardship", and "compelling public need" should also be considered.

We appreciate the opportunity to comment on these proposed interim standards.