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In re Water Use Permit Applications, 147 P.3d 839 (Haw. 2006)

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In a dissenting opinion, Justice Coats disagreed with the court's interpretation of the stipulation in favor of the Management District. He argued that the record did not support the characterization of the emergency and backup exceptions as temporary. Additionally, Justice Coats suggested that when both the district court and the majority determined the parties' intent in agreeing to the stipulation, they ignored evidence of Cherokee's interest in maintaining an adequate secondary supply through Wells 1-8.

Ryan Malarky

HAWAII

In re Water Use Permit Applications, 147 P.3d 839 (Haw. 2006) (holding that the intermediate court of appeals has jurisdiction over appeals filed after July 1, 2006 regarding the Water Commission decisions).

Hakipu'u 'Ohana, Ka Lahui Hawai'i and Hawai'i's Thousand Friends appealed the Water Commission's decision regarding the use of water from the Wai hole ditch system. Appellants filed the appeal on August 11, 2006 with the Supreme Court of Hawai'i pursuant to Haw. Rev. Stat. § 174C-60 (1993) which grants the supreme court jurisdiction to hear appeals from the Water Commission. The supreme court ordered the appeal to be rescheduled with the intermediate appellate court pursuant to the newly enacted Haw. Rev. Stat. § 602-57(1), which provides the intermediate appellate court jurisdiction over appeals from any agency absent a law to the contrary. The new statute became effective on July 1, 2006.

The court determined that the legislature's failure to include Haw. Rev. Stat. § 174C-60 in the list of fifty-three statutes amended by the recent Haw. Rev. Stat. § 602-5(a)(1) was merely an oversight. The court reasoned that it could resolve the oversight by applying a provision in the new statute which grants jurisdiction over all agency appeals to the intermediate appellate court. The court further used the rules of statutory construction to find that, where the laws are inconsistent with one another, the legislature will be deemed to have changed the preceding law to be in conformity with the new statute. Therefore, despite the legislature's failure to expressly amend the older statute, which grants jurisdiction of Water Commission appeals only to the supreme court, the court held that the intermediate appellate court has jurisdiction over such appeals effective July 1, 2006.

Accordingly, the court ordered that the appeal be docketed with the intermediate court of appeals *nunc pro tunc* to October 10, 2006.

Diane O'Neil