Mr. Randy Gentry
County of Maui
Department of Parks and Recreation
700 Halia Nakoa, Unit 2
Wailuku, HI 96793

Dear Mr. Gentry:

Notice of Commission Action
War Memorial Football Stadium Well (Well No. 5329-14, WUP 713)
Baldwin High School Well (5329-05, WUP 710)
Papohaku Park Well (5429-02, WUP 712)
Waiehu Golf Well (5529-01, WUP 711)

This letter serves as your official notice of action taken by the Commission on Water Resource Management (Commission) on the subject application. By a unanimous vote of the Commission at their meeting on September 28, 2005, the Commission:

Approved the water use permits for the reasonable-beneficial irrigation use of the captioned Maui Parks and Recreation caprock wells, subject to standard conditions and the following special conditions:

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.

2. The applicant shall contact the Environmental Management Division, State Department of Health, at 586-4304, concerning "GUIDELINES APPLICABLE TO GOLF COURSES IN HAWAII" dated July, 2002 (version 6).

3. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

4. Standard condition 10 is emphasized, to report consumption on a regular basis.

If you have any questions, please contact Charley Ice of Commission staff at 587-0251.

Sincerely,

DEAN A. NAKANO
Acting Deputy Director

Ref: MP&R. WUPA.act
October 19, 2005

Ref: 710-713.wup
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Randy Gentry
County of Maui
Department of Parks and Recreation
700 Halia Nakoa, Unit 2
Wailuku, HI 96793

Dear Mr. Gentry:

Approval of Water Use Permits for
War Memorial Football Stadium Well (Well No. 5329-14, WUP 713)
Baldwin High School Well (5329-05, WUP 710)
Papohaku Park Well (5429-02, WUP 712)
Waiehu Golf Well (5529-01, WUP 711)
Iao Ground-Water Management Area, Maui

This letter transmits your water use permits for the captioned wells for the specified use below, measured on a 12-month moving average basis, that was approved by the Commission on Water Resource Management (Commission) on September 28, 2005. As part of the Commission's approval, the following special conditions were added and are part of your permit under Standard Permit Condition 19:

Special Conditions

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.

2. The applicant shall contact the Environmental Management Division, State Department of Health, at 586-4304, concerning "GUIDELINES APPLICABLE TO GOLF COURSES IN HAWAII" dated July, 2002 (version 6).

3. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

4. Standard Condition 10 is emphasized, to report consumption on a regular basis.
Enclosed with this letter of approval are the following:

1. Your water use permit
2. Your official monthly water use report form

Please be sure to read the conditions of your approved permit.

We draw your attention to two key conditions of your permit that require your response. First, you are required to keep a record of your monthly total pumpage, water level, salinity, and water temperature. This information must be submitted to the Commission on a regular yearly basis using the enclosed water use report form. You should make copies of the enclosed report form as needed.

Second, you are required to submit a water shortage plan to the Commission within thirty (30) days of the issuance date of this permit. Your water shortage plan simply identifies what you are willing to do should the Commission declare a water shortage situation in the Laqo Ground-Water Management Area and can be as short as a one page letter. In a water shortage situation, the Commission may require temporary reductions in pumpage from all sources. The Commission is required, by law, to formulate a plan to implement such area-wide reductions, which should accommodate, include, and be consistent with your plans. Therefore, your help, by submitting your water shortage plan, is greatly needed in formulating the Commission's overall Water Shortage Plan.

If you have any questions, please call Charley Ice of the Commission staff at 587-0251.

Sincerely,

Peter T. Young
Chairperson

Attachments
GROUND-WATER USE PERMIT
WUP NO. 710

PERMITTEE

<table>
<thead>
<tr>
<th>Permittee/Water User</th>
<th>Landowner of Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maui Department of Parks and Recreation</td>
<td>Address Same</td>
</tr>
<tr>
<td>700 Halia Nakoa, Unit 2, Wailuku, HI 96793</td>
<td>Address Same</td>
</tr>
</tbody>
</table>

PERMITTED SOURCE INFORMATION

<table>
<thead>
<tr>
<th>Island</th>
<th>Maui</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Management Area</td>
<td>Wailuku</td>
</tr>
<tr>
<td>Aquifer Sector</td>
<td>Iao</td>
</tr>
<tr>
<td>Aquifer System</td>
<td>Iao</td>
</tr>
<tr>
<td>System Sustainable Yield</td>
<td>20</td>
</tr>
<tr>
<td>Well Name</td>
<td>Baldwin High School Well</td>
</tr>
<tr>
<td>State Well No.</td>
<td>5329-05</td>
</tr>
</tbody>
</table>

PERMITTED USE INFORMATION

<table>
<thead>
<tr>
<th>Reasonable beneficial use</th>
<th>Municipal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withdrawal (12 month moving ave.)</td>
<td>0.011 mgd</td>
</tr>
<tr>
<td>Location of water use</td>
<td></td>
</tr>
<tr>
<td>TMK #</td>
<td>3-8-7:4</td>
</tr>
<tr>
<td>State land use classification</td>
<td>Urban</td>
</tr>
<tr>
<td>County zoning classification</td>
<td>Park</td>
</tr>
</tbody>
</table>

Pursuant to Hawaii's State Constitution, Article XI, Section 7, Hawaii Revised Statutes, Chapter 174C; Hawaii Administrative Rules, Chapters 13-167 through 13-171; and Hawaii decisional law and custom, the permittee is hereby authorized to use ground water from the sources and in the amount and from and upon the locations described above; subject however, to the requirements of law including but not limited to the following conditions:
1. The water described in this water use permit may only be taken from the location described and used for the reasonable beneficial use described at the location described above. Reasonable beneficial uses means "the use of water in such a quantity as is necessary for economic and efficient utilization which is both reasonable and consistent with State and County land use plans and the public interest." (HRS § 174C-3)

2. The right to use ground water is a shared use right.

3. The water use must at all times meet the requirements set forth in HRS § 174C-49(a), which means that it:
   a. Can be accommodated with the available water source;
   b. Is a reasonable-beneficial use as defined in HRS § 174C-3;
   c. Will not interfere with any existing legal use of water;
   d. Is consistent with the public interest;
   e. Is consistent with State and County general plans and land use designations;
   f. Is consistent with County land use plans and policies; and
   g. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in section 221 of the Hawaiian Homes Commission Act and HRS § 174C-101(a).

4. The ground-water use here must not interfere with surface or other ground-water rights or reservations.

5. The ground-water use here must not interfere with interim or permanent instream flow standards. If it does, then:
   a. A separate water use permit for surface water must be obtained in the case an area is also designated as a surface water management area;
   b. The interim or permanent instream flow standard, as applicable, must be amended.

6. The water use authorized here is subject to the requirements of the Hawaiian Homes Commission Act, as amended, if applicable.

7. The water use permit application and submittal, as amended, approved by the Commission at its September 28, 2005 meeting are incorporated into this permit by reference.

8. Any modification of the permit terms, conditions, or uses may only be made with the express written consent of the Commission.

9. This permit may be modified by the Commission and the amount of water initially granted to the permittee may be reduced if the Commission determines it is necessary to:
   a. protect the water sources (quantity or quality);
   b. meet other legal obligations including other correlative rights;
   c. insure adequate conservation measures;
   d. require efficiency of water uses;
   e. reserve water for future uses, provided that all legal existing uses of water as of June, 1987 shall be protected;
   f. meet legal obligations to the Department of Hawaiian Home Lands, if applicable; or
   g. carry out such other necessary and proper exercise of the State's and the Commission's police powers under law as may be required.

Prior to any reduction, the Commission shall give notice of its proposed action to the permittee and provide the permittee an opportunity to be heard.

10. An approved flowmeter(s) must be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a yearly basis (attached).
11. This permit shall be subject to the Commission's periodic review of the Iao Aquifer System's sustainable yield. The amount of water authorized by this permit may be reduced by the Commission if the sustainable yield of the Iao Aquifer System, or relevant modified aquifer(s), is reduced.

12. A permit may be transferred, in whole or in part, from the permittee to another, if:
   a. The conditions of use of the permit, including, but not limited to, place, quantity, and purpose of the use, remain the same; and
   b. The Commission is informed of the transfer within ninety days.

Failure to inform the department of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer, which involves a change in any condition of the permit, including a change in use covered in HRS § 174C-57, is also invalid and constitutes a ground for revocation.

13. The use(s) authorized by law and by this permit do not constitute ownership rights.

14. The permittee shall request modification of the permit as necessary to comply with all applicable laws, rules, and ordinances that will affect the permittee's water use.

15. The permittee understands that under HRS § 174C-58(4), that partial or total nonuse, for reasons other than conservation, of the water allowed by this permit for a period of four (4) continuous years or more may result in a permanent revocation as to the amount of water not in use. The Commission and the permittee may enter into a written agreement that, for reasons satisfactory to the Commission, any period of nonuse may not apply towards the four-year period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section HRS § 174C-62 shall not apply towards the four-year period of forfeiture.

16. The permittee shall prepare and submit a water shortage plan within 30 days of the issuance of this permit as required by HAR § 13-171-42(c). The permittee's water shortage plan shall identify what the permittee is willing to do should the Commission declare a water shortage in the Iao Ground-Water Management Area.

17. The water use permit shall be subject to the Commission's establishment of instream standards and policies relating to the Stream Protection and Management (SPAM) program, as well as legislative mandates to protect stream resources.

18. The permittee understands that any willful violation of any of the above conditions or any provisions of HRS § 174C or HAR § 13-171 may result in the suspension or revocation of this permit.

19. Special conditions in the attached cover transmittal letter are incorporated herein by reference.

W. Roy Young
Chairperson
Commission on Water Resource Management

Attachment
August 29, 2005
State of Hawaii
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809
Attn: Mr. Charles Ice
And All Interested Parties

Subject: Supreme Court Request for Alternate sources and Duties of those with wells in the lao/Waihee Aquifer

Mr Charles Ice: You will find here within a list of caprock wells that are in use for irrigation by the County of Maui Department of Parks and Recreation at the current time or are expected to be in use when repairs are completed. The wells listed here are the wells that are caprock wells producing non potable water from the lao Aquifer

- 5329-14 War Memorial Foot Ball Stadium
- 5329-05 Baldwin High School Well located on DPR Property and licensed to DPR.
- 5429-02 Papohaku Park Irrigation Well Located at Wailuku Community Center
- 5330-04 Waiehu Golf Course Irrigation well

For the first three wells that are listed : 5329-14 War Memorial Foot Ball Stadium ; 5329-05 Baldwin High School Well located on DPR Property and licensed to DPR; 5429-02 Papohaku Park Irrigation Well Located at the Wailuku Community Center there are possibilities of alternate water resources in the future. As wellas a proactive chance of saving of water resources at well number 5329-05.

Well # 5329-05 Baldwin High School Well Located on DPR. Property and Licensed to the DPR. Irrigates approximately 50% of the area of the War Memorial Sports Complex and is using “Quick Couplers”. With a change to an automatic system that uses Rainbird automatic irrigation heads and a Rainbird ESP 24 MC electronic Controller a savings of up to 30% of monthly non-potable water could be realized on this system. It is in our plans for this system to be included in the in the budget and installed as soon as is possible.

For all of the wells with the exception of #5330 -04 which is the well at the Waiehu Golf Course and has had recent major upgrades we have plans. As Recycled R-1 water line from the Public
Works sewage treatment plant becomes available at the parks that are involved and given a number in this document; when Recycle R-1 reaches the park it will be converted to recycled water for irrigation purposes. At this time in Kahului only Kanaha Park on the north shore has R-1 water available and is using it. In South Maui many of our parks use R-1 water. The same applies to software upgrades for our automatic systems, as the upgrades become available they will be installed irregardless if the water is caprock irrigation water from a well or recycled water. Conservation of All water is a goal that we have set to reach for.

As for the Waiehu Golf Course Irrigation well, it is quite isolated from all areas so it will be some time before an alternate source can be used for the irrigation of the Golf Course. As you have seen from our upgrading of the pump system and weather station as well as controller software at the golf course we have managed to cut our water usage by about 50% and as more technology becomes available there will be more room for water conservation.

Randy Gentry
County of Maui
Department of Parks and Recreation
Project Coordinator
STAFF SUBMITTAL

For the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

September 28, 2005
Honolulu, Hawaii

Maui Department of Parks & Recreation
Living Waters Land Foundation, LLC

APPLICATIONS FOR WATER USE PERMITS
War Memorial Football Stadium Well (5329-14, WUP 713)
Baldwin High School Well (5329-05, WUP 710)
Papohaku Park Well (5429-02, WUP 712)
Waiehu Golf Well (5529-02, WUP 711)
Waihee Mauka (Living Waters #1) (5531-01, WUP 704)

Existing and New Uses
Iao Ground Water Management Area, Maui

APPLICANT 1:
Maui Department of Parks & Recreation (MP&R)
700 Halia Nakoa Street, Unit 2
Wailuku, HI 96793

APPLICANT 2:
Living Waters Land Foundation, LLC (Living Waters)
P.O. Box 2667
Wailuku, HI 96793

SUMMARY OF REQUEST:
To approve water use permits for the reasonable beneficial existing use from Iao caprock wells and to defer action on a new basal well until all existing uses from basal sources are settled.

LOCATION MAP: See Exhibit 1

BACKGROUND:
July 21, 2003
Iao Ground Water Management Area officially designated through publication of public notice on that date. Actual existing users not exempted under the Code have one year from this date to apply for continued existing use.
Staff Submittal

June 21, 2004
The Supreme Court handed down its opinion ("Waiahole II") in the remanded Waiahole Decision and Order of December 28, 2001, clarifying the Commission’s consideration of water use permit criteria. This opinion specified the importance of practicable alternatives and the careful calculation of appropriate "duties".

July 15, 2004
The water use permit application for new use from Waihee Mauka Well (Well No. 5531-01) was accepted as complete. Public Notice was duly published August 11 and 18, 2004.

July 21, 2004
The one-year deadline arrived for filing water use permit applications for existing use. Incomplete applications for the four captioned wells were received on this day from the MP&R. Objections were received on these applications, requiring the Commission to conduct a public hearing for these applications.

August 25, 2004
Staff circulated a letter from the hearing officers concerning two considerations raised by the Supreme Court that should be part of the permitting process (Exhibit 2).

September 1, 2004
Staff received an emailed objection to the Living Waters application, stating that the Living Waters property had been unlawfully transferred to the applicant, that the applicant was illegally withdrawing water from auwai, and making reference to other party’s interests without identifying the issues. A response from the applicant indicated that some of these concerns concerned parcels other than the applicant’s and issues that had been dismissed in Circuit Court.

September 22, 2004
The Commission approved a public hearing for all water use permit applications from the Iao Ground Water Management Area. Although the action recommendation requested public hearing initially only for complete applications for existing uses, the Commission approved hearing all applications submitted by the one-year deadline, complete or incomplete, for existing basal, caprock, and high-level sources, and for proposed new basal use.

October 28, 2004
Hearing officers conducted the first session of the public hearing on water use permits for existing use, in Wailuku (see Exhibit 3). MP&R submitted amendments to its applications to correct and clarify location and pumpage information. Testimony was received on objections, and a contested case hearing was requested for wells listed in the public notice. Specifically, the caprock sources of MP&R had objections concerning hydrologic and legal requirements, while the Living Waters Well primarily had concerns over legal land tenure of the property. It was learned that Living Waters land use objections had been dismissed from Circuit Court. The hearing remained open for subsequent information gathering for all water use permit applications (WUPAs).
In response to objections raised for the WUPAs, staff circulated a clarification of the Supreme Court’s opinion concerning water use permit application burdens as applied to Hawaiian water rights and “domestic use” as an aspect of the public trust. (Exhibit 4)

A second session of the public hearing was held in Wailuku (see Exhibit 5). MP&R submitted additional amendments to its applications to correct and update information, showing system efficiency improvements and consequent pumpage reductions. There was no further testimony from objectors to the Living Waters Well. The hearing remained open for subsequent information gathering for all WUPAs.

Public Notice was given for previously incomplete applications for MP&R caprock wells, including those captioned in this submittal, and for high-level sources (stream augmentation tunnels) of Wailuku Agribusiness, Inc.

Objections from the Office of Hawaiian Affairs (OHA) and Earthjustice (EJ), respectively, were received on the MP&R WUPAs. While no responses to these objections have been officially filed, additional information was received at the April 22, 2005 session of the public hearing and at the July 11, 2005 information meeting between applicants and objectors (see below).

An informational meeting was held in Wailuku among applicants and objectors, to share information. MP&R submitted new information to correct pumpage amounts originally provided for Well No. 5329-14, and to update other information from their investigations. The table in Exhibit 7 is therefore updated for Well Nos. 5329-04 and 5329-14, WUP Nos. 709 and 713. Note that MP&R has consistently and correctly located the War Memorial Stadium Well (Well No. 5329-14), but incorrectly referred to it as “5329-04”, while now reporting that the Maui Stadium Well (Well No. 5329-04), adjacent to the Baldwin High School Well, as now paved over and not in service. It is an indication of the confusion generated by this miscommunication that the Public Notice for September 7 did not carry the correction for these two wells as done for Exhibit 7, the working hearing document. Similarly, the revised amount requested for 5329-14 was corrected for the hearing document but not corrected for the public notice.

At this meeting staff also learned that there were continuing private discussions between objectors (EJ and OHA) and applicants (MP&R and Maui Department of Water Supply (MDWS)) concerning the objections to applications. Similarly, there were discussions between other parties concerning other applications. None of the substance of these discussions were disclosed.

3
A third and final session of the public hearing was held in Wailuku (see Exhibit 6). Objections to the MP&R applications were withdrawn following successful discussions between objectors and the applicant, and no other requests for contested case on these applications were made. There was no further testimony from objectors to the Living Waters Well, and no request for contested case hearing on this application was made at this final session. The public hearing was closed with instructions from the hearing officers to proceed with the uncontested WUPAs for the caprock wells and Living Waters.

Deadline for written requests for a contested case hearing to be filed on these applications. No written requests for a contested case hearing on these applications were filed as of this date.

ISSUES/ANALYSIS:

Section 174C-49(a) of the State Water Code establishes seven (7) criteria that must be met to obtain a water use permit. An analysis of the proposed permit in relation to these criteria follows:

(1) **Water availability**

Through the Hawaii Water Plan, the Commission has adopted 20 million gallons per day (mgd) as the sustainable yield (SY) for the Iao Aquifer System Area. This 20 mgd is specific to the basal portion of the aquifer system area. Dike and caprock aquifers within this area have no separate SY figures, and free-flowing tunnels and caprock pumpage do not significantly impact the SY of the basal aquifer within the Iao Ground Water Management Area.

MP&R wells tap the caprock aquifer. Waihee Mauka/Living Waters Well #2 taps the basal aquifer.

Existing Use: *Maui Parks and Recreation Wells*

The caprock wells are brackish, under influence from ocean salt water. There are no other users of the caprock, and the only potential conflicts are with other government caprock wells in the vicinity of the Football Stadium Well. At this point, the only person representing the other potential interests is the applicant, who has been communicating with them. No objections have been lodged, and in staff’s judgment, the source remains adequate for the existing use, especially in view of new efficiencies affected in the operating systems.

New Use: *Waihee Mauka Well (5531-01)*

The site of this well lies below the Spreckels Ditch at about 350 feet elevation. The well construction permit was approved February 25, 2003, and construction was completed February 4, 2004. The pump installation permit has not been approved and will not until a water use permit (WUP) is approved. The nearest wells are across Waihee Stream in the Waihee Aquifer, over 1.5 miles away; next nearest are the Waihee Wells toward Wailuku over 2 miles away. Three other wells are proposed in the same area, not as closely spaced as any of the County wellfields.
A summary of the current ground water conditions in the aquifer is provided in Table 1:

**Table 1. Iao Aquifer System Area – Basal Portion**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>Iao Aquifer System (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sustainable Yield</td>
<td>20</td>
</tr>
<tr>
<td>Less: Other Existing Water Use Permits (shown in Exhibit 2)</td>
<td>0</td>
</tr>
<tr>
<td>Reservation to DHHL</td>
<td>0</td>
</tr>
<tr>
<td><strong>Subtotal (Current Available Allocation)</strong></td>
<td>20</td>
</tr>
<tr>
<td>Less: Other Completed Applications (shown in Exhibit 3)</td>
<td>16.998*</td>
</tr>
<tr>
<td>Less: This Application</td>
<td>0.020**</td>
</tr>
<tr>
<td><strong>Subtotal (Potential Available Allocation/Allocation Deficit)</strong></td>
<td>2,982</td>
</tr>
</tbody>
</table>

* basal sources only
** Living Waters #1 is the only basal well under consideration in this submittal

A table of all applications, with captioned sources highlighted, is Exhibit 7.

Other detailed information on wells is found in Exhibit 8.

Therefore, there are no impacts on basal water availability from the caprock and there appears to be ample supply to accommodate the new use should the current complete applications for existing basal sources remain unchanged.

(2) Reasonable-beneficial

Section 174C-3 HRS defines "reasonable-beneficial use" is "...the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest".

**I. Purpose of Use:**

**Existing Use: Maui Parks and Recreation Wells**
The caprock wells irrigate public parks, from the Central Maui sports complex to a neighborhood park to a regional municipal golf course. The Water Code's Declaration of Policy (HRS §174C-2) mandates maximum beneficial use of State waters for irrigation and recreation.

**New Use: Waihee Mauka Well (5531-01)**
The proposed water use is for irrigating agriculture on lands historically used for agriculture and regarded by experts as one of the most fruitful areas of the State. The uses include macadamia nut orchards that are very productive and small farms with diversified crops. The Water Code Policy Declaration mandates maximum beneficial use of State waters for agriculture.
II. Quantity Justification:

**Existing Use: Maui Parks and Recreation Wells**

The existing uses of caprock sources supply ballpark turf demands. The parks will be using up to about 1,200-1,250 gallons per acre per day (gad) during relatively dry periods, a conservative figure compared with county water system standards of 1,700 gad, which is low compared with the Oahu standard of 4,000 gad. The golf course lies in a wetland and uses the well to supplement a high water table and natural rainfall, using only about 250 gad average pumpage over a 12-month period. Golf course use varies widely across the State due to climatic conditions.

**New Use: Waihee Mauka Well (5531-01)**

The proposed basal well likewise is intended to augment seasonal natural rainfall. Current acreage in production is 170 acres of macadamia nuts, requiring a total of about 4,000 gad and 20 acres of diversified crops including banana, papaya, kalo, tapioca, eggplant and other vegetables, at about 2,000 gad, both of which are conservative in meeting county standards of use for these crops. Macadamia nuts can withstand some irrigation shortfall, and the applicant is not expecting to rely on the well to provide a large portion of the total demand, which would come to 680,000 gallons per day (gpd). Diversified crops, on the other hand, are less tolerant of interruptions in irrigation, and the well production is based on being able to provide up to about 50% of the total irrigation demand, which would be 40,000 gpd. These estimates are based on several years' rainfall experience.

III. Efficiency of Use:

**Existing Use: Maui Parks and Recreation Wells**

The County parks systems have all recently been reviewed for efficiency gains, with new booster pumps and irrigation systems installed, new storage tanks and valving, and experimentation with different irrigation timing schedules. In consequence, some of the pumpage figures have been reduced below the original request.

**New Use: Waihee Mauka Well (5531-01)**

The actual amount requested is far less than total demand because of normal abundant rainfall, but could be insufficient during drought periods. Over a normal 12-month period, the requested amount is very reasonable; over a longer period of wet and dry years, may still be reasonable. The property hopes to expand the acreage, which would require augmenting this source or increasing its yield. However, the basal water from this well would be of high quality, used for non-potable demand.

IV. Practicable Alternatives:

**Existing Use: Maui Parks and Recreation Wells**

The irrigation use of brackish water is the first choice among alternatives and augments natural rainfall. Alternatives would all be more expensive and require use of higher quality water for non-potable purpose. Kahului's wastewater treatment plant is limited in quantity, quality, and distribution; it is unavailable an alternative at this time. Standard special conditions of this WUP would allow for change over when it becomes more practicable.

Therefore, these applications meet the updated reasonable and beneficial criterion.
New Use: *Waihee Mauka Well (5531-01)*
The existing use has been able to obtain surface water from Wailuku Agribusiness, Inc. via the Waiehu Ditch system but faces increased difficulty in having access to this water from the purveyor. The applicant has invested in this well as a back-up source. Municipal water is also unavailable. Alternatives would all be more expensive and require use of higher quality water for non-potable purpose. Caprock and reclaimed water sources are unavailable at this location. If Living Waters is forced off its current surface water supply and no practicable alternatives exist besides the basal well, it too becomes a reasonable-beneficial use of potable ground water.

(3) **Interference with other existing legal uses**

Existing Use: *Maui Parks and Recreation Wells*  
The only other existing caprock wells are in the Kahului segment of the caprock aquifer, adjacent to two of the captioned wells. All those in service coexist compatibly under county management for irrigation use.

New Use: *Waihee Mauka Well (5531-01)*  
There are no other wells closer to the proposed well than to the coast, and those are at considerable distance from the proposed well. It is unlikely to produce significant impacts on any wells, based on monitor well information in the area. The low level of pumpage will have a small impact on other existing infrastructure.

Therefore, both applications show no significant impacts to other existing legal uses at this time.

(4) **Public interest**

Existing Use: *Maui Parks and Recreation Wells*  
No streams or springs are affected by caprock withdrawals. Ocean discharge impacts would be negligible. Early objections by OHA and EJ focused on the limited information provided as to whether proposed uses are consistent with maintaining and protecting resources in their natural state, preserving water for domestic use, and observing traditional and customary Native Hawaiian rights. Following the provision of additional information to the Commission and private discussions not revealed to the hearing officers, these objections have been withdrawn. No contested case was requested for these sources. Also, such irrigation use complies with the definition of public interest in HRS 174C-2.

New Use: *Waihee Mauka Well (5531-01)*  
No objections have raised a public interest concern. The proposed well will tap water below the nearest stream invert, Waiehu Stream, over half a mile away, which is the subject of a petition to restore flow from upstream diversions. No contested case was requested for this source. Also, such irrigation use complies with the definition of public interest in HRS 174C-2.

Therefore, both applications meet the public interest criterion.
5) **State & county general plans and land use designations**

These proposed caprock uses are in the State Urban District, zoned Parks. The proposed new basal well is in the Agriculture District and the Agriculture Zone. The proposed uses are consistent with the state and county general plans and land use designations. Normal agency review included the Department of Land and Natural Resources (DLNR) State Parks, Aquatic Resources, Historic Preservation, and Land Divisions; the State Department of Health (DOH), Department of Hawaiian Home Lands (DHHL), OHA and the Land Use Commission (LUC); and the County Planning and Water Supply Department and County Council. They have yielded no concerns nor objections in this matter.

Therefore, both applications meet the state and county general plans and land use designation.

6) **County land use plans and policies**

These proposed uses are consistent with county land use plans and policies. Normal agency review included the DLNR State Parks, Aquatic Resources, Historic Preservation, and Land Divisions; the DOH, DHHL, OHA, and the LUC; and the County Planning and Water Supply Department and County Council. They have yielded no concerns nor objections in this matter.

Therefore, both applications meet the county land use plans and policies criterion.

7) **Interference with Hawaiian home lands rights**

All permits are subject to the prior rights of Hawaiian home lands. The DHHL and OHA have reviewed this application. While objections were raised by OHA concerning Native Hawaiian water rights, the objections did not specify Hawaiian home land rights; those objections have been withdrawn. DHHL had no comments nor objections. There were no other concerns nor objections in this matter. Moreover, water use permit standard condition #3(c) requires that a water use must at all times not interfere with other legal uses.

**RECOMMENDATIONS:**

A. That the Commission approve the water use permits for the reasonable-beneficial irrigation use of the following Maui Parks and Recreation caprock wells:

- War Memorial Football Stadium Well, Well No. 5329-14, WUP No. 713 - 0.100 mgd
- Baldwin High School Well, Well No. 5329-05, WUP No. 710 – 0.011 mgd
- Papohaku Park Well, Well No. 5429-02, WUP No. 712 - 0.005 mgd
- Waihee Golf Well, Well No. 5529-02, WUP No. 711 – 0.158 mgd

subject to the standard conditions in Exhibit 9 and the following special conditions:

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.
2. The applicant shall contact the Environmental Management Division, State Department of Health, at 586-4304, concerning "GUIDELINES APPLICABLE TO GOLF COURSES IN HAWAII" dated July, 2002 (version 6).

3. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

4. Standard condition 10 is emphasized, to report consumption on a regular basis. (amendment by Jim Frazier)

B. That the Commission defer action on the water use permit for the Waihee Mauka Well (Living Waters #1) Well No. 5531-01, WUP No. 704, pending completion of the processing of all water use permit applications for existing uses from the Iao Ground Water Management Area.

Respectfully submitted,

DEAN A. NAKANO
Acting Deputy Director

APPROVED FOR SUBMITTAL:

PETER T. YOUNG
Chairperson

Exhibit(s):

1 (Location Map)
2 (August 25, 2004 letter from hearing officers on 2 Sup. Ct. permitting considerations)
3 (Public Notice for hearing on October 28, 2004)
4 (November 15, 2004 letter from hearing officers clarifying Sup. Ct. position on Hawaiian rights and “domestic use”)
5 (Public Notice for hearing on April 22, 2005)
6 (Public Notice for hearing on September 7, 2005)
7 (List of all proposed existing uses, captioned wells highlighted)
8 (Detailed Water Use Information)
9 (Water Use Permit Standard Conditions)
Charley:

As I mentioned the second well which is noted as a "new well" at the golf course is in reality a set of two new frequency generated booster pumps (written testimony will have details, pictures and notes on operating software). This would be well #5530-04. While doing the written part of the testimony I noticed that we also have another "new well" that does not exist and this would most likely be my paperwork foul-up. This well would be located at the War Memorial Complex. I am not sure which number would be the non existant one- The Baldwin High School well is situated on the War Memorial Complex Grounds and is near Kaahamanu Avenue at the front of the complex by our offices, and is number 5329-05. The only other well at this complex is located in the Maintenance Area at the rear of the physical football stadium. I am not sure which number has been assigned to it through the years but it looks like it is well # 5329-04. (In the New use applications we show Maui Stadium Well as 5329-14 which would be the same well. If you have a idea on this I could really use your help. I am still having a problem with the well at Maui Community College and if you have the paper work that will help me to transfer the well that is on their property to the college I would appreciate it if you could send it as an attachment to an e-mail and I will take care of it right away. I know that we have a well at Maui Central Park (Keopuolani Park) but I do not know what number it is and it is still inoperative. Pacific Excavation and water wells is at the present time trying to get it in operation and also 2 other wells at Maui Central Park that are on the Kahului Aquifer. Once these wells are in operation they will make a state of the art computer controlled frequency pump, radio frequency weather station to controller interrupt water conservation system. (explanation and pictures as well as specifications will be in written testimony.)

Now that I have given you your headache for the day, I can tell you that all of our pumpage rates have been brought down to about 70% of what they have been in the past by new equipment and software as well as plain old conservation......Randy

You are quite correct in that thought Charlie. I am working on the written presentation at this time. The wells upgrade at the Waiehu Golf Course was for a water conserving type of booster pump and not for a new well. We are working on the new pumpage figure as this time as well as a written presentation as to how the system operates. At this time it is turning out that the new booster pumps along with the Maxi 5 software and the RainBird ESP MC controller are realizing us a savings of about 126,000 gallons of water per day that the system is run. This will be documented along with conservation methods for other caprock wells in the Iao Aquifer System....Randy Gentry
TO: Honorable Micah Kane, Director
   Department of Hawaiian Home Lands

   Honorable Chiyome L. Fukino, M.D., Director
   Department of Health

   Mr. Clyde W. Namuo, Administrator
   Office of Hawaiian Affairs
   Attn: Mr. Jonathan Scheuer

   Honorable Dain P. Kane, Chairperson
   County Council
   County of Maui

   Mr. George Y. Tengan, Director
   Department of Water Supply
   County of Maui

   Mr. Michael W. Foley, Director
   Planning Department
   County of Maui

FROM: Peter T. Young, Chairperson
       Commission on Water Resource Management

SUBJECT: Water Use Permit Application
   Iao Ground Water Management Area, Maui

Transmitted for your review and comment are copies of water use permit applications:

Existing Use Applications
   War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
   Baldwin High School Well (Well No. 5329-05), WUPA No. 710
   Papohaku Park Well (Well No. 5429-02), WUPA No. 712
   Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications
   Maui Stadium Well (Well No. 5329-14), WUPA No. 713
   Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Response:

    () we have no objections or comments
    () objections attached
    () only comments attached

Contact person: Jonathan Likeke Scheuer
Phone: (808) 594-1941
Date: 6/20/05

Signed: [Signature]
June 20, 2005

Peter Young, Chairperson
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

RE: Water Use Permit Applications in the ‘Iao Ground Water Management Area, Maui.¹

Dear Mr. Young and Commissioners,

The Office of Hawaiian Affairs (OHA) appreciates the opportunity to comment on these permits. OHA objects to these applications because they were accepted by the Commission despite being incomplete and for other reasons specified herein.

Before offering our comments, we would like to note a few relevant points:

1. We are here offering essentially the same comments and objections we have for all of the other applications submitted and circulated for the ‘Iao Ground Water Management Area.
2. It is our understanding that our objection means that these permits will be considered in the ongoing proceedings on these other permits before the Commission, which is acceptable to OHA.
3. As our objections are the same and the hearings are the same, we include by reference and as applicable, the other communications we have sent to the Commission on these matters.
4. We note that last two of these applications listed below have been deemed by the Commission to be for “new uses” under the Code, and as such may only be considered after allocations have been made for the permit applications for existing uses.
5. OHA has been working with Maui County officials to resolve our earlier objections and we believe that the County is making good faith efforts to address our concerns. Because

¹ Applications by County of Maui, Department of Parks and Recreation, for:
   War Memorial Stadium Well (Well No. 5329-04, WUPA No. 709, TMKs 3-8-07:55, 93, and 94)
   Baldwin High School Well (Well No. 5329-05, WUPA No. 710, TMKs 3-8-07:55, 93, and 94)
   Pāpōhaku Park Well (Well No. 5329-04, WUPA No. 712, TMK 3-4-30:Portion 1)
   Waiehu Golf Course Well (Well No. 5529-02, WUPA No. 711, TMK 3-2-13:6, 19, 28, 29)
   War Memorial Stadium Well (Well No. 5329-14, WUPA No. 713, TMKs 3-8-07:55, 93, and 94)
   Waiehu Golf Course Well (Well No. 5530-04, WUPA No. 714, TMK 3-2-13:6, 19, 28, 29)
of this progress, we have reason to believe that this applicant, a division of the county
government, has more relevant information available than has been submitted in these
applications. However, because that information, especially specific to the source they
use, has not been provided, we must object.

6. Finally, we will note that because these permits are for withdrawals from the caprock
aquifer, it may be easier for the applicant in this instance to meet their constitutional and
statutory burdens that we have outlined in this and previous letters.

OHA’s interests in these matters
As you are all well aware, the Office of Hawaiian Affairs was established at the same time and
by the same body as the Water Commission, at and by the 1978 Constitutional Convention. Not
only do the two organizations share the same origin, but many of our concerns overlap. The
Commission is directed in its enabling statute that it “Shall cooperate with federal agencies, other
state agencies, county or other local governmental organizations, and all other public and private
agencies created for the purposes of utilizing and conserving the waters of the State…” (HRS
§174C-5 (6)). Importantly, the Water Code also strongly states that any provision of the Code or
its implementation shall not amend, modify, diminish, extinguish, abridge, or deny Native
Hawaiian Water Rights (HRS §174C-101).

Concurrently, in OHA’s enabling statute it is directed that “It shall be the duty and responsibility
of all state departments and instrumentalities of state government providing services and
programs which affect native Hawaiians and Hawaiians to actively work toward the goals of this
chapter and to cooperate with and assist wherever possible the office of Hawaiian affairs” (HRS
§10-1 (b)). Moreover, in order to achieve our primary purposes of the betterment of conditions of
native Hawaiians and Hawaiians (HRS §10-3 (1) & (2)), OHA was also created for “Assessing
the policies and practices of other agencies impacting on native Hawaiians and Hawaiians, and
conducting advocacy efforts for native Hawaiians and Hawaiians (HRS §10-3 (4)).

Water, both ground and surface, has many historic, legal, cultural, economic, and other important
values to native Hawaiians and Hawaiians, and as such both to OHA and the future Hawaiian
Nation. OHA’s interest in water is both general across the islands and specific to this area and
island. It is in light of the interests OHA has in water, and existing legal mandates outlined
above, that OHA objects to these WUPA.

OHA’s primary objection

OHA has one central objection to these WUPAs as filed by the applicant and accepted by the
commission. The applicant has utterly failed in their applications to establish that the proposed
use of water meets the seven conditions for water use in a designated ground water management
area. In each application, the applicant only provides two sentences that vaguely address these
issues, under application item 13.

This failure raises issues for OHA that are among the bases for our objection. First, OHA is
concerned that the Commission has even accepted the application as complete. As the
Commission’s own diagram entitled “WATER USE PERMIT PROCESS” relates, acceptance of
an application (and the consequent beginning of the time limits for action) should only occur
when the above referenced requirements are addressed.
Secondly, the lack of information makes it difficult and burdensome for OHA to comment on whether the use will impact on protected Native Hawaiian Water Rights. This is a problem because the Code, the WUPA form, and the Hawaii Supreme Court make it clear to the Commission (Waiahole 94 Haw. 97, 161) that “Under the public trust and the Code, permit applicants have the burden of justifying their proposed uses in light of protected public rights in the resource.” The applicant bears the burden of showing these conditions are met; this burden does not lie with the Commission or with any party objecting to the issuance of the permit. OHA notes that the absence of any meaningful information will make evaluation of the permit by the Commission also difficult and burdensome.

Mahalo for your attention to these matters. We acknowledge the hard work that the Commission and the County have been undertaking for the ʻĪao Aquifer, and we look forward to working together to protect these resources. If you have further questions, please contact Dr. Jonathan Likeke Scheuer at (808) 594-1946 or email him at jonathans@oha.org.

Sincerely,

Clyde W. Nāmuʻo
Administrator

cc: Randy Gentry, Maui Parks and Recreation (via First Class U.S. Mail)
    George Tengan, Ellen Kraftsow, and Jane Lovell, Maui County (via email)
    John V. Duey, Hui o Nā Wai ʻEhā (via email)
    Jim Williamson, Maui Meadows Homeowners Association (via email)
    Kapua Sproat, Earthjustice (via email)
    Linnel Nishioka, HC&S and Kehalani Mauka (via email)
    Avery B. Chumbley and Clayton Suzuki, Wailuku Agribusiness (via email)
    Garrett Hew, HC&S (via email)
May 13, 2005

TO: Other Interested Parties

FROM: Dean A. Nakano, Acting Deputy Director
Commission on Water Resource Management

SUBJECT: Request for Comments
Water Use Permit Application
Iao Ground Water Management Area, Maui

In addition to serving you notice as required by 174C-52 (a), HRS, transmitted for your review and comment are copies of water use permit applications:

**Existing Use Applications**

War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
Baldwin High School Well (Well No. 5329-05), WUPA No. 710
Papohaku Park Well (Well No. 5429-02), WUPA No. 712
Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

**New Use Applications**

Maui Stadium Well (Well No. 5329-14), WUPA No. 713
Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the attached application for any conflicts or inconsistencies with the programs, plans, and objectives of the organization or agency that you represent. Written objections should be made in accordance with Section 13-171-18, Hawaii Administrative Rules and must be filed by the June 6, 2005 deadline. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Cl:ss
Attachment(s)

Response:
( ) We have no objections or comments
(*) Objections attached
( ) Only comments attached

Contact person: O. Kapua Sproat
Phone: 599-2436, ext. 16

Signed: [Signature]
Date: June 20, 2005
June 20, 2005

BY U.S. MAIL & FACSIMILE TRANSMITTAL
Fax: (808) 587-0219

Peter T. Young, Chairperson
Dean A. Nakano, Acting Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai‘i 96809

Re: Objection to the County of Maui’s Water Use Permit Applications for Well No. 5329-04, Well No. 5329-05, Well No. 5429-02, Well No. 5529-02, Well No. 5329-14, and Well No. 5530-04; `Iao Ground Water Management Area, Maui

Dear Chair Young and Acting Deputy Director Nakano:

On behalf of Hui o Nā Wai `Ehā and Maui Meadows Homeowners Association, Earthjustice submits the following comments and objections regarding Maui County Department of Parks and Recreation’s (“MDPR’s”) water use permit application (“WUPA”) numbers 709-714 for the War Memorial Stadium Well (Well No. 5329-04), Baldwin High School Well (Well No. 5329-05), Papohaku Park Well (Well No. 5429-02), Waiehu Golf Course Well (Well No. 5529-02), Maui Stadium Well (Well No. 5329-14), and Waiehu Golf Course Well 2 (Well No.

1 Hui o Nā Wai Ehā is a community-based organization that was formed to promote the conservation and appropriate management of Hawai‘i’s natural and cultural resources and the practices that depend on them. The Hui strives to protect and restore streams, oceans, estuaries, native flora and fauna, and the activities that rely on these resources, especially the perpetuation of traditional and customary Native Hawaiian practices. Hui members live, work, and play in the `Iao ground water management area. They rely on and routinely use ground water from the aquifer as well as surface water from `Iao, Waihe’e, Waiehu, and Waikapū streams and their nearshore marine waters for fishing, swimming, agriculture, aquaculture, research, photography, educational programs, aesthetic enjoyment, traditional and customary Native Hawaiian practices, and other recreational, scientific, cultural, educational and religious activities.

2 Maui Meadows Homeowners Association is an association of homeowners from the Maui Meadows subdivision in Kihei. The association’s filing of a July 2001 petition resulted in the designation of the `Iao aquifer in July of 2003. Maui Meadows has been active in water and land use issues on Maui for many years and its members rely on the `Iao aquifer to satisfy their water needs. Additionally, the association’s members have been working to ensure appropriate management of the ground water resources in the `Iao and Waihe’e aquifers.
Earthjustice’s Objection to the County of Maui Department of Parks and Recreation’s Water Use Permit Applications
June 20, 2005
Page 2 of 5

5530-04). These applications seek permits from the `Īao Ground Water Management Area to irrigate various MDPR facilities. For all of the reasons detailed herein, these applications fail to establish that the proposed new and existing uses comply with the requirements of the law. The Hui and Maui Meadows therefore urge this Commission to require MDPR to complete its applications before holding any meetings or public hearings regarding these WUPAs. If the missing information is provided in a timely fashion, we remain hopeful that the communities’ concerns and objections can be resolved via the mediated discussions between the parties, alleviating any need for a contested case hearing.

In their current state, MDPR’s permit applications fail to provide the factual and other basis necessary for this Commission to complete the analysis and make the findings required by the State Constitution and Water Code, and ratified by the Hawai‘i Supreme Court. The applications are insufficient for the following reasons:

1. MDPR failed to establish that the water source would accommodate its proposed uses, pursuant to Haw. Rev. Stat. § 174C-49(a)(1).

The Code requires each applicant to establish that a water source can accommodate its proposed use. Haw. Rev. Stat. § 174C-49(a)(1). MDPR’s applications neglect even to mention the condition of `Īao aquifer or assess how its proposed uses will be supported, if at all. For years now, Commission staff and United States Geological Survey have warned that water is being extracted from the `Īao aquifer at rates that jeopardize the quality and viability of this important resource. Despite indications that the aquifer is threatened by existing and proposed withdrawals of water, the application lacks any analysis regarding whether the water source can accommodate MDPR’s total requested allocation of 455,750 gallons per day. See generally State of Hawai‘i Commission on Water Resource Management, `Īao and Waihe‘e Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact (Nov. 14, 2002) (detailing the condition of the `Īao aquifer). MDPR must provide the information necessary to satisfy this criterion.

2. MDPR failed to establish that its proposed uses are consistent with the public interest and will not interfere with existing legal uses of water, pursuant to Haw. Rev. Stat. §§ 174C-49(a)(3)-(4).

The Hawai‘i Supreme Court affirmed that this Commission is “duty-bound to place the burden on the applicant to justify the proposed water use in light of the trust purposes and weigh competing public and private water uses on a case-by-case basis.” In re Waiāhole Ditch Combined Contested Case Hearing 105 Haw. at 1, 16, 93 P.3d at 643, 658 (2004) (quotations omitted). Moreover, the Code mandates that an applicant establish that its proposed use “will not interfere with any existing legal use of water” and “is consistent with the public interest.” Haw. Rev. Stat. §§ 174C-49(a)(3)-(4).
When allocating water, this Commission must consider the impact of all proposed uses on: (1) the maintenance of waters in their natural state, (2) resource protection, (3) water for domestic purposes, and (4) the protection of traditional and customary Native Hawaiian rights and practices. In re Waiʻola o Molokaʻi, Inc. ("Waiʻola"), 103 Haw. 401, 429 (2004) (citing In re Waiahole Ditch Combined Contested Case Hearing ("Waiahole I"), 94 Haw. 97, 136-138, 142, 9 P.3d 409, 448-450, 454 (2000)).

Analyzing potential impacts on each of these public trust uses is especially important in ʻIao, where the condition of the aquifer has long been in question and studies are currently underway to better quantify the aquifer’s true sustainable yield. MDPR’s applications fail even to identify, let alone analyze, any public trust uses or any existing legal uses of water. Indeed, this Commission cannot and should not issue permits to MDPR absent additional information demonstrating that MDPR’s proposed uses are consistent with known existing and yet to be identified uses.

3. MDPR failed to establish that its proposed uses are “reasonable-beneficial,” pursuant to Haw. Rev. Stat. § 174C-49(a)(2).

a. MDPR failed to demonstrate that its proposed uses are reasonable and beneficial by detailing actual water needs.

The law requires that permit applicants such as MDPR demonstrate, at a minimum, that their requested allocations reflect actual need. See Waiahole I, 94 Haw. at 162, 9 P.3d at 474 (“Notwithstanding the present and uncertain nature of the permitting process, therefore, permit applicants must still demonstrate their actual needs and, within the constraints of available knowledge, the propriety of draining water from public streams to satisfy those needs.”); Haw. Rev. Stat. § 174C-50(f) (“A permit to continue an existing use shall be for a quantity of water not exceeding that quantity being consumed under the existing use.”). MDPR neglected to provide any basis for its requested allocations, and must provide this information before the Commission takes any further action on its applications.

b. MDPR failed to demonstrate that its proposed uses are reasonable and beneficial by analyzing alternative sources of water.

Assuming, arguendo, that 455,750 gallons per day reflects MDPR’s actual water needs, the applications fail to examine alternative sources of water. This analysis is necessary to fulfill the Commission’s duty as trustee of Hawai‘i’s water resources and MDPR’s burden of proof.

Specifically, the public trust compels the state duly to consider the cumulative impact of existing and proposed diversions on trust purposes and to implement

---

3 Maui Meadows and the Hui acknowledge that MDPR’s burden regarding this criterion may be easier to satisfy for MDPR’s caprock sources. Still, some effort must be made to fulfill the necessary requirements.
reasonable measures to mitigate this impact, including the use of alternative sources.

_Waiahole I_, 94 Haw. at 143, 9 P.3d at 455. This analysis is essential for this Commission and the community at large to evaluate whether an applicant has adequately established that its requested allocation would support a reasonable-beneficial use. The Hawai‘i Supreme Court ruled:

> It is axiomatic that the Commission must also consider alternative sources in permitting existing or new uses in the first instance, as a part of its analysis of the "reasonable-beneficial" and "consistent with the public interest" conditions for a permit.

_Waiahole I_, 94 Haw. at 162 n.65, 9 P.3d at 474 n.65. Accordingly, alternative sources and other physical solutions such as the potential modification of project operations must be set forth by the applicant and examined by this Commission. The Code, the Commission’s prior decisions and orders, and the Hawai‘i Water Plan contain numerous examples of such alternatives. Because MDPR’s applications fail to include the required alternatives analysis, Commission approval of these WUPAs in their present state would be wrong as a matter of law.


The Code also requires that MDPR establish that its proposed uses are consistent with state and county general plans, land use designations, plans, and policies, and will not interfere with the rights of the Department of Hawaiian Home Lands. Haw. Rev. Stat. § 174C-49(a)(5)-(7). MDPR’s applications fail even to address these issues, let alone establish that its proposed uses are consistent with them. Given the high level of scrutiny required by the state constitution, Water Code, and public trust principles, MDPR must affirmatively demonstrate compliance with these necessary requirements.

5. Conclusion.

In conclusion, MDPR’s applications fail to meet the minimum requirements necessary to protect the ʻĪao aquifer, to safeguard the public interest, and to facilitate meaningful participation by interested parties and reasoned decisionmaking by this Commission. Because MDPR failed to satisfy each of the conditions for a water use permit, Maui Meadows and Hui o Nā Wai ʻEhā respectfully urge this Commission to deny the applications in their present state. In the alternative, we ask this Commission to order MDPR to immediately provide information detailed in this objection, so that the community and this Commission can review and analyze this data before any mediated discussion by the parties or the continuation of any public hearing. At the latest, we request that all additional information be provided at least one week prior to any scheduled meeting of the parties. We finally request that any meetings or hearings be held on Maui to facilitate participation by our clients and other affected parties.
Earthjustice’s Objection to the County of Maui Department of Parks and Recreation’s Water Use Permit Applications
June 20, 2005
Page 5 of 5

Please do not hesitate to contact us for further information.

Me ke aloha,

D. Kapua Sproat

cc: Randy Gentry, Maui Parks and Recreation (via First Class U.S. Mail)
    John V. Duey, Hui o Nā Wai ʻEhā (via email)
    Jim Williamson, Maui Meadows Homeowners Association (via email)
    Dr. Jonathan Likeke Scheuer, OHA (via email)
    Deputy Corp. Counsel Jane Lovell, Maui County Dept. of Water Supply (via email)
    George Tengan, Maui County DWS (via email)
    Ellen Kraftsow, Maui County DWS (via email)
    Linnel Nishioka, HC&S and Kehalani Mauka (via email)
    Garrett Hew, HC&S (via email)
    Avery B. Chumbley, Wailuku Agribusiness Co., Inc. (via email)
    Clayton Suzuki, Wailuku Agribusiness Co., Inc. (via email)
May 13, 2005

TO: Other Interested Parties
FROM: Dean A. Nakano, Acting Deputy Director Commission on Water Resource Management
SUBJECT: Request for Comments
Water Use Permit Application
Ian Ground Water Management Area, Maui

In addition to serving you notice as required by 174C-52 (a), HRS, transmitted for your review and comment are copies of water use permit applications:

**Existing Use Applications**
- War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
- Baldwin High School Well (Well No. 5329-05), WUPA No. 710
- Papohaku Park Well (Well No. 5429-02), WUPA No. 712
- Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

**New Use Applications**
- Maui Stadium Well (Well No. 5329-14), WUPA No. 713
- Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the attached application for any conflicts or inconsistencies with the programs, plans, and objectives of the organization or agency that you represent. Written objections should be made in accordance with Section 13-171-18, Hawaii Administrative Rules and must be filed by the June 6, 2005 deadline. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Cl: ss
Attachment(s)

Response:

( ) We have no objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: D. Kapua Sproat

Signed:

Phone: 599-2436, ext. 16
Date: June 20, 2005
June 20, 2005

BY U.S. MAIL & FACSIMILE TRANSMITTAL
Fax: (808) 587-0219

Peter T. Young, Chairperson
Dean A. Nakano, Acting Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai‘i 96809

Re: Objection to the County of Maui’s Water Use Permit Applications for Well No. 5329-04, Well No. 5329-05, Well No. 5429-02, Well No. 5529-02, Well No. 5329-14, and Well No. 5530-04; ʻĪao Ground Water Management Area, Maui

Dear Chair Young and Acting Deputy Director Nakano:

On behalf of Hui o Nā Wai `Ehā and Maui Meadows Homeowners Association, Earthjustice submits the following comments and objections regarding Maui County Department of Parks and Recreation’s ("MDPR’s") water use permit application ("WUPA") numbers 709-714 for the War Memorial Stadium Well (Well No. 5329-04), Baldwin High School Well (Well No. 5329-05), Papohaku Park Well (Well No. 5429-02), Waiehu Golf Course Well (Well No. 5529-02), Maui Stadium Well (Well No. 5329-14), and Waiehu Golf Course Well 2 (Well No.

1 Hui o Nā Wai Ehā is a community-based organization that was formed to promote the conservation and appropriate management of Hawai‘i’s natural and cultural resources and the practices that depend on them. The Hui strives to protect and restore streams, oceans, estuaries, native flora and fauna, and the activities that rely on these resources, especially the perpetuation of traditional and customary Native Hawaiian practices. Hui members live, work, and play in the ʻĪao ground water management area. They rely on and routinely use ground water from the aquifer as well as surface water from ʻĪao, Waiehu, Waikapū and ʻĪao nearshore marine waters for fishing, swimming, agriculture, aquaculture, research, photography, educational programs, aesthetic enjoyment, traditional and customary Native Hawaiian practices, and other recreational, scientific, cultural, educational and religious activities.

2 Maui Meadows Homeowners Association is an association of homeowners from the Maui Meadows subdivision in Kihei. The association’s filing of a July 2001 petition resulted in the designation of the ʻĪao aquifer in July of 2003. Maui Meadows has been active in water and land use issues on Maui for many years and its members rely on the ʻĪao aquifer to satisfy their water needs. Additionally, the association’s members have been working to ensure appropriate management of the ground water resources in the ʻĪao and Waiehu aquifers.
Earthjustice’s Objection to the County of Maui Department of Parks and Recreation’s Water Use Permit Applications
June 20, 2005
Page 2 of 5

5530-04). These applications seek permits from the ‘Īao Ground Water Management Area to irrigate various MDPR facilities. For all of the reasons detailed herein, these applications fail to establish that the proposed new and existing uses comply with the requirements of the law. The Hui and Maui Meadows therefore urge this Commission to require MDPR to complete its applications before holding any meetings or public hearings regarding these WUPAs. If the missing information is provided in a timely fashion, we remain hopeful that the communities’ concerns and objections can be resolved via the mediated discussions between the parties, alleviating any need for a contested case hearing.

In their current state, MDPR’s permit applications fail to provide the factual and other basis necessary for this Commission to complete the analysis and make the findings required by the State Constitution and Water Code, and ratified by the Hawai‘i Supreme Court. The applications are insufficient for the following reasons:

1. MDPR failed to establish that the water source would accommodate its proposed uses, pursuant to Haw. Rev. Stat. § 174C-49(a)(1).

The Code requires each applicant to establish that a water source can accommodate its proposed use. Haw. Rev. Stat. § 174C-49(a)(1). MDPR’s applications neglect even to mention the condition of ‘Īao aquifer or assess how its proposed uses will be supported, if at all. For years now, Commission staff and United States Geological Survey have warned that water is being extracted from the ‘Īao aquifer at rates that jeopardize the quality and viability of this important resource. Despite indications that the aquifer is threatened by existing and proposed withdrawals of water, the application lacks any analysis regarding whether the water source can accommodate MDPR’s total requested allocation of 455,750 gallons per day. See generally State of Hawai‘i Commission on Water Resource Management, ‘Īao and Wai‘e‘e Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact (Nov. 14, 2002) (detailing the condition of the ‘Īao aquifer). MDPR must provide the information necessary to satisfy this criterion.

2. MDPR failed to establish that its proposed uses are consistent with the public interest and will not interfere with existing legal uses of water, pursuant to Haw. Rev. Stat. §§ 174C-49(a)(3)-(4).

The Hawai‘i Supreme Court affirmed that this Commission is “duty-bound to place the burden on the applicant to justify the proposed water use in light of the trust purposes and weigh competing public and private water uses on a case-by-case basis.” In re Waiāhole Ditch Combined Contested Case Hearing 105 Haw. at 1, 16, 93 P.3d at 643, 658 (2004) (quotations omitted). Moreover, the Code mandates that an applicant establish that its proposed use “will not interfere with any existing legal use of water” and “is consistent with the public interest.” Haw. Rev. Stat. §§ 174C-49(a)(3)-(4).
Earthjustice’s Objection to the County of Maui Department of Parks and Recreation’s Water Use Permit Applications
June 20, 2005
Page 3 of 5

When allocating water, this Commission must consider the impact of all proposed uses on: (1) the maintenance of waters in their natural state, (2) resource protection, (3) water for domestic purposes, and (4) the protection of traditional and customary Native Hawaiian rights and practices. In re Wai‘ola o Moloka‘i, Inc., (“Wai‘ola”), 103 Haw. 401, 429 (2004) (citing In re Waiahole Ditch Combined Contested Case Hearing (“Waiahole I”), 94 Haw. 97, 136-138, 142, 9 P.3d 409, 448-450, 454 (2000)). Analyzing potential impacts on each of these public trust uses is especially important in ‘Iao, where the condition of the aquifer has long been in question and studies are currently underway to better quantify the aquifer’s true sustainable yield. MDPR’s applications fail even to identify, let alone analyze, any public trust uses or any existing legal uses of water. Indeed, this Commission cannot and should not issue permits to MDPR absent additional information demonstrating that MDPR’s proposed uses are consistent with known existing and yet to be identified uses.

3. MDPR failed to establish that its proposed uses are “reasonable-beneficial,” pursuant to Haw. Rev. Stat. § 174C-49(a)(2).

a. MDPR failed to demonstrate that its proposed uses are reasonable and beneficial by detailing actual water needs.

The law requires that permit applicants such as MDPR demonstrate, at a minimum, that their requested allocations reflect actual need. See Waiahole I, 94 Haw. at 162, 9 P.3d at 474 (“Notwithstanding the present and uncertain nature of the permitting process, therefore, permit applicants must still demonstrate their actual needs and, within the constraints of available knowledge, the propriety of draining water from public streams to satisfy those needs.”); Haw. Rev. Stat. § 174C-50(f) (“A permit to continue an existing use shall be for a quantity of water not exceeding that quantity being consumed under the existing use.”). MDPR neglected to provide any basis for its requested allocations, and must provide this information before the Commission takes any further action on its applications.

b. MDPR failed to demonstrate that its proposed uses are reasonable and beneficial by analyzing alternative sources of water.

Assuming, arguendo, that 455,750 gallons per day reflects MDPR’s actual water needs, the applications fail to examine alternative sources of water. This analysis is necessary to fulfill the Commission’s duty as trustee of Hawai‘i’s water resources and MDPR’s burden of proof.

Specifically, the public trust compels the state duty to consider the cumulative impact of existing and proposed diversions on trust purposes and to implement

7 Maui Meadows and the Hui acknowledge that MDPR’s burden regarding this criterion may be easier to satisfy for MDPR’s caprock sources. Still, some effort must be made to fulfill the necessary requirements.
reasonable measures to mitigate this impact, including the use of alternative sources.

_Waiaholo_ 1, 94 Haw. at 143, 9 P.3d at 455. This analysis is essential for this Commission and the community at large to evaluate whether an applicant has adequately established that its requested allocation would support a reasonable-beneficial use. The Hawai’i Supreme Court ruled:

It is axiomatic that the Commission must also consider alternative sources in permitting existing or new uses in the first instance, as a part of its analysis of the “reasonable-beneficial” and “consistent with the public interest” conditions for a permit.

_Waiaholo_ 1, 94 Haw. at 162 n.65, 9 P.3d at 474 n.65. Accordingly, alternative sources and other physical solutions such as the potential modification of project operations must be set forth by the applicant and examined by this Commission. The Code, the Commission’s prior decisions and orders, and the Hawai’i Water Plan contain numerous examples of such alternatives. Because MDPR’s applications fail to include the required alternatives analysis, Commission approval of these WUPAs in their present state would be wrong as a matter of law.


The Code also requires that MDPR establish that its proposed uses are consistent with state and county general plans, land use designations, plans, and policies, and will not interfere with the rights of the Department of Hawaiian Home Lands. Haw. Rev. Stat. § 174C-49(a)(5)-(7). MDPR’s applications fail even to address these issues, let alone establish that its proposed uses are consistent with them. Given the high level of scrutiny required by the state constitution, Water Code, and public trust principles, MDPR must affirmatively demonstrate compliance with these necessary requirements.

5. Conclusion.

In conclusion, MDPR’s applications fail to meet the minimum requirements necessary to protect the ‘Īao aquifer, to safeguard the public interest, and to facilitate meaningful participation by interested parties and reasoned decisionmaking by this Commission. Because MDPR failed to satisfy each of the conditions for a water use permit, Maui Meadows and Hui o Nā Wai ‘Ehā respectfully urge this Commission to deny the applications in their present state. In the alternative, we ask this Commission to order MDPR to immediately provide information detailed in this objection, so that the community and this Commission can review and analyze this data before any mediated discussion by the parties or the continuation of any public hearing. At the latest, we request that all additional information be provided at least one week prior to any scheduled meeting of the parties. We finally request that any meetings or hearings be held on Maui to facilitate participation by our clients and other affected parties.
Earthjustice’s Objection to the County of Maui Department of Parks and Recreation’s Water Use Permit Applications
June 20, 2005
Page 5 of 5

Please do not hesitate to contact us for further information.

Me ke aloha,

D. Kapua Speck

cc: Randy Gentry, Maui Parks and Recreation (via First Class U.S. Mail)
    John V. Ducey, Hui o Nā Wai `Ehā (via email)
    Jim Williamson, Maui Meadows Homeowners Association (via email)
    Dr. Jonathan Likeke Scheuer, OHA (via email)
    Deputy Corp. Counsel Jane Lovell, Maui County Dept. of Water Supply (via email)
    George Tengan, Maui County DWS (via email)
    Ellen Kraftsow, Maui County DWS (via email)
    Linnel Nishioka, HC&S and Kehalani Mauka (via email)
    Garrett Hew, HC&S (via email)
    Avery B. Chumbley, Wailuku Agribusiness Co., Inc. (via email)
    Clayton Suzuki, Wailuku Agribusiness Co., Inc. (via email)
We are awaiting corrected/updated pumpage figures for Parks & Rec wells, as well as some details on the system upgrade work done at various locations. I understand from a phone conversation that the "replaced pumps" were in fact boosters from the storage pond, rather than well pumps. It would be easier for filing to have these information bits transmitted by email rather than by phone, is that's agreeable. Also, you had some beautiful exhibits at the hearing, and I believe you hung on to them to send with the complete info packet. If possible, we'd like to transmit available information to interested parties prior to the follow-up meeting, so they can be prepared for comments or questions. We look forward to that. Thanks, Randy.
We have set July 11, 2005, a Monday, from 1:00 - 5:00 pm, for our meeting at Cameron Center. All who responded indicated that was an agreeable date. We hope it works for the others. We may not need that much time, but hope to sort things out comprehensively within that time. This will be your only notice. We will still conduct another full session of the public hearing, yet to be determined, which we anticipate would be the last.
May 13, 2005

TO: Harry M. Yada, Acting Administrator
   Land Division

FROM: Dean A. Nakano, Acting Deputy Director
      Commission on Water Resource Management

SUBJECT: Request for Comments

Water Use Permit Application
Iao Ground Water Management Area, Maui

Transmitted for your review and comment are copies of water use permit applications:

Existing Use Applications
- War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
- Baldwin High School Well (Well No. 5329-05), WUPA No. 710
- Papohaku Park Well (Well No. 5429-02), WUPA No. 712
- Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications
- Maui Stadium Well (Well No. 5329-14), WUPA No. 713
- Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the attached application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your division only. Please respond by returning this cover memo form by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Cl: ss
Attachment(s)

Response:

( ) A water lease/permit is required of this applicant and an application for such will be requested by our division.
XX) A water lease/permit is not required of this applicant.
( ) A water lease/permit has been obtained by the applicant through lease no.
XX) This well project ( ) requires ( ) does not require a CDUP. If a CDUP is required it ( ) has ( ) has not been approved and ( ) is ( ) is not currently active.
( ) Other relevant Land Division rules/regulations, information, or recommendations are attached.
( ) No objections
XX) Other comments: County of Maui owned lands.

Contact person: Gary Martin
Phone: 587-0421
Signed: Gary Martin
Date: JUN 14, 2005
TO: Dean A. Nakano, Acting Deputy Director
Commission on Water Resource Management

FROM: Skippy Hau, Aquatic Biologist

SUBJECT: Water Use Permit Application Comments
War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
Baldwin High School Well, (Well No. 5329-05), WUPA No. 710
Papohaku Park Well, (Well No. 5429-02), WUPA No. 712
Waiehu Golf Course Well, (Well No. 5529-02), WUPA No. 711
Maui Stadium Well (Well No. 5329-14), WUPA No. 713
Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

June 6, 2005

I reviewed the applications and found the total amount of water declarations are more than 166.3 million gallons per year or roughly 455,750 gallons per day.

Shade (1997) estimated natural recharge for the Iao watershed was about 24 million gallons per day with sugar cane production adding an additional 27 to 12 MGD.

c: DAR - Oahu
May 13, 2005

TO: Aquatic Resources
Forestry and Wildlife/Natural Area Reserve System
Historic Preservation
State Parks

FROM: Dean A. Nakano, Acting Deputy Director
Commission on Water Resource Management

SUBJECT: Request for Comments
Water Use Permit Application
Iao Ground Water Management Area, Maui

Transmitted for your review and comment are copies of water use permit applications:

Existing Use Applications
- War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
- Baldwin High School Well (Well No. 5329-05), WUPA No. 710
- Papohaku Park Well (Well No. 5429-02), WUPA No. 712
- Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications
- Maui Stadium Well (Well No. 5329-14), WUPA No. 713
- Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the attached application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your division only. Please respond by returning this cover memo form by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Cl: ss
Attachment(s)

Response:
( ) We have no objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: Skippy Haun
Phone: 243-5834

Signed: Skippy Haun
Date: 6/6/05
May 13, 2005

TO: 
Honorable Micah Kane, Director
Department of Hawaiian Home Lands

Honorable Chiyome L. Fukino, M.D., Director
Department of Health

Mr. Clyde W. Namuo, Administrator
Office of Hawaiian Affairs
Attn: Mr. Jonathan Scheuer

Honorable Dain P. Kane, Chairperson
County Council
County of Maui

Mr. George Y. Tengan, Director
Department of Water Supply
County of Maui

Mr. Michael W. Foley, Director
Planning Department
County of Maui

FROM: Peter T. Young, Chairperson
Commission on Water Resource Management

SUBJECT: Water Use Permit Application
Iao Ground Water Management Area, Maui

Transmitted for your review and comment are copies of water use permit applications:

Existing Use Applications
War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
Baldwin High School Well (Well No. 5329-05), WUPA No. 710
Papohaku Park Well (Well No. 5429-02), WUPA No. 712
Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications
Maui Stadium Well (Well No. 5329-14), WUPA No. 713
Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistancies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Class:
Attachment(s)

Response:
× We have no objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: George Y. Tengan, Director
Signed: [Signature]

Phone: 279-7816
Date: 6/4/05
TO: 
Honorable Micah Kane, Director
Department of Hawaiian Home Lands

Honorable Chiyoime L. Fukino, M.D., Director
Department of Health

Mr. Clyde W. Namuo, Administrator
Office of Hawaiian Affairs
Attn: Mr. Jonathan Scheuer

Honorable Dain P. Kane, Chairperson
County Council
County of Maui

Mr. George Y. Tengan, Director
Department of Water Supply
County of Maui

Mr. Michael W. Foley, Director
Planning Department
County of Maui

FROM: 
Peter T. Young, Chairperson
Commission on Water Resource Management

SUBJECT: Water Use Permit Application

transmitted for your review and comment are copies of water use permit applications:

Existing Use Applications

- War Memorial Stadium Well (Well No. 5239-04), WUPA No. 709
- Baldwin High School Well (Well No. 5239-05), WUPA No. 710
- Papohaku Park Well (Well No. 5429-02), WUPA No. 712
- Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications

- Maui Stadium Well (Well No. 5329-14), WUPA No. 713
- Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Class
Attachment(s)

Response:

We have no objections or comments

Objections attached

Only comments attached

Contact person: George Y. Tengan, Director 

Phone: 270-7816 

Date: 6/6/05
May 13, 2005

TO: Aquatic Resources
Forestry and Wildlife/Natural Area Reserve System
Historic Preservation
State Parks

FROM: Dean A. Nakano, Acting Deputy Director
Commission on Water Resource Management

SUBJECT: Request for Comments
Water Use Permit Application
Ian Ground Water Management Area, Maui

Transmitted for your review and comment are copies of water use permit applications:

Existing Use Applications
War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
Baldwin High School Well (Well No. 5329-05), WUPA No. 710
Papohaku Park Well (Well No. 5429-02), WUPA No. 712
Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications
Maui Stadium Well (Well No. 5329-14), WUPA No. 713
Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the attached application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your division only. Please respond by returning this cover memo form by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Response:

(✓) We have no objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: ____________________________

Phone: __________

Signed: ____________________________

Date: JUN - 2 2005
May 13, 2005

TO: Mr. Anthony Ching, Executive Officer  
Land Use Commission

FROM: Peter T. Young, Chairperson  
Commission on Water Resource Management

SUBJECT: WATER USE PERMIT APPLICATION  
Iao Ground Water Management Area, Maui

Transmitted for your review and comment are copies of water use permit applications:

**Existing Use Applications**
- War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
- Baldwin High School Well (Well No. 5329-05), WUPA No. 710
- Papohaku Park Well (Well No. 5429-02), WUPA No. 712
- Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

**New Use Applications**
- Maui Stadium Well (Well No. 5329-14), WUPA No. 713
- Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1). Specifically, we request that you inform us of the current state land use designation for the TMK parcel, or portion thereof, for the proposed use area(s) and, secondly, whether the current state land use designation is appropriate for the proposed project.

We have attached a TMK map(s) that covers the proposed use area(s). Where water is proposed for use on only a portion of a TMK parcel, or on parcels with multiple zoning, the proposed use area(s) has been clearly delineated on the attached map. **Please respond by returning this cover memo along with your review comments by June 6, 2005.** If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Response:

- We have no objections or comments
- Objections attached
- Only comments attached

Contact person: BEST SARUWATARI  
Signed: BEST SARUWATARI  
Phone: 587-3822  
Date: MAY 25, 2005
TO: Peter T. Young, Chairperson  
Commission on Water Resource Management  
Department of Land and Natural Resources

FROM: Anthony J. H. Ching, Executive Officer

SUBJECT: Existing Water Use Permit Applications  
War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709  
Baldwin High School Well (Well No. 5329-05), WUPA No. 710  
Papohaku Park Well (Well No. 5429-02), WUPA No. 712  
Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications  
War Memorial Stadium Well (Well No. 5329-14), WUPA No. 713  
Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

We have reviewed the subject applications forwarded by your transmittal dated May 13, 2005. Based on the representation of the well sites on the various location maps, we have determined that they are located within the respective State land use districts (SLUD) as follows:

**Existing Well**  
War Memorial Stadium Well  
Baldwin High School Well  
Papohaku Park Well  
Waiehu Golf Course Well

**SLUD**  
Urban  
Urban  
Agricultural\(^1\)  
Conservation

**New Well**  
Maui Stadium Well  
Waiehu Golf Course Well 2

**SLUD**  
Urban  
Agricultural\(^2\)

---

\(^1\) In the application, the well is incorrectly stated as being located in the Urban District.  
\(^2\) In the application, the well is incorrectly stated as being located in the Conservation District.
With respect to your request as to whether the current designation is appropriate for the proposed project, please be advised that pursuant to section 205-2(b), Hawaii Revised Statutes (HRS), activities or uses within the Urban District are the jurisdiction of the respective counties as provided by their ordinances or regulations. As such, we suggest that you contact the County of Maui Department of Planning directly for their comments on this matter.

With respect to the wells that are located in the Agricultural District, please be advised that although sections 205-2(d) and 205-4.5(a), HRS, do not explicitly list wells as permissible activities or uses within the district, we have in the past noted that when the requested water was directly accessory to the uses specified in the aforementioned sections, the activities appeared to be appropriate uses within the district. To the extent that the water requested from these wells would be used for municipal use, we would defer to the County zoning designation of the respective parcel, which we understand permits water wells as minor utility facilities.

With respect to the well that is located in the Conservation District, inasmuch as the establishment of permitted activities or uses within the district is under the jurisdiction of the Department of Land and Natural Resources pursuant to chapter 183C, HRS, we have no comments to offer on this matter.

Thank you for the opportunity to comment on the subject applications. As requested, we are returning the cover memo for the subject applications.

Please feel free to contact Bert Saruwatari of my office at 587-3822 should you require clarification or any further assistance.

Enclosure
TO: Honorable Micah Kane, Director
Department of Hawaiian Home Lands

Honorable Chiyome L. Fukino, M.D., Director
Department of Health

Mr. Clyde W. Namuo, Administrator
Office of Hawaiian Affairs
Attn: Mr. Jonathan Scheuer

Honorable Dain P. Kane, Chairperson
County Council
County of Maui

Mr. George Y. Tengan, Director
Department of Water Supply
County of Maui

Mr. Michael W. Foley, Director
Planning Department
County of Maui

FROM: Peter T. Young, Chairperson
Commission on Water Resource Management

SUBJECT: Water Use Permit Application
Iao Ground Water Management Area, Maui

May 13, 2005

Transmitted for your review and comment are copies of water use permit applications:

Existing Use Applications
War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
Baldwin High School Well (Well No. 5329-05), WUPA No. 710
PapohakU Park Well (Well No. 5429-02), WUPA No. 712
Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications
Maui Stadium Well (Well No. 5329-14), WUPA No. 713
Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Signed:

Contact person: Phone: 270-7814

Date: 5-20-05
PUBLIC NOTICE

Applications for Water Use Permit
Iao Ground Water Management Area, Maui

The following applications for water use permit have been received by the Commission on Water Resource Management, and are hereby made public in accordance with Section 13-171, Hawaii Administrative Rules, "Designation and Regulation of Water Management Areas." These applications are subject to a continuing public hearing, which commenced October 28, 2004 and continued on April 22, 2005. The hearing remains open and will be reconvened at a later date.

1. Wailuku Agribusiness Company, Inc.
   255 East Waiko Road
   Wailuku, HI 96793

The following applications are for Existing Uses as of July 21, 2003 and completed applications submitted by the July 21, 2004 deadline.

WUPA No. 681 Waikapu Tunnel 1, Well No. 5132-01
WUPA No. 682 Waikapu Tunnel 2, Well No. 5132-02
WUPA Nos. 684 & 686 Iao Needle Tunnels 1 & 2, Well Nos. 5333-01 & 02
WUPA No. 685 Black Gorge Tunnel, Well No. 5332-01

Date Application Received/Filed: January 2, 2004
Date Application Acknowledged as Complete: March 16, 2004
Aquifer Area: Iao System Area, Wailuku Sector, Maui
Quantity Requested: Natural tunnel flow amounts unknown, augmenting Iao and Waikapu Stream flows, from high-level aquifers, not counted against basal sustainable yield.
Existing/New Water Use: Existing
Place of Water Use: Various in Wailuku and Waikapu; WUPAs 684-686 TMKs: 3-3,4,5,6 (contribute to ditch diversions for agriculture)

2. County of Maui
   Department of Parks and Recreation
   700 Halia Nakoa Street, Unit 2
   Wailuku, HI 96793

The following applications are for Existing Uses as of July 21, 2003 and completed applications submitted by the July 21, 2004 deadline.

WUPA No. 709 War Memorial Stadium Well (Well No. 5329-04)
WUPA No. 710 Baldwin High School Well (Well No. 5329-05)
WUPA No. 712 Papohaku Park Well (Well No. 5429-02)
WUPA No. 711 Waiehu Golf Course Well (Well No. 5529-02)

Date Application Received/Filed: July 21, 2004
Date Application Acknowledged as Complete: July 21, 2004
Aquifer: Iao System, Wailuku Sector, Maui
Quantity Requested: Currently uncertain; estimates total 340,000 gpd from caprock, not counted against basal sustainable yield.
Existing/New Water Use: Existing
Place of Water Use: Parks in Wailuku, Kahului, and Waiehu; TMKs: 3-8-7:55, 3-4-30:15, 3-2-13:6

The following applications were received after the one-year filing deadline and are therefore being considered as New Uses.

WUPA No. 713 Maui Stadium Well (Well No. 5329-14)
WUPA No. 714 Waiehu Golf Course Well 2 (Well No. 5530-04)

Date Application Received/Filed: August 4, 2004
Date Application Acknowledged as Complete: August 4, 2004
Aquifer: Iao System, Wailuku Sector, Maui
Quantity Requested: Currently uncertain; estimates total 78,000 gpd from caprock, not counted against basal sustainable yield.
Existing/New Water Use: New
Place of Water Use: Parks in Kahului and Waiehu; TMKs: 3-8-7:55, 3-2-13:29

Written objections or comments on the above application may be filed by any person who has property interest in any land within the hydrologic unit of the source of water supply, any person who will be directly and immediately affected by the proposed water use, or any other interested person. Written objections shall: (1) state property or other interest in the matter (provide TMK information); (2) set forth questions of procedure, fact, law, or policy, to which objections are taken; and (3) state all grounds for objections to the proposed permit. Written objections must be received by June 6, 2005. Objections must be sent to 1) the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809 and
2) the applicant at the above address. The continuing public hearing for these applications will be duly noticed.

COMMISSION ON WATER RESOURCE MANAGEMENT

DEAN A. NAKANO, Acting Deputy Director for
PETER T. YOUNG, Chairperson

Dated: May 10, 2005

Publish in: Maui News issues of May 13, 2005 and May 20, 2005
May 13, 2005

Mr. Randy Gentry
County of Maui
Department of Parks and Recreation
700 Halia Nakoa Street, Unit 2
Wailuku, HI 96793

Dear Mr. Gentry:

Existing Use Applications
War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
Baldwin High School Well (Well No. 5329-05), WUPA No. 710
Papohaku Park Well (Well No. 5429-02), WUPA No. 712
Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications
Maui Stadium Well (Well No. 5329-14), WUPA No. 713
Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

We acknowledge the acceptance of your completed water use permit applications, as captioned, as of July 21, 2004. This late notice is due to efforts to clarify application information inconsistent with Commission information. WUPA Nos. 713 and 714 are considered new uses as they were filed on August 4, 2004, after the deadline for existing uses.

We are voiding and returning your application for Waiehu Golf Course Well No. 5530-03, WUPA 708, as you have indicated that it is capped and is not intended for future use. Enclosed is an application to seal the well, to prevent potential contamination of the aquifer.

Enclosed is a copy of the public notice for your water use permit applications which will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

If you have any questions, please contact Charley Ice at 587-0251.

Sincerely,

DEAN A. NAKANO
Acting Deputy Director

Cl:ss
Enclosures
May 13, 2005

TO: Aquatic Resources
Forestry and Wildlife/Natural Area Reserve System
Historic Preservation
State Parks

FROM: Dean A. Nakano, Acting Deputy Director
Commission on Water Resource Management

SUBJECT: Request for Comments
Water Use Permit Application
Iao Ground Water Management Area, Maui

Transmitted for your review and comment are copies of water use permit applications:

Existing Use Applications
- War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
- Baldwin High School Well (Well No. 5329-05), WUPA No. 710
- Papohaku Park Well (Well No. 5429-02), WUPA No. 712
- Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications
- Maui Stadium Well (Well No. 5329-14), WUPA No. 713
- Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the attached application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your division only. Please respond by returning this cover memo form by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Cl: ss
Attachment(s)

Response:
( ) We have no objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: ___________________________ Phone: ________________________
Signed: ___________________________ Date: ________________________
May 13, 2005

TO:    Harry M. Yada, Acting Administrator  
       Land Division

FROM:  Dean A. Nakano, Acting Deputy Director  
       Commission on Water Resource Management

SUBJECT:  Request for Comments  
          Water Use Permit Application  
          Iao Ground Water Management Area, Maui

Transmitted for your review and comment are copies of water use permit applications:

Existing Use Applications
War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
Baldwin High School Well (Well No. 5329-05), WUPA No. 710
Papohaku Park Well (Well No. 5429-02), WUPA No. 712
Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications
Maui Stadium Well (Well No. 5329-14), WUPA No. 713
Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the attached application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your division only. Please respond by returning this cover memo form by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Cl:ss
Attachment(s)

Response:
( ) A water lease/permit is required of this applicant and an application for such will be requested by our division.
( ) A water lease/permit is not required of this applicant.
( ) A water lease/permit has been obtained by the applicant through lease no.
( ) This well project ( ) requires ( ) does not require a CDUP. If a CDUP is required it ( ) has ( ) has not been approved and ( ) is ( ) is not currently active.
( ) Other relevant Land Division rules/regulations, information, or recommendations are attached.
( ) No objections
( ) Other comments:

Contact person: ___________________________ Phone: ___________________________

Signed: ___________________________ Date: ___________________________
May 13, 2005

TO: Mr. Anthony Ching, Executive Officer
   Land Use Commission

FROM: Peter T. Young, Chairperson
   Commission on Water Resource Management

SUBJECT: WATER USE PERMIT APPLICATION
   Iao Ground Water Management Area, Maui

Transmitted for your review and comment are copies of water use permit applications:

   Existing Use Applications
   War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
   Baldwin High School Well (Well No. 5329-05), WUPA No. 710
   Papohaku Park Well (Well No. 5429-02), WUPA No. 712
   Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

   New Use Applications
   Maui Stadium Well (Well No. 5329-14), WUPA No. 713
   Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1). Specifically, we request that you inform us of the current state land use designation for the TMK parcel, or portion thereof, for the proposed use area(s) and, secondly, whether the current state land use designation is appropriate for the proposed project.

We have attached a TMK map(s) that covers the proposed use area(s). Where water is proposed for use on only a portion of a TMK parcel, or on parcels with multiple zoning, the proposed use area(s) has been clearly delineated on the attached map. Please respond by returning this cover memo along with your review comments by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Cl: ss
Attachment(s)

Response:

( ) We have no objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: ____________________________ Phone: ____________________________
Signed: ____________________________ Date: ____________________________
May 13, 2005

TO: 
Honorable Micah Kane, Director
Department of Hawaiian Home Lands

Honorable Chiyome L. Fukino, M.D., Director
Department of Health

Mr. Clyde W. Namuo, Administrator
Office of Hawaiian Affairs
Attn: Mr. Jonathan Scheuer

Honorable Dain P. Kane, Chairperson
County Council
County of Maui

Mr. George Y. Tengan, Director
Department of Water Supply
County of Maui

Mr. Michael W. Foley, Director
Planning Department
County of Maui

FROM: Peter T. Young, Chairperson
Commission on Water Resource Management

SUBJECT: Water Use Permit Application
Ian Ground Water Management Area, Maui

Transmitted for your review and comment are copies of water use permit applications:

Existing Use Applications
War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
Baldwin High School Well (Well No. 5329-05), WUPA No. 710
Papohaku Park Well (Well No. 5429-02), WUPA No. 712
Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

New Use Applications
Maui Stadium Well (Well No. 5329-14), WUPA No. 713
Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by June 6, 2005. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Response: ________________________________________________
We have no objections or comments
Objections attached
Only comments attached

Contact person: _______________ Phone: ____________________
Signed: ___________________________ Date: ____________
Honorable Alan M. Arakawa, Mayor
County of Maui
200 South High Street
Wailuku, HI 96793

Dear Mayor Arakawa:

Notice of an Application for a Water Use Permit
Jao Ground Water Management Area, Maui

In accordance with the Department of Land and Natural Resources Administrative Rules, Section 13-171-17(a), we are transmitting for your review and comment copies of water use permit applications:

**Existing Use Applications**
- War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
- Baldwin High School Well (Well No. 5329-05), WUPA No. 710
- Papohaku Park Well (Well No. 5429-02), WUPA No. 712
- Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

**New Use Applications**
- Maui Stadium Well (Well No. 5329-14), WUPA No. 713
- Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

In addition, Section 13-171-13(b) of our Administrative Rules states:

"Within sixty days after receipt of notice of a permit application, the county shall inform the commission if the proposed use is inconsistent with the county land use plans and policies."

We have attached copies of the applications for your review and would appreciate receiving your comments, within the next sixty (60) days, on whether this water use is consistent with county plans and policies.

If you have any questions, please call Dean A. Nakano, Acting Deputy Director, at 587-0214 or toll-free at 984-2400, extension 70214.

Sincerely,

Peter T. Young
Chairperson

Ct:ss
Enclosures
May 13, 2005

TO: Other Interested Parties

FROM: Dean A. Nakano, Acting Deputy Director
Commission on Water Resource Management

SUBJECT: Request for Comments
Water Use Permit Application
Iao Ground Water Management Area, Maui

In addition to serving you notice as required by 174C-52 (a), HRS, transmitted for your review and comment are copies of water use permit applications:

**Existing Use Applications**
- War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
- Baldwin High School Well (Well No. 5329-05), WUPA No. 710
- Papohaku Park Well (Well No. 5429-02), WUPA No. 712
- Waiehu Golf Course Well (Well No. 5529-02), WUPA No. 711

**New Use Applications**
- Maui Stadium Well (Well No. 5329-14), WUPA No. 713
- Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

Public notice of these applications will be published in the Maui News issues of May 13, 2005 and May 20, 2005.

We would appreciate your review of the attached application for any conflicts or inconsistencies with the programs, plans, and objectives of the organization or agency that you represent. Written objections should be made in accordance with Section 13-171-18, Hawaii Administrative Rules and must be filed by the June 6, 2005 deadline. If we do not receive your comments by this date, we will assume you have no comments or objections.

If you have any questions, require additional information, or would like to request an extension of the review period for this application, please contact Charley Ice at 587-0251.

Cl: ss
Attachment(s)

Response:
( ) We have no objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: ____________________________ Phone: ____________________________

Signed: ____________________________ Date: ____________________________
PUBLIC HEARING NOTICE

Applications for Water Use Permits
Iao Ground Water Management Area, Maui

The following applications for water use permits to continue uses existing as of July 21, 2003, and applications for new uses have received objections and are subject to public hearing. The Commission on Water Resource Management, at its regular meeting on September 22, 2004, approved a public hearing originally commenced on October 28, 2004. This public hearing will be the second session and continuation of the original October 28, 2004 hearing and will be held:

April 22, 2005, 5:00-9:00 p.m.
J. Walter Cameron Center
95 Mahalani Street, Wailuku, Hawaii 96793

The Hearing Officers will gather further testimony and information on basal aquifer and caprock wells. Testimony on the high-level dike sources will also be received, but these sources affect stream flow and will be combined with a pending petition to amend the interim instream flow standard of four Wailuku District streams: Waihe'e, Waiehu, Iao, and Waikapū. Testimony should focus on practicable alternatives, water duties, Hawaiian rights, and definitions of public trust uses.

### Basal Sources:

<table>
<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Amount (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Uses</strong> as of July 21, 2003 and completed applications submitted by the July 21, 2004 deadline</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mokuhau Well 1</td>
<td>5330-09</td>
<td>MDWS</td>
<td>700</td>
<td>3-3-2:24</td>
<td>1.994</td>
</tr>
<tr>
<td>Mokuhau Well 3</td>
<td>5330-11</td>
<td>MDWS</td>
<td>701</td>
<td>3-3-2:24</td>
<td>2.221</td>
</tr>
<tr>
<td>Waiehu Heights Well 1</td>
<td>5430-01</td>
<td>MDWS</td>
<td>697</td>
<td>3-3-2:28</td>
<td>0.165</td>
</tr>
<tr>
<td>Waiehu Heights Well 2</td>
<td>5430-02</td>
<td>MDWS</td>
<td>698</td>
<td>3-3-2:28</td>
<td>1.415</td>
</tr>
<tr>
<td>Waiehu Well 1</td>
<td>5431-02</td>
<td>MDWS</td>
<td>695</td>
<td>3-3-17:31</td>
<td>1.480</td>
</tr>
<tr>
<td>Waiehu Well 2</td>
<td>5431-03</td>
<td>MDWS</td>
<td>696</td>
<td>3-3-17:31</td>
<td>2.439</td>
</tr>
<tr>
<td>Waiehu Well 3</td>
<td>5431-04</td>
<td>MDWS</td>
<td>703</td>
<td>3-3-17:31</td>
<td>1.513</td>
</tr>
<tr>
<td><strong>New Uses</strong> arising after July 21, 2003, or completed applications submitted after the July 21, 2004 deadline</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wailuku Shaft 33</td>
<td>5330-05</td>
<td>Kehalani</td>
<td>707</td>
<td>3-5-1:1</td>
<td>5.771</td>
</tr>
<tr>
<td>Wailuku Shaft 33</td>
<td>5330-05</td>
<td>MDWS</td>
<td>702</td>
<td>(3-5-1:1)</td>
<td>(5.771) not to be double-counted</td>
</tr>
<tr>
<td>Living Waters #1</td>
<td>5531-01</td>
<td>LWLF</td>
<td>704</td>
<td>3-2-13:15</td>
<td>0.020</td>
</tr>
</tbody>
</table>

### Caprock Sources:

<table>
<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Amount (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Uses</strong> as of July 21, 2003 and accepted as completed applications submitted by the July 21, 2004 deadline</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>War Memorial Stadium</td>
<td>5329-04</td>
<td>MP&amp;R</td>
<td>709</td>
<td>3-8-7:55</td>
<td>0.038?</td>
</tr>
<tr>
<td>Baldwin High School</td>
<td>5329-05</td>
<td>MP&amp;R</td>
<td>710</td>
<td>3-8-7:55</td>
<td>0.010</td>
</tr>
<tr>
<td>Maui Stadium</td>
<td>5329-14</td>
<td>MP&amp;R</td>
<td>713</td>
<td>3-8-7:55</td>
<td>0.039?</td>
</tr>
<tr>
<td>Papohaku Park</td>
<td>5429-02</td>
<td>MP&amp;R</td>
<td>712</td>
<td>3-2-13:29</td>
<td>0.324</td>
</tr>
<tr>
<td>Waiehu Golf</td>
<td>5529-02</td>
<td>MP&amp;R</td>
<td>711</td>
<td>3-2-13:6</td>
<td>0.039</td>
</tr>
<tr>
<td>Waiehu Golf 1</td>
<td>5530-03</td>
<td>MP&amp;R</td>
<td>708</td>
<td>3-2-13:29</td>
<td>0.324?</td>
</tr>
<tr>
<td>Waiehu Golf 2</td>
<td>5530-04</td>
<td>MP&amp;R</td>
<td>714</td>
<td>3-2-13:29</td>
<td>0.324?</td>
</tr>
</tbody>
</table>

**New Uses** arising after July 21, 2003 or completed applications submitted after the July 21, 2004 deadline

None
- High-level Dike Sources (impacting stream flows, to be later combined with the IIFS petition proceedings)

<table>
<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Amount (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Uses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>as of July 21, 2003</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>and accepted as</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>complete applications</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>submitted by the</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>July 21, 2004</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>deadline</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kepaniwai Well</td>
<td>5332-05</td>
<td>MDWS</td>
<td>699</td>
<td>3-3-3-5</td>
<td>1.042</td>
</tr>
<tr>
<td>lao Tunnel</td>
<td>5332-02</td>
<td>MDWS</td>
<td>680</td>
<td>3-3-3-3</td>
<td>1.359</td>
</tr>
<tr>
<td>Waikapu Tunnel 1</td>
<td>5132-01</td>
<td>WACI</td>
<td>681</td>
<td>3-5-3-1</td>
<td>unknown</td>
</tr>
<tr>
<td>Waikapu Tunnel 2</td>
<td>5132-02</td>
<td>WACI</td>
<td>682</td>
<td>3-6-3-1</td>
<td>unknown</td>
</tr>
<tr>
<td>lao Tunnel</td>
<td>5330-02</td>
<td>HC&amp;S</td>
<td>691</td>
<td>3-4-34:34</td>
<td>0.100</td>
</tr>
<tr>
<td>Black Gorge Tunnel</td>
<td>5332-01</td>
<td>WACI</td>
<td>685</td>
<td>3-3-3-3</td>
<td>unknown</td>
</tr>
<tr>
<td>lao Needle Tunnel 1</td>
<td>5333-02</td>
<td>WACI</td>
<td>684</td>
<td>3-5-3-1</td>
<td>unknown</td>
</tr>
<tr>
<td>lao Needle Tunnel 2</td>
<td>5333-02</td>
<td>WACI</td>
<td>686</td>
<td>3-3-3-3</td>
<td>unknown</td>
</tr>
</tbody>
</table>

**New Uses** arising after July 21, 2003, or applications submitted by or after July 21, 2004

None

**Applicants:**
- County of Maui, Department of Water Supply (MDWS)
- County of Maui, Department of Parks & Recreation (MP&R)
- Kehalani Mauka, LLC (Kehalani)
- Living Waters Land Foundation (LWLF)
- Hawaiian Commercial and Sugar (HC&S)
- Wailuku Agribusiness Company, Inc., (WACI)

Materials related to the noticed items are available for review at the Kahului Library, 90 School St., Kahului, Maui and at the Commission office located at 1151 Punchbowl St., Rm 227, Honolulu and will also be available at this public hearing.

The Hearing Officers will close the public hearing at the end of this session. Commission staff recommendations on these applications will be forwarded to the Commission at a later date based on the available information.

Any person may testify or present additional information on the public hearing subject matter. If you have a legal interest that may be adversely affected by a proposed application, you have a right to request an administrative contested case hearing (Hawaii Administrative Rules (HAR) §13-167-52(a)). However, you must make the request for such a hearing either orally or in writing by the close of public hearing and file (or mail and postmark) a written petition for a contested case with the Commission within ten (10) days after the close of the public hearing. Petition forms are available from the Commission.

If you do not make a request or fail to file a timely written petition for contested case hearing on a particular application noticed herein with the Commission, the consequence is that you will be precluded from later obtaining a contested case hearing and seeking judicial review of any adverse decision (HAR Chapter 13-167).

Disabled individuals planning to attend the public hearing are asked to contact the Commission at the above address or phone (Kauai) 274-3141 ext. 70214, (Maui) 984-2400 ext. 70214, (Hawaii) 974-4000 ext. 70214, (Molokai or Lanai) 1-800-GOV-INHI ext. 70214 or 587-0214 at least three days in advance of the public hearing to indicate if they have special needs that require accommodation.

COMMISSION ON WATER RESOURCE MANAGEMENT

DEAN A. NAKANO, Acting Deputy Director for

PETER T. YOUNG, Chairperson

Dated: March 28, 2005

Publish in: Maui News issue of April 1, 2005
December 17, 2004

BY U.S. MAIL & FACSIMILE TRANSMITTAL

Fax: (808) 587-0219

Yvonne Y. Izu, Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai‘i 96809

Re: Burdens Of Proof And Legal Standards Regarding: (1) Traditional And Customary Native Hawaiian Rights And Practices; And (2) Municipal Uses

Dear Deputy Director Izu:

Mahalo for this opportunity to respond to the Commission’s November 15, 2004 letter requesting comments on Commissioner Miike’s questions and analyses on the burdens of proof and legal standards regarding: (1) traditional and customary Native Hawaiian rights and practices; and (2) municipal uses. We have addressed the issues in detail and are hopeful that our comments will assist the Commission in its water use permitting for the ‘Iao aquifer.

I. Traditional & Customary Native Hawaiian Rights & Practices.


Pursuant to Hawai‘i’s constitution, statutes, and case law, this Water Commission is “obligated to protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians.” Ka Pa‘akai o ka ‘Aina v. Land Use Comm’n, 94 Haw. 31, 45 (2000) (“Ka Pa‘akai”); see also Haw. Const. Art. XII § 7. These rights include, but are not limited to: (1) traditional and customarily exercised rights and practices (e.g., gathering rights for limu, fish, crustaceans, and shellfish in springs, streams, and nearshore marine waters, use of springs and streams for religious and spiritual purposes, water for kalo cultivation); and (2) entitlements to water pursuant to the Hawaiian Homes Commission Act of 1920. See, e.g., Haw. Const. Art. XI § 7; Haw. Rev. Stat. §§ 1-1, 7-1, 174C-63, 174C-101.

1 Native Hawaiians may also possess appurtenant, riparian, or correlative rights, which may be used for traditional and customary purposes, such as the appurtenant, riparian, or correlative right to water for kalo cultivation on one’s own kuleana. See generally Lawrence H. Miike, M.D., J.D. Water and the Law in Hawai‘i 118 (University of Hawai‘i Press 2004).
Moreover, as trustee of the state’s water resources trust established under the state constitution, this Commission bears the ultimate burden of identifying and protecting Native Hawaiians’ traditionally and customarily exercised rights and practices in the context of water use permit applications for the ʻĪao Aquifer. See generally In re Waiāhole Combined Contested Case, 94 Haw. 97, 141 (2000) (“Waiahole I”) (“The state also bears an ‘affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses.’”); id. at 137 (“uphold[ing] the exercise of Native Hawaiian and traditional and customary rights as a public trust purpose”).

In addition to the constitutional mandates above, the state Water Code includes independent requirements for this Commission, working in partnership with affected Native Hawaiian practitioners, to identify traditional and customary rights and practices supported by ground water and related surface water in ʻĪao. In fact, the Code contemplated completion of this process many years ago through the declaration of water uses and issuance of certificates for such uses. Haw. Rev. Stat. §§ 174C-26, 27.

The Code required any person using water in any area of the state, including uses of water for traditional and customary practices, to file a declaration of use by April 1989. Id. § 174C-26(a). Once those declarations were filed, the Code required the Commission to scrutinize identified uses to determine if they were reasonable and beneficial. Id. § 174C-27(a). The Code further required this Commission to “act upon a declaration within six months after its filing.” Id. § 174C-26(e). Unfortunately, the Commission never completed this process, and it is our understanding that no certificates of water use were ever issued. This is particularly regrettable because the Code contemplated use of these certificates to “resolv[e] claims related to existing water rights and uses including appurtenant rights, riparian and correlative uses[,]” which is precisely the dilemma faced by this Commission in permitting water uses in the ʻĪao aquifer. Id. § 174C-27(a).

Other sections of the Water Code also mandated this Commission to inventory the scope and existence of traditional and customary Native Hawaiian rights and practices throughout Hawaiʻi, including ʻĪao. As part of the Hawaiʻi Water Plan, this Commission was charged with developing a water resources protection plan, including: (1) “study[ing] and inventory[ing] the existing water resources of the state and the means and methods of conserving and augmenting such water resources”; and (2) “study[ing] the quantity and quality of water needed for existing and contemplated uses[,]” Id. §174C-31(c) (emphasis added). Other requirements of the Hawaiʻi Water Plan mandate the Commission to “describe and inventory: (1) all water resources and systems in each hydrologic unit; (2) all presently exercised uses; (3) the quantity of water not presently used within that hydrologic unit; and (4) potential threats to water
resources, both current and future.” Id. §174C-31(h) (emphasis added). If the Commission had completed meaningful inventories and established (1) an instream use and protection program and (2) sustainable yields based on numerical or other models lacking the shortcomings of the Robust Analytical Model, the Commission, together with affected practitioners, would have identified many of the traditional and customary rights and practices historically and currently exercised in the areas affected by the ‘lao permit applications. Id. § 174C-31(i).

The Hawai‘i Supreme Court confirmed the Commission’s planning mandate:

The Code planning provisions mandate the Commission to ‘study and inventory the existing water resources of the state and the means and methods of conserving and augmenting such water resources,’ in formulating a ‘water resources protection and quality plan,’ which must include, among other information, ‘requirements for beneficial instream uses and environmental protection’. The Code also obligates the Commission to ensure that it does not ‘abridge or deny’ traditional and customary rights of Native Hawaiians.

Waianae 1, 94 Haw. at 153 (citations omitted). If these requirements had been implemented, the work necessitated by the Commission’s and the water use permit applicants’ burden would have been significantly reduced. This ongoing failure to comply with the letter and spirit of the Code, however, does not justify improperly shifting this burden to practitioners of Native Hawaiian customs and traditions.

“[A]n applicant for a water use permit bears the burden of establishing that the proposed use will not interfere with any public trust purposes; likewise, the Commission is duty bound to hold an applicant to its burden[.]” In re Wai‘ola o Moloka‘i, Inc., 103 Haw. 401, 441 (2004) (“Wai‘ola”). Wai‘ola presented nearly identical issues: this Commission was tasked with considering the impact of a water use permit application for ground water withdrawals for municipal and other purposes on traditional and customary rights and practices. The Hawai‘i Supreme Court vacated this Commission’s order because the Commission “failed adequately to discharge its public trust obligation to protect native Hawaiians’ traditional and customary gathering rights[.]” Id. at 443. In so doing, the Court placed “the burden of proving, inter alia, that the proposed water use would not abridge or deny traditional and customary native Hawaiian rights” squarely on the applicant’s and the Commission’s shoulders. Id. at 442. The Court also admonished the Commission for “erroneously plac[ing] the burden on the [practitioners] to establish that the proposed use would abridge or deny their traditional and customary gathering rights.” Id. In no uncertain terms the Court
held that the applicant “was obligated to demonstrate affirmatively that the proposed well would not affect native Hawaiians’ rights; in other words, the absence of evidence that the proposed use would affect native Hawaiians’ rights was insufficient to meet the burden imposed upon [the applicant] by the public trust doctrine, the Hawai‘i Constitution, and the Code.” Id. (emphases in original).

In light of the Code’s mandates and Wai‘ola’s clear language, the burden of establishing that traditional and customary Native Hawaiian rights exist in the first instance rests with this Commission as trustee of Hawai‘i’s water resources trust and with any permit applicant who covets public trust resources. “[T]he Commission must not relegate itself to the role of a mere ‘umpire, passively calling balls and strikes for adversaries appearing before it,’ but instead must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decisionmaking process.” Waiahole I, 94 Haw. at 143. Again, the Code devised the Hawai‘i Water Plan (especially the Water Resources Protection Plan) as the framework for managing one of Hawai‘i’s most precious resources. See Miike, supra, at 234-35. The challenges and burdens that continue to arise from the failure to adequately fund and implement this framework should not and indeed cannot be laid at the feet of practitioners of Native Hawaiian customs and traditions.

B. Assertions Of Traditional & Customary Rights & Practices Are Sufficient.

Hawai‘i case law is unambiguous that even an assertion of traditional and customary rights and practices, without a conclusive showing that specified individuals have such rights, requires private commercial users and this Commission to gather information necessary to analyze potential impacts and ensure that any traditional and customary rights and practices are not abridged or denied. See Ka Pa‘akai, 94 Haw. at 51 n.35 (noting that “neither the boundaries of the Resource Zones . . . nor the specific [traditional and customary] uses in each zone have been established”); id. at 37 (acknowledging general testimony regarding cultural practices including fishing, picking limu, and gathering ‘opihi and other resources); Public Access Shoreline Hawai‘i v. Hawai‘i Cty. Planning Comm’n, 79 Haw. 425, 450 (1995) (“the right of each ahupua‘a tenant to exercise traditional and customary practices remains intact, notwithstanding arguable abandonment of a particular site”).

The Hawai‘i Supreme Court further ruled that state agencies, such as this Commission, “may not act without independently considering the effect of their actions on Hawaiian traditions and practices.” Ka Pa‘akai, 94 Haw. at 46 (emphasis added). The Court went on to specifically detail an “analytic framework in an effort to effectuate the state’s obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests.” Id. at 46-47. “Indeed,
the promise of preserving and protecting customary and traditional rights would be illusory absent findings on the extent of their exercise, their impairment, and the feasibility of their protection." \textit{Id. at} 50.

Pursuant to \textit{Ka Pa'akai}, given the information already provided to this Commission in objections to water use permit applications for 'Iao, at the October 28, 2004 public hearing on Maui, and in the petition to restore stream flow in Waihe'e, North and South Waiehu, 'Iao and Waikapū streams and their tributaries ("\textit{Na Wai 'Ehā}") filed by Earthjustice on June 25, 2004, this Commission is tasked with investigating and making specific findings regarding: (1) the identity and scope of cultural, historical and natural resources in the area affected by the permit applications for 'Iao, including the extent to which traditional and customary rights and practices are exercised in that area; (2) the extent to which those resources, rights, and practices will be affected by the proposed action; and (3) feasible action, if any, to reasonably protect Native Hawaiian rights and practices. 94 Haw. at 52. In particular, we note that the IIFS petition detailed some cultural practices supported by ground and surface water in the \textit{Na Wai 'Ehā} area. If the Commission determines that such rights exist, all water use permit applicants must overcome the presumption in favor of such protected public trust purposes.

Given the limitations of the outdated declarations of water use and Hawai'i Water Plan, we understand the enormity of the task facing this Commission and the applicants seeking water use permits for 'Iao. Although the Hawai'i Supreme Court has made clear that this burden lies with the Commission and permit applicants, not the practitioners, several workable avenues are available to help provide the necessary information. The Commission, in partnership with the permit applicants, could, for example: (1) review declarations of water use for all TMKs and uses within the affected area; (2) request from plantation interests including Wailuku Agribusiness and HC&S, a list of all individuals who receive kuleana water; (3) publish notices in local papers and broadcast on local TV (Akaku) and radio stations requests for information from practitioners from the affected area; (4) locally notice and hold public meetings in Central Maui for practitioners who may be affected by the pending applications; (5) contact Hawaiian agencies with offices or representatives in the affected area, including the Office of Hawaiian Affairs, Queen Lili'uokalani Children's Center, and Alu Like for lists of local practitioners or contacts; (6) contact elected representatives at the county, state, and federal levels for recommended contacts; (7) contact cultural consultants or experts from the area, including those listed in state Office of Environmental Quality Control's list of cultural consultants and others potentially available through the Bailey House; (8) contact culturally-based groups from the area including hula hālau, Hawaiian Civic Clubs, 'Onipa'a Na Hui Kalo, Maui Cultural Lands, Maui Cultural Resources Commission and
Letter to Yvonne Izu Re: Burdens Of Proof And Legal Standards Regarding: (1) Traditional & Customary Native Hawaiian Rights & Practices; & (2) Municipal Uses
December 17, 2004
Page 6 of 13

the like for information and recommendations; (9) contact state agencies, including the historic preservation division and Island Burial Councils for lists of local practitioners or contacts; and (10) contact schools and organizations of higher learning, including the University of Hawai’i and Maui Community College for lists of Hawaiian organizations, clubs, local practitioners, and other contacts from the area. These are just a sampling of potential sources of information; many more are available to this Commission and the permit applicants.

C. This Commission Has The Authority And Duty To Recognize And Uphold Traditional & Customary Rights & Practices.

Finally, this Commission has both the authority and the duty to recognize traditional and customary Native Hawaiian rights in the context of water use permitting, contested case hearings, and other matters under its jurisdiction. The Hawai’i Supreme Court has never imposed any requirement for those asserting such rights to obtain a court ruling before the Commission or any other agency could consider them. Rather, as detailed above, state agencies including this Commission “may not act without independently considering the effect of their actions on Hawaiian traditions and practices.” Ka Pa’akai, 94 Haw. at 46. In Ka Pa’akai, the Hawai’i Supreme Court specifically detailed an “analytical framework in order to effectuate the state’s obligation to protect native Hawaiian customary and traditional practices[.].” Id. at 46-47. The Court placed this burden squarely on agencies such as this Commission, going on to rule that “[t]he power and responsibility to determine the effects on customary and traditional native Hawaiian practices and the means to protect such practices may not validly be delegated[.].” Id. at 52.

We again note that in Waiʻola, the Court vacated this Commission’s issuance of water use permits for proposed ground water uses not unlike those at issue in ‘Iao because the Commission “failed adequately to discharge its public trust obligation to protect native Hawaiians’ traditional and customary gathering rights[.].” 103 Haw. at 443. More specifically, the Court ruled that “an applicant for a water use permit bears the burden of establishing that the proposed use will not interfere with any public trust purposes; likewise, the Commission is duty bound to hold an applicant to its burden during a contested-case hearing.” Id. at 441-42 (emphasis added).

II. Municipal Uses.

A. “Municipal” Use Is Not A Public Trust Use.

At the October 28, 2004 public hearing, Commissioner Miike stated that “municipal” use was not a “domestic” use recognized under Waiāhole as a public
trust purpose, citing the Water Code’s definition of “domestic use” as support. Commissioner Miike later modified this position in correspondence dated November 3 and 15, 2004, opining that Waiahole I suggested domestic uses could extend to municipal uses. We respectfully submit that the Commissioner’s first inclination was correct. In sum, although municipal use may serve the general public interest and partially (but not exclusively) includes many aggregate domestic uses, it constitutes a large-scale, consumptive, and diversionary use that differs, both qualitatively and quantitatively, from the uses that the public trust, both in Hawai‘i and elsewhere, has traditionally protected. Thus, notwithstanding the “important public benefits” of municipal uses, long-established public trust precedent “stops short” of including such use as a public trust purpose. Waiahole I, 94 Haw. at 138.

“Domestic” and “municipal” are legal terms of art in water law that have carried distinct meanings under the common law for ages. As the plain meaning suggests, “domestic” use denotes individual water use “for household purposes, i.e., for drinking, washing, cooking, and watering domestic animals.” Carter v. Territory, 24 Haw. 47, 66 (1917). Historically, in Hawai‘i and elsewhere, the priority for domestic use has arisen in connection with riparian principles, such that the use cannot “materially diminish the supply of water or render useless its application by others.” Peck v. Bailey, 8 Haw. 658, 662 (1867). See also id. (recognizing the “sound distinction” under riparian law between “the right to enjoy water in its natural state, and that which is created by artificial means”); Carter, 24 Haw. at 66 (affirming the riparian distinction between “natural” and “artificial” uses and stating, “we have no doubt that such is the law in [Hawai‘i]”).

“Municipal” use, in contrast, denotes bulk water uses of large population entities. This may include the aggregate domestic uses of the population, but also includes many other kinds of uses, including commercial, agricultural, and industrial purposes. Maui Department of Water Supply’s (“MDWS’s”) applications, for example, concede that single-family use comprises about only 16% of the total use in Central Maui. See, e.g., MDWS’s Water Use Permit Application for Mokuhau 1. MDWS has also admitted that it transports potable water from Iao to Central and South Maui and Pā‘ia for both potable and non-potable needs. MDWS, however, is unable to provide calculations or even estimates of its non-domestic uses, including water for commercial, agricultural, industrial and other purposes. As MDWS’s applications establish, municipal uses, by nature, are large-scale and consumptive, and involve diversions

---

2 This Commission determined that while potable water is delivered through the Central Maui system to provide for both potable and non-potable needs, the County was unable to “differentiate between these major categories of use.” State Commission on Water Resource Management, Iao and Waihe‘e Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact (Nov. 14, 2002) at 66.
away from the water source. Moreover, although municipal use is not “commercial” per se, it does involve the sale of water or water services by a utility (in some places, a private entity), as opposed to a domestic user who takes water for his or her own personal use.

The Code incorporates these common law distinctions between domestic and municipal uses. As Commissioner Miike noted, § 174C-3 assigns separate meanings to each. Domestic use “means any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, noncommercial gardening, and sanitation.” Municipal use “means the domestic, industrial, and commercial use of water through public services available to persons of a county for the promotion and protection of their health, comfort, and safety, for the protection of property from fire, and for the purposes listed under the term ‘domestic use.’”

Lumping domestic and municipal together contradicts this well-settled distinction. Courts have consistently declined to make such a leap. Thus, as the eminent treatise on water law (cited repeatedly in Waiahole) observes, “[c]ities generally cannot invoke the domestic preference [under riparian law] to acquire land and water rights to supply their inhabitants and to claim an immunity from liability by injured riparians.” A. Dan Tarlock, Law of Water Rights & Resources § 3:59 at 3-97 (2004 rev. ed.) (footnote omitted) (citing cases); see also Union Water Supply Corp. v. Vaughn, 355 F. Supp. 211, 214 (S.D. Tex 1972) (seeing a “clear distinction between general municipal use and domestic and livestock use” and rejecting collective appropriation on behalf of individual domestic users as “domestic” use). Similarly, the seminal treatise on eminent domain explains that “[t]he doctrine that a riparian town

---

3 The Code underscores the distinction between domestic and municipal uses by exempting only domestic uses from water use permitting requirements. “No person shall make any withdrawal, diversion, impoundment, or consumptive use of water in any designated water management area without first obtaining a permit from the commission. However, no permit shall be required for domestic consumption of water by individual users, and no permit shall be required for the use of a catchment system to gather water.” Haw. Rev. Stat. § 174C-48(a) (emphasis added). In areas such as the ‘lao aquifer where municipal systems comprise the vast majority of existing uses, exempting municipal uses from water use permitting requirements would nullify this Commission’s primary tool for managing water resources. Clearly, domestic and municipal uses were never meant to be one in the same.

4 We note that, although this case involves ground water, similar principles apply, and the Commission should avoid any artificial distinctions between ground and surface water. See Waiahole, 94 Haw. at 177 n.90 (analogizing correlative rights to ground water to riparian rights in surface water); id. at 172-73 (rejecting artificial ground-surface distinction). See also id. at 180 n.95 (citing ground water statues from other states preserving the right of landowners to withdraw water for “domestic” uses, which would not extend to municipal uses).
Letter to Yvonne Izu Re: Burdens Of Proof And Legal Standards Regarding: (1) Traditional & Customary Native Hawaiian Rights & Practices; & (2) Municipal Uses
December 17, 2004
Page 9 of 13

may take from a private stream all the water it needs for the domestic use of its inhabitants is not generally accepted and is expressly denied in a number of cases.” 2 J. Sackman, Nichols on Eminent Domain § 5.05[2][a][vii], at 5-247 (rev. 3d ed.) (citing cases). “A private riparian proprietor has no right at common law to divert water . . . for purposes of sale, and it would seem that a municipal or a public service corporation should stand in no better position.” Id.

The reason for this differential treatment of domestic and municipal uses is not hard to discern. As the renowned jurist Roscoe Pound explained:

The law does not regard the needs and desires of the person taking the water solely to the exclusion of all riparian proprietors, but looks rather to the natural effect of his use of water upon the stream and the equal rights of others therein. The true distinction appears to lie between those modes of use which ordinarily involve the taking of small quantities, and but little interference with the stream, such as drinking and other household purposes, and those which necessarily involve the taking or diversion of large quantities and a considerable interference with its ordinary course and flow, such as manufacturing purposes.


The Commission’s November 15 letter focuses on several points in the Waiāhole I decision as potential support for the idea of municipal uses being a public trust purpose. The letter emphasizes Waiāhole I’s recognition of the “vital domestic uses of the general public.” Id. at 2 (citing 94 Haw. at 137) (emphasis in letter). This excerpt, however, cannot be removed from its context. The Court used this phrase in the context of extending the trust’s purpose from its “original intent” of preserving Native Hawaiian traditional and customary uses to its “broader sense” of protecting analogous uses of the public at large, i.e., non-Hawaiians and non-traditional users. 94 Haw. at 137. This does not establish that the Court meant to expand domestic uses to include municipal uses. On the contrary, the Court’s actual holding simply states, in unmodified terms: “we recognize domestic water use as a purpose of the state water resources trust.” Id. (emphasis added). We again note that Wa‘iala involved municipal-type uses, yet the Supreme Court did not treat them as domestic, public trust uses.

The November 15 letter also examines the Court’s citations, but again, these should not be read out of context and proportion. The Court cited this authority for general examples, not definitive rules. See 94 Haw. at 137 (citing the California and Minnesota statues with “see, e.g.,” for the general proposition of domestic preference,
and using “cf.” (compare) in citing the Clifton case. The imagined implications of these generalized references do not control. Far more telling, and ultimately controlling, are the Court’s citations to Haw. Rev. Stat. § 7-1, the McBryde case, which the Court described as “comparing [§ 7-1] with authority in other jurisdictions recognizing riparian rights to water for domestic purposes,” and the Carter case, which the Court described as “granting priority to domestic use based on riparian principles and [§ 7-1].” Id. (emphasis added).

Analysis of Waiahole I must not lose sight of the forest for the trees. A larger view of the public trust purposes recognized in Hawaii and other jurisdictions makes clear that these uses all involve maintaining the water source either in its natural state or without substantial impairment. See, e.g., 94 Haw. at 136-37. As explained above, the common definition of domestic use conforms to this unifying principle. Municipal uses, such as those proposed by MDWS for Iao, may include aggregate domestic uses, but are otherwise qualitatively and quantitatively different because of their large-scale, consumptive, and diversionary nature. Inclusion of such uses (which include many other uses besides domestic, including commercial uses, and in most cases would drain a water source dry) as a public trust purpose would constitute an unprecedented, fundamental deviation from long-standing public trust principles.

Moreover, equating domestic and municipal uses would essentially resurrect the argument rejected by the California Supreme Court “Mono Lake” case that the public trust encompassed “all public uses,” including the municipal uses of the City of Los Angeles (termed “domestic” under California statute and in that case). See National Audubon Soc’y v. Superior Ct. of Alpine Cty., 658 P.2d 709, 723-24 (Cal. 1983) (cited in Waiahole I, 94 Haw. at 138). The National Audubon court declined to adopt such a “broad concept of trust uses,” maintaining that the “public trust is more than an affirmation of state power to use public property for public purposes. It is an affirmation of the duty of the state to protect the people’s common heritage of streams, lakes, marshlands, and tidelands[.]” Id. The Waiahole I decision adopted this reasoning without qualification. 94 Haw. at 138. Indeed, Waiahole I specifically acknowledged that “National Audubon involved diversions for a public purpose, the domestic uses of the City of Los Angeles.” Id. at 140. Yet, these “domestic”/municipal uses in National Audubon did not lead the Court to limit its embrace of that case in any

5 The substance of the Clifton court’s holding was that the state held potable drinking water reserves in trust, 539 A.2d at 765; in other words, the court focused on the “scope” of the trust, and not the “uses” it protects. Cf. Waiahole I, 94 Haw. 133-35 (analogous section holding that the public trust doctrine applies to “all water resources,” including ground water). Clifton in no way suggested that a state could drain a stream, lake, or aquifer dry to serve municipal purposes.
Letter to Yvonne Izu Re. Burdens Of Proof And Legal Standards Regarding: (1) Traditional & Customary Native Hawaiian Rights & Practices; & (2) Municipal Uses
December 17, 2004
Page 11 of 13

way. Notably, the court described these municipal uses as a “public purpose,” not a “public trust purpose.”

In short, Waiāhole I came no closer than National Audubon to acknowledging municipal uses as a public trust purpose. Such a ruling would, indeed, eviscerate the public trust doctrine, reducing it to a generalized “public use” doctrine with no more meaning and effect than the clause of the Fifth Amendment of the same name. There is simply “no authority [that] supports this view of the public trust.” Id. at 138 (quoting National Audubon).

The ultimate point of all the foregoing is that, notwithstanding any general “public purpose” served by municipal uses, Waiāhole I and other public trust precedent do not support including municipal uses as a “public trust purpose.” The reasoning of the Hawai‘i Supreme Court in Waiāhole I applies with equal force here: “while the state water resources trust acknowledges that [public] use for [municipal purposes] may produce important public benefits and that such benefits must figure into any balancing of competing interests in water, it stops short of embracing [such] use as a protected ‘trust purpose.’” 94 Haw. at 138.


The November 15 letter also points out that municipal uses are not “private commercial uses” discussed in Waiāhole I. Of course, the only uses at issue in Waiāhole I were private commercial uses,” so claiming that Waiāhole I’s rulings refer only to those kinds of uses says little. Rather, the relevant categories that the Court identified were: (1) public trust uses; and (2) other uses, whether public or private. This dichotomy is fundamental to public trust law. See Waiāhole I, 94 Haw. at 139 (“As commonly understood, the trust protects public waters ... against ... substantial impairment, whether for private or public purposes.” (citation and internal quotation marks omitted) (emphasis added)). As discussed above, municipal use is a public use, but not a public trust use. “Thus, insofar as the public trust, by nature and definition, establishes use consistent with trust purposes as the norm, or ‘default’ condition,” municipal uses, just as with any other publicly beneficial non-public trust uses like the agricultural uses in Waiāhole I, are subject to a “higher level of scrutiny.” Id. at 142 (emphasis added). “In practical terms, this means that the burden lies with those seeking or approving such uses to justify them in light of the purposes protected by the trust.” Id.; see also Wai‘ola, 103 Haw. at 441 (“An applicant for a water use permit bears the burden of establishing that the proposed use will not interfere with any public trust purposes; likewise, the Commission is duty bound to hold an applicant to its burden...]”).
The November 15 letter suggests that, although the Court declined to differentiate among public trust uses, it would differentiate between non-public trust uses, i.e., between private commercial and public uses. Nothing in the Court’s case law supports this notion, and Waiahole I effectively disposes of it. 94 Haw. at 142 (maintaining that “the Commission inevitably must weigh competing public and private water uses on a case-by-case basis”).

This does not mean, of course, that the Commission cannot consider the “definite interest” of the public in uses for municipal, agricultural, or any other publicly beneficial purposes and give such uses their due weight in decisionmaking. Id. at 141-42, 138. It does mean applicants for municipal use such as MDWS must show that their use will not interfere with any public trust purposes, and the Commission must hold such applicants to their burden. Wai‘ola, 103 Haw. at 441.

This understanding, it may be noted, comports with the underlying policies of the public trust doctrine. Scholarship on the doctrine has recognized that the public trust serves to protect uses of the “diffuse public” against the immediate desires of “tightly organized groups with clear and immediate goals.” J. Sax, The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention, 68 Mich. L. Rev. 471, 556 (1970); cf. Waiahole I, 94 Haw. at 190 n.108 (recognizing the Code’s instream flow provisions as a protection of “the inchoate public, including generations unborn”). Municipal users have dedicated agencies to account and advocate for their needs. The efforts of a handful of volunteer community members and public interest groups notwithstanding, the same cannot be said for public trust resources and uses. Holding municipal uses to the same requirements as other non-public trust uses thus makes imminent sense.

Even if municipal uses could be differentiated from other non-public trust uses, or municipal uses could be deemed a public trust use, nothing would effectively change. The Commission would still bear an “affirmative duty to take the public trust into account . . . and to protect public trust uses whenever feasible.” Waiahole I, 94 Haw. at 141. Even between public trust uses, it “must still ensure that all trust purposes are protected to the extent feasible.” Id. at 142 n.43 (emphasis added). Thus, however municipal uses were categorized, it would have to “consider the cumulative impact of existing and proposed diversions on trust purposes and to implement reasonable measures to mitigate this impact, including the use of alternative sources.” Id. at 143.

It must be emphasized that the foregoing addresses only the requirements of the constitutional public trust. Apart from these requirements, the Code imposes a burden on applicants for municipal uses such as MDWS. The Code does not grant municipal
uses any allocation priority, but requires municipal users to apply for water use permits like any other user. See also footnote 3, supra. Permit applicants “have the burden of justifying their proposed uses in light of protected public rights in the resource.” Id. at 160. Moreover, the Commission “is duty bound to hold [applicants] to its burden under the Code[.]” Wai`ola, 104 Haw. at 426. The standards for a permit under Haw. Rev. Stat. § 174C-49(a), particularly the requirement of “reasonable-beneficial use,” requires applicants, first, “to prove their own actual water needs.” Waiahole I, 94 Haw. at 161. “Furthermore, besides advocating the social and economic utility of their proposed uses, permit applicants must also demonstrate the absence of any practicable mitigating measures, including the use of alternative water sources” -- a requirement that the Court deemed “intrinsic to . . . the definition of ‘reasonable-beneficial use’” and “an essential part of any balancing between competing interests.” Id.; see also In re Waiahole Combined Contested Case, 105 Haw. 1, 16 (2004) (reiterating these standards). These requirements essentially parallel those of the public trust and would likewise apply however “municipal” uses were categorized under the public trust.

Again, mahalo for this opportunity to share our mana`o on these important issues. Please don’t hesitate to contact us if you have any questions or require additional information.

cc: Dr. Jonathan Likeke Scheuer
Office of Hawaiian Affairs
(via U.S. Mail)

Mr. Jim Williamson,
Maui Meadows Homeowners Association
(via U.S. Mail)

Mr. John V. Duey,
Hui o Nā Wai `Ehā
(via U.S. Mail)
Ms. Jane E. Lovell, Esq.
County of Maui
Department of the Corporation Counsel
200 South High Street
Wailuku, HI 96793

Dear Ms. Lovell:

Transmission of Water Use Permit Files
Iao Water Management Area, Maui

Thank you for your help in providing the Commission with public access to our files concerning water use permit documentation for existing users in the Iao ground water management area.

The copying of the captioned files has been completed, and is up-to-date as of November 30, 2004. There are 11 folders weighing about 12 pounds, which would be expensive to ship, so we are arranging for a department staff person to convey them to Wailuku Public Library as soon as possible.

Items of the record from December 1, 2004 will be separated in our files, and may be compiled by interested parties, or may be arranged for shipment as may be convenient.

If you have any questions, please call Charley Ice of the Commission staff at 587-0251 or toll-free at 984-2400, extension 70251.

Sincerely,

YVONNE Y. IZU
Deputy Director

CI:ss
November 18, 2004

Mr. George Y. Tengan, Director
County of Maui
Department of Water Supply
200 South High Street
Wailuku, HI 96793

Dear Mr. Tengan:

Central Maui Ground Water Production – Summary of Recent Findings

Thank you for your letter dated October 7, alerting the Commission to inaccuracies in water use reporting from the Central Maui Service Area from around January 2001, with a maximum discrepancy in November 2003 overstating the total production for the Central System at about 1.3 mgd.

We appreciate your efforts to correct the pumpage data. At this point, the Commission does not wish to separately examine the evidence of inaccuracies, but to rely upon your professional judgment in correcting them. We will look forward to a timeline of receiving corrected information.

We are deeply concerned that this proceeds in a timely way, as significant resources have been invested in developing a ground water model for this area by yourselves and the U.S. Geological Survey. The study absolutely depends on accurate information. Furthermore, your applications for water use permits are absolutely dependent upon accurate information. Finally, requests for use of surface water are also dependent upon accurate ground water information, either from potential interactions (from a source development perspective) or combinations (from an end use perspective) with ground water.

Please call on us if we can assist in any way. If you have any questions, please call Charley Ice of the Commission staff at 587-0251 or toll-free at 984-2400, extension 70251.

Sincerely,

YVONNE Y. IZU
Deputy Director

Cl: ss
Ms. Kapua Sproat  
Earthjustice  
223 South King St., Ste. 400  
Honolulu, HI 96813

Dear Ms. Sproat:

Water Use Permit Applications, Iao Aquifer, Maui  
Public Trust Burden

Following adjournment of the still-open public hearing convened on October 28, 2004, the Commissioners appointed to conduct the hearing are requesting additional information from objectors as well as applicants.

Hawaiian Water Rights

Your objections to water use permit applications for ground water from Iao Aquifer on Maui raised the issue of addressing traditional and customary and Native Hawaiian water rights, specifically saying that the applications had failed to provide information sufficient to evaluate the requirements of the Supreme Court’s ruling in Waiahole concerning these matters.

At the public hearing, Commissioner Miike asked the various parties for their opinion on who has the burden of proof as to whether or not traditional and customary and Native Hawaiian rights exist. Commissioner Miike opined that, while such rights are public trust purposes, they accrue to individuals. He believes it is clear that, when such rights exist, private commercial uses must overcome the presumption in favor of trust purposes. But who has the burden of showing that such rights exist in the first place? And does only an assertion that such rights exist, without a showing that specified individuals have such rights, require private commercial uses to overcome a presumption in favor of such asserted rights? Does the Commission have the authority to recognize traditional and customary and Native Hawaiian rights in a water use permit application or in a contested case hearing, or do those asserting such rights have to obtain such a ruling from the state courts before the Commission can consider them in the water permitting process?
"Domestic Use", "Public Trust"

Commissioner Miike also asked whether uses by the MDWS are public trust purposes? If so, then there is no presumption in favor of other trust purposes. If it is not a public trust purpose (or only partly so; i.e., drinking water), it is also not a private commercial use. Then what level of scrutiny should its water use permit applications be subject to?

The Code defines “municipal use” as “the domestic, industrial, and commercial use of water through public services available to persons of a county for the promotion and protection of their health, comfort, and safety, for the protection of property from fire, and for the purposes listed under the term ‘domestic use.’”

At the public hearing, Commissioner Miike commented that “domestic use” was personal use, relying on the definition in the Water Code (“any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, noncommercial gardening, and sanitation”).

However, in reviewing the Court’s Waiāhole I decision, he noted that the Court refers to “the vital domestic uses of the general public (emphasis added)” (94 Haw. 97, 137) as a public trust purpose of the use of the state’s freshwater resources. The Court cited the California and Minnesota water codes, as well as Clifton v Passaic Valley Water Comm’n, 539 A.2d 760,765 (1987). The California code states that “domestic use is the highest use,” while the Minnesota code states that “first priority (is) domestic water supply, excluding industrial and commercial uses of municipal water supply.” Neither code defines “domestic use.” Clifton states: “Potable water, then, is an essential commodity which every individual requires in order to sustain human existence...residents in urban and suburban areas are dependent upon the agency or institution which supplies potable water...the public trust doctrine applies with equal impact upon the control of our drinking water reserves.” The Court in Waiāhole I “prescribes a ‘higher level of scrutiny’ for private commercial uses (emphasis added)” (94 Haw. 97, 142).

We look forward to your comments to the above analyses and responses to the questions posed. We would appreciate receiving a response by December 10, 2004.

If you have any questions, please call Charley Ice of the Commission staff at 587-0251.

Sincerely,

YVONNE Y. IZU
Deputy Director

Cc: Clyde Namuo, Office of Hawaiian Affairs
November 15, 2004

Mr. Clyde Namuo, Administrator
Office of Hawaiian Affairs
711 Kapiolani Boulevard, Ste. 500
Honolulu, HI 96813

Dear Mr. Namuo:

Water Use Permit Applications, Iao Aquifer, Maui
Public Trust Burden

Following adjournment of the still-open public hearing convened on October 28, 2004, the Commissioners appointed to conduct the hearing are requesting additional information from objectors as well as applicants.

Hawaiian Water Rights

Your objections to water use permit applications for ground water from Iao Aquifer on Maui raised the issue of addressing traditional and customary and Native Hawaiian water rights, specifically saying that the applications had failed to provide information sufficient to evaluate the requirements of the Supreme Court's ruling in Waiahole concerning these matters.

At the public hearing, Commissioner Miike asked the various parties for their opinion on who has the burden of proof as to whether or not traditional and customary and Native Hawaiian rights exist. Commissioner Miike opined that, while such rights are public trust purposes, they accrue to individuals. He believes it is clear that, when such rights exist, private commercial uses must overcome the presumption in favor of trust purposes. But who has the burden of showing that such rights exist in the first place? And does only an assertion that such rights exist, without a showing that specified individuals have such rights, require private commercial uses to overcome a presumption in favor of such asserted rights? Does the Commission have the authority to recognize traditional and customary and Native Hawaiian rights in a water use permit application or in a contested case hearing, or do those asserting such rights have to obtain such a ruling from the state courts before the Commission can consider them in the water permitting process?
"Domestic Use", "Public Trust"

Commissioner Miike also asked whether uses by the MDWS are public trust purposes? If so, then there is no presumption in favor of other trust purposes. If it is not a public trust purpose (or only partly so; i.e., drinking water), it is also not a private commercial use. Then what level of scrutiny should its water use permit applications be subject to?

The Code defines “municipal use” as “the domestic, industrial, and commercial use of water through public services available to persons of a county for the promotion and protection of their health, comfort, and safety, for the protection of property from fire, and for the purposes listed under the term ‘domestic use.’”

At the public hearing, Commissioner Miike commented that “domestic use” was personal use, relying on the definition in the Water Code (“any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, noncommercial gardening, and sanitation”).

However, in reviewing the Court’s Waiahole I decision, he noted that the Court refers to “the vital domestic uses of the general public (emphasis added)” (94 Haw. 97, 137) as a public trust purpose of the use of the state’s freshwater resources. The Court cited the California and Minnesota water codes, as well as Clifton v Passaic Valley Water Comm’n, 539 A.2d 760,765 (1987). The California code states that “domestic use is the highest use,” while the Minnesota code states that “first priority (is) domestic water supply, excluding industrial and commercial uses of municipal water supply.” Neither code defines “domestic use.” Clifton states: “Potable water, then, is an essential commodity which every individual requires in order to sustain human existence...residents in urban and suburban areas are dependent upon the agency or institution which supplies potable water...the public trust doctrine applies with equal impact upon the control of our drinking water reserves.” The Court in Waiahole I “prescribes a ‘higher level of scrutiny’ for private commercial uses (emphasis added)” (94 Haw. 97, 142).

We look forward to your comments to the above analyses and responses to the questions posed. We would appreciate receiving a response by December 10, 2004.

If you have any questions, please call Charley Ice of the Commission staff at 587-0251.

Sincerely,

[Signature]

YVONNE Y. IZU
Deputy Director

Cl:ss

c: Kapua Sproat, Earthjustice
To: Attendees of October 28, 2004 Public Hearing on Water Use Permits in the Iao Ground Water Management Area

Dear Attendee:

**Clarification of by Hearing Officer Lawrence Mike Regarding Domestic Use**

Attached for your perusal is a memo from the hearing officer to those parties in attendance at the public hearing.

If you have any questions, please do not hesitate to call Roy Hardy at 587-0274 or toll-free at 984-2400, extension 70274.

Sincerely,

[Signature]

YVONNE Y. IZU
Deputy Director

RH:ss
Attachments
November 3, 2004

Roy/Charlie:

Could you send this on to the parties as a correction of what I said about the definition of “domestic use” at the public hearing?

At the public hearing, I made a comment that “domestic use” was personal use, relying on the definition in the Water Code (“any use of water for individual personal needs and for household purposes such as drinking, bathing, heating, cooking, noncommercial gardening, and sanitation”).

However, in reviewing the Court’s Waiahole I decision, it refers to “the vital domestic uses of the general public (my emphasis)”1 as a public trust purpose of the use of the state’s freshwater resources.

The Code defines “municipal use” as “the domestic, industrial, and commercial use of water through public services available to persons of a county for the promotion and protection of their health, comfort, and safety, for the protection of property from fire, and for the purposes listed under the term ‘domestic use.’”

So it could be argued that a municipal water system is a public trust purpose, or at the least, that municipal uses include a public trust purpose or that they collectively have higher priority than other uses because they are being provided “through public services available to persons of a county.”

As for remedies, in Reppun v Board of Water Supply, the Court concluded that “the public use of water, once that use has clearly attached, should be continued in order to avoid the harsh consequences of interruption.”2 There can be remedies if the water was improperly diverted, but they would not include stopping the diversion (e.g., if the diversion was improper, perhaps monetary damages would be relevant).

Larry Miike

Larry Miike

---

1 94 Hawai‘i 97, 137; 9 P.3d 409, 449.
2 65 Hawai‘i 531, 560; 656 P.2d 57 (1982).
public trust uses of waters in their natural state, courts have recognized the distinct public interest in resource protection. As explained by the California Supreme Court:

[O]ne of the most important public uses of the tidelands -- a use encompassed within the tidelands trust -- is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.

_National Audubon_, 658 P.2d at 719 (quoting _Marks v. Whitney_, 491 P.2d 374, 380 (Cal. 1971)) (emphasis added). Thus, with respect to the lake ecosystem involved in that case, the court held that the public trust protected values described as "recreational and ecological -- the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds." _Id_.

This court has likewise acknowledged resource protection, with its numerous derivative public uses, benefits, and values, as an important underlying purpose of the reserved water resources trust. _See Robinson_, 65 Haw. at 674-76, 658 P.2d at 310-11 (upholding the public interest in the "purity and flow," "continued existence," and "preservation" of the waters of the state). The people of our state have validated resource "protection" by express constitutional decree. _See Haw. Const. art. XI, §§ 1 & 7_. We thus hold that the maintenance of waters in their natural state constitutes a distinct "use" under the water resources trust. This disposes of any portrayal of retention of waters in their natural state as "waste." _See Reppun_, 65 Haw. at 560 n.20, 656 P.2d at 76 n.20 (citing article XI, section 1 as an acknowledgment of the public interest in "a free-flowing stream for its own sake").

Whether under riparian or prior appropriation systems, common law or statute, states have uniformly recognized domestic uses, particularly drinking, as among the highest uses of water resources. _See, e.g.,_ Restatement (Second) of Torts § 850A cmt.
c (1979) [hereinafter Restatement (Second)] (preference for domestic, or "natural," uses under riparian law); Cal. Water Code § 1254 (West 1971) ("domestic use is the highest use"); Minn. Stat. Ann. § 103G.261(a)(1) (West 1997) (domestic use given first priority). This jurisdiction presents no exception. In granting individuals fee simple title to land in the Kuleana Act, the kingdom expressly guaranteed: "The people shall . . . have a right to drinking water, and running water . . . ." Enactment of Further Principles of 1850 § 7, Laws of 1850 at 202 (codified at HRS § 7-1 (1993)). See also McBryde, 54 Haw. at 191-98, 504 P.2d at 1341-44 (comparing section 7 of the Kuleana act with authority in other jurisdictions recognizing riparian rights to water for domestic uses); Carter v. Territory, 24 Haw. 47, 66 (1917) (granting priority to domestic use based on riparian principles and section 7 of the Kuleana Act). And although this provision and others, including the reservation of sovereign prerogatives, evidently originated out of concern for the rights of native tenants in particular, we have no doubt that they apply today, in a broader sense, to the vital domestic uses of the general public. Accordingly, we recognize domestic water use as a purpose of the state water resources trust. Cf. Clifton v. Passaic Valley Water Comm'n, 539 A.2d 760, 765 (N.J. Super. Ct. Law Div. 1987) (holding that the public trust "applies with equal impact upon the control of drinking water reserves").

In acknowledging the general public's need for water, however, we do not lose sight of the trust's "original intent." As noted above, review of the early law of the kingdom reveals the specific objective of preserving the rights of native tenants during the transition to a western system of private property. Before the Māhele, the law "Respecting Water for Irrigation" assured native tenants "their equal proportion" of water. See Laws of 1942, in Fundamental Laws of Hawaii 29 (1904).

Subsequently, the aforementioned Kuleana Act provision ensured
PUBLIC HEARING
Applications for Water Use Permits
Iao Ground Water Management Area, Maui

The following applications for water use permits to continue uses existing as of July 21, 2003 have received objections and are subject to public hearing. The Commission on Water Resource Management, at its regular meeting on September 22, 2004, approved a hearing now scheduled to begin:

October 28, 2004, 10:00 a.m.
J. Walter Cameron Center
95 Mahalani Street, Wailuku, Hawaii 96793

The hearing will be conducted in two parts: first, applications accepted as complete by the July 21, 2004 one-year filing deadline.

<table>
<thead>
<tr>
<th>Well Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Requested amount (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wailuku Shaft 33</td>
<td>5330-05</td>
<td>Kehalani**</td>
<td>707</td>
<td>3-5-1:1</td>
<td>5.771</td>
</tr>
<tr>
<td>Mokuhau Well 1</td>
<td>5330-09</td>
<td>MDWS</td>
<td>700</td>
<td>3-3-2:24</td>
<td>1.994</td>
</tr>
<tr>
<td>Mokuhau Well 3</td>
<td>5330-11</td>
<td>MDWS</td>
<td>701</td>
<td>3-3-2:24</td>
<td>2.221</td>
</tr>
<tr>
<td>Waiehu Heights Well 1</td>
<td>5430-01</td>
<td>MDWS</td>
<td>697</td>
<td>3-3-2:28</td>
<td>0.165</td>
</tr>
<tr>
<td>Waiehu Heights Well 2</td>
<td>5430-02</td>
<td>MDWS</td>
<td>698</td>
<td>3-3-2:28</td>
<td>1.415</td>
</tr>
<tr>
<td>Waiehu Well 1</td>
<td>5431-01</td>
<td>MDWS</td>
<td>695</td>
<td>3-3-17:31</td>
<td>1.480</td>
</tr>
<tr>
<td>Waiehu Well 2</td>
<td>5431-03</td>
<td>MDWS</td>
<td>696</td>
<td>3-3-17:31</td>
<td>2.439</td>
</tr>
<tr>
<td>Waiehu Well 3</td>
<td>5431-04</td>
<td>MDWS</td>
<td>703</td>
<td>3-3-17:31</td>
<td>1.513</td>
</tr>
<tr>
<td>Iao Tunnel</td>
<td>5332-02</td>
<td>MOWS</td>
<td>680</td>
<td>3-3-3:3</td>
<td>1.359</td>
</tr>
<tr>
<td>Kepeanwi Well</td>
<td>5332-05</td>
<td>MOWS</td>
<td>699</td>
<td>3-3-3:5</td>
<td>1.042</td>
</tr>
<tr>
<td>Iao Tunnel</td>
<td>5330-02</td>
<td>HC&amp;S</td>
<td>691</td>
<td>3-4-34:34</td>
<td>0.100</td>
</tr>
</tbody>
</table>

Total from all sources: 19.499

Second, the hearing will entertain applications to continue known existing uses that were filed incomplete by the July 21, 2004 one-year filing deadline, and an application for a new use* that was completed by the July 21, 2004 deadline for existing uses:

<table>
<thead>
<tr>
<th>Well Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Requested amount (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wailuku Shaft 33</td>
<td>5330-05</td>
<td>MDWS**</td>
<td>702</td>
<td>3-5-1:1</td>
<td>5.771</td>
</tr>
<tr>
<td>War Memorial Stadium</td>
<td>5329-04</td>
<td>MP&amp;R</td>
<td>709</td>
<td>3-8-7:55</td>
<td>0.038</td>
</tr>
<tr>
<td>Baldwin High School</td>
<td>5329-05</td>
<td>MP&amp;R</td>
<td>710</td>
<td>3-8-7:55</td>
<td>0.010</td>
</tr>
<tr>
<td>Maui Stadium</td>
<td>5329-14</td>
<td>MP&amp;R</td>
<td>713</td>
<td>3-8-7:55</td>
<td>0.039</td>
</tr>
<tr>
<td>Papahaku Park</td>
<td>5429-02</td>
<td>MP&amp;R</td>
<td>712</td>
<td>3-2-13:29</td>
<td>0.324</td>
</tr>
<tr>
<td>Waiehu Golf</td>
<td>5529-02</td>
<td>MP&amp;R</td>
<td>711</td>
<td>3-2-13:6</td>
<td>0.039</td>
</tr>
<tr>
<td>Waiehu Golf 1</td>
<td>5530-03</td>
<td>MP&amp;R</td>
<td>708</td>
<td>3-2-13:29</td>
<td>0.324</td>
</tr>
<tr>
<td>Waiehu Golf 2</td>
<td>5530-04</td>
<td>MP&amp;R</td>
<td>714</td>
<td>3-2-13:29</td>
<td>0.324</td>
</tr>
<tr>
<td>Black George Tunnel</td>
<td>5332-01</td>
<td>HC&amp;S</td>
<td>685</td>
<td>3-3-3:3</td>
<td>not identified</td>
</tr>
<tr>
<td>Iao Needle Tunnel 1</td>
<td>5333-01</td>
<td>HC&amp;S</td>
<td>684</td>
<td>3-5-3:1</td>
<td>not identified</td>
</tr>
<tr>
<td>Iao Needle Tunnel 2</td>
<td>5333-02</td>
<td>HC&amp;S</td>
<td>686</td>
<td>3-3-3:3</td>
<td>not identified</td>
</tr>
<tr>
<td>*Living Waters #1</td>
<td>5631-01</td>
<td>LWLF</td>
<td>704</td>
<td>3-2-13:15</td>
<td>0.020</td>
</tr>
</tbody>
</table>

Total from all sources: >6.890

**Competing applications – do not double count.

Applicants:
Maui County Department of Water Supply (MDWS)
Maui Department of Parks & Recreation (MP&R)
Hawaiian Commercial & Sugar (HC&S)
Kehalani Mauka, LLC (Kehalani)
Living Waters Land Foundation (LWLF)

The hearing may be left open to allow for additional information as may be requested by Commissioners. If, during the course of the hearing, a contested case hearing is requested, the requester will be required to complete a written request, identifying HRS §174C-50(b) for existing uses or §174C-49(a) for new uses as the authority under which the action is to be made. The following may be admitted as a party to a contested case hearing: persons within the Iao Water Management Area with a property interest, who reside on the land, or can otherwise demonstrate that they will be so directly and immediately affected by the proposed water uses that their interest is clearly distinguishable from that of the general public; others who can show a substantial interest in the matter and can substantially assist the Commission in its decision making; agencies whose jurisdiction includes the land or water in question.

COMMISSION ON WATER RESOURCE MANAGEMENT

YVONNE Y. IZU, Deputy Director for
PETER T. YOUNG, Chairperson

Dated: October 7, 2004

Publish in: Maui News issue of October 12, 2004
Mr. Randy Gentry  
County of Maui  
Department of Parks and Recreation  
700 Hali‘a Nakoa Street, Unit 2  
Wailuku, HI 96793  

Dear Mr. Gentry:

**Supreme Court Directions for Water Use Permit Applications**

Thank you for completing your applications to the best of your abilities and the directions provided by staff. We have been advised to alert you to directions of the Supreme Court in adjudicating the Waiahole Contested Case on remand, as they pose additional information requirements for water use permit applications, namely discussion of practicable alternatives and the calculation of per-unit amounts of water ("duties").

As we have received objections to the applications submitted to-date for continuing the existing use of ground water from the Iao Aquifer, please be informed that additional information is advised for the hearing on Maui that is being scheduled tentatively for late October.

The Supreme Court's opinion is summarized as follows:

1. Practicable Alternatives

   "Under the public trust doctrine and the Code, permit applicants have the burden of justifying their proposed uses in light of protected public rights in the resource" (Waiahole 1, 94 Hawai‘i at 160, 9 P.3d at 472). The Water Code requires, inter alia, that the applicant prove that the proposed use of water is a "reasonable-beneficial use" and is consistent with the public interest (HRS § 174C-49(a)(2 & 4). "Reasonable-beneficial use" is defined as "the use of water in such a quantity as is necessary for economic and efficient use (sic) for a purpose and in a manner both reasonable and consistent with state and county plans and the public interest" (HRS § 174C-3, emphasis added.

   "Furthermore, besides advocating the social and economic utility of their proposed uses, permit applicants must also demonstrate the absence of practicable mitigating measures, including the use of alternative water sources. Such a requirement is ... an essential part of any balancing between competing interests." (Waiahole 1 94 Hawai‘i at 161, 9 P.3d at 473, emphasis added)
2. Calculating per-unit amounts of water ("duties")

The Court found that some calculations done for the Waiahole case were not clearly erroneous while others were erroneous. It is typical for planners to project reasonable ballpark numbers to be used by each household, each business, or each acre of crop, based on experience. The Court has opined that such ballpark numbers are inadequate when public resources are being contested, and that more careful, detailed examination of factors must be specified when projecting need. The court made distinctions between type of crop, location, and other factors, and we surmise the same may be applied to different businesses and households.

We urge you to review the Hawaii Supreme Court's Waiahole I and Waiahole II decisions in formulating your response to this request for additional information.

If you have any questions, please call Charley Ice of the Commission staff at 587-0251 or toll-free at 984-2400, extension 70251.

Sincerely,

YVONNE Y. IZU
Deputy Director

Cl:ss
Charley, fyi - and I think you have the hard copies already printed for you. Randy, Charley's email above.

"Randy Gentry" <Randy.Gentry@co.mauL.hi.us>

08/19/2004 07:13 AM

To <Roy.Hardy@hawaii.gov>

cc

Subject lao Aquifier WUPA

Charley: I had sent the e-mails below to Roy Hardy to try and figure out what I did wrong and the first e-mail below pretty much sums it up. I had put the wrong numbers for the well at War Memorial Stadium (should be 5329-14) 5329-04 is a wrong number and at the Golf Course I had also given a wrong number it should be 5530-04 (5530-03 is in error and not used by us. Randy Gentry- I will review all of the applications again and then give you a call...Thank you for your patience....Randy Gentry

Roy: I do not have Charlie's e-mail address , can you forward this to him? Thank You Randy Gentry

Charlie: I had sent the e-mails below to Roy Hardy to try and figure out what I did wrong and the first e-mail below pretty much sums it up. I had put the wrong numbers for the well at War Memorial Stadium (should be 5329-14) 5329-04 is a wrong number and at the Golf Course I had also given a wrong number it should be 5530-04 (5530-03 is in error and not used by us. Randy Gentry- I will review all of the applications again and then give you a call...Thank you for your patience....Randy Gentry

Roy: I had put the wrong numbers for the wells and needed to correct the information that I had sent you- The War Memorial Stadium Well is 5329-14 (I had given it the wrong number of 5329-04 when I first sent in the applications) the Waiehu Golf Course is the same way the correct number should be 5530-04 and( 5530-03 was in error). I will try and find out when these wells started pumping but that may take a few days because it has been at least 20 years ago as the Parks Personell that has been here for years has told me. Sorry that I could not get back to you sooner ,my wife has been in hospital since last Thursday and is home now an we are waiting on doctors-I took the days off to be a support to her. I will look into your matters today and keep checking until I come up with the answers. Mahalo...Randy

>>> <Roy.Hardy@hawaii.gov> 8/9/2004 10:28:59 AM >>>

Randy,

Some further follow-up. Please clarify as soon as possible. Thanks

----- Forwarded by Roy Hardy/DLNR/StateHiUS on 08/09/2004 10:25 AM
no problem. Hope your wife has a quick and full recovery.

Randy, in reviewing for completeness:

1) are the new applications backup wells? Specifically, is Waiehu
Randy,

Some further follow-up. Please clarify as soon as possible. Thanks

maui parks & rec wupas.doc

--- Forwarded by Roy Hardy/DLNRIStateHiUS on 08/09/2004 10:25 AM ---

Randy, in reviewing for completeness:

1) are the new applications backup wells? Specifically, is Waiehu golf course 5530-04 a backup to 5530-03 (requested amount is the same for both)? Is War Memorial Stadium 5329-14 a backup 5329-04 (requested amount is the same for both)? Also, do you know the date when the wells started pumping these amounts?

--- Forwarded by Roy Hardy/DLNRIStateHiUS on 08/06/2004 09:07 AM ---

Randy, got them in yesterday but in my intray today! Thanks

--- Forwarded by Roy Hardy/DLNRIStateHiUS on 08/05/2004 03:18 PM ---

Randy,

Still haven't received the updated applications. Need to have them soon.

"Randy Gentry" <Randy.Gentry@co.mau.hi.us>
Randy, in reviewing for completeness:

1) are the new applications backup wells? Specifically, is Waiehu golf course 5530-04 a backup to 5530-03 (requested amount is the same for both)? Is War Memorial Stadium 5329-14 a backup 5329-04 (requested amount is the same for both)? Also, do you know the date when the wells started pumping these amounts?

--- Forwarded by Roy Hardy/DLNR/StateHiUS on 08/06/2004 09:07 AM ---

Randy, got them in yesterday but in my intray today! Thanks
--- Forwarded by Roy Hardy/DLNR/StateHiUS on 08/05/2004 03:18 PM ---

Roy: Just a follow up to our telephone conversation this morning, I will be sending revised copies of the well applications for the Waiehu Golf Course #2 irrigation well (5530-04 and the Maui Stadium Irrigation well (5530-04). I actually got some of the numbers from a memo that was sent to my director on September 17, 2003 from a Mr. Peter Young. The memo listed the numbers and owners of the wells in the Iao Aquifer (I will include copy) and had us listed for the numbers that I used but your numbers are correct and I will make the adjustments. Thank you for
Roy Hardy/DLNR/StateHiUS
08/05/2004 03:19 PM
To Randy.Gentry@co.maui.hi.us
cc Lenore Y Nakama/DLNR/StateHiUS@StateHiUS, Charley F Ice/DLNR/StateHiUS@StateHiUS
bcc
Subject Fw: Maui Parks and Recreation Water Use Permits

Randy, got them in yesterday but in my intray today! Thanks
----- Forwarded by Roy Hardy/DLNR/StateHiUS on 08/05/2004 03:18 PM -----

Roy Hardy/DLNR/StateHiUS
08/03/2004 02:47 PM
To "Randy Gentry" <Randy.Gentry@co.maui.hi.us>
cc Lenore Y Nakama/DLNR/StateHiUS@StateHiUS
Subject Re: Maui Parks and Recreation Water Use Permits

Randy,

Still haven't received the updated applications. Need to have them soon.
"Randy Gentry" <Randy.Gentry@co.maui.hi.us>

"Randy Gentry"
<Randy.Gentry@co.maui.hi.us>
07/28/2004 01:14 PM
To <Roy.Hardy@hawaii.gov>
cc
Subject Re: Maui Parks and Recreation Water Use Permits

Roy: Just a follow up to our telephone conversation this morning, I will be sending revised copies of the well applications for the Waiehu Golf Course #2 irrigation well (5530-04 and the Maui Stadium Irrigation well (5530-04). I actually got some of the numbers from a memo that was sent to my director on September 17, 2003 from a Mr. Peter Young. The memo listed the numbers and owners of the wells in the Iao Aquifer (I will include copy) and had us listed for the numbers that I used but your numbers are correct and I will make the adjustments. Thank you for bringing this to my attention and for being considerate in this matter, I appreciate It. Mahalo again ,Randy Gentry

>>> <Roy.Hardy@hawaii.gov> 7/22/2004 11:41:35 AM >>> Following up on my phone message to you, we have received your water use permit applications (WUPA) and are reviewing them for completeness. However, there were a couple wells we expected to receive a WUPA for, but did not. These are:

5530-04 Waiehu golf course 2
5329-14 Maui Stadium

Also, for 5530-03 Waiehu Golf Course 1, your app states that two other wells are involved:
Randy, in reviewing for completeness:

1) are the new applications backup wells? Specifically, is Waiehu golf course 5530-04 a backup to 5530-03 (requested amount is the same for both)? Is War Memorial Stadium 5329-14 a backup 5329-04 (requested amount is the same for both)? Also, do you know the date when the wells started pumping these amounts?

----- Forwarded by Roy Hardy/DLNR/StateHiUS on 08/06/2004 09:07 AM
-----
golf course 5530-04 a backup to 5530-03 (requested amount is the same for both)? Is War Memorial Stadium 5329-14 a backup 5329-04 (requested amount is the same for both)? Also, do you know the date when the wells started pumping these amounts?

------ Forwarded by Roy Hardy/DLNR/StateHiUS on 08/06/2004 09:07 AM
------

Roy Hardy/DLNR/StateHiUS
08/05/2004 03:19 PM

To
Randy.Gentry@co.mauि.hi.us
cc
Lenore Y Nakama/DLNR/StateHiUS@StateHiUS, Charley F Ice/DLNR/StateHiUS@StateHiUS
Subject
Fw: Maui Parks and Recreation Water Use Permits

Randy, got them in yesterday but in my intray today! Thanks

------ Forwarded by Roy Hardy/DLNR/StateHiUS on 08/05/2004 03:18 PM
------

Roy Hardy/DLNR/StateHiUS
08/03/2004 02:47 PM

To
"Randy Gentry" <Randy.Gentry@co.mauि.hi.us>
cc
Lenore Y Nakama/DLNR/StateHiUS@StateHiUS
Subject
Re: Maui Parks and Recreation Water Use Permits

Randy,

Still haven't received the updated applications. Need to have them soon.

"Randy Gentry" <Randy.Gentry@co.mauि.hi.us>
07/28/2004 01:14 PM

To
<Roy.Hardy@hawaii.gov>
cc

Subject
Re: Maui Parks and Recreation Water Use Permits
Randy,

Still haven’t received the updated applications. Need to have them soon.

"Randy Gentry" <Randy.Gentry@co.mauie.hi.us>

---

Roy: Just a follow up to our telephone conversation this morning, I will be sending revised copies of the well applications for the Waiehu Golf Course #2 irrigation well (5530-04) and the Maui Stadium Irrigation well (5530-04). I actually got some of the numbers from a memo that was sent to my director on September 17, 2003 from a Mr. Peter Young. The memo listed the numbers and owners of the wells in the Iao Aquifer (I will include copy) and had us listed for the numbers that I used but your numbers are correct and I will make the adjustments. Thank you for bringing this to my attention and for being considerate in this matter, I appreciate it. Mahalo again, Randy Gentry

>>> <Roy.Hardy@hawaii.gov> 7/22/2004 11:41:35 AM >>>
Following up on my phone message to you, we have received your water use permit applications (WUPA) and are reviewing them for completeness. However, there were a couple wells we expected to receive a WUPA for, but did not. These are:

5530-04 Waiehu golf course 2
5329-14 Maui Stadium

Also, for 5530-03 Waiehu Golf Course 1, your app states that two other wells are involved:

5330-03 Field 63 well owned by Wailuku AG (but attached map shows 5330-03)
5329-02 Alelo Place owned by the county and not in the Iao aquifer system area (but attached map shows 5329-02)

typos?

Roy Hardy
Commission on Water Resource Management
808-587-0274
ok. That 9/17 letter from Peter Young is from us. It was a notice about filing for these water use permits for the wells we have registered to your dept, so it should clear matters up. Don't need to return Lenore Nakama's phone call on this, this email string will suffice. Thanks and look forward to the updated applications.

"Randy Gentry" <Randy.Gentry@co.mauLi.us>

To "Randy Gentry" <Randy.Gentry@co.mauLi.us>
cc Charley F Ice/DLNR/StateHiUS@StateHiUS, Lenore Y Nakama/DLNR/StateHiUS@StateHiUS
bcc
Subject Re: Maui Parks and Recreation Water Use Permits

Roy: Just a follow up to our telephone conversation this morning, I will be sending revised copies of the well applications for the Waiehu Golf Course #2 irrigation well (5530-04) and the Maui Stadium Irrigation well (5530-04). I actually got some of the numbers from a memo that was sent to my director on September 17, 2003 from a Mr. Peter Young. The memo listed the numbers and owners of the wells in the Iao Aquifer (I will include copy) and had us listed for the numbers that I used but your numbers are correct and I will make the adjustments. Thank you for bringing this to my attention and for being considerate in this matter, I appreciate it. Mahalo again, Randy Gentry

>>> <Roy.Hardy@hawaii.gov> 7/22/2004 11:41:35 AM >>>
Following up on my phone message to you, we have received your water use permit applications (WUPA) and are reviewing them for completeness. However, there were a couple wells we expected to receive a WUPA for, but did not. These are:

5530-04 Waiehu golf course 2
5329-14 Maui Stadium

Also, for 5530-03 Waiehu Golf Course 1, your app states that two other wells are involved:

5330-03 Field 63 well owned by Wailuku AG (but attached map shows 5529-03)
5329-02 Alelo Place owned by the county and not in the Iao aquifer system area (but attached map shows 5529-02)

typos?
Roy Hardy
Roy: Just a follow up to our telephone conversation this morning, I will be sending revised copies of the well applications for the Waiehu Golf Course #2 irrigation well (5530-04) and the Maui Stadium Irrigation well (5530-04). I actually got some of the numbers from a memo that was sent to my director on September 17, 2003 from a Mr. Peter Young. The memo listed the numbers and owners of the wells in the Iao Aquifer (I will include copy) and had us listed for the numbers that I used but your numbers are correct and I will make the adjustments. Thank you for bringing this to my attention and for being considerate in this matter, I appreciate it. Mahalo again ,Randy Gentry

>>> <Roy.Hardy@hawaii.gov> 7/22/2004 11:41:35 AM >>>

Following up on my phone message to you, we have received your water use permit applications (WUPA) and are reviewing them for completeness. However, there were a couple wells we expected to receive a WUPA for, but did not. These are:

5530-04  Waiehu golf course 2
5329-14  Maui Stadium

Also, for 5530-03 Waiehu Golf Course 1, your app states that two other wells are involved:

5330-03  Field 63 well owned by Wailuku AG  (but attached map shows 5530-03)
5329-02  Alelo Place owned by the county and not in the Iao aquifer system area  (but attached map shows 5529-02)

typos?

Roy Hardy
Commission on Water Resource Management
808-587-0274
Following up on my phone message to you, we have received your water use permit applications (WUPA) and are reviewing them for completeness. However, there were a couple wells we expected to receive a WUPA for, but did not. These are:

5530-04 Waiehu golf course 2
5329-14 Maui Stadium

Also, for 5530-03 Waiehu Golf Course 1, your app states that two other wells are involved:

5330-03 Field 63 well owned by Wailuku AG (but attached map shows 5530-03)
5329-02 Alelo Place owned by the county and not in the lao aquifer system area (but attached map shows 5529-02)

typos?

Roy Hardy
Commission on Water Resource Management
808-587-0274
State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
APPLICATION FOR WATER USE PERMIT

Groundwater or Surface Water

Instructions: Please print in ink or type and send 10 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 261, Honolulu, Hawaii 96803. Application must be accompanied by a non-refundable filing fee of $250.00 payable to the Department of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 808-587-0225. For further information and updates to this application form, visit HTTP://www.hawaii.gov/dlnr.

PERMITTE INFORMATION

1. (a) APPLICANT
   Firm/Name: County of Maui Department of Parks and Recreation
   Contact Person: Randy Gentry
   Address: 700 Hālāi Nākua Street Unit 2, Wailuku, Hawaii 96793
   Phone: (808) 270-5553 Fax: (808) 270-7162
   E-mail: Randy.Gentry@co.mau.hi.us

   (b) LANDOWNER OF SOURCE
   Firm/Name: County of Maui
   Contact Person: Glenn T. Correa (Director Parks and Recreation)
   Address: 700 Hālāi Nākua Street Unit 2, Wailuku, Hawaii 96793
   Phone: (808) 270-7626 Fax: (808) 270-7934
   E-mail: Glenn.Correa@co.mau.hi.us

SOURCE INFORMATION

2. WATER MANAGEMENT AREA: Lāʻa Aquifer ISLAND: Maui
3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Baldwin High School Well# 5329-05
   (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME:
   (c) LOCATION: Address: 201 Kānaʻa Street Wailuku, Hawaii Tax Map Key: 3-8-075-500-00-0

USE INFORMATION

4. SOURCE TYPE (check one): [X] Stream [ ] Well & Pump
   (check one): [ ] Artesian [ ] Diverted Surface [ ] Other (explain)

5. METHOD OF TAKING WATER
   (check one): [X] Municipal (including hotels, stores, etc.) [ ] Individual Domestic [ ] Irrigation
   [ ] Industrial [ ] Military [ ] Other Explain

6. LOCATION OF PROPOSED WATER USE: (If possible, show on same maps as source location. Otherwise, attach similar maps)
   (a) PUC-Regulated Private System [ ] Intended Dedication to Dept./Board of Water Supply [ ] Non PUC-Regulated Private System
   (b) Tax map Key: Please complete table 1 on back of application and shade applicable portion of property tax map.

7. QUANTITY OF WATER REQUESTED: 10,500 gallons per day (averaged over 1 year)

8. METHOD OF MEASUREMENT:
   [X] Flowmeter [ ] Open-pipe [ ] Weir [ ] Orifice [ ] Other (explain)

9. QUALITY OF WATER REQUESTED:
   [ ] Fresh [ ] Brackish [ ] Salt [ ] Potable [ ] Non-Potable

10. PROPOSED USE:
    [ ] Municipal (including hotels, stores, etc.) [ ] Individual Domestic [ ] Irrigation
        [ ] Industrial [ ] Military [ ] Other Explain

11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 4:00 A.M.-12:00 P.M. every other day
    (daytime hours of operation; example, 7 a.m. to 2 p.m.)

12. APPLICANT MUST ESTABLISH THAT THE PROPOSED USE OF WATER:
    (a) Can be accommodated with the available water source
    (b) Is a reasonable-beneficial use.
    (c) Will not interfere with any existing legal use.
    (d) Is consistent with the public interest.
    (e) Is consistent with state and county general plans and land use designations.
    (f) Is consistent with county land use plans and general policies.
    (g) Will not interfere with the rights of the Department of Hawaiian Home lands.

   * Section 13-171-2, Hawaii Revised Statutes - 
   "Reasonable-beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is not wasteful and is both reasonable and consistent with the state and county land use plans and the public interest.

13. REMARKS, EXPLANATIONS: Even though described as Baldwin High School Well- this an irrigation well that is owned and operated by the County of Maui Department of Parks and Recreation. (New TMK Numbering System: 23800705550000-030000, 940000. Other information is included in application.

NOTE: Signing below indicates that the signatories understand and swear that: 1) the information provided on this application is accurate and true to the best of their knowledge; 2) Item 14 is the responsibility of the applicant prior to Commission approval; If necessary, further information may be required before the application is considered complete; 4) If a water use permit is granted by the Commission, this permit is subject to prior existing permitted uses, changes in sustainable yields and instream flow standards, reserved uses as defined by the Commission, and Hawaiian Home Lands future uses; and 5) Upon permit approval, a water shortage plan must be submitted by the applicant should the Commission require one.

Applicant (print) Parks and Recreation
Signature
Date 7/28/04

Landowner (print) County of Maui
Signature
Date 7/28/04

WUPAFORM (4/28/03)
### TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>No.</th>
<th>Project Name &amp; Phases (Include address if applicable)</th>
<th>Existing or New Use (If existing, fill in date of first use)</th>
<th>Potable or Nonpotable</th>
<th>TMK</th>
<th>County Zoning Code</th>
<th>Units or Net Acres</th>
<th>GPD Unit or GPD/Acre</th>
<th>4-Year Cumulative Projected Demand</th>
<th>Ultimate Demand GPD (To Build Out)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Baldwin High School WELL # 5329-05</td>
<td>Well No. 5329-05</td>
<td>Nonpotable</td>
<td>3-8-07-56-0000</td>
<td>Urban Parks</td>
<td>17.5 Acres</td>
<td>600</td>
<td>3,832,500</td>
<td>3,832,500</td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL GPD** 10,500

(For Oahu only) DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE ____________________________ DATE __________

Only for verification that: 1) TMKs listed are consistent with zoning and development plans; and 2) projects listed are allowed with respect to zoning and development plans.

**Instructions for Completing Table 1:**
- Individual projects and phases must be listed separately and numbered sequentially on Table 1. Copy Table 1 and attach additional sheets if necessary. Please indicate individual projects and phases on TMK maps by clearly delineating project areas and indicating sequential number within delineated areas to coincide with Table 1. Please attach a separate sheet giving the address and a brief description of each project and phase listed above. In addition, if the proposed use is existing, please provide the WUP No. or indicate when the existing use was initiated. Also, the Department of Planning and Permitting (DPP) must sign before application is acceptably complete. Please consult with DPP at 650 South King Street, 7th Floor, Honolulu, HI 96813.
We have set July 11, 2005, a Monday, from 1:00 - 5:00 pm, for our meeting at Cameron Center. All who responded indicated that was an agreeable date. We hope it works for the others. We may not need that much time, but hope to sort things out comprehensively within that time. This will be your only notice. We will still conduct another full session of the public hearing, yet to be determined, which we anticipate would be the last.
WATER USE PERMIT NO. 710

This report has been prepared in accordance with 13-171-22(b) of the Hawaii Revised Statutes requiring a 20-year review of issued water use permits to determine permit compliance. Following is a summary of permit information, site characteristics, methodology, findings, and recommendations for this State permit file.

Permit Information

Water User: County of Maui, Department of Parks & Recreation Maintenance Division 700 Halia Nakoa St., Unit 2 Wailuku, HI 96793

Landowner of Source: County of Maui, Department of Parks & Recreation Maintenance Division 700 Halia Nakoa St., Unit 2 Wailuku, HI 96793

Permitted Withdrawal Rate: 0.011 mgd (Based upon a 12-month moving average)

Water Management Area: Iao

Island: Maui

Aquifer Sector/System: Wailuku/Iao

System Sustainable Yield: 20 mgd

Water Type: Fresh

Original CWRM Date: September 28th, 2005

Standard Conditions: 1-19

Special Conditions: 1-4

Water Source

State Well Number(s): 5329-05

Well Name: Baldwin High School

Water Source TMK Number(s): 2nd Division, 3-8-007:004

State Land Use Classification(s): Urban

County Zoning Classification(s): Park

Geographical Coordinates: Latitude 20° 53’ 21.1” North
Longitude 156° 29’ 21.3” West

End Use

End Use TMK Number(s): 2nd Division, 3-8-007:055, 3-8-007:094

State Land Use Classification(s): Urban
County Zoning Classification(s):  Park
Beneficial Use Explanation:  Use for irrigation of 31.6 acres of park area

Background Information

Water Use Permit 710 was approved during the September 28th, 2005 Commission on Water Resource Management meeting. There are no monthly water use records on file for State Well No. 5329-05. Standard conditions 1-19 and special conditions 1-4 are the governing conditions for this water use permit. A complete list of all standard and special conditions is given in the final summary report to the Legislature for this 20-year Water Use Permit Review.

Field Investigation Information

Contact:  Baron Sumida
Site Address:  Baldwin High School
            Wailuku, HI 96793

Brown and Caldwell conducted a field investigation on May 23rd, 2008 from 9:00 a.m. until 1:00 p.m. with Mr. Baron Sumida for WUP’s 710-713. During this time, type of water usage was verified, GPS coordinates of well head(s) were recorded, flow meter installation and functionality were documented, and property TMK information was verified. The wellhead, its related appurtenances, and water usage area were visually inspected to assess compliance with permit conditions. Visual inspection of water loss/waste was limited to outdoor areas within the usage boundary. Reference the TMK and GIS maps in the permit file for a visual representation of the site.

Summary of Findings for Water Use Permit No. 710

State Well No. 5329-05 is located on TMK parcel (2) 3-8-007:004 at 20° 53’ 21.1” N, 156° 29’ 21.3” W, with a real time accuracy of ±13 feet. Although the well is named ‘Baldwin High School’, the physical location of the well is adjacent to the War Memorial Gym parking lot. Water is drawn from the well via a vertically mounted pump motor and sent directly into the irrigation system where it is used for irrigation of park grounds and several baseball fields in TMK parcels (2) 3-8-007:055 and 3-8-007:094. Pump initiation is done manually by County of Maui maintenance personnel. A functional flowmeter is installed at the well site, but the permittee has advised that no monthly water use records are taken. Reference the Appendix for photographs of the previously described system components.
The following are a list of standard condition(s) that the permittee is found to be in non-compliance with:

(10) An approved flowmeter must be installed to measure monthly withdrawals and a month record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a monthly basis.

After inspection, it was found that State Well No. 5329-05 has a functional system flowmeter. However, since no monthly water use records are being submitted to the State, the permittee is in violation of Standard Condition (10).

The following are a list of special condition(s) that the permittee is found to be in non-compliance with:

(4) Standard Condition (10) is emphasized, to report consumption on a regular basis.

In light of the emphasis placed on the importance of water use reporting, the permittee has advised that they do not report water use. They have also indicated that unless the State issues a reminder in the form of an official letter, reporting is not likely to begin.

Based upon visual inspection of the system, all components appear to be in full working order. The permittee demonstrated functionality of an installed flowmeter and provided access to the site grounds where no wasting of water or water loss was observed. Visual inspection also confirmed that water use was within the permitted TMK boundaries.

**Recommendations**

- Address the following discrepancies between the Commission’s electronic database and actual field investigation findings:
  - Change permittee contact to the current Parks & Recreation director (Tamara Horcajo)
- Address violation of Standard Condition (10) and Special Condition (4) regarding non-reporting of water use.
20-Year Water Use Permit Review
Water Use Permit No. 710

APPENDIX

Field Investigation Photographs
Figure 1 – State Well No. 5329-05

Figure 2 – Functional system flowmeter
Water Use Permit Survey
(Please complete one survey form for each WUP)

WUP Number: 710
Well Number(s): 5329-05

Contact Information (of the person who will be present at site visit):
Name: FRANK MIAZONO/BARON SUMIDA
Phone (for phone interview): (808) 270-6173 (Baron) Fax:
Email: (808) 270-7327 (Franci)
Best time to reach for phone interview:

Property Information (of the water use/well location):
Address: BALDWIN HIGH SCHOOL
City: WAILUKU, MAUI, HI Zip: 96793
Well Location TMK (list all if multiple wells present): 3-8-007:004
Water Use TMK (list all if used on multiple lots):

Water Use/Well Information:
Is the water source currently in use? Yes ☑ No ☐
If no, please explain:

What are you currently using the water for? (example: "Use for 45 acres of diversified agriculture and 3 residences"); IRRIGATION

Is a flow meter installed and working properly? Yes ☑ No ☐
If no, please explain:

Do you submit monthly water use reports to the State? Yes ☐ No ☑
If no, please explain:

Field Investigations:
A representative from Brown and Caldwell will be visiting wells in your area over the next several months between the times of 9:00 am and 5:00 pm. Each site investigation will take approximately 1-2 hours. Please indicate up to three potential days of the week and availability times for an on-site inspection of the well location and verification of water use compliance. The permit holder must provide Brown and Caldwell with at least five (5) working days notice of the need to reschedule.

Option #1 Date (M-F): Time: 9:00 am ☐ 12:00 pm ☐ 3:00 pm ☐
Option #2 Date (M-F): Time: 9:00 am ☐ 12:00 pm ☐ 3:00 pm ☐
Option #3 Date (M-F): Time: 9:00 am ☐ 12:00 pm ☐ 3:00 pm ☐

Once this survey is returned, a Brown and Caldwell representative will be contacting you to conduct a phone interview and finalize the exact date and time of your field investigation. Please fax/mail completed surveys by March 5th, 2008 and direct any questions related to this survey to Mr. Milo Smith of Brown and Caldwell at:
1099 Alakea Street, Suite #2400
Honolulu, HI 96813
Tel: (808) 203-2661
Fax: (808) 533-0226
mcsmith@brwncald.com

For Official Use Only
Received: 3/13/08 Information Updated: 3/12/08 Phone Interview Complete: 3/12/08
Notes/Comments:
Field Investigation Checklist

WUP Number: 710  Well Number(s): 5329-05

Water Source
Well Location TMK(s): (2) 3-8-007 004
Well Head GPS Coordinates: Latitude: 20°53'21.1" N  Longitude: 156°29'21.3" W
Well Type: Drilled
Currently using water source? Yes ☒ No ☐

Notes/Comments:

Is there a flow meter installed? Yes ☒ No ☐
Is the flow meter operational? Yes ☒ No ☐

Notes/Comments:

Water Use
Water Use TMK(s): (2) 3-8-007 004  3-8-007 055  3-8-007 049
What is the water being used for? Irrigation of central Maui park areas

Is the water being used within the permitted boundaries? Yes ☒ No ☐
If no, explain ________________________________

Is there any observed wasting of water or water loss? Yes ☐ No ☒
If no, explain ________________________________

Are the permit conditions being complied with? Yes ☐ No ☒
If no, explain: ________________________________

No water use reports

Other
Photographs of: Water Source ☒ Water Meter ☒ Usage Area ☐ Pump/Motor ☒

General Notes/Comments:
• Water is pumped directly into the irrigation system; flowmeter installed and functional, but no readings are submitted.
• Use is for baseball fields adjacent to UH Memorial Gym and other mini park grounds in the area.

Investigated By: M.C.  Date: 5/23/08  Time: 9:00 a.m.
Phone Interview

WUP Number: 710  Well Number(s): 5329-05

Contact Name: Baron Sumida  Phone Number: (908) 270-6113

Attempt #1: Date/Time: 5/12/08 (3:03)  Result: Reached
Attempt #2: Date/Time: N/A  Result: N/A

Well Location TMK(s): 3-8-007-004
Water Use TMK(s):

Water Source Address: Baldwin High School
City: Wailuku  Zip Code: 96793

Currently using water source?  Yes ☒  No ☐
Notes/Comments: Use for irrigation

How often is the water source being used? Daily ☐  Weekly ☐  Monthly ☐
Notes/Comments:

How long have you been using this water source?:
Has there been any rezoning of the water source/water use properties?  Yes ☐  No ☒
Have you reported the rezoning to the State?  Yes ☐  No ☐  N/A ☒
If no, explain:

Scheduled field investigation day/time: 5/23/08 @ 9:00 a.m.
Notes (Special directions, site conditions, potential hazards, general notes, etc.):

- Meet at Parks & Rec. office @ WMC Memorial Gym
- Enter Gym → veer to ☐ → last door on the left
- Cell: 870-7241

Comments To Make:
- Although we prefer that you do not change your scheduled field investigation time, if you require a reschedule, you must provide Brown and Caldwell with at least five (5) working days notice of the need to reschedule.
- A representative from Brown & Caldwell will be making a reminder phone call to you sometime during the week prior to your scheduled field investigation.
- It is very important that you provide access to the site at the day and time agreed upon. Due to a very tight schedule, if you fail to provide access at the agreed upon time and/or do not reschedule with at least a five (5) working day notice, a makeup date will not be allowed.
- If for some reason you don’t know where your well head is located, it would be a good idea to locate it prior to your field investigation to help make the visit go quickly and smoothly.

Interviewed By: M.S.  Date: 5/12/08  Time: 3:00 p.m.
Standard Conditions List

1. The water described in this water use permit may only be taken from the location described and used for the reasonable beneficial use described at the location described above. Reasonable beneficial uses means “the use of water in such a quantity as is necessary for economic and efficient utilization, which is both reasonable and consistent with State and County land use plans and the public interest.” (HRS § 174C-3)

2. The right to use ground water is a shared use right.

3. The water use must at all times meet the requirements set forth in HRS § 174C-49(a), which means that it:
   a. Can be accommodated with the available water source;
   b. Is a reasonable-beneficial use as defined in HRS § 174C-3;
   c. Will not interfere with any existing legal use of water;
   d. Is consistent with the public interest;
   e. Is consistent with State and County general plans and land use designations;
   f. Is consistent with County land use plans and policies; and
   g. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in Section 221 of the Hawaiian Homes Commission Act and HRS § 174C-101(a).

4. The ground-water use here must not interfere with surface or other ground-water rights or reservations.

5. The ground-water use here must not interfere with interim or permanent instream flow standards. If it does, then:
   a. A separate water use permit for surface water must be obtained in the case an area is also designated as a surface water management area;
   b. The interim or permanent instream flow standard, as applicable, must be amended.

6. The water use authorized here is subject to the requirements of the Hawaiian Homes Commission Act, as amended, if applicable.

7. The water use permit application and submittal, as amended, approved by the Commission at its <Insert Date> meeting are incorporated into this permit by reference.

8. Any modification of the permit terms, conditions, or uses may only be made with the express written consent of the Commission.

Variations of Standard Condition (8) are as follows:
   i. Modification of any permit condition shall be approved by the Commission. Modification of any permit condition without notification may result in the revocation of the water use permit.
9. This permit may be modified by the Commission and the amount of water initially granted to the permittee may be reduced if the Commission determines it is necessary to:
   a. Protect the water sources (quantity or quality);
   b. Meet other legal obligations including other correlative rights;
   c. Insure adequate conservation measures;
   d. Require efficiency of water uses;
   e. Reserve water for future uses, provided that all legal existing uses of water as of June, 1987 shall be protected;
   f. Meet legal obligations to the Department of Hawaiian Home Lands, if applicable; or
   g. Carry out such other necessary and proper exercise of the State's and the Commission's police powers under law as may be required.

Prior to any reduction, the Commission shall give notice of its proposed action to the permittee and provide the permittee an opportunity to be heard.

10. An approved flowmeter(s) must be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a monthly basis (attached).

Variations of Standard Condition (10) are as follows:
   i. The applicant shall keep monthly pumpage estimates to be submitted annually to the Commission.
   ii. An approved flowmeter(s) need not be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a yearly basis (attached).
   iii. An approved flowmeter(s) must be installed to measure withdrawals and a monthly record of withdrawals, water-levels, salinity, and temperature must be kept and reported to the Commission on a monthly basis in accordance with the Commission's September 16, 1992 action on reporting requirements.
   iv. Approved flowmeters must be installed to measure monthly withdrawals and a monthly record of withdrawals must be kept and reported to the Commission on Water Resource Management on a monthly basis.
   v. An approved flowmeter(s) must be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a quarterly/yearly basis (attached).
   vi. An approved flowmeter shall be installed to measure water withdrawals.
   vii. An approved flowmeter(s) must be installed to measure withdrawals; and a record of the withdrawals must be kept and reported to the Department of
Land and Natural Resources, Division of Water and Land Development, P.O. Box 373, Honolulu, HI 96809, on a **monthly** basis.

viii. Although not stated as a condition of the permit §13-168-7 HAR requires you to keep a record of your **monthly** total pumpage, water level, salinity, and water temperature. This information **must be** submitted to the Commission on a regular monthly basis using the enclosed water use report form.

ix. An approved flowmeter shall be installed and the withdrawal from Well 1851-73 shall be recorded and reported to DLNR on a **monthly** basis by the owner and/or operator of the well.

x. The withdrawals from these wells shall be recorded and reported to the DLNR on a **monthly** basis by the BWS.

xi. The applicant shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting water usage on a **monthly** basis.

xii. The applicant shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage. Water usage shall be measured on a **monthly** basis and reported to the Commission.

xiii. The applicant shall provide and maintain an approved meter or other appropriate device or means for measuring and reporting total water usage. Water usage shall be measured on a **monthly** basis and reported to the Commission along with water level and salinity measurements.

11. This permit shall be subject to the Commission’s periodic review of the <Aquifer> Aquifer System’s sustainable yield. The amount of water authorized by this permit may be reduced by the Commission if the sustainable yield of the <Aquifer> Aquifer System, or relevant modified aquifer(s), is reduced.

12. A permit may be transferred, in whole or in part, from the permittee to another, if:
   a. The conditions of use of the permit, including, but not limited to, place, quantity, and purpose of use, remain the same; and
   b. The Commission is informed of the transfer within ninety days.

   Failure to inform the department of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer, which involves a change in any condition of the permit, including a change in use covered in HRS § 174C-57, is also invalid and constitutes a ground for revocation.

13. The uses(s) authorized by law and by this permit do not constitute ownership rights.

14. The permittee shall request modification of the permit as necessary to comply with all applicable laws, rules, and ordinances that will affect the permittee’s water use.

15. The permittee understands that under HRS § 174C-58(4), that partial or total nonuse, for reasons other than conservations, of the water allowed by this permit for a period of four (4) continuous years or more may result in a permanent revocation as to the amount of water not in use. The Commission and the permittee may enter
into a written agreement that, for reasons satisfactory to the Commission, any period of nonuse may not apply towards the four-year period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section HRS § 174C-62 shall not apply towards the four-year period or forfeiture.

16. The permittee shall prepare and submit a water shortage plan within 30 days of the issuance of this permit as required by HAR § 13-171-42(c). The permittee’s water shortage plan shall identify what the permittee is willing to do should the Commission declare a water shortage in the <Aquifer>Ground-Water Management Area.

17. The water use permit shall be subject to the Commission’s establishment of instream standards and policies relating to the Stream Protection and Management (SPAM) program, as well as legislative mandates to protect stream resources.

18. The permittee understands that any willful violation of any of the above conditions or any provisions of HRS § 174C or HAR § 13-171 may result in the suspension or revocation of this permit.

19. Special conditions in the attached cover transmittal letter or attached exhibits are incorporated herein by reference.

20. If the ground-water source does not presently exist, the new well shall be completed, i.e. able to withdraw water for the proposed use on a regular basis, within twenty-four (24) months from the date the water use permit is approved.

Variations of Standard Condition (20) are as follows:
   i. The permit may be revoked if work is not started within six months of the date of issuance or if work is suspended or abandoned for six months. The work proposed in the permit application shall be completed within two years from the date of permit issuance.

21. This permit may not be transferred or the use rights granted by this permit sold or in any other way alienated. Pursuant to HRS § 174C-59 and the requirements of Chapter 174C, the Commission on Water Resource Management has the authority to allow the transfer of the permit and the use rights granted by this permit in a manner consistent with HRS § 174C-59. Any such transfer shall only occur with the Commission’s prior express written approval. Any sale, assignment, lease, alienation, or other transfer of any interest in this permit shall be void.

22. The water use permit granted shall be an interim water use permit, pursuant to HRS § 174C-50. The final determination of the water use quantity shall be made within five (5) years of the filing of the application to continue the existing use.

23. The water use permit shall be issued only after agricultural review.

24. That scheduled adjustments to Oahu Sugar Co. permitted use shall be initiated upon discontinuance of agricultural uses.
25. The issuance of this permit was approved by the Commission on Water Resource Management at its meeting on <Insert Date>.

26. The permit shall be subject to the review by the Attorney General.

27. The permit holder may be required to relinquish this permit at any time or specified time after issuance to the Board of Land and Natural Resources in accordance with Chapter 166 of Title 13.

28. The applicant shall obtain the necessary land acquisition documents from the Hawaii Housing Authority.
Special Conditions List

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.

2. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

3. The applicant shall contact the Environmental Management Division, State Department of Health, at 586-4304, concerning “GUIDELINES APPLICABLE TO GOLF COURSES IN HAWAII” date <Insert Date & Version #>.

4. Standard Condition 10 is emphasized, to report consumption on a regular basis.

5. The applicant may continue this existing use of ground water within the limits approved by the Commission, and the actual issuance of the interim permit shall not be a reason to interrupt this existing use.

6. This interim water use permit shall cease to become interim and shall be subject to HRS § 174C-55 upon administrative review of the quantity within five (5) years, provided that all conditions of the use (including the review of the quantity which shall not be greater than the amount initially granted) remain the same. Enforcement of the allocation limit shall be stayed pending staff's review and issuance of a permanent water use permit.

7. As-built drawings of the well and pump, and a complete pumping test record shall be submitted within sixty (60) days.

8. In the event the pump tests show that aquifer boundary conditions do not support the requested withdrawals, the Commission reserves the right to amend this permit, after a hearing, to a level that is supported by the pump tests.

9. The existing use may be continued within the levels approved by the Commission, and the actual issuance of the permit document shall not be a reason to interrupt the approved level of use.

10. The filing of an application by Kukui, Inc. for a new or modified water use permit for the Kualapuu Aquifer in excess of 2.0 mgd (total system withdrawal) shall be just cause for re-consideration of this interim permit by the Commission.

11. Upon completion of a new transmission line for the transport of water use by Well #17, the permit shall be modified to reduce the allocation amount by the additional 79,220 gallons per day allocated for use of the Molokai Irrigation System.

12. Within six (6) months from the date of approval of a water use permit for the well, the applicant shall conduct a feasibility study and submit a report describing
alternative sources of nonpotable water for irrigation uses at the resort area. It is suggested that the developer consider use of dual lines in the subdivisions so that effluent may be used in the existing reuse system. Another consideration is the development of brackish water wells in the Kaluakoi Aquifer system for mixing with the effluent generated at the resort.

13. Within six (6) months from the date of approval of a water use permit for the well, the application shall evaluate the filter back discharges into Kakaako Gulch to determine if excessive preventable waste is occurring and identify possible measures to eliminate or reduce such waste. The evaluation shall be conducted in cooperation with the Commission staff and staff of the Department of Health's Safe Drinking Water Branch, which regulates the drinking water system.

14. Within six (6) months from the date of approval of a water use permit for the well, the applicant shall 1) implement a leakage control and detection system and compete repairs to prevent such leakage and 2) implement use of xeriscaping and low-flow fixtures.

15. Action on the future use portion of the water use permit application for Well #17 (Well No. 0901-01) is deferred pending the establishment of existing uses in the aquifer. Kukui Inc.'s application for uses in excess of those uses existing on July 15, 1992 will be considered "new" uses and will be taken up by the Commission as soon as other existing use applications have been decided. In the interim,
   a. The Commission shall recognize that there is disagreement between the applicant's staff calculations of reasonable-beneficial existing use
   b. The Applicant will have the burden of proof to show within six (6) months reasonable-beneficial existing use calculations that support the applicant's request as opposed to staff's calculations.
   c. The Commission's enforcement of the approved existing use allocation will be suspended for six (6) months.

16. The permittee shall submit a notice of intent and written request to continue the use at least ninety (90) days prior to the expiration of the interim five-year permit.

17. The Commission shall delegate to Maui Department of Water Supply the authority to allocate the use of water for municipal purposes, as provided in §174C-48(b).

18. Maui Department of Water Supply shall be exempt from the requirements for permit modifications, as provided in §174C-57(c).

19. The permittee must meter water use and monitor chloride concentrations on a monthly basis and submit monthly reports of water use and chloride concentrations to the Commission.

20. Standard Condition 16 is waived for saltwater wells.

21. The permit will be revoked if (1) stream monitoring shows that pumping the well reduces stream flow, or (2) the electromagnetic resistivity survey indicates that the
well was drilled into a dike compartment, unless the applicant submits a petition for an amendment to the interim instream flow standard with the well completion report. However, no use of the water may be made without a Pump Installation Permit, which cannot be issued during consideration of the amendment of the interim instream flow standard.

22. The applicant shall present the results of the electromagnetic resistivity survey, pump tests, and stream monitoring to a community meeting as well as to the Commission.

23. A final determination of water use quantity shall be made within five (5) years of the filing date of the application (<Insert Date>) to continue existing use.

24. The applicant shall implement, by December 31, 1995, a biological and hydraulic monitoring program for a minimum 2-year period that: 1) documents the existing operating procedure, 2) seeks to identify the impacts of all operating alternatives on Waikolu Stream, and 3) seeks to identify the effectiveness of weir modifications (Dam No. 1). This program shall incorporate the three new wells, Wells #4-6 (Well Nos. 0855-06, -05, &-04, respectively), which may be pumped within the approved limits, for monitoring and testing purposes only. Further, semi-annual reports summarizing data and preliminary findings shall be submitted to the Commission. It is suggested that the Department of Agriculture work with the State Division of Aquatic Resources and other affected agencies to prepare the monitoring program in light of the difficult technical questions raised by this application. A particular concern is the coordination of this monitoring program with the ongoing National Park Service study by Anne Brasher. A draft of this plan shall be submitted to the Commission staff within ninety (90) days for technical review and comment. Results of the monitoring program shall be used to make recommendations to the Commission on any additional use of the wells, and shall be made readily available to all interested parties.

25. That the Commission approves the well construction permit for the Kamiloloa-Waiola Well (Well No. 0759-01), subject to the standard well construction conditions and the special conditions for the pumping well for the aquifer tests.

26. That the Commission authorizes the Chairperson to approve and issue a pump installation permit upon acceptance of adequate pump test result, subject to the standard pump installation conditions.

27. Should the well be used for back-up domestic supply, applicant is advised to contact DOH or otherwise ensure safe drinking water quality is maintained.

28. The applicant shall follow the agreed monitoring plan.

29. If pesticides used by the applicant are found in ground or surface water and can be traced to the applicant's use, the CWRM may revoke the permit immediately upon such finding.
30. Issuance of the interim permit shall be withheld until the reservation of water for DHHL is set by rule. Applicant may continue this existing use within the approved limits.

31. The applicant shall submit well modification and pump installation permit applications for administrative approval by chairperson prior to beginning any work required to complete well.

32. Should any stream flow impacts result from use, petition to amend interim instream flow standards shall be submitted.

33. Should any dewatering result from use, pumping shall cease immediately.

34. Shall submit accurate schematic diagram of distribution system for the battery of 5 wells.

35. Shall be subject to a 6-month independent audit & monitoring.

36. Final pump capacity shall be determined from pump test results & approved administratively by signature of chair.

37. The permittee shall seek and submit to the Commission within ninety (90) days written confirmation from the Department of Land Utilization of the non-conforming use.

38. Pumping shall cease immediately if the chloride reports show that the brackish water developed in the well exceeds 1,000 mg/l of chloride, unless a variance from the chloride limit has been granted. The authority to approve future variance requests is delegated to the chairperson.

39. The duration of the interim permit shall be:
   a. To July 1, 2006, or
   b. Until treated wastewater is available and acceptable for use, or
   c. Until such time that a significant change in permitted, actual, or projected uses or water supply occurs.

40. Action on any interim permit may be initiated by the Commission or any permittee upon letter request or pursuant to §174C-57 Haw. Rev. Stat. (Modification of permit terms).

41. This permit is approved under the assumption that wastewater will become available for reuse as an alternative supply source.

42. Require adherence to the chloride sampling protocol and the submittal of weekly chloride data. The authority to approve variances from the weekly reporting requirement is delegated to the Chairperson.

43. Require adherence to the Conservation Conditions.
44. In the event a water shortage is declared by the Commission, permittees in the <Insert Aquifer System> shall comply with the <Insert Aquifer System> water shortage plan adopted by the Commission.

45. The permittee shall contact the Department of Health, Clean Water Branch and obtain the necessary discharge permit(s).

46. Permit shall be interim and replaces existing WUP for 2051-07 & 11.

47. Applicant shall submit an acceptable archaeological inventory survey report to DHP. If historic sites affected, a plan to mitigate these affects must be accepted by DHP and completed by applicant.

48. Should the well be used for back-up domestic supply, applicant is advised to contact DOH or otherwise ensure safe drinking water quality is maintained.

49. (The permittee) may report monthly pumpage on yearly basis.

50. Prior to issuance of any permits, must submit filing fee for after-the-fact pump installation permit.

51. The term of this permit shall be twenty years from the date of issuance of the permit with a five-year Board review to determine compliance with the provisions of the permit.

52. The amount of water to be withdrawn under this permit shall be 0.19 mgd, averaged annually, for irrigation use. This permitted use of 0.19 mgd when added to a preserved use of 0.27 mgd amounts to a total of 0.46 mgd, averaged annually, which may be withdrawn from well 1646-01.

53. The use authorized by the permit must not interfered substantially and materially with existing individual household uses and existing uses.

54. The use of this well shall be subject to the shortage and emergency powers of the Board of Land and Natural Resources (BLNR).

55. This permit may be suspended or revoked, in accordance with Chapter 166.

56. The permit holder may be required to relinquish this permit to BLNR, in accordance with Chapter 166.

57. The withdrawal from Well 1646-10 shall be recorded and reported to DLNR on a monthly basis by the permittee.

58. In the event that emergency water use occurs, the permittee shall notify the Commission in writing within one (1) day of pumping, to in form the Commission as to the nature of the emergency and the expected duration of the emergency. A water
use report shall also be filed pursuant to Standard Condition 10 and Administrative Rule 13-168-7.

59. Note DOH's requirements related to non-potable water systems (attached to original permit).

60. Standard Condition 16 requiring the submittal of a water shortage plan is waived.

61. All non-potable spigots and piping shall be clearly labeled as "DO NOT DRINK, NON-POTABLE" to prevent direct human consumption.

62. Standard Condition 10 is modified. Due to the inability to take water level measurements, the requirement to measure monthly water levels is waived. In addition, as long as the U.S. Geological Survey is collecting and analyzing the chloride content of the well water, the requirement for the permittee to measure and report chlorides is also waived.

63. Well elevation components must be surveyed by a licensed surveyor and this information must be submitted to commission prior to issuance of permanent permit.

64. The permittee shall obtain approvals from the Department of Health and the U.S. Environmental Protection Agency prior to use of the water.

65. This water use permit, WUP No. <Insert #>, shall supersede WUP No. <Insert #>.

66. WUP No. <Insert #> is revoked.

67. Standard Condition 17 is waived.

68. Standard Condition 22 for interim water use permits shall not apply.

69. To supplement our records, we request that you provide a map of the Galbraith Est. lands west of Wahiawa (2100 ac+) and the associated TMK's for use area.

70. Deferred action on portion requested for golf course irrigation pending further refinement of irrigation requirement and a feasibility study for utilization of surface water sources, including Wahiawa Reservoir.

71. Written justification be provided for any 'cushion' of 0.5 mgd.

72. The water use permit shall be an interim permit. The duration of the interim permit shall be until treated wastewater is available and acceptable for use. The permittee shall continue discussions with Honolulu Board of Water Supply regarding the use of reclaimed water.

73. The permittee is put on notice that this is a qualified approval in that this permit may be modified or revoked prior to the expiration of the interim permit if the
Commission decides that the use of additional basal ground water for dust control and landscape irrigation is not reasonable-beneficial use.

74. The permittee encouraged to use drought-tolerant landscaping to conserve water.

75. Should the applicant provide written evidence that the county DHCD approves a 201E exemption for the elderly affordable housing project then the applicant may modify a corresponding portion of their existing aquacultural use to be used by the exemption approved project within the Commission approved water use permit limits under recommendation 5.

76. The applicant shall obtain a water lease/permit from Land Division prior to actual use of the well water.

77. Require the permittee to sign a contract by May 14, 1998 with the City Department of Wastewater Management to buy and use 0.400 mgd of R-1 water for a corresponding reduction in allocation for Well Nos. 1900-02, 17 to 20, and 1901-03.

78. Standard Condition 9 is waived.

79. Standard Condition 10 is modified to exempt the permittee from monthly measurements of salinity and temperature.

80. Standard Condition 10 is waived.

81. Applicant must seek a determination from BLNR and Land Mgt Div as to whether water license required. If required, license must be obtained prior to issuance of permit. If not, permit will be issued w/out further action.

82. Commission defers action on use in excess of 452,000 gpd pending additional info from BWS and further staff analysis.

83. The permit shall be subject to the Commission’s sustainable yield review by December 1990.

84. The Commission shall delegate to the Honolulu Board of Water Supply the authority to allocate the use of water for municipal purposes, in accordance with §174C-48(b) HRS.

85. Honolulu Board of Water Supply shall be exempt from the requirements of permit modifications as provided in §174C-57.

86. BWS must participate in discussions, to be coordinated by Commission Staff, regarding a monitoring program to address impacts to Kaneohe Bay water quality, prior to any action on applications for future municipal uses.

87. A pump installation permit application must be made and approved prior to the installation of a permanent pump.
88. The water withdrawn shall be 0.7 mgd for municipal use.

89. The installed pump capacity of the well shall not be more than 700 gpm or 1.01 mgd.

90. The term of permit shall automatically expire twelve months from the date of issuance.

91. The Honolulu Board of Water Supply may continue to submit monthly water data on their own form, provided that the data are submitted in a format that is acceptable to the Commission staff.

92. Standard Condition 7 shall not apply.

93. Standard Condition 22 shall not apply.

94. Standard Condition 10 is modified to exempt the permittee from monthly measurements of salinity and temperature.

95. This permit shall be subject to conditions providing for stream restoration if the Commission determines that additional water should be returned to the streams.

96. HECO 1 mgd for industrial use

97. Campbell Estate 1 mgd for municipal use through BWS, by separate agreement with HECO

98. BWS 1 mgd for municipal use.

99. The permit shall be subject to the Commission’s sustainable yield review by <Insert Date>.

100. The applicant shall obtain the current version of the Department of Health’s Guidelines Applicable to Golf Courses in Hawaii. Where relevant and viable, items of the guidelines should be implemented and sustained appropriately. To obtain the current version, contact the Safe Drinking Water Branch, Environmental Management Division at 808-586-4258 (Honolulu).

101. The future use portion of the application shall be deferred until existing uses in the Koolauloa area are established.

102. The water to be withdrawn under this permit shall be a total of 0.03 mgd (0.02 mgd preserved plus an additional 0.01 mgd permitted use), averaged annually, for domestic and irrigation use

103. Existing well 1851-09 shall be properly sealed by a licensed drilling contractor. A well modification permit application, enclosed, shall be submitted to the Department for approval of the well sealing. A filing fee for sealing the well will not be required.
104. The permittee is required to test the source using a certified private laboratory and submit the test results to the Commission within three (3) months. The Commission will then forward the results to the Department of Health for their review. The Department of Health recommends that the well be routinely tested for microbiological and chemical parameters thereafter.

105. The permittee is required to submit a completed Registration of Well and Declaration of Water use by <Insert Date>.

106. The permittee shall contact the Department of Health for a written determination on the status of their water system and comply with any Department of Health requirements for monitoring and testing.

107. In the event that the original spring source decontaminates, the new well authorized will be shut down.

108. That within each aquifer the total permitted use shall not exceed the sustainable yield.

109. That any water available for allocation shall be for in-district use.

110. That scheduled reductions to Oahu Sugar Co. permitted use shall be initiated upon final termination of an Osco lease or sub-lease, whichever occurs later.

111. That permits for water use issued in accordance with the proposed schedule shall be interim permits subject to review and adjustment by 1995.

112. That the permit shall be an interim permit for a new use which is afforded to existing users as specified in §13-171-20.

113. That the original allocation of 0.200 mgd shall be taken to hearing for possible revocation at a later date to complete the transfer of the water use permit entirely to Well No. 3407-02. This revocation would reduce the current allocation afforded to the Kunihiro Well (Well No. 3406-06) to zero.

114. This allocation incorporates the unspecified domestic needs of the applicant and therefore necessitates a single meter be installed at the well.

115. Should any impacts to nearby wells or streams be established by the use of this well, the applicant shall address these issues to the satisfaction of the Commission.

116. If an economically feasible nonpotable source is identified, the applicant shall convert to the alternative nonpotable source.

117. The permit shall be subject to the Chairperson’s approval of a water use plan recommending possible measures to prevent or minimize saltwater contamination and establish courses of action to follow should the aquifer become to saline to use.
118. Permittee shall provide the necessary end-use information on the 10th residence to allow regulation of the use under Chapter 174C.

119. Standard Conditions 10 & 18 shall not apply.

120. Standard Condition 10 is modified to exempt the permittee from the requirement to install a flowmeter. Salt water withdrawals may instead be estimated based on pumping capacity and run time.

121. The applicant shall review the existing year long period of pumpage and streamflow data and provide analysis on ground and surface water interaction. Deadline is January 25, 1994.

122. The water use permit for Well Nos. 2301-27 to -32 for 0.75 mgd (WUP No. 419) shall be revoked upon issuance of a pump installation permit for the well.

123. The permittee shall use mulching to decrease evaporative losses and manage irrigation scheduling to minimize water demand.

124. The permittee shall submit a detailed agricultural plan to support any future water use permit application for increased agricultural use at this parcel.

125. If not already obtained, the permittee shall seek and obtain any necessary permits from the Department of Health for the proposed discharge to Malaekahana Stream.

126. Standard Condition 10 is modified to waive the requirement for installing a water meter on Well Nos. 2358-21, 22, and 29. The permittee shall install a water meter on Well No. 2358-26 to measure total monthly flow through the discharge line. This quantity should then be assumed to be the rate of natural flow from the other three wells for monthly reporting purposes.

127. The permit shall be effective upon submittal of documentation by Navy that it has met the DOH requirements for a public system.

128. This WUP shall be subject to Army's application for a WUP to reduce the permitted use of the Army's Schofield Shaft (2901-22 to 04, 10) by 0.208 mgd to a new total of 5.648 mgd. The Army's application shall be submitted within 60 days after the approval of this WUP or this WUP shall be void. Approval of the modification request shall be obtained from the CWRM prior to use of Well No. 3100-02 and issuance of this WUP.

129. Navy shall submit an after-the-fact PIPA, and approval of the permit shall be obtained prior to use of the well.

130. The well shall not be used for drinking water purposes unless it is properly tested and treated.
131. This permit is approved subject to reclaimed water becoming a practical alternative and provided that the Department of Health approves the reuse application.

132. Should any opae ula be recovered in the well water, the permittee shall notify the Division of Aquatic Resources and provide specimens to the Division of Aquatic Resources for analysis.

133. If a single meter at the well is used, the Commission shall allow an additional 1,000 gallons per day to the water use permit amount for the domestic needs of two residences, although a permit for individual domestic consumption is not required. Otherwise, the applicant must provide a meter to separately measure the irrigation consumption.

134. This permit is approved under the requirement that conversion to either: 1) treated wastewater becoming available for reuse as an alternative supply source, provided that Department of Health concerns over the use of treated effluent over the potable water aquifer have been addressed; and/or 2) other nonpotable source becoming available will occur in a timely manner.

135. These permits shall be subject to a review of actual use within four years for possible modification of the permitted amount.

136. The permit shall be reviewed in two (2) years for possible additional revocation due to nonuse.

137. The allocation is based on the projects listed in Exhibit 5 (of Item 10 of the May 20, 1998 Staff Submittal), except for the Queen's Beach GC (TMK 139-11-2,3), Lot 9 (TMK 139-17-51), and Varsity Place (TMK 128-24-35).

138. Kamehameha Schools Bishop Estate/Honolulu Board of Water Supply shall transfer the water use permit within ninety (90) days of the effective date of the transfer of the pump station to the Honolulu Board of Water Supply, pursuant to §174C-59 Hawaii Revised Statutes.

139. The permittee shall ensure that the water is recycled by either directing it into the Waiahole Ditch for use by downstream farmers (subject to the approval of the Agribusiness Development Corporation’s Board) or into Waikele Farm’s existing irrigation system.

140. The permittee shall file a completed application to modify WUP No. 758 to reduce the allocation by 0.100 mgd within 60 days. If a completed water use permit modification application is not received within 60 days from this submittal’s date, then the subject water use permit application (WUPA No. 767) shall be deemed denied without prejudice without the need for another hearing.

141. The water withdrawn shall be for municipal use. No improvements to the existing sources are required as the existing source capacities are greater than the increase.
142. Water license must be determined through LM.

143. Proposed other uses will be considered at a later date.
October 19, 2005

Mr. Randy Gentry
County of Maui
Department of Parks and Recreation
700 Halia Nakoa, Unit 2
Wailuku, HI 96793

Dear Mr. Gentry:

Notice of Commission Action
War Memorial Football Stadium Well (Well No. 5329-14, WUP 713)
Baldwin High School Well (5329-05, WUP 710)
Papohaku Park Well (5429-02, WUP 712)
Waiehu Golf Well (5529-01, WUP 711)

This letter serves as your official notice of action taken by the Commission on Water Resource Management (Commission) on the subject application. By a unanimous vote of the Commission at their meeting on September 28, 2005, the Commission:

Approved the water use permits for the reasonable-beneficial irrigation use of the captioned Maui Parks and Recreation caprock wells, subject to standard conditions and the following special conditions:

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.

2. The applicant shall contact the Environmental Management Division, State Department of Health, at 586-4304, concerning "GUIDELINES APPLICABLE TO GOLF COURSES IN HAWAII" dated July, 2002 (version 6).

3. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

4. Standard condition 10 is emphasized, to report consumption on a regular basis.

If you have any questions, please contact Charley Ice of Commission staff at 587-0251.

Sincerely,

DEAN A. NAKANO
Acting Deputy Director
October 19, 2005

Mr. Randy Gentry
County of Maui
Department of Parks and Recreation
700 Halia Nakoa, Unit 2
Wailuku, HI 96793

Dear Mr. Gentry:

Approval of Water Use Permits for
War Memorial Football Stadium Well (Well No. 5329-14, WUP 713)
Baldwin High School Well (5329-05, WUP 710)
Papohaku Park Well (5429-02, WUP 712)
Waiehu Golf Well (5529-01, WUP 711)
Iao Ground-Water Management Area, Maui

This letter transmits your water use permits for the captioned wells for the specified use below, measured on a 12-month moving average basis, that was approved by the Commission on Water Resource Management (Commission) on September 28, 2005. As part of the Commission's approval, the following special conditions were added and are part of your permit under Standard Permit Condition 19:

Special Conditions

1. Should an alternate permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.

2. The applicant shall contact the Environmental Management Division, State Department of Health, at 586-4304, concerning "GUIDELINES APPLICABLE TO GOLF COURSES IN HAWAII" dated July, 2002 (version 6).

3. In the event that the tax map key at the location of the water use is changed, the permittee shall notify the Commission in writing of the tax map key change within thirty (30) days after the permittee receives notice of the tax map key change.

4. Standard Condition 10 is emphasized, to report consumption on a regular basis.
Enclosed with this letter of approval are the following:

1. Your water use permit
2. Your official monthly water use report form

Please be sure to read the conditions of your approved permit.

We draw your attention to two key conditions of your permit that require your response. First, you are required to keep a record of your monthly total pumpage, water level, salinity, and water temperature. This information must be submitted to the Commission on a regular yearly basis using the enclosed water use report form. You should make copies of the enclosed report form as needed.

Second, you are required to submit a water shortage plan to the Commission within thirty (30) days of the issuance date of this permit. Your water shortage plan simply identifies what you are willing to do should the Commission declare a water shortage situation in the Iao Ground-Water Management Area and can be as short as a one page letter. In a water shortage situation, the Commission may require temporary reductions in pumpage from all sources. The Commission is required, by law, to formulate a plan to implement such area-wide reductions, which should accommodate, include, and be consistent with your plans. Therefore, your help, by submitting your water shortage plan, is greatly needed in formulating the Commission's overall Water Shortage Plan.

If you have any questions, please call Charley Ice of the Commission staff at 587-0251.

Sincerely,

Peter T. Young
Chairperson

Attachments
GROUND-WATER USE PERMIT
WUP NO. 710

PERMITTEE

<table>
<thead>
<tr>
<th>Permittee/Water User</th>
<th>Landowner of Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maui Department of Parks and Recreation</td>
<td>Address</td>
</tr>
<tr>
<td>700 Halia Nakoa, Unit 2</td>
<td>Wailuku, HI 96793</td>
</tr>
</tbody>
</table>

PERMITTED SOURCE INFORMATION

<table>
<thead>
<tr>
<th>Island</th>
<th>Water Management Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maui</td>
<td>Wailuku</td>
</tr>
<tr>
<td></td>
<td>Iao</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Aquifer Sector</th>
<th>System Sustainable Yield</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wailuku</td>
<td>20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Well Name</th>
<th>State Well No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Baldwin High School Well</td>
<td>5329-05</td>
</tr>
</tbody>
</table>

PERMITTED USE INFORMATION

<table>
<thead>
<tr>
<th>Reasonable beneficial use</th>
<th>Municipal</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Withdrawal (12 month moving ave.)</th>
<th>0.011 mgd</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Location of water use</th>
<th>TMK #</th>
<th>State land use classification</th>
<th>County zoning classification</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3-8-7:4</td>
<td>Urban</td>
<td>Park</td>
</tr>
</tbody>
</table>

Pursuant to Hawaii’s State Constitution, Article XI, Section 7, Hawaii Revised Statutes, Chapter 174C; Hawaii Administrative Rules, Chapters 13-167 through 13-171; and Hawaii decisional law and custom, the permittee is hereby authorized to use ground water from the sources and in the amount and from and upon the locations described above; subject however, to the requirements of law including but not limited to the following conditions:
1. The water described in this water use permit may only be taken from the location described and used for the reasonable beneficial use described at the location described above. Reasonable beneficial use means "the use of water in such a quantity as is necessary for economic and efficient utilization which is both reasonable and consistent with State and County land use plans and the public interest." (HRS § 174C-3)

2. The right to use ground water is a shared use right.

3. The water use must at all times meet the requirements set forth in HRS § 174C-49(a), which means that it:
   a. Can be accommodated with the available water source;
   b. Is a reasonable-beneficial use as defined in HRS § 174C-3;
   c. Will not interfere with any existing legal use of water;
   d. Is consistent with the public interest;
   e. Is consistent with State and County general plans and land use designations;
   f. Is consistent with County land use plans and policies; and
   g. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in section 221 of the Hawaiian Homes Commission Act and HRS § 174C-101(a).

4. The ground-water use here must not interfere with surface or other ground-water rights or reservations.

5. The ground-water use here must not interfere with interim or permanent instream flow standards. If it does, then:
   a. A separate water use permit for surface water must be obtained in the case an area is also designated as a surface water management area;
   b. The interim or permanent instream flow standard, as applicable, must be amended.

6. The water use authorized here is subject to the requirements of the Hawaiian Homes Commission Act, as amended, if applicable.

7. The water use permit application and submittal, as amended, approved by the Commission at its September 28, 2005 meeting are incorporated into this permit by reference.

8. Any modification of the permit terms, conditions, or uses may only be made with the express written consent of the Commission.

9. This permit may be modified by the Commission and the amount of water initially granted to the permittee may be reduced if the Commission determines it is necessary to:
   a. protect the water sources (quantity or quality);
   b. meet other legal obligations including other correlative rights;
   c. insure adequate conservation measures;
   d. require efficiency of water uses;
   e. reserve water for future uses, provided that all legal existing uses of water as of June, 1987 shall be protected;
   f. meet legal obligations to the Department of Hawaiian Home Lands, if applicable; or
   g. carry out such other necessary and proper exercise of the State's and the Commission's police powers under law as may be required.

Prior to any reduction, the Commission shall give notice of its proposed action to the permittee and provide the permittee an opportunity to be heard.

10. An approved flowmeter(s) must be installed to measure monthly withdrawals and a monthly record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a yearly basis (attached).
11. This permit shall be subject to the Commission's periodic review of the Iao Aquifer System's sustainable yield. The amount of water authorized by this permit may be reduced by the Commission if the sustainable yield of the Iao Aquifer System, or relevant modified aquifer(s), is reduced.

12. A permit may be transferred, in whole or in part, from the permittee to another, if:
   a. The conditions of use of the permit, including, but not limited to, place, quantity, and purpose of the use, remain the same; and
   b. The Commission is informed of the transfer within ninety days.

Failure to inform the department of the transfer invalidates the transfer and constitutes a ground for revocation of the permit. A transfer, which involves a change in any condition of the permit, including a change in use covered in HRS § 174C-57, is also invalid and constitutes a ground for revocation.

13. The use(s) authorized by law and by this permit do not constitute ownership rights.

14. The permittee shall request modification of the permit as necessary to comply with all applicable laws, rules, and ordinances that will affect the permittee's water use.

15. The permittee understands that under HRS § 174C-58(4), that partial or total nonuse, for reasons other than conservation, of the water allowed by this permit for a period of four (4) continuous years or more may result in a permanent revocation as to the amount of water not in use. The Commission and the permittee may enter into a written agreement that, for reasons satisfactory to the Commission, any period of nonuse may not apply towards the four-year period. Any period of nonuse which is caused by a declaration of water shortage pursuant to section HRS § 174C-62 shall not apply towards the four-year period of forfeiture.

16. The permittee shall prepare and submit a water shortage plan within 30 days of the issuance of this permit as required by HAR § 13-171-42(c). The permittee's water shortage plan shall identify what the permittee is willing to do should the Commission declare a water shortage in the Iao Ground-Water Management Area.

17. The water use permit shall be subject to the Commission's establishment of instream standards and policies relating to the Stream Protection and Management (SPAM) program, as well as legislative mandates to protect stream resources.

18. The permittee understands that any willful violation of any of the above conditions or any provisions of HRS § 174C or HAR § 13-171 may result in the suspension or revocation of this permit.

19. Special conditions in the attached cover transmittal letter are incorporated herein by reference.

PETER T. YOUNG, Chairperson
Commission on Water Resource Management

Attachment