June 17, 2011

Honorable William J. Aila, Jr., Chairperson
Commission on Water Resource Management
State of Hawaii Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Chairperson Aila:

Subject: Water Shortage Plan for DEC-ADM97-A1 Modification of Water Use Permits
(WUP No. 680 to WUP No. 920, WUP No. 699 to WUP No. 921, WUP No. 817 to WUP No. 922, and WUP No. 884 to WUP No. 923)

Iao Ground-Water Management Area 81B

Pursuant to Section 13-171-42(c) of your administrative rules, please find attached the water shortage plan for the above referenced water use permit modifications for Well No. 5332-02, Well No. 5332-05, Well No. 5430-01, and Well No. 5430-02.

Should you have any questions, please contact our Water Resources Planning Division at (808) 244-8550.

Sincerely,

David Taylor
Director

emb

c: Engineering Division
    Ed Kushi, Jr. First Deputy Corporation Counsel
    Jane Lovell, Deputy Corporation Counsel

enclosure

"By Water All Things Find Life"
16-9-1  **Purpose.** The purpose of the rule is to prevent overdraft of Iao aquifer.  

16-9-2  **Definitions.** The definitions as set forth herein, and in Board of Water Supply Rules and Regulations Rule Sections 1-2, 16-8-2, and 16-7-3 shall apply in these rules unless another meaning is plainly evident from the context. If there is any conflict between definitions it is intended that the broader or more inclusive definition apply. If a word or phrase is not defined the commonly accepted definition of that word or phrase shall apply.

"Base period water use" or "base period" means the monthly average water use based on water usage for the immediately preceding full twenty-four (24) month billing cycle at the time of the caution low groundwater declaration. Partial billing cycles are not to be included in the determination of the monthly average.

"Sustainable yield" means the maximum rate at which water may be withdrawn from a water source without impairing the utility or quality of the water source as determined by the Commission on Water Resources Management.

16-9-3  **Caution low groundwater condition.**

(a) A caution low groundwater condition exists:

(1) At any time the 12 month moving average pumpage of gallons of water withdrawn from the Iao Aquifer exceeds 95% of the sustainable yield of the Iao Aquifer; or

(2) Whenever chloride content reaches the absolute limit in ppm chloride shown in Column A in Schedule 1 in more than one area based on a 3 month moving average.

(b) The board shall at any time during the period in which a caution low groundwater condition exists inform the public that a caution low groundwater condition exists. Thereafter the director shall:

(1) Conduct an intensive public appeal for water conservation through the mass media;

(2) Institute voluntary irrigation and other water use schedules to reduce water consumption;

(3) Send letters to large consumers and other private well operators asking them to cut back their usage; and

(4) Notify the Mayor, Maui County Council, and the State Commission on Water Resources Management.

(c) The goal for draft reduction is 5% of Iao Aquifer sustainable yield as determined by the Commission on Water Resources Management.

(d) Consumers shall be given a target of a 10% reduction of their base period water use as the goal for reduction of water use in the caution low groundwater condition.
(e) No new applications for water meters or payment of the water system development fee shall be accepted by
the Department at any time when the combination of actual pumpage from the Iao Aquifer plus the amount
of water estimated to be used, based on paid for meter reservations for meters which have not been
physically installed, equals or exceeds 98%.

(f) The following procedure shall be followed to issue meters after the caution low ground water condition is
lifted:
(1) The director shall establish a system to put all such requests on a master list in the order in which
they are received;
(2) When applications for meters may be accepted the director shall contact the persons on the master
list in the order which the request was received and inform them that they may file an application.
The application and payment of the fee must be submitted within 90 days of notification;
(3) If the person does not apply for a meter and pay the fee within this period the person is removed
from the list and must reapply in the normal course of business; and
(4) No new applications for meters shall be accepted until all of the persons on the list have first been
offered a meter and have either applied for a meter and paid the fee or have not applied within the
period specified in subsection (3), above.

(g) The director shall, at each board meeting while a caution low groundwater condition exists, report to the board:
(1) The status of the chloride levels of the department's facilities listed in Schedule 1;
(2) The weekly average of daily pumpage; the effectiveness of the voluntary conservation measures
being advocated; increase or decrease in public appeals to conserve water; and
(3) Such other information which the board may require from time to time to evaluate the status of the
low condition and make modification to the voluntary conservation measures being advocated.

16-9-4 Alert Low Groundwater Condition.
(a) An alert low groundwater condition exists:
(1) At any time the 12 month moving average pumpage of gallons of water withdrawn from the Iao
Aquifer reaches 98% of the sustainable yield of the Iao Aquifer; or
(2) Whenever chloride content reaches the absolute limit in ppm chloride shown in Column B in
Schedule 1 in more than one area based on a 3 month moving average.

(b) The board shall at any time during the period in which an alert low groundwater condition exists declare
that an alert low groundwater condition exists. Thereafter the director shall:
(1) Implement mandatory restrictions pursuant to Section 16-9-6 of these rules;
(2) Take appropriate action against those person(s) failing to comply with these provisions as
permitted within these and the other Board Rules and Regulations;
(3) Take any action authorized to be taken pursuant to Section 16-9-3 of these rules; and
(4) Notify the Mayor, Maui County Council, and the state Commission on Water Resources
Management.

(c) Private wells.
(1) During an alert low groundwater condition period the Board shall ask owners of private wells that
adversely affect the Iao Aquifer sustainable yield to comply with maximum monthly water allotments
established for each private well or battery of private wells. Such allotments shall be stated as a percentage
of the highest average daily draft for each month of the year over the last five years prior to the effective
date of the alert low groundwater condition as declared by the board.

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* Highest Average Daily Pumpage for Each Month of the Year Over the Last 5 years for John Doe Well.
Jan - 2.4 mgd
Feb - 2.0 mgd
Mar - 1.9 mgd
Apr - 2.6 mgd
(2) In no case shall the allotment be less than 90% of the highest average daily draft for each month of the year over the last five years;
(3) Any Owner of two or more separate wells may regulate the draft of their wells so that aggregate monthly draft will not exceed the combined monthly allotment for all of their wells;
(d) The goal for draft reduction is 10% of Iao Aquifer sustainable yield as determined by the Commission on Water Resources Management.
(e) Consumers shall be given a target of a 15% reduction of their base period water use as the goal for reduction of water use in the alert low ground water condition.
(f) The director shall, at each board meeting while an alert low groundwater condition exists, report to the board:
(1) The status of the chloride levels of the department's facilities listed in Schedule 1;
(2) The weekly average of daily pumpage; the restrictions and allotments in force; plans to increase or decrease public appeals to conserve water; and
(3) Such other information which the board may desire or require from time to time to evaluate the status of the low groundwater condition and make modification to the mandatory conservation measures being advocated.[Eff. 03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

16-9-5 Critical Low Groundwater Condition.
(a) A critical low groundwater condition exists:
(1) At any time the 12 month moving average pumpage of gallons of water withdrawn from the Iao Aquifer reaches 100% of the sustainable yield of the Iao Aquifer;
(2) Whenever chloride content reaches the absolute limit in ppm chloride shown in column C in Schedule 1 in more than one area based on a 3 month moving average.
(b) The board shall at any time during the period in which a critical low groundwater condition exists declare that a critical low groundwater condition exists. Thereafter, the director shall;
(1) Implement mandatory restrictions within the scope of these rules and regulations;
(2) Take appropriate action against those person(s) failing to comply with these provisions as permitted within these and the other Board Rules and Regulations;
(3) Take any action authorized to be taken pursuant to Section 16-9-3 and 16-9-4 of these rules; and
(4) Notify the Mayor, Maui County Council, and the state Commission on Water Resources Management.
(c) Private wells.
(1) During a critical low groundwater condition period, the board shall ask owners of private wells that adversely affect the Iao Aquifer sustainable yield to comply with maximum monthly water allotments established for each private well or battery of private wells. Such allotments shall be stated as a percentage of the highest average daily draft for each month of the year over the last five years prior to the effective date of the critical low groundwater condition as declared by the board. The board may, from time to time, increase or decrease the initial percentage limit set for the well or battery of wells provided that in no case shall the percentage be less than 70% of the highest average daily draft for each month of the year over the last five years.
(2) Any Owner of two or more separate wells may regulate the draft on their wells so that the aggregate monthly draft will not exceed the combined monthly allotment for all of their wells.
(d) The goal for draft reduction is 15% of Iao aquifer sustainable yield as determined by the Commission on Water Resources Management.
(e) Consumers shall be given a target of a 20% reduction of their base period water use as the goal for reduction of water use during a critical low ground water condition.
(f) The director shall, at each meeting while a declared critical low groundwater condition as provided herein is in effect, report to the board:
(1) The status of the chloride levels of the department's facilities listed in Schedule 1;
(2) The weekly average of daily pumpage; the restrictions and allotments in force; plans to increase or reduce restrictions and allotments; and
16-9-6 Mandatory restrictions related to alert low groundwater condition.
(a) Board of water supply consumers. During an alert low groundwater condition period, the director may set lawn and ground cover water irrigation restrictions on any of the department's consumers. Such restrictions shall relate to the time when such irrigation may take place and the quantity of water used and may be different for the various classes of the department's consumers as the director shall determine. In addition, the director shall establish water allotments for consumers which shall not be less than 90% of the base period water use, but not less than 400 gallons/day for single family and duplex residences.
(b) During an alert low groundwater condition no meter applications shall be accepted and no meters shall be installed.
(c) Department personnel may issue warnings and citations for violations of mandatory restrictions.

16-9-7 Mandatory restrictions related to critical low groundwater condition.
(a) Board of water supply consumers. The director shall declare that one or more of the following restrictions apply to any or all classes of the department's consumers. Such restrictions may relate to the time when the uses listed in this paragraph may occur and the quantity of water used and may be different for the various classes of the department's consumers as the director may determine.
(b) The restrictions include the following:
   (1) Limits on lawn and ground cover water irrigation;
   (2) Limits on plant and garden irrigation;
   (3) Limits on the washing of cars, boats, trailers, and other vehicles;
   (4) Limits on the filling of swimming pools and other types of pools and ponds;
   (5) Limits on the washing of sidewalks, walkways, driveways, patios, parking lots, tennis courts, and other hard-surfaced areas; and
   (6) Limits on the operations of fountains.
(c) Department personnel may issue warnings and citations for violations of mandatory restrictions set by the director.

16-9-8 Surcharge penalties for Alert and Critical Groundwater Conditions.
(a) During alert and critical low groundwater condition periods a surcharge schedule for excess water use shall be established according to the following procedure. The director shall set water allotments per billing period for each class of the department's consumers. Such allotments shall be stated as a percentage (which may be greater than 100% but not less than 70%) of the base period water use. In addition, the allotment shall not be less than 400 gallons per day for single family and duplex residences.
(b) The base period water use as defined in section 16-9-2, above, shall be used to determine surcharge penalties. This amount is not a moving average but is intended to be used for the duration of any Alert or Critical Groundwater condition.
(c) Surcharge penalties shall be charged as follows during Alert and Critical Groundwater conditions:
   (1) Usage between the allotment as set forth in Section 16-9-8(a), above, and the base period water usage shall be subject to a surcharge of three (3) times the current highest block rate;
   (2) Usage above the base period water usage shall be charged at twenty (20) times the current highest block rate; and
   (3) Consumers who use more than the base period water usage are also subject to the installation of a flow restriction device and/or the discontinuation of water service, including removal of the meter.
(d) Surcharges shall be assessed each consumer after receipt of the first water bill following the establishment of allotments by the board. Upon termination of allotments by the board, surcharges shall cease.

16-9-9 Penalties.
Any violation by any person of the restrictions declared by the board under Sections 16-9-6 and 16-9-7 of this chapter or who consumes water in excess of the amount designated for their class shall be subject to the installation of a flow restriction device by the department and punishable according to these rules and regulations and section 3-
26 of the rules and regulations of the department of water supply. An offender shall pay the actual cost for the installation and removal of a flow restriction device by the department, which cost shall be billed at the prevailing wage rate(s) plus costs for equipment and materials. Water service may be discontinued for an offense committed after the installation of a flow restrictor in accordance with section 3-12 of the rules and regulations of the department of water supply. [Eff. 03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

16-9-10 Procedures for control of water use during Alert or Critical low groundwater conditions.

(a) Declaration of low groundwater level condition. The Director shall inform the public and the department's consumers of the declaration of an alert or critical low groundwater condition by publishing such declaration in a newspaper of general circulation on the island of Maui at least once a day for three consecutive days. The alert or critical low groundwater condition shall begin at midnight on the third day of the publication declaring such condition. The following notices shall be issued during an alert or critical low groundwater condition:

(1) Notice of restrictions. The Director shall inform the public and the department's consumers of the restrictions being imposed because of an alert or critical low groundwater condition by publishing such restrictions in a newspaper of general circulation on the island of Maui at least once a day for three consecutive days. The restrictions shall begin at midnight on the third day of publication declaring such condition and shall terminate at midnight on the first day of a publication terminating such condition;

(2) Notice of water allotment to consumers. Each consumer shall be notified of their water allotment per billing period by printing such amount on their water bill or by direct mail to the consumer. In cases where a water bill is not sent directly to the person using the water, the consumer shall be responsible for informing the user of the water allotment per billing period applicable to them; and

(3) Notice of maximum monthly water allotment to private well operators. Private well operators shall be notified by mail of their monthly water allotment.
I. Exceptions. Consideration of written applications for exceptions regarding the allotment system or regulations and restrictions on water use shall be set forth in this chapter. Written applications for exceptions shall be accepted, and may be granted, by the director. The director shall report to the Board at each Board meeting a list of all exemptions requested and exceptions granted by consumer class since the previous meeting. Grounds for granting such exceptions are:

A. Failure to do so would cause an unnecessary and undue hardship to the applicant, including but not limited to adverse economic impacts such as loss of production or jobs;

B. Failure to do so would cause an emergency condition affecting the health, sanitation, fire protection, or safety of the applicant or the public;

C. For single family residences with more than four persons permanently residing in the home, if a written application for exception is granted as provided herein, the applicable allotment shall be increased by 40 gallons per person per day for each person permanently residing in the home in excess of four persons;

D. For multiple residential units with more than two dwelling units where the allotment is less than 280 gallons per day per dwelling unit, if a written application for an exception is granted as provided herein, the applicable allotment shall be 280 gallons for each unit; and

E. Denial of an application for exception may be appealed in writing to the board, which shall consider the appeal as a contested case pursuant to Board of Water Supply Rules of Practice and Procedure, Title 16, chapter 2.

II. The director shall inform the public and the department's consumers of the termination by the Board of an alert or critical low groundwater condition by publishing such termination in a newspaper of general circulation on the island of Maui at least once a day for three consecutive days. The alert or critical low groundwater condition and all restrictions and allotments associated therewith shall terminate at midnight on the first day of a publication terminating such condition. [Eff.03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

16-9-11 Termination of Caution, Alert, or Critical low groundwater conditions
The board may terminate a declared Caution, Alert, or Critical Low Groundwater condition whenever chloride content and moving annual average pumpage over three consecutive months at sources that caused the declared low groundwater level conditions to exist are appropriately reduced below their respective amounts. [Eff. 03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

16-9-12 Exemption of private wells within designated groundwater control areas
New and existing private wells within designated groundwater control areas only shall be exempt from the provision of these rules and regulations. However, owners of private wells shall be asked to comply with any allotments set by the board for private wells. Control and regulation of such wells shall be subject to state statutes, rules, regulations, directives, and standards as currently exist and as may, from time to time hereafter, be amended. Eff. 03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

16-9-13 Relationship between Designation of the Iao Aquifer for management and the Iao Water Management Rule
Upon designation of the Iao Aquifer by the appropriate state agency the Board shall meet and consider the reasons for designation and independently determine whether the criteria for declaring either a caution, alert, or critical low groundwater condition exists and, if so, to declare the appropriate low groundwater condition as existing. Nothing in this rule shall require the Board to declare that any such low groundwater condition exists, even though the Iao aquifer may be so designated by a state agency. [Eff. 03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

16-9-14 Effective date.
This rule shall become effective ten (10) days after it is filed with the county clerk of the county of Maui. Eff. 03/15/99] (Auth: HRS 91-4) (Imp: HRS 54-33)

Adopted on the 14th day of January, 1999, by the Board of Water Supply of the County of Maui.
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**02Jul08**

Handwritten note: "WUPA/ch 343 not yet ready - Ryan wants another try to discuss - WUPA ready to go when Ryan is ready."
September 13, 2010

Mr. Clayton Suzuki
Wailuku Water Company, LLC
225 East Waiko Road
Wailuku, HI 96793

Dear Mr. Suzuki:

Notice of Commission Action

Denial of Water Use Permit Applications (WUPAs) Nos. 684, 686, & 685
   Iao Needle Tunnels (Well Nos.5333-01 & 02) and Black Gorge Tunnel (Well No. 5332-01)
   Incomplete WUPA No. 738 for Iao Tunnel (Well No. 5332-02) and
   Exclusion and Voiding WUPA Nos. 681 & 682 for Waikapu Tunnels (Well Nos. 5132-01 & 02)

This letter serves as your official notice of action taken by the Commission on Water Resource Management (Commission) on the subject applications. By a majority vote of the Commission in their June 10, 2010 Decision and Order in CCH-MA06-01, the Commission made the following decisions:

1. Denial of Tunnel WUPAs

   Denied Wailuku Water Company’s (WWC’s) water use permit applications (WUPAs) 684, 686, and 685, respectively, for Iao Needle Tunnels 1 & 2 and Black Gorge Tunnel, Well Nos. 5333-01 & 02 and 5332-01, respectively. “These three tunnels discharge into Iao Stream upstream of all diversions, and whatever amounts of water they discharge have been incorporated into the current IIFS for Iao Stream. Therefore, even if WWC were able to quantify the amounts discharged by the three tunnels, they are not being used by WWC as separate and distinct sources of water from WWC’s surface water diversions of Iao Stream and do not qualify for water use permits from the high-level, diked ground waters.”

2. Incomplete Water Use Permit Application for Iao Tunnel

   “WWC’s WUPA for its portion of the Iao Tunnel (Well No. 5332-02) that it shares with Maui Department of Water Supply (MDWS) was not complete and not included in the contested case hearing (CCH). During the CCH, WWC attempted to amend its WUPA to cover the amount in excess of that used by MDWS, or 0.227 mgd. WWC may file a new-use WUPA for that amount.” Therefore, WUPA No. 738 has been voided, and a new application may be submitted (attached).

3. Exclusion and Voiding Waikapu Tunnel WUPAs

   “WWC’s Well Nos. 5132-01 & 02 (Waikapu Tunnels 1 & 2) were excluded, because they are not subject to the Iao ground water management area designation.” Therefore WUPA Nos. 681 & 682 for these tunnels have been voided.

If you have any questions, please contact Charley Ice of Commission Staff at 587-0218.

Sincerely,

LENORE N. OHYE
Acting Deputy Director

Ref:TunnelWUP.act

CI:ss
Attachment
3. **WWC**

WWC's WUPAs No. 684 (Well No. 5333-01, 'Iao Needle Tunnel 1), No. 686 (Well No. 5333-02, 'Iao Needle Tunnel 2), and No. 685 (Well No. 5332-01, Black Gorge Tunnel) are denied.

These three tunnels discharge into 'Iao Stream upstream of all diversions, and whatever amounts of water they discharge have been incorporated into the current IIFS for 'Iao Stream. Therefore, even if WWC were able to quantify the amounts discharged by the three tunnels, they are not being used by WWC as separate and distinct sources of water from WWC's surface water diversions of 'Iao Stream and do not qualify for water use permits from the high-level, diked ground waters.

WWC's WUPA for its portion of the 'Iao Tunnel (Well No 5332-02) that it shares with MDWS was not complete and not included in this CCH. During the CCH, WWC attempted to amend its WUPA to cover the amount in excess of that used by MDWS, or 0.227 mgd. WWC may file a new-use WUPA for that amount.
260. "Iao Stream's reproductive and full restorative potential is very limited or prohibited entirely due to the extensive channelization of the 2.5 miles of streambed above the mouth and the 20-foot vertical drop.

261. The most credible proposals for amending the IIFS are USGS's proposed controlled flows. Of the three proposed phases, the 1st phase, totaling 12.5 mgd and comprised of 10.0 mgd for Waihe'e River, 1.6 mgd for North Waiehu Stream, and 0.9 mgd for South Waiehu Stream, provide the best balance between instream values and offstream uses, and are the only viable IIFS when stream flows are low and all available practical alternatives are in use.

262. The economic impact of restricting noninstream uses would not apply to water being used in an unreasonable manner, because such uses are not reasonable-beneficial, nor to the costs of practical alternatives, because use of such alternatives is intrinsic to the definition of "reasonable-beneficial."

H. WATER USE PERMIT APPLICATIONS ("WUPAs")

263. The WUPAs in this CCH were for high-level diked ground waters: 1) MDWS's Well No. 5332-05 (Kepaniwai Well) for 1.042 mgd; 2) MDWS's Well No. 5332-02 ('Iao Tunnel [Kepaniwai]) for 1.359 mgd; 3) HC&S's Well No. 5330-02 ('Iao Tunnel [Puako]) for 0.100 mgd; and 4) five wells for unknown amounts of water: WWC's Wells No. 5132-01 (Waikapu Tunnel 1), No. 5132-02 (Waikapu Tunnel 2), No. 5332-01 (Black Gorge Tunnel), No. 5333-01 ('Iao Needle Tunnel 1), and No. 5333-02 ('Iao Needle Tunnel 2). WUPAs for Waikapū Tunnels 1 and 2 were subsequently excluded, because they were not subject to the 'Iao ground water management area designation. FOF 17.

1. MDWS's WUPAs

264. MDWS's WUPAs for 1.042 mgd for the Kepaniwai Well (Well No. 5332-05) and 1.359 mgd for the 'Iao Tunnel (Well No. 5332-02) meet all the criteria for a water use permit. FOF 360-367.
August 23, 2010

Honorable Laura H. Thielen, Chairperson
Commission on Water Resource Management
State of Hawaii Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Chairperson Thielen:

Subject: Water Shortage Plan for Water Use Permit (WUP No. 699) for Well No. 5332-05 and WUP No. 680 for Well No. 5332-02, Iao Ground-Water Management Area

Pursuant to Section 13-171-42(c) of your administrative rules, please find attached the water shortage plan for the approved WUP No. 699 and WUP No. 680 in the Iao Ground-Water Management Area.

Should you have any questions, please contact our Water Resources and Planning Division at (808) 244-8550.

Sincerely,

Jeffrey K. Eng
Director

enclosure

c: Engineering Division
   Ed Kushi, Jr. Deputy Corporation Counsel
   Jane Lovell, Deputy Corporation Counsel

"By Water All Things Find Life"

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5964 (voice or TDD)
16-9-1 Purpose. The purpose of the rule is to prevent overdraft of Iao aquifer.
[Eff. 03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

16-9-2 Definitions. The definitions as set forth herein, and in Board of Water Supply Rules and Regulations Rule Sections 1-2, 16-8-2, and 16-7-3 shall apply in these rules unless another meaning is plainly evident from the context. If there is any conflict between definitions it is intended that the broader or more inclusive definition apply. If a word or phrase is not defined the commonly accepted definition of that word or phrase shall apply.

"Base period water use" or "base period" means the monthly average water use based on water usage for the immediately preceding full twenty-four (24) month billing cycle at the time of the caution low groundwater declaration. Partial billing cycles are not to be included in the determination of the monthly average.

"Sustainable yield" means the maximum rate at which water may be withdrawn from a water source without impairing the utility or quality of the water source as determined by the Commission on Water Resources Management. [Eff. 03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

16-9-3 Caution low groundwater condition.
(a) A caution low groundwater condition exists:
   (1) At any time the 12 month moving average pumpage of gallons of water withdrawn from the Iao Aquifer exceeds 95% of the sustainable yield of the Iao Aquifer; or
   (2) Whenever chloride content reaches the absolute limit in ppm chloride shown in Column A in Schedule 1 in more than one area based on a 3 month moving average.

(b) The board shall at any time during the period in which a caution low groundwater condition exists inform the public that a caution low groundwater condition exists. Thereafter the director shall:
   (1) Conduct an intensive public appeal for water conservation through the mass media;
   (2) Institute voluntary irrigation and other water use schedules to reduce water consumption;
   (3) Send letters to large consumers and other private well operators asking them to cut back their usage; and
   (4) Notify the Mayor, Maui County Council, and the State Commission on Water Resources Management

(c) The goal for draft reduction is 5% of Iao Aquifer sustainable yield as determined by the Commission on Water Resources Management.

(d) Consumers shall be given a target of a 10% reduction of their base period water use as the goal for
<table>
<thead>
<tr>
<th>TO:</th>
<th>INIT.</th>
<th>TO:</th>
<th>INIT.</th>
<th>FOR:</th>
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<td>NAKAMA, L.</td>
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<td>YOSHINAGA, M.</td>
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</table>

- little notice but must they?
- don't see what authority we or county have over controlling price.
- should we request their response? (they said)
DLNR - CHAIRPERSON'S OFFICE DEPARTMENT ROUTESLIP

DATE: 3/10/04
TO: CWRM

CC:
- CHAIRPERSON
- DEPUTY DIRECTOR
- DEPUTY WATER
- ATG/LAND TRANS.
- BOC
- CWRM
- DAR
- DATA
- DOBOR
- DOCARE
- DOFAW
- ENG.
- FISCAL
- KIRC
- LAND
- OCCL
- PARKS
- PERSONNEL
- PIO
- SHPD

TRACK (if circled)
ACTION APPROVED BY: /PY RM/

ACTION:
- Draft reply for my signature*
- Direct reply – copy to me*
- Investigate - reply to me*
- Update/comment – reply to me*
- For your information/files
- Distribute to office staff
- Other (see below comments)

*For tracking purposes, please refer to log number

COMMENTS/REMARKS: ________________________________
March 8, 2006

Avery B. Chumbley  
President  
Wailuku Water Co.  
255 East Waiko Road  
Wailuku, Hawaii 96793-9355

Dear Mr. Chumbley:

Subject: OBJECTION TO YOUR UNILATERALLY-IMPOSED RATE INCREASE FOR IAO TUNNEL WATER

This letter is to inform you that, on behalf of County water system consumers, we object to the Iao Tunnel water rate increase unilaterally imposed by Wailuku Water Co. per your letter dated December 29, 2005. A copy of your letter is attached.

Our objections are summarized as follows:

• Objection One:

Based on a review of extant records, the County of Maui owns the original, and arguably most productive, portion of the Iao Tunnel, as well as the pipeline between the Iao Tunnel and the County water system. Most of the Iao Tunnel lies within lands owned by the State of Hawaii and transferred to the County of Maui by Executive Order No. 751. The Iao Tunnel draws water from the Iao Aquifer, an aquifer designated by the Commission on Water Resource Management.

The water, by State Constitution, is held in trust by the State for the people of Hawaii. Why is Wailuku Water Co. charging the County of Maui for this water? What costs, if any, does Wailuku Water Co. bear with regard to Iao Tunnel water used by the County of Maui?

"By Water All Things Find Life"

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5964 (voice and TDD)
• **Objection Two:**

Wailuku Water Co. appears to be telling users of the County’s water system that Wailuku Water Co. will squeeze them for whatever it can get out of them. The irony in this case is that the people are already entitled to the water that is being delivered to them through County pipe lines from a tunnel located mostly within State-owned lands.

• **Objection Three:**

Your price increase has no relation to any cost of service and is not justified.

• **Objection Four:**

Your price increase came with very little notice (less than 30 days), and without forewarning or discussion.

We, in the County Administration, ask that Wailuku Water Co. rescind its imposition of a water rate increase. If you do not agree to do so, please contact me as we feel, in the interests of the citizens of Maui County, discussion on this matter is warranted.

Very truly yours,

GEORGE Y. TENGAN
Director
Department of Water Supply

Attachment
xc: Mayor Alan M. Arakawa
Governor Linda Lingle
Senator Shan S. Tsutsui
Representative Bob Nakasone
Representative Felipe P. Abinsay,
   Chair, Agriculture Committee
Carlito P. Caliboso, Chair
Public Utilities Commission
Peter T. Young, Chair
Board of Land and Natural Resources
Meredith J. Ching, Alexander and Baldwin
Keith A. Regan, Managing Director
Brian T. Moto, Corporation Counsel
G. Riki Hokama, Council Chair
Members, Board of Water Supply
Subject: DWS usage of water from Iao Tunnel

Dear Mr. Tengan;

The purpose of this letter is to provide notice that effective January 1, 2006, Wailuku Water Company will no longer be utilizing the fuel oil adjustment method for calculating the fees to be charged to the DWS for the additional water taken from the Iao Tunnel.

The rate to be used for the Iao Meter shall be $0.60 per 1,000 gallons, this change will be reflected in the January 2006 invoice.

If you have any questions please feel free to contact me at 244-7079.

Respectfully yours,

Avery B. Chumbley
President

Cc: Fred Tacla, WWC office manager
PUBLIC HEARING NOTICE

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

The following applications for water use permits for groundwater use in the Iao Ground Water Management Area were accepted for public hearing by the Commission at its meeting on September 22, 2004. The hearing originally commenced on October 28, 2004. It now continues on:

February 2, 2006, 1:00-4:30 pm (Thursday)
State Office Bldg 2, Conference Room B (3rd Floor)
54 South High Street, Wailuku HI 96793

The hearing officers will gather information on high-level sources (tunnels and the Kepaniwai Well). These applications will be combined with proceedings concerning a petition to amend the interim instream flow standard of four Wailuku District streams: Waihee, Waiehu, Iao, and Waikapu. Testimony should focus on practicable alternatives, water duties, Hawaiian rights, and definitions of public trust uses.

• High-level Sources:

<table>
<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA #</th>
<th>TMK</th>
<th>amount (mgd)</th>
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<tr>
<td>Kepaniwai Well</td>
<td>5332-02</td>
<td>MDWS</td>
<td>680</td>
<td>3-3-3:3</td>
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<td>Iao Tunnel (Kepaniwai)</td>
<td>5332-02</td>
<td>MDWS</td>
<td>680</td>
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<tr>
<td>Iao Tunnel (Puako)</td>
<td>5330-02</td>
<td>HC&amp;S</td>
<td>691</td>
<td>3-4-34:34</td>
<td>0.100</td>
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<td>Black Gorge Tunnel</td>
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<td>WWC</td>
<td>685</td>
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<tr>
<td>Iao Needle Tunnel 1</td>
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<td>WWC</td>
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<td>686</td>
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<td>unknown</td>
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</tbody>
</table>

Applicants: Maui County Department of Water Supply (MDWS)
Hawaiian Commercial and Sugar (HC&S)
Wailuku Water Company, LLC
(note that the interests of Wailuku Agribusiness Company, Inc. (WACI) have been transferred to Wailuku Water Company, LLC, with the same respondents)

Materials related to the noticed items are available for review at the Wailuku Public Library, 251 South High Street, Wailuku, and at the Commission office located at 1151 Punchbowl Street, Room 227, Honolulu, and will also be available at this public hearing.

The hearing officers will close the hearing at the end of this session. Commission staff recommendations on these applications would then 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 the proposed action, you have a right to request an administrative contested case hearing (Hawaii Administrative Rules §13-167-52(a)). However, you must make the request for such a hearing either orally or in writing by the close of the public hearing and file (or mail and postmark) a written petition for a contested case with the Commission within ten days after the date of the public hearing noticed here. Petition forms are available from the Commission.

If you do not make such a request or fail to file a timely written petition for a 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 (Oahu) 587-0214 at least three days in advance of the public hearing or meeting 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: January 12, 2006

Publish in: Maui News issue of January 17, 2006
BY HAND DELIVERY

February 2, 2006

Commission on Water Resource Management
Attn: Commissioners Lawrence H. Miike & James A. Frazier
State Office Building 2
Conference Room B
54 South High Street
Wailuku, Hawai‘i 96793

Re: Testimony Opposing All Water Use Permit Applications For High-Level Wells And Tunnels; ʻĪao Ground Water Management Area, Maui

Dear Commissioners Miike and Frazier:

Over the course of the last year and a half, Earthjustice, on behalf of Hui o Nā Wai ʻEhā ("Hui"), objected to and provided oral and written testimony opposing each of the water use permit applications you are considering today. Given the detailed nature of our comments, we will not rehash them again here, except to note that these applications wholly fail to satisfy the requirements of the law. Their sufficiency varies, but some applications - such as the five submitted by WACI (now Wailuku Water Company) - fail even to include basic information such as the amount of water requested. Such glaring omissions improperly shift the burden of proof to the public, making it extremely difficult for community members to analyze the potential impacts of the claimed uses and to provide meaningful testimony.

At this Commission’s January 11, 2006 meeting, we reiterated these concerns and urged the Commission to order HC&S, Wailuku Water Company, and MDWS to complete their applications before the public hearing was continued. We noted that absent such information, affected individuals, including members of the Hui, would be forced to request a contested case hearing in order to preserve their rights. We also

1 Testimony opposing:
- Hawaiian Commercial and Sugar Company’s ("HC&S’s") Water Use Permit Application ("WUPA") 691 for the ʻĪao Tunnel (Puako) (Well No. 5330-02);
- Wailuku Agribusiness Corporation, Inc.’s ("WACI’s") (now known as the Wailuku Water Company’s) WUPAs 681 & 682 for Waikapu Tunnels 1 & 2 (Well Nos. 5132-01 & 5132-02), and WUPAs 684 to 686 for the ʻĪao Needle Tunnels 1 & 2 (Well Nos. 5333-01 & 5333-02) and the Black Gorge Tunnel (Well No. 5332-01); and
- Maui County Department of Water Supply’s ("MDWS’s") WUPAs 699 & 680 for Kepaniwai Well (Well No. 5332-05) and the ʻĪao Tunnel (Kepaniwai) (Well No. 5332-02).
Earthjustice's Testimony Opposing All Permit Applications for High-Level Sources
February 2, 2006
Page 2 of 2

respectfully reminded this Commission that it must first address the Hui's and Maui Tomorrow Foundation Inc.'s petition to amend the interim instream flow standards for Waihe'e, Waiehu, 'Iao and Waikapū streams (and associated citizen complaint regarding the dumping of water) (SCAP-MA-375), before issuing any water use permits for high-level dike sources. See In re Waiahole Ditch Combined Contested Case Hearing, 94 Haw. 97, 148 (2000) ("In order for the 'instream use protection' framework to fulfill its stated purpose, therefore, the Commission must designate instream flow standards as early as possible, during the process of comprehensive planning, and particularly before it authorizes offstream diversions potentially detrimental to public instream uses and values.") (emphases added).

Unfortunately, this hearing was scheduled even though the applicants have neglected to disclose the necessary information. We again implore the Commission to order the applicants to provide the missing information, and to schedule another public hearing on Maui when all of the applications are complete so that interested members of the public can provide meaningful input. If the Commission closes the public hearing today, this will force Earthjustice to request a contested case on behalf of our clients, even though – at this stage – such a hearing is not in the best interests of the applicants, this Commission, the affected resources, or the community at large.

Mahalo for this opportunity to testify.

Me ke aloha,

D. Kapua Sproat
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 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96806. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-6225. For further information and updates to this application form, visit http://www.hawaii.gov/dlnr/cwrm.

PERMITTEE INFORMATION

1. (a) APPLICANT: Maui County Dept of Water
   Firm Name: George Tengan, Director
   Address: 200 S. High St, Wailuku, HI
   Phone: (808) 270-7816 (808) 270-7833
   E-mail: george.tengan@co.maui.hi.us
   (b) LANDOWNER OF SOURCE: Wailuku AgriBusiness
   Firm Name: Avery Bumphrey, President
   Address: 255 E. Waiko Rd, Wailuku, HI 96793
   Phone: (808) 244-9570 (808) 242-7068

SOURCE INFORMATION

2. WATER MANAGEMENT AREA: Iao aquifer
3. (a) EXISTING WEL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
   (b) PROPOSED (NEW) WEL/STREAM DIVERSION NAME: Iao Tunnel
   (c) LOCATION: Address: Iao Valley, Wailuku, Maui
   Tax Map Key: 3.3.03.003

USE INFORMATION

4. SOURCE TYPE (check one): □ Stream □ Groundwater □ Surface Water
5. METHOD OF TAKING WATER (check one): □ Open-pipe □ Weir □ Pump
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 show applicable portion of property tax map.
7. QUANTITY OF WATER REQUESTED: 1,418 million gallons per day (averaged over 1 year)
8. METHOD OF MEASUREMENT: □ Flowmeter □ Weir □ Office
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: 24 hours (daytime hours of operation; example, 7 a.m. to 2 p.m.)

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: portion of total flow unused by MDWS used by WACI. Measured from Aug 2005 - Jan 2006, daily average ~ 0.222 mgd

If total yield Jul '02 - Jul '03 or Jul '05 - Jan '06, that's 4.9 mgd.

Less MDWS' claimed use Jul '02 - Jul '03, WACI's portion av = 0.527 mgd

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; 3) 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 as per the Commission require one.

Applicant (print): George Tengan
Signature:
Date: 2/11/09

Landowner (print): Avery Bumphrey
Signature:
Date: 2/11/09

WUPAFORM (4/29/03)
### TABLE 1. TMKs TO USE REQUESTED WATER

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<tr>
<th>#.</th>
<th>TMKs Listed (Include address if applicable)</th>
<th>Existing Use (if existing, fill in date of first use)</th>
<th>New Use of Water</th>
<th>Potable or Nonpotable</th>
<th>State or County Code</th>
<th>Current County Zoning Code</th>
<th>Units of Net Acres</th>
<th>Impact on OGP Acres</th>
<th>4-Year Cumulative Projected Demand</th>
<th>Ultimate Demand (GM/TO)</th>
<th>DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE</th>
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### 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 660 South King Street, 7th Floor, Honolulu, HI 96813 Attn: Arthur O. Challacombe.

Only for verification that:

1) TMKs listed are consistent with zoning; and
2) Projects listed are allowed with respect to zoning.
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**Total Water Use by Country and Major Use Source**

**County of Maui**

**Monthly Source Reports (Gals X 1000)**

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Iao Tunnel Yield (daily av), July 2002 – July 2003
(12-MAV at designation of Iao WMA)

as delivered to & reported by Maui Dept of Water Supply

<table>
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<tr>
<th>Month</th>
<th>Yield (mgd)</th>
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<td>Jul 02</td>
<td>1.068</td>
</tr>
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<td>Aug 02</td>
<td>1.113</td>
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<tr>
<td>Sep 02</td>
<td>1.278</td>
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<td>Oct 02</td>
<td>1.423</td>
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<td>Nov 02</td>
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<td>Jan 03</td>
<td>1.329</td>
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<td>Jun 03</td>
<td>1.481</td>
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<td>Jul 03</td>
<td>1.424</td>
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16.556 mgd /12 = 1.380 mgd*

* WUPA indicates 1.418, later amended to read 1.359

"year to date", as of July '03, represents higher reporting months Jan '03 to Jul '03 = "1.420"

MDWS reporting (cont') add WACI amts total flow? (MDWS+WACI) total daily average:

<table>
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<tr>
<th>Month</th>
<th>Yield (mgd)</th>
<th>Daily Avg</th>
<th>Total Flow</th>
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<td>Aug 05</td>
<td>1.680</td>
<td>0.288</td>
<td>1.968</td>
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<td>Sep 05</td>
<td>1.655</td>
<td>0.256</td>
<td>1.911</td>
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<tr>
<td>Oct 05</td>
<td>1.682</td>
<td>0.200</td>
<td>1.882 (1.907 mgd)</td>
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<tr>
<td>Nov 05</td>
<td>1.692</td>
<td>0.200</td>
<td>1.892</td>
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<tr>
<td>Dec 05</td>
<td>1.692</td>
<td>0.188</td>
<td>1.880</td>
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<tr>
<td>Jan 06</td>
<td>na</td>
<td>0.200</td>
<td>??</td>
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* measured/estimated weekly as daily total, expressed here as monthly daily average

Total est. flow daily average - av. MDWS portion reported '02-'03 = av. WACI portion '02-'03
(1.907 mgd) - (1.380 mgd) = 0.527 mgd
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<th>PLEASE: Review &amp; Comment</th>
<th>Type Draft</th>
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*some interesting observations*

*yes - pin file*
lao Tunnel Yield (daily av), July 2002 – July 2003
(12-MAV at designation of lao WMA)

as delivered to & reported by Maui Dept of Water Supply

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\[
\text{Total} = 16.556 \text{ mgd} \div 12 = 1.380 \text{ mgd}^* \\
\]

Aug 04 2.015
Sep 04 2.039
Oct 04 2.073
Nov 04 2.016
Dec 04 2.036
Jan 05 2.011
Feb 05 1.985
Mar 05 1.777
Apr 05 2.052
May 05 2.149
Jun 05 2.102
Jul 05 1.729

23.984 mgd \div 12 = 1.999 mgd

* WUPA indicates 1.418, later amended to read 1.359

“year to date”, as of July ’03, represents higher reporting months Jan ’03 to Jul ’03 = "1.420*

MDWS reporting (cont)

<table>
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<tr>
<th>Month</th>
<th>Daily Yield (mgd)</th>
<th>add WACI amts meas. 8/05 – 1/06*</th>
<th>Total flow? (MDWS+WACI) total daily average:</th>
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Total est. flow daily average - av. MDWS portion reported '02-'03 = av. WACI portion '02-'03
(1.907 mgd) - (1.380 mgd) = 0.527 mgd
Here is the info on the daily flows which go to WWC Company from IAO Tunnel. These are in addition to the numbers reported on the monthly schedule of use by the DWS.

Call me if you have further questions.

Avery

Alaka'i Roy
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Good thing noted this as anticipated with 738 - not accept
Avery B. Chumbley, President

Waipahu, Hawaii 96793
Direct Line: (808) 244-7079
Fax: (808) 242-7068
Email: abc@hawaii.net

Avery B. Chumbley, President

Date: 1-20-06

Fax Number: 587-0219

CC: Paul Wakeshi

RE: IAO Tunnel # 5332-02

To: Roy Harney

Company: WAILUKU WATER CO.

WAIKAPU IAO WAIEHU WAIMEE

Na Wai Eha

FAX TRANSMITTAL SHEET

TO: Roy Harney

FROM: Avery B. Chumbley, President

COMPANY: WAILUKU WATER CO.

DATE: 1-20-06

FAX NUMBER: 587-0219

TOTAL NO. OF PAGES (INCLUDING COVER):

CC: Paul Wakeshi

RE: IAO Tunnel # 5332-02

URGENT: X FOR REVIEW/COMMENT: ☐ PLEASE CALL: ☐ FOR YOUR FILES: ☐

NOTES/COMMENTS:

Aloha Roy, thanks for your phone message; yes I was calling about the High Level Tunnel # 5332-02. Here is a copy of what I needed to Charles' attention as a result of the request at the July 11, 05 meeting. I have also provided a copy of the tunnel withdrawal through the end of CY 2005. (Nov) I will call you on Monday to go over this.
Wailuku Water Co.

lao Tunnel 5332-02 Water Use by Department of Water Supply
(Million Gallons)

<table>
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<tr>
<th>Year</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
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Roy - I will update do Dec 05 and fix it do you an memory.

Avery
### Wailuku Water Co.

#### Water Use Report

(FLOWS IN MILLION GALLONS)

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<th>Mar-05</th>
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## Walluku Water Co. Water Use Report

**FLows in Million Gallons**

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<thead>
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<th>Month/Year</th>
<th>Jan-05</th>
<th>Feb-05</th>
<th>Mar-05</th>
<th>Apr-05</th>
<th>May-05</th>
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<td>159.12</td>
<td>143.72</td>
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### Water Delivery Agreements:

- **HCAS Sugarcane**: 135.17, 352.28, 160.29, 277.46, 175.53, 227.82, 343.28, 403.38, 407.43, 385.10, 471.50, 374.84, 3,504.08
- **Diversified Farming**: 1.97, 1.82, 2.31, 4.24, 5.22, 4.69, 5.73, 5.02, 5.14, 3.92, 2.87, 1.17, 46.10
- **Maui Tropical Plantation**: 1.02, 2.61, 2.28, 3.02, 4.22, 4.20, 4.24, 4.10, 4.35, 4.06, 3.88, 2.46, 41.46
- **MKI Maui (King Kaum Golf)**: 17.07, 5.60, 11.88, 18.66, 21.98, 22.31, 27.60, 23.20, 24.65, 20.15, 33.86, 23.50, 308.64
- **Maui Pineapple Company**: 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 10.51
- **County of Maui (Koloa Valley)**: 52.03, 58.85, 45.82, 70.66, 61.21, 81.21, 55.94, 56.51, 51.12, 54.78, 52.92, 53.26, 580.34
- **County of Maui (Wailuku)**: 24.15, 24.99, 17.97, 25.13, 29.72, 28.60, 31.65, 31.29, 15.92, 19.56, 257.70
- **Walluku Country Estates**: 2.73, 3.37, 3.27, 5.35, 6.28, 6.23, 8.27, 6.38, 6.93, 8.86, 8.99, 6.79, 77.39
- **Kula Coffee Company**: 0.95, 0.18, 0.57, 1.58, 3.53, 4.75, 4.85, 5.18, 3.96, 2.26, 3.66, 3.11, 33.38
- **Waini Houcaleau Unit Partnership**: 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00, 0.00

**Subtotal**: 244.23, 479.71, 244.07, 396.11, 308.80, 358.31, 476.95, 543.35, 527.89, 539.34, 582.80, 484.53, 5,097.50

Delivered to HCAS: 1,032.88, 534.82, 1,258.84, 1,320.83, 1,204.47, 1,084.18, 1,261.89, 1,171.44, 1,256.77, 1,351.18, 1,084.52, 940.83, 13,580.02
## Wailuku Water Co.
### Iao Tunnel 5332-02 Water Use by Department of Water Supply

(Million Gallons)

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November 17, 2005

Mr. Peter Horovitz
Mancini, Welch, & Geiger LLP
33 Lono Avenue, Ste. 470
Kahului, HI 96732

Dear Mr. Horovitz:

Request to Transfer Water Use Permit Applications

Thank you for your October 20, 2005 notice of transfer of interest in the water system of Wailuku Agribusiness Co., Inc. to Wailuku Water Company LLC.

We are amending the applications for water use permits filed with the Commission on January 2, 2004 (and as may have been subsequently amended) to reflect the new entity's assumption of interest. The Commission referred these applications to public hearing at its regular meeting on September 22, 2004. The hearing will be continued at a date to be announced. These include:

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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,

DEAN A. NAKANO
Acting Deputy Director

Cc: Wailuku Water Company LLC
    Wailuku Agribusiness Co., Inc.
October 20, 2005

Via U.S. Mail

Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Re: Request to Transfer Water Use Permit; Wailuku Agribusiness Co., Inc. to Wailuku Water Company LLC

To whom it may concern:

Enclosed please find a Request to Transfer Water Use Permit dated September 6, 2005 (the "Request"). The Request indicates an effective date, if allowed, of October 1, 2005. The permits and registrations at issue are set forth on Exhibit "A" attached to the Request.

The condition and purposes of the permits remain unchanged. Accordingly, pursuant to Hawaii Revised Statute §174C-59 it is our understanding that the enclosed Request suffices to transfer all listed permits and registrations to Wailuku Water Company, LLC. If this is not the case, or if you need any further information in order to affect the transfer, please contact me immediately so that we can address your requirements.

I look forward to hearing from you.

Very truly yours,

Peter A. Horovitz

Mancini, Welch & Geiger LLP
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TO: Charlie Ice
FROM: Avery B. Chumbley, President
COMPANY: CWRM
DATE: July 14, 05
FAX NUMBER: 808-587-0219
TOTAL NO. OF PAGES (including cover):
CC: RE: Follow up on I10

UGENT □ FOR REVIEW/COMMENT □ PLEASE CALL □ FOR YOUR FILES
NOTES/COMMENTS:

Along Charlie,

As a follow up from the public
hearing held on Monday the 11th,
here is the amounts of water
taken by AWS and us at I10
Tunnel. I am not aware of any
Alternatives to this source. The
duties would remain at 100% of
the diversion for economic use.

Call me if you have questions.

Avery
## Wailuku Agribusiness Co.

Iao Tunnel 5332-02 Water Use by Department of Water Supply

(Million Gallons)

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</tbody>
</table>
At our last public hearing session, Avery indicated that WACI uses overflow from this source, in addition to the amounts normally used by MDWS. We are poised to update your application, and assign a new number (different use), but have not received details. You have mentioned a few different numbers. MDWS has an application for 1.418 mgd, based on their 12-MAV, and you have indicated totals of 1.2 mgd, 1.359 mgd, and as much as 2.5 mgd. We are not clear which number represents the overflow amounts you use, nor do we have a clear picture of which fields use them. Please address this matter at your earliest convenience.
When we get the new info, that's when we'll assign the number. In the meantime, new WUPAs may come in and we simply number accordingly. Don't want to set-aside numbers that 'might' be used. Simply put, WUP numbers and data get assigned when applications come in.

Charley F Ice/DLNRI/StateHiUS

MDWS and WACI both submitted WUPAs for this source. WACI acknowledging that it was used by MDWS. At the April 22 session of the public hearing, WACI told us for the first time that they do use overflow from the source -- water that overflows the MDWS conduit and runs into WACI ditches. We agreed to amend the WACI WUPA when the info comes in, and I think we should assign it a new WUPA#. I looked in your db and find that the next WUPA# is 742. If this is correct, please set it aside for future data input when available.

no: 738 set aside already
May 13, 2005

Mr. Clayton Suzuki
Wailuku Agribusiness Company, Inc.
255 East Waiko Road
Wailuku, HI 96793

Dear Mr. Suzuki:

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

We acknowledge the receipt of your completed water use permit applications (WUPAs), as captioned, as of March 16, 2004. This late notice is due to a misfiling of your March 16, 2004 letter, which completed your map portion of the water use permit application.

Please note that all these applications are already part of the public hearing, under the Commission’s September 22, 2004 decision.

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

WUPA No. 680 was assigned to the Iao Tunnel (Kepaniwai) Well No. 5532-02, for which we have two applications — yours and one filed by Maui Department of Water Supply (MDWS). Both were filed for the existing MDWS use, and yours was filed on behalf of MDWS as the applicant but signed by you, rendering it technically incomplete.

You commented at the April 22, 2005 public hearing that overflow from MDWS’ intake is captured by Wailuku Agribusiness Company, Inc. (WACI) ditches and used by WACI. This new information leads us to suggest we amend your original application for amounts yet to be specified and for uses yet to be specified, to which we are assigning the WUPA No. 738. When we receive sufficient information concerning amounts and uses, as per Table 1 on the returned application (enclosed), we can accept it as complete but must treat it as a new use.

Your original January 2, 2004 application specified MDWS as the end user, in the amount of 1.2 mgd. The initial MDWS WUPA for the same source, transmitted February 19, 2004, lists its end use as 1.418 mgd. Your November 4, 2004 amended application corrected the amount to 1.359 mgd, but again specified only the MDWS as user. Your April 22, 2005 comments included the statement “historical use suggests the actual total is more like 2.5 mgd”. We do not have full documentation of these facts and, as a result, do not really know how much is being used by WACI. Please describe these in writing for your amended application. Diagrams of the intakes will be required for our continued evaluation of your applications.

The public hearing process will be continued in order to receive additional clarifying information to be shared with interested parties, and the hearing will be resumed at a later date.

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

Sincerely,

DEAN A. NAKANO
Acting Deputy Director

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

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

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.  

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

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.

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

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.  

Cl: ss  
Attachment(s)  

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

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

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

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

Cl: 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), Hawaii Revised Statutes, we transmit for your review and comment copies of water use permit applications for Wailuku Agribusiness Company, Inc.:

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

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.

CIs:
Attachment(s)

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

Contact person: __________________________ Phone: __________________________

Signed: __________________________ Date: __________________________
INTERESTED OTHERS LIST

ADDITIONAL STANDARD CORRESPONDENCE

Kapua Sproat
EarthJustice
223 South King Street 4 Fl
Honolulu, HI  96813

James Williamson, Vice-President
Maui Meadows Homeowners Association
PO Box 1935
Kihei, HI  96753

IF FOR AQUACULTURE
Leonard Young,
Aquacultural Development Program

ADDITIONAL STANDARD MAILING LIST FOR MOLOKAI
PUBLIC NOTICE

Applications for Water Use Permit
Lao 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 Waikoo 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 Lao 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: Lao System Area, Wailuku Sector, Maui
Quantity Requested: Natural tunnel flow amounts unknown, augmenting Lao 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: Lao 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: Lao 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
PUBLIC HEARING NOTICE

Applications for Water Use Permits
Lāo 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, Lāo, 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 as of July 21, 2003 and completed applications submitted by the July 21, 2004 deadline</strong></td>
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<tr>
<td>Mokuhau Well 1</td>
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<td>MDWS</td>
<td>700</td>
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<td>MDWS</td>
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<td>MDWS</td>
<td>697</td>
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<td>MDWS</td>
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<td>1.415</td>
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<tr>
<td>Waihee Well 1</td>
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<td>MDWS</td>
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<td>MDWS</td>
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<td>Waihee Well 3</td>
<td>5431-04</td>
<td>MDWS</td>
<td>703</td>
<td>3-3-17:31</td>
<td>1.513</td>
</tr>
</tbody>
</table>

  | New Uses arising after July 21, 2003, or completed applications submitted after the July 21, 2004 deadline |          |           |          |     |              |
  | Wailuku Shaft 33  | 5330-05  | Kehalani  | 707      | 3-5-1:1 | 5.771         |
  | Wailuku Shaft 33  | 5330-05  | MDWS      | 702      | (3-5-1:1) | (5.771) not to be double-counted |
  | Living Waters #1  | 5531-01  | LWLF      | 704      | 3-2-13:15 | 0.020        |

- **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 as of July 21, 2003 and accepted as completed applications submitted by the July 21, 2004 deadline</strong></td>
<td></td>
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<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>
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<tr>
<td>Maui Stadium</td>
<td>5329-14</td>
<td>MP&amp;R</td>
<td>713</td>
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<td>0.039?</td>
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<tr>
<td>Papohaku Park</td>
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<td>MP&amp;R</td>
<td>712</td>
<td>3-2-13:29</td>
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<tr>
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<td>711</td>
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<td>0.039</td>
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<tr>
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<td>5530-03</td>
<td>MP&amp;R</td>
<td>708</td>
<td>3-2-13:29</td>
<td>0.324?</td>
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<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>Existing Uses</td>
<td></td>
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<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>
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<td>Iao Tunnel</td>
<td>5332-02</td>
<td>MDWS</td>
<td>680</td>
<td>3-3-3:3</td>
<td>1.359</td>
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<td>Waikapu Tunnel 1</td>
<td>5132-01</td>
<td>WACI</td>
<td>681</td>
<td>3-5-3:1</td>
<td>unknown</td>
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<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>
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<td>5330-02</td>
<td>HC&amp;S</td>
<td>691</td>
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<tr>
<td>Iao Needle Tunnel 1</td>
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<td>Iao Needle Tunnel 2</td>
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<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

[Signature]

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 8, 2004

Yvonne Izu, Deputy Director
Department of Land and Natural Resources
Commission of Water Resource Management
P. O. Box 621
Honolulu, Hawaii 96809

Dear Ms. Izu,

This is in response to your letter on November 18, 2004 concerning Water Use for Iao Tunnel (5330-01 & 5332-02), Black Gorge Tunnel (5332-01), Iao Needle Tunnels (5331-01 & 02). These tunnels were constructed in the early 1900’s to supplement the Iao Stream flow. Water is fed from these tunnels directly into Iao Stream above the Wailuku Agribusiness Co.’s Iao Stream Diversion. The locations of these tunnels are unknown at this present time and therefore we cannot install metering devices. Stream flow is diverted into the Iao Stream Diversion, which is not controlled. The diverted water flows to the Iao-Waikapu Ditch and the Iao-Maniania Ditch, which has controls. Water that is not used by these ditches is sent back into Iao Stream. This control is about 500 feet below the Iao Stream Diversion. The Iao-Waikapu Ditch and Iao-Maniania Ditch water is used to irrigate upper level fields and water not used to irrigate these afore mentioned fields is ditched to Wailuku Agribusiness Co.’s main ditch the Waihee Ditch. All of Wailuku Agribusiness Co.’s ditches are tied into the Waihee Ditch or Spreckles Ditch. Water from one source can be used to irrigate fields depending on water needs throughout the plantation.

Wailuku Agribusiness Co.’s land and water use table is a guideline used to send water throughout the plantation to irrigate its fields. Some users such as the golf course and quarry use a constant amount weekly. Sugarcane, Pineapple and Diversified Farming vary according to rainfall, evapo-transporation and the numbers shown are for an average week.

On Item 2, Monitor or Irrigation use, the Waiehu Tunnel (5330-01) and Iao Tunnel (5330-01) are monitoring wells only.
Item 3, Practicable Alternatives will be addressed separately.

Please call me at 244-2208 should there be further questions.

Sincerely,

Clayton Suzuki
Land Manager

CC: Charley Ice, Commission of Water Resource Management
Avery Chumbley, Wailuku Agribusiness Co., Inc.
Mr. Clayton Suzuki, Land Manager
Wailuku Agribusiness Company, Inc.
255 East Waiko Road
Wailuku, HI 96793

Dear Mr. Suzuki:

Water Use Applications
lao Tunnels (5330-01 & 5332-02), Black Gorge Tunnel (5332-01),
lao Needle Tunnels (5333-01 & 02), Waiehu Tunnel (5530-01)

Following the public hearing on October 28, 2004, Avery Chumbley spoke with our staff and reached some conclusions about the status of applications for the captioned tunnels. The Commissioners delegated to conduct the hearing have also approved more specific information requests for all applicants. We are addressing all applicants with apparent information discrepancies or inadequacies of their applications.

1. Reconciling source and use information in a single accounting

Your letter dated March 15, 2004, in response to our request for additional information concerning applications filed on January 2, 2004, enclosed two tables, one showing amounts delivered to certain acreages of use, and another copy of a water use report totaling deliveries to particular end users. These appear to reflect total water use from ditches drawing from various ground and surface sources. Neither distinguished between the water sources under application. Neither did they relate the acreages in one table to the end users of the other, so they appear to be mutually exclusive reports. Our form requests amounts in gallons per day, for each source and use, but even in making the mathematical adjustments to translate your reportage amounts from acre-inches per week to gallons per acre per day, our staff found great differences from one acreage to the next that we could not reconcile with typical water use "duties" for similar crops. Each use must be determined to make reasonable and beneficial use of water from the identified source.

We request that the information reflect the contribution of each tunnel, and how that amount will be used. We understand that the tunnel flows are not gaged, but the Commissioners have recommended that they should be gaged in some way to estimate average flows. The sole exception among your applications is 5332-02, in which you applied for 1.2 mgd, apparently based on a flowmeter. We do not know from the applications whether 1.2 mgd is applicable to this single lao Tunnel source or is a more generalized flow measurement in the ditch which receives those flows.
We recognize that these tunnel sources augment ditch flow from stream sources, and that the end use may reflect not only tunnel amounts but the full amount delivered from the ditch. If it is impossible to separate water delivered to various uses from tunnels versus delivery from stream sources, we may accept a pro-ration of tunnel contributions to the total amounts delivered.

2. Monitor or Irrigation use?

Your applications for lao Tunnel (5330-01) and Waiehu Tunnel (5530-01) indicate that they are monitoring wells, and no amounts are requested for them. On this basis they were not noticed for comment before action. However, this would be a change from our registration information for lao Tunnel, which indicates that the tunnel is used for irrigation. This registration source notes Waiehu Tunnel as an observation source. In fact, a third party has expressed the belief that lao Tunnel can be seen flowing into lao Stream, which is later diverted for irrigation. Your application did not include maps, which might resolve some confusion, if for no other reason than there are at least three sources called “lao Tunnel”. Please provide evidence of the tunnel’s status.

3. Practicable Alternatives

Finally, our letter to you recommending information to assist the Commission in following the Supreme Court’s guidelines for decision-making requested discussion of practicable alternatives. To date, your response has not addressed the use of surface flows. This is an issue because a complaint has been filed concerning the alleged “waste” of surface flows.

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,

[Signature]

YVONNE Y. IZU
Deputy Director
DWS applied for this - this is an amendment or an additional (2nd week)?

Please call Suzuki to clarify. (Another shaft 33?!?)
November 3, 2004

Yvonne Izu
Department of Land and Natural Resources
Commission of Water Resource Management
P. O. Box 621
Honolulu, Hawaii 96809

Dear Ms. Izu,

Attached is a revised application for water use permit on the Iao Tunnel 5332-02 for the Iao Aquifer. Please call me at 244-2208 should there be further questions.

Sincerely,

Clayton Suzuki
Land Manager

CC: Charley Ice, Commission of Water Resource Management w/ attachments
Avery Chumbley, Wailuku Agribusiness Co., Inc. w/ attachments
# Wailuku Agribusiness Co.

## Iao Tunnel 5332-02 Water Use

(Million Gallons)

<table>
<thead>
<tr>
<th>Year</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>61.02</td>
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<td>56.29</td>
<td>56.54</td>
<td>55.90</td>
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<tr>
<td>1997</td>
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<td>52.26</td>
<td>46.06</td>
<td>46.72</td>
<td>46.78</td>
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<tr>
<td>1998</td>
<td>57.63</td>
<td>56.93</td>
<td>53.09</td>
<td>54.89</td>
<td>56.07</td>
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<td>47.14</td>
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<td>44.39</td>
<td>41.31</td>
<td>44.11</td>
<td>42.65</td>
<td>43.23</td>
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</tbody>
</table>

Note: Wailuku Agribusiness usage is 0.25 million gallons per day, the balance is used by the County of Maui, Department of Water Supply under contract from Wailuku Agribusiness.
13. REMARKS, EXPLANATIONS, DESCRIPTION OF USE:

1/2/04 original app for 1.2 Mgd MDWS with Clayton Suzuki signing for DWS and WACI.

1/14/04 letter sent to WACI to fill in Table 1 completely.

2/19/04. Assumed this application was representing WUP 680 from MDWS submitted with both MDWS & WACI signatures and was combined into 680 as a response for 1/14/04 letter.

3/8/04 letter sent requesting clarification and completion of Table 1 info and submittal of required maps.

10/28/04 public hearing WACI made assertions that they had some use from 5332-02.

11/4/04 app came in to clarify statements at public hearing. This is the receipt date for this wupa.

11/18/04 letter sent requesting clarification to application.

12/8/04 letter responded, but did not differentiate between MDWS and WACI uses.

Hasn't come in yet per the clarifications made at 4/22/05 public hearing.

10/21/05, noticed by applicant to change from Wailuku Agribusiness Co., Inc. to Wailuku Water Co., LLC.

11/25/05 telcom with Avery Chumbley, gave info about 1954 agreement between MDWS and WACI and 8/05 metering of WACI's portion ~0.250 mgd. This WUPA will be a bifurcation of the original WUP 680.

Presently part of CCH-MA-06-01.
<table>
<thead>
<tr>
<th>WELL NO.</th>
<th>WUPNO</th>
<th>WUPNO</th>
<th>1.418 MGD</th>
<th>Groundwater</th>
<th>Surface Water</th>
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<tbody>
<tr>
<td>5332-02</td>
<td>580</td>
<td></td>
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<tr>
<td>Iao Tunnel (Kepaniwai)</td>
<td>Maui DWS</td>
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</tbody>
</table>

13. REMARKS, EXPLANATIONS, DESCRIPTION OF USE:
Method of taking water is a tunnel intake pipe.

1/2/04 original app for 1.2 Mgd MDWS with Clayton Suzuki signing for DWS and WACI.

2/19/04 followup app came in for 1.418 mgd to MDWS with Tengan and Chumbley signed 1954?

Public hearing (noticed 10/12/04) opened 10/28/04, not closed.

3/3/04 letter sent to applicant requesting clarification and completion of Table 1 info.

3/8/04 & 6/10/04 letters sent requesting clarification and completion of Table 1 info and

6/21/04 Table 1 info completed and updated 1.418 to 1.359 Mgd app accepted.

11/4/04 new amended app came in for 1.359 mgd from WACI too. This was assigned to

2nd public hearing held 4/22/05, not closed. Comment made by WACI that they have a

10/21/05, noticed by applicant to change from Wailuku Agribusiness Co., Inc. to Wailuku (co-applicant) of this source.

11/25/05 telcom with Avery Chumbley, gave info about 1954 agreement between MDWS portion ~0.250 mgd. WUP 738 is bifurcated and amended portion for WACI from source

Presently part of CCH-MA-06-01.
COMMISSION ON WATER RESOURCE MANAGEMENT
APPLICATION FOR WATER USE PERMIT

In accordance with Section 13-171.3, Hawaii Revised Statutes, the information on this application is accurate and true to the best of my knowledge.

SECTION 2. WATER MANAGEMENT AREA

STATE: Hawaii
ISLAND: Maui
EXISTING WELL/STREAM DIVERSION NAME: Iao Tunnel 5332-02
PROPOSED WELL/STREAM DIVERSION NAME: Iao Aquifer
PROPOSED LOCATION: Address: Wailuku Agribusiness Co., Inc.

SECTION 3. METHOD OF TAKING WATER

METHOD OF WITHDRAWAL OR DIVERSION: 24 hours
METHOD OF TAKING WATER: 1.359 M gallons per day (averaged over 1 year)

SECTION 4. WATER REQUESTED

WATER REQUESTED: 1.359 M gallons per day

SECTION 5. QUANTITY OF WATER REQUESTED

QUANTITY OF WATER REQUESTED: 1.359 M gallons per day (averaged over 1 year)

SECTION 6. USE INFORMATION

USE: Industrial

SECTION 7. QUALITY OF WATER REQUESTED

QUALITY OF WATER REQUESTED: Municipal (including hotels, stores, etc.)

SECTION 8. METHOD OF MEASUREMENT

METHOD OF MEASUREMENT: Orifice

SECTION 9. LOCATION OF PROPOSED WATER USE

LOCATION OF PROPOSED WATER USE: Iao Valley, Maui

SECTION 10. LOCATION OF SOURCE

LOCATION OF SOURCE: Wailuku Agribusiness Co., Inc.

SECTION 11. COMMENTS, EXPLANATIONS

DIVERSION is used by the County of Maui, Department of Water Supply.

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; and 3) if necessary, further information may be required before the application is considered complete. 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.

Signature
Clayton S. Suzuki
Date
2/1/09

Signature
Wailuku Agribusiness Co., Inc.
Date
2/1/09
### TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASES (include address if applicable)</th>
<th>EXISTING or NEW USE (indicate if existing, fill in date of first use)</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE LAND</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS GPO/UNIT or GPD/ACRE</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>ULTIMATE DEMAND GPD (TO BUILD OUT)</th>
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<td></td>
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<td></td>
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<td>YEAR 1 (year)</td>
<td>YEAR 2 (year)</td>
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<td>12.</td>
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<td>13.</td>
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<tr>
<td>14.</td>
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</tbody>
</table>

**TOTAL GPD**

(For Oahu only) DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE

DATE ______________________

**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 850 South King Street, 7th Floor, Honolulu, HI 96813.
13. REMARKS, EXPLANATIONS, DESCRIPTION OF USE:

Method of taking water is a tunnel intake pipe.

1/2/04 original app for 1.2 Mgd MDWS with Clayton Suzuki signing for DWS and WACI.

2/19/04 followup app came in for 1.418 mgd to MDWS with Tengan and Chumbley signatures. 17.391 service connections cited, since 1954?

Public hearing (noticed 10/12/04) opened 10/28/04, not closed.

3/3/04 letter sent to applicant requesting clarification and completion of Table 1 info.

3/6/04 & 6/10/04 letters sent requesting clarification and completion of Table 1 info and submittal of required maps.

6/21/04 Table 1 info completed and updated 1.418 to 1.359 Mgd app accepted.

11/4/04 new amended app came in for 1.359 mgd from WACI too. This was assigned to WUP 738.

2nd public hearing held 4/22/05, not closed. Comment made by WACI that they have a portion of end use. Asked to clarify.

10/21/05, noticed by applicant to change from Wailuku Agribusiness Co., Inc. to Wailuku Water Co., LLC., which affects the landowner (co-applicant) of this source.

11/25/05 telcom with Avery Chumbley, gave info about 1954 agreement between MDWS and WACI and 8/05 metering of WWCI's portion ~0.250 mgd. WUP 738 is bifurcated and amended portion for WACI from source.

Presently part of CCH-MA-06-01.
stures. 17,391 service connections cited, since submittal of required maps.

> WUP 738.
portion of end use. Asked to clarify.
> Water Co., LLC., which affects the landowner
and WACI and 8/05 metering of WWCI's.
## 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; second, the hearing will entertain applications to continue known existing uses, or for a new use that was completed by the July 21, 2004 deadline for existing uses:

### Table: Applications for Water Use Permits

<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>
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<tbody>
<tr>
<td>Wailuku Shaft 33</td>
<td>5330-05</td>
<td>Kehalani*</td>
<td>707</td>
<td>3-5-1:1</td>
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<td>Mokuah Well 1</td>
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<td>700</td>
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<td>MDWS</td>
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<td>3-3-2:28</td>
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<tr>
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<td>MP&amp;R</td>
<td>695</td>
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<td>DWS</td>
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<td>HC&amp;S</td>
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<td>MDWS</td>
<td>691</td>
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<td><strong>Total from all sources</strong></td>
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<td></td>
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<td><strong>19.499</strong></td>
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</tbody>
</table>

*Living Waters #1

**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 waer in question.

**COMMISSION ON WATER RESOURCE MANAGEMENT**

[Dated: October 7, 2004](#)

**Publish in: Maui News issue of October 12, 2004**
March 8, 2004

Mr. Clayton Suzuki
Wailuku Agribusiness Company, Inc.
255 East Waiko Road
Wailuku, HI 96793

Dear Mr. Suzuki:

Water Use Permit Application for Various Tunnels

We have received your water use permit application and filing fee for various tunnels. However, your application is incomplete. Matters which must be addressed before we accept your application as complete are as follows:

1. Areas listed in Table 1 on the reverse side of the application can be identified as Wailuku Agribusiness parcels, but are not identified by end use (Column 1). Your water use reporting, transmitted separately, lists sugar cane, macadamia nut, pineapple, and diversified farming, as well as water delivered to HC&S for undisclosed but presumably agricultural uses. In addition, the water use reports identify kuleana use, Maui Tropical Plantation and Waikapu Mauka Golf Course as users, but these are not indicated in Table 1, Column 1.

2. No required maps were submitted to help sort out these end uses.

Upon receipt of clarifying information, we will accept your application as complete and you can then expect your application to be processed within ninety (90) days.

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

Sincerely,

[Signature]
ERNEST Y.W. LAU
Deputy Director

Cl:ss
Attachments
January 14, 2004

Mr. Clayton Suzuki
Wailuku Agribusiness Company, Inc.
255 East Waiko Road
Wailuku, HI 96793

Dear Mr. Suzuki:

Water Use Permit Application for Various Wells

We have received your water use permit application and filing fee for various tunnels. However, your application is incomplete. Matters which must be addressed before we accept your application as complete are as follows:

1. Table 1 on the reverse side of the application calls for the locations of use, not source. Please provide TMK parcel identification for locations of use. We are returning these applications for additional information.

Upon receipt of the above information, we will accept your application as complete and you can then expect your application to be processed within ninety (90) days.

In addition, we find that five applications are for monitoring wells. By the definition in the Water Code, "use" means withdrawal for consumptive use; monitor wells need not apply. We are returning these applications. The filing fees, unfortunately, are non-refundable.

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

Sincerely,

[Signature]

ERNEST Y.W. LAU
Deputy Director

Ct:ss
Enclosures
PERMITTEE INFORMATION

For further information and updates to this application, please visit http://www.hawaii.gov/dlnr/cwrm.

Instructions: Please print in ink or type and send 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0225.

1. (a) APPLICANT
   Firm/Name: Department of Water Supply
   Contact Person: ___________________________
   Address: 200 S. High Street, Wailuku, 96793
   Phone: 808-270-7816 Fax: 808-270-7833
   E-mail: ___________________________

2. WATER MANAGEMENT AREA: __________ ISLAND: Maui

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: __________
   (If source doesn’t presently exist, please attach well construction/stream diversion permit or application.)
   (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME: __________________________
   (c) LOCATION: Address __________}
   Maui
   Tax Map Key: __________
   (Attach and show source location on a USGS map, scale 1"=2000", and a property tax map)

4. SOURCE TYPE (check one): □ Stream □ Well & Pump □ Diverted Surface □ Other (explain)
   □ Industrial □ Artesian □ Weir □ Orifice □ Other (explain)

5. METHOD OF TAKING WATER (check one): __________
   □ Flowmeter □ Irrigation □ Orifice □ Other (explain)
   □ Open-pipe □ Non-Potable □ Weir □ Other (explain)
   □ Dike-confined □ Potable □ Silt □ Non-Potable □ Perched □ Other (explain)
   □ Caprock □ Military

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: 1,200,000 gallons per day (averaged over 1 year)

8. METHOD OF MEASUREMENT:
   □ Flowmeter □ Open-pipe □ Weir □ Orifice □ Other (explain)
   □ Dike-confined □ Silt □ Potable □ Other (explain)
   □ Caprock □ Military

9. QUALITY OF WATER REQUESTED:
   □ Fresh □ Irrigation □ Non-Potable □ Brackish □ Potable □ Other (explain)
   □ Salt □ Intended Use □ Other (explain)

10. PROPOSED USE: □ Industrial (including hotels, stores, etc.) □ Individual Domestic □ Other (explain)
    □ Municipal (including hotels, stores, etc.) □ Artesian □ Military

11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 24 hours
    (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: □ Diversion is used by the County of Maui, Department of Water Supply.
    □ Reasonable-beneficial use.
    □ Will not interfere with the existing rights of Hawaiian Home Lands.
    □ Will not interfere with the rights of the Department of Hawaiian Home Lands.

For Official Use Only:

Applicant (print) Clayton S. Suzuki
Signature ___________________________
Date Dec 29 2003

Landowner (print) Wailuku Agribusiness Co., Inc.
Signature ___________________________
Date Dec 29 2003

WUPFORM (4/29/03)
### TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASES (include address if applicable)</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS or NET ACRES</th>
<th>GPDU or GPD/ACRE</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>ULTIMATE DEMAND GPD (TO BUILD OUT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROJECT NAME &amp; PHASES</td>
<td>POTABLE or NONPOTABLE</td>
<td>TMK</td>
<td>STATE</td>
<td>CURRENT COUNTY ZONING CODE</td>
<td>UNITS or NET ACRES</td>
<td>GPDU or GPD/ACRE</td>
<td>YEAR 1 (year)</td>
<td>YEAR 2 (year)</td>
</tr>
<tr>
<td>Iao Tunnel</td>
<td>Existing</td>
<td>3-3-03-03</td>
<td>Consv.</td>
<td>Consv.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Iao Tunnel
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12. 
13. 
14. 

TOTAL GPD

(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.
State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
APPLICANT FOR WATER USE PERMIT

Instructions: Please print in ink or type and send 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 921, Honolulu, Hawaii 96822. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0225.

For further information and updates to this application, visit http://www.hawaii.gov/cwrm.

COMMISSION ON WATER RESOURCE MANAGEMENT

PERMITTEE INFORMATION
1. (a) APPLICANT
   Firm/Name: Department of Water Supply
   Contact Person: ___________________ _
   Address: 200 S. High Street, Wailuku, 96793
   Phone: 808-270-7816_ Fax: 808-270-7833
   E-mail: ___________________ _

   (b) LANDOWNER OF SOURCE
   Firm/Name: Wailuku Agribusiness Co., Inc.
   Contact Person: Clayton S. Suzuki
   Address: 225 E. Waikou Road, Wailuku, 96793
   Phone: 808-244-2208_ Fax: 808-242-7068
   E-mail: csuzuki@cbc11826.com

SOURCE INFORMATION
2. WATER MANAGEMENT AREA: Iao Aquifer ISLAND: Maui
3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
   (If source doesn't presently exist, please attach well construction/stream diversion permit or application.)
   (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME:
   (c) LOCATION: Address: Iao Valley, Maui Tax Map Key: 3.3.03.03
   (Attach and show source location on a USGS map, scale 1"=2000', and a property tax map)

4. SOURCE TYPE (check one): Stream
   □ Basal □ Dike-confined □ Perched □ Caprock
5. METHOD OF TAKING WATER (check one): Artesian
   □ Well & Pump □ Diverted Surface □ Other (explain)

USE INFORMATION
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: 1,200,000 gallons per day (averaged over 1 year)
8. METHOD OF MEASUREMENT:
   □ 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: 24 hours (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: Diversion is used by the County of Maui, Department of Water Supply.

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; 3) 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 Land future uses; and 5) Upon permit approval, a water shortage plan must be submitted by the applicant should the Commission require one.

Applicant (print): Clayton S. Suzuki
Signature: ___________________ _
Date: DEC 29 2003

Landowner (print): Wailuku Agribusiness Co., Inc.
Signature: ___________________ _
Date: DEC 29 2003

WUPAFORM (4/29/03)
<table>
<thead>
<tr>
<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>STATE</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS or NET ACRES</th>
<th>GPDO/UNIT or GPDO/ACRE</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>ULTIMATE DEMAND GPDO (TO BUILD OUT)</th>
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<td>(year)</td>
<td>(year)</td>
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1. Iao Tunnel

<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASES</th>
<th>EXISTING or NEW USE</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS or NET ACRES</th>
<th>GPDO/UNIT or GPDO/ACRE</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>ULTIMATE DEMAND GPDO (TO BUILD OUT)</th>
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</thead>
<tbody>
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<td>Existing</td>
<td></td>
<td></td>
<td>3-3-03-03</td>
<td>Consv.</td>
<td>Consv.</td>
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<td></td>
<td>(year)</td>
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TOTAL GPDO

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

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PERMITTEE INFORMATION

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Firm/Name: Department of Water Supply
Contact Person:
Address: 200 S. High Street, Wailuku, 96793
Phone: 808-270-7816 Fax: 808-270-7833
E-mail:
(b) LANDOWNER OF SOURCE
Firm/Name: Wailuku Agribusiness Co., Inc.
Contact Person: Clayton S. Suzuki
Address: 225 E. Waikoloa Road, Wailuku, 96793
Phone: 808-244-2208 Fax: 808-242-7068
E-mail: csuzuki@cbc1826.com

SOURCE INFORMATION

2. WATER MANAGEMENT AREA: Iao Aquifer
   ISLAND: Maui
3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
(b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME:
(c) LOCATION: Address Iao Valley, Maui
   Tax Map Key: ___________ ___________ ___________ 03 03 03
   (Attach and show source location on a USGS map, scale 1"=2000', and a property tax map)

4. SOURCE TYPE (check one): Stream □ Basal □ Dike-confined □ Perched □ Caprock
5. METHOD OF TAKING WATER (check one): Artesian □ Well & Pump □ Diverted Surface □ Other (explain)

USE INFORMATION

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
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7. QUANTITY OF WATER REQUESTED: 1,200,000 gallons per day (averaged over 1 year)
8. METHOD OF MEASUREMENT: □ Flowmeter □ Open-pipe □ Weir □ Orifice □ Other (explain)
9. QUALITY OF WATER REQUESTED: □ Fresh □ Brackish □ Salt □ Potable □ Non-Potable □ Other (explain)
10. PROPOSED USE: □ Municipal (including hotels, stores, etc.) □ Individual Domestic □ Irrigation □ Other
    □ Industrial □ Military □ Other Explain
11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 24 hours
    (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 Homesteads.
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Applicant (print) Clayton S. Suzuki
Signature
Date DEC 2 9 2003

Landowner (print) Wailuku Agribusiness Co., Inc.
Signature
Date DEC 2 9 2003
**TABLE 1. TMKs TO USE REQUESTED WATER**

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<th>TMK</th>
<th>STATE LUD</th>
<th>CURRENT 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. Iao Tunnel</td>
<td>Existing</td>
<td>3-3-03-03</td>
<td>Conserv.</td>
<td>Conserv.</td>
<td></td>
<td></td>
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<td>YEAR 1 (year)</td>
<td>YEAR 2 (year)</td>
</tr>
<tr>
<td>2.</td>
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</tr>
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**TOTAL GPD**

(For Oahu only) DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE

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...

DATE

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
PERMITTEE INFORMATION

1. (a) APPLICANT
   Firm/Name: Department of Water Supply
   Contact Person: 
   Address: 200 S. High Street, Wailuku, 96793
   Phone: 808-270-7816 Fax: 808-270-7833
   E-mail: 

   (b) LANDOWNER OF SOURCE
   Firm/Name: Wailuku Agribusiness Co., Inc.
   Contact Person: Clayton S. Suzuki
   Address: 225 E. Waiako Road, Wailuku, 96793
   Phone: 808-244-2208 Fax: 808-242-7068
   E-mail: csuzuki@cbcl1826.com

SOURCE INFORMATION

2. WATER MANAGEMENT AREA: Iao Aquifer
   ISLAND: Maui

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
   (If source doesn’t presently exist, please attach well construction/stream diversion permit or application.)

   (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME: Iao Valley, Maui
   (Attach and show source location on a USGS map, scale 1”=2’000”, and a property tax map)

   Tax Map Key: 3 3 03 03

4. SOURCE TYPE (check one): Stream
   □ Basal
   □ Dike-confined
   □ Perched
   □ Caprock

5. METHOD OF TAKING WATER (check one): Artesian
   □ Well & Pump
   □ Diverted Surface
   □ Other (explain)

USE INFORMATION

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
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7. QUANTITY OF WATER REQUESTED: 1,200,000 gallons per day (averaged over 1 year)

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

9. QUALITY OF WATER REQUESTED: □ Fresh
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   □ Salt
   □ Potable
   □ Non-Potable

10. PROPOSED USE: □ Municipal (including hotels, stores, etc.)
        □ Industrial
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        □ Irrigation
        □ Other Explain

11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 24 hours (daytime hours of operation; example, 7 a.m. to 2 p.m.)

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   (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
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13. REMARKS, EXPLANATIONS: Diversions is used by the County of Maui, Department of Water Supply.

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Applicant (print) Clayton S. Suzuki
Signature
Date DEC 29 2003

Landowner (print) Wailuku Agribusiness Co., Inc
Signature
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<th>GPD/ACRE</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>ULTIMATE DEMAND GPD (TO BUILD OUT)</th>
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TOTAL GPD

(For Oahu only) DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE __________________________ DATE ______________________

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(c) LOCATION: Address Iao Valley, Maui
   Tax Map Key: 3 3 03 03
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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 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0225.
For further information and updates to this application form, visit http://www.hawaii.gov/dlnr/cwrm.

PERMITTEE INFORMATION

1. (a) APPLICANT
Firm/Name: Department of Water Supply
Contact Person: 
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8. METHOD OF MEASUREMENT:
   □ Flowmeter □ Open-circuit □ Well □ 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 □ Other Explain
        □ Industrial

11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 24 hour(s)
    (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: Diverions is used by the County of Maui, Department of Water Supply.

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; 3) 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): Clayton S. Suzuki
Signature: 
Date: DEC 29 2003

Landowner (print): Wailuku Agribusiness Co., Inc.
Signature: 
Date: DEC 29 2003

WUPAFORM (4/29/03)
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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 defining 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.
State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
APPLICATION FOR WATER USE PERMIT

Instructions: Please print in ink or type and send 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0210. For further information and updates to this application form, visit http://www.hawaii.gov/dlnr/cwm.

PERMITTEE INFORMATION

1. (a) APPLICANT
   Firm/Name: Department of Water Supply
   Contact Person: ________
   Address: 200 S. High Street, Wailuku, 96793
   Phone: 808-270-7816 Fax: 808-270-7833
   E-mail: ____________

(b) LANDOWNER OF SOURCE
   Firm/Name: Wailuku Agribusiness Co., Inc.
   Contact Person: Clayton S. Suzuki
   Address: 225 E. Waiko Road, Wailuku, 96793
   Phone: 808-244-2208 Fax: 808-242-7068
   E-mail: csuzuki@cbc1826.com

SOURCE INFORMATION

2. WATER MANAGEMENT AREA: Iao Aquifer
   ISLAND: Maui

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
   (If source doesn't presently exist, please attach well construction/stream diversion permit or application.)

(b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME:
   Tax Map Key: 3 3 03 03
   (Attach and show source location on a USGS map, scale 1"=2000', and a property tax map)

4. SOURCE TYPE (check one): Stream
   (a) Municipal (including hotels, stores, etc.)
   (b) Industrial
   (c) Individual Domestic
   (d) Military
   (e) Irrigation
   (f) Other Explain

5. METHOD OF TAKING WATER (check one):
   (a) Artesian
   (b) Well & Pump
   (c) Diverted Surface
   (d) Other

USE INFORMATION

6. LOCATION OF PROPOSED WATER USE: (If possible, show on same maps as source location. Otherwise, attach similar maps)
   (a) PUC-Regulated Private System
   (b) Non-PUC-Regulated Private System
   Tax Map Key: Please complete Table 1 on back of application and shade applicable portion of property tax map.

7. QUANTITY OF WATER REQUESTED: 1,200,000 gallons per day (averaged over 1 year)

8. METHOD OF MEASUREMENT:
   (a) Flowmeter
   (b) Open-pipe
   (c) Weir
   (d) Orifice
   (e) Other

9. QUALITY OF WATER REQUESTED:
   (a) Municipal (including hotels, stores, etc.)
   (b) Industrial
   (c) Individual Domestic
   (d) Military
   (e) Irrigation
   (f) Other

10. PROPOSED USE:
    (a) Municipal (including hotels, stores, etc.)
    (b) Industrial
    (c) Individual Domestic
    (d) Military
    (e) Irrigation
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11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION:
    24 hour
    (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.
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* 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: Diversion is used by the County of Maui, Department of Water Supply.

NOTE: Signing below indicates that the signatory(ies) 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; 3) 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) Clayton S. Suzuki
Signature ____________
Date DEC 2 9 2003

Landowner (print) Wailuku Agribusiness Co., Inc.
Signature ____________
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WUPAFORM (4/29/03)
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(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
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 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0225. For further information and updates to this application form, visit http://www.hawaii.gov/dlnr/cwrm.

PERMITTEE INFORMATION
1. (a) APPLICANT
   Firm/Name: Department of Water Supply
   Contact Person:
   Address: 200 S. High Street, Wailuku, 96793
   Phone: 808-270-7816 Fax: 808-270-7833
   E-mail:

   (b) LANDOWNER OF SOURCE
   Firm/Name: Wailuku Agribusiness Co., Inc.
   Contact Person: Clayton S. Suzuki
   Address: 225 E. Waiko Road, Wailuku, 96793
   Phone: 808-244-2208 Fax: 808-242-7068
   E-mail: csuzuki@cbcl1826.com

SOURCE INFORMATION
2. WATER MANAGEMENT AREA:
   Lao Aquifer
   ISLAND: Maui

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER:
   Lao Tunnel 5332-02
   (If source doesn’t presently exist, please attach well construction/stream diversion permit or application.)

   (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME:
   Lao Valley, Maui
   (Attach and show source location on a USGS map, scale 1”=2000’, and a property tax map)

4. SOURCE TYPE (check one): ☐ Stream ☐ Dike-confined ☐ Perched ☐ Caprock
   ☐ Dike-confined ☐ Open-pipe ☐ Weir ☐ Orifice ☐ Other (explain)

5. METHOD OF TAKING WATER (check one):
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USE INFORMATION
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: 1,200,000 gallons per day (averaged over 1 year)

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

9. QUALITY OF WATER REQUESTED:
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10. PROPOSED USE:
    ☐ Municipal (including hotels, stores, etc.) ☐ Individual Domestic ☐ Irrigation ☐ Other Explain
        ☐ Industrial ☐ Military

11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 24 hour
    (daytime hours of operation; example, 7 a.m. to 2 p.m.)

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Applicant (print) Clayton S. Suzuki
Signature ____________________________
Date 2/9/2003

Landowner (print) Wailuku Agribusiness Co., Inc.
Signature ____________________________
Date 2/9/2003

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(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.

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State of Hawaii
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Department of Land and Natural Resources
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PERMITTEE INFORMATION

1. (a) APPLICANT
   Firm/Name ____________________________
   Contact Person _______________________  
   Address _______________________________
   Phone ______________________ Fax __________
   E-mail __________________________________

   (b) LANDOWNER OF SOURCE
   Firm/Name ____________________________
   Contact Person _______________________  
   Address _______________________________
   Phone ______________________ Fax __________
   E-mail __________________________________

SOURCE INFORMATION

2. WATER MANAGEMENT AREA: _____________  

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: _____________  
   (If source doesn’t presently exist, please attach well construction/stream diversion permit or application.)  
   (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME: _____________________________  
   (c) LOCATION: Address ____________________________
   ____________________________
   ____________________________
   ____________________________

4. SOURCE TYPE (check one):  
   ① Stream  ② Basal  ③ Dike-confined  ④ Perched  ⑤ Caprock

5. METHOD OF TAKING WATER (check one):  
   ① Artesian  ② Well & Pump  ③ Diverted Surface  ④ Other (explain)

USE INFORMATION

6. LOCATION OF PROPOSED WATER USE: (If possible, show on same maps as source location. Otherwise, attach similar maps)
   (a) 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: _____________ gallons per day (averaged over 1 year)  

8. METHOD OF MEASUREMENT:  
   ① Flowmeter  ② Open-pipe  ③ Weir  ④ Orifice  ⑤ Other (explain)

9. QUALITY OF WATER REQUESTED:  
   ① Fresh  ② Brackish  ③ Salt  ④ Potable  ⑤ Non-Potable  ⑥ Other

10. PROPOSED USE:  
    ① Municipal (including hotels, stores, etc.)  ② Individual Domestic  ⑥ Irrigation
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Applicant (print) ____________________________  
Signature ____________________________  
Date ____________________________

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WUPA FORM (4/29/03)
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TOTAL GPD

(For Oahu only) DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE __________________________ DATE ____________

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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 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 521, Honolulu, Hawaii 96809. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 808-270-0223.
For further information and updates to this application form, visit http://www.hawaiigov/dlnr/cwrm.

PERMITTEE INFORMATION
1. (a) APPLICANT
Name ____________________________
Contact Person ____________________
Address 200 S. High Street, Wailuku, 96793
Phone 808-270-7816 Fax 808-270-7833
E-mail ____________________________

(b) LANDOWNER OF SOURCE
Name Wailuku Agribusiness Co., Inc.
Contact Person Clayton S. Suzuki
Address 225 E. Waihau Road, Wailuku, 96793
Phone 808-244-2208 Fax 808-242-7068
E-mail csuzuki@cbcl1826.com

SOURCE INFORMATION
2. WATER MANAGEMENT AREA: Iao Aquifer
   ISLAND: Maui

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
   (If source doesn't presently exist, please attach well construction/stream diversion permit or application.)

4. SOURCE INFORMATION
   SOURCE TYPE (check one): □ Stream □ Basal □ Dike-confined □ Perched □ Caprock

5. METHOD OF TAKING WATER
   (check one): □ Artesian □ Well & Pump □ Diverted Surface □ Other (explain)

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

7. QUANTITY OF WATER REQUESTED: 1,200,000 gallons per day (averaged over 1 year)

8. METHOD OF MEASUREMENT: □ 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
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Applicant (print) Clayton S. Suzuki
Signature ____________________________
Date DEC 29 2003

Landowner (print) Wailuku Agribusiness Co.
Signature ____________________________
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Firm/Name: Department of Water Supply
Contact Person: _______________
Address: 200 S. High Street, Wailuku, 96793
Phone: 808-270-7816 Fax: 808-270-7833
E-mail: _______________

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Address: 225 E. Waikolu Road, Wailuku, 96793
Phone: 808-242-2208 Fax: 808-242-7068
E-mail: csuzuki@cbcl1826.com

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ISLAND: Maui

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02

(b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME: _______________________________

(c) LOCATION: Address ______________________ ISLAND: Maui

Tax Map Key: ___________ ___________ ___________ ___________

(Attach and show source location on a USGS map, scale 1"=2000', and a property tax map)

4. METHOD OF TAKING WATER: _______________________________

(check one): □ Stream □ Dike-confined □ Perched □ Caprock

□ Basel □ Diverted Surface

□ Well & Pump □ Other (explain)

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□ Artesian □ Pump

□ Weir □ Other (explain)

□ Flowmeter □ Irrigation □ Caprock

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□ Office □ Municipal (including hotels, stores, etc.)

□ Weir □ Individual Domestic □ Non-Potable

□ Sei (Other (explain))

□ Potable □ Industrial □ Potable (Other (explain))

□ Other (explain)

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9. QUALITY OF WATER REQUESTED:

□ Fresh □ Other (explain)

□ Brackish □ Potable □ Other (explain)

□ Salt □ Non-Potable (Other (explain))

□ Potable

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□ Agricultural □ Industrial □ Military

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Signature ____________________________ Date DEC 2 9 2003

Landowner (print) Wailuku Agribusiness Co., Inc.
Signature ____________________________ Date DEC 2 9 2003

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State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
APPLICATION FOR WATER USE PERMIT

Instructions: Please print in ink or type and send 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 821, Honolulu, Hawaii 96809. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 808-587-0025. For further information and updates to this application form, visit http://www.hawaii.gov/cwrm.

PERMITTEE INFORMATION

1. (a) APPLICANT
   Firm/Name: Department of Water Supply
   Contact Person:
   Address: 200 S. High Street, Wailuku, 96793
   Phone: 808-270-7816 Fax 808-270-7833
   E-mail: ___________________________

(b) LANDOWNER OF SOURCE
   Firm/Name: Wailuku Agribusiness Co., Inc.
   Contact Person: Clayton S. Suzuki
   Address: 225 E. Waiko Road, Wailuku, 96793
   Phone: 808-244-2208 Fax 808-242-7068
   E-mail: csuzuki@cbc1826.com

SOURCE INFORMATION

2. WATER MANAGEMENT AREA: Iao Aquifer ISLAND: Maui

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
   (If source doesn't presently exist, please attach well construction/stream diversion permit or application.)

(b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME: __________________________

(c) LOCATION: Address __________________________
   (Attach and show source location on a USGS map, scale 1"x2000", and a property tax map)
   Tax Map Key: __________________________

4. SOURCE TYPE (check one): □ Stream □ Basal □ Dike-confined □ Perched □ Caprock

5. METHOD OF TAKING WATER (check one): □ Artesian □ Well & Pump □ Diverted Surface □ Other (explain)

USE INFORMATION

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: 1,200,000 gallons per day (averaged over 1 year)

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

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

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11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: __________________________
    (daytime hours of operation; example, 7 a.m. to 2 p.m.)

12. APPLICANT MUST ESTABLISH THAT THE PROPOSED USE OF WATER:
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* 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: Diversion is used by the County of Maui, Department of Water Supply.

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Applicant (print) Clayton S. Suzuki
Signature __________________________
Date DEC 2 9 2003

Landowner (print) Wailuku Agribusiness Co., Inc.
Signature __________________________
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For Official Use Only:
WUPAFORM (4/29/03)
<table>
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<th>1. Iao Tunnel</th>
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<th>Conv.</th>
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   ISLAND: Maui

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   (Attach and show source location on a USGS map, scale 1"=2000', and a property tax map)

4. SOURCE TYPE (check one):  □ Stream  □ Basal  □ Dike-confined  □ Perched  □ Caprock

5. METHOD OF TAKING WATER (check one):  □ Artesian  □ Well & Pump  □ Diverted Surface  □ Other (explain)

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9. QUALITY OF WATER REQUESTED:
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10. PROPOSED USE:  □ Municipal (including hotels, stores, etc.)  □ Individual Domestic  □ Irrigation  □ Other (explain)
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11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 24 hour
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Signature ____________________________
Date DEC 29 2003

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Signature ____________________________
Date DEC 29 2003
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TOTAL GPDP

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

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\[ \checkmark \] Groundwater or \[ \checkmark \] Surface Water

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Signature □ □ Date DEC 29 2003 □ DEC 29 2003

WUPAFORM (4/29/03)
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<td><strong>CURRENT COUNTY ZONING CODE</strong></td>
<td><strong>UNITS or NET ACRES</strong></td>
<td><strong>GPD/UNIT or GPD/acre</strong></td>
<td><strong>4-YEAR CUMULATIVE PROJECTED DEMAND</strong></td>
<td><strong>ULTIMATE DEMAND GPD (TO BUILD OUT)</strong></td>
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| **TOTAL GPD** | | | | | | | | | | |

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Assessed values reflect tax year 2010 for all islands. Taxes reflect tax year 2009.

Search criteria: TMK Taxkey 2-3-3-3-3

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RESERVE WATER COMPANY LLC

This information has been supplied by third parties and has not been independently verified by Hawaii Information Service and is therefore not guaranteed.

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<th>Assessed values and Building Details reflect tax year 2010 for all islands. Taxes reflect tax year 2009.</th>
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### Well Index

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### 12 Month Moving Average

![Graph showing 12 Month Moving Average](image)

- **Well ID**: 8-5332-002, Well Name: lso Tunnel, WUP MGD: 2, Beginning: 1/1/2002, Ending: 10/31/2008

### Compute 12-Month Moving Average

- The graph illustrates the 12-month moving average for water production (MGD) for different wells. The data spans from January 2002 to October 2008.

### Well Index Options

- **View Pupage Selected**: View Pumpage Selected
- **View Final Output Detail**: View Final Output Detail
- **No WUP Report**: No WUP Report
- **Print Report**: Print Report

### Additional Information

- **Beginning**: Start date of the data analysis period.
- **Ending**: End date of the data analysis period.
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STATE OF HAWAII
COMMISSION ON WATER RESOURCE MANAGEMENT
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF WATER RESOURCE MANAGEMENT

REGISTRATION OF WELL
AND DECLARATION OF WATER USE

INSTRUCTIONS: Please type or print. If information is not available or not applicable, indicate as N/A. Fill out as completely as possible, sign, and file form with the Division of Water Resource Management, P.O. Box 373, Honolulu, Hawaii 96809. Phone 548-3648 or 548-7543 for assistance.

BATTERY OF WELLS: For a battery of wells, on the surface, in a tunnel, or in a shaft, submit a registration form for each well together with a single map or plot plan showing layout of wells.

STATE WELL NO.: 5332-02
WELL NAME OR DESIGNATION: Iao Tunnel
ISLAND: Maui
SOURCE OR STATION NAME (For a battery of wells):

A. WELL OPERATOR
Firm name: Dept. of Water Supply
Contact person: ____________________________
Address: P. O. Box 1109
Wailuku, Maui, Hawaii
Zip: 96793 Phone: 243-7730

B. OWNER OF WELL SITE
Firm name: Wailuku Sugar Company
Contact person: ____________________________
Address: ____________________________
Zip: _______ Phone: _______

C. WELL LOCATION
Tax Map Key: 3-3-03:3 Iao Valley
Town, Place, District: _____________
Attach USGS "Quad" map (scale 1:24,000), tax map, or other map showing the well location.

D. WELL DATA
For Drilled Wells, submit "as-built" drawing, driller's log, and pump test results, and complete items below.

For Tunnels and Shafts, submit construction drawings, plot plan, or sketch map.

Ground elevation (Mean sea level): 785 ft.
Reference point (Used to measure depth to water):
Elevation: ____________________________ ft.
Description: ____________________________

Depth to water (Below reference point): ______ ft.
Maximum recorded chloride: ______ ppm
Minimum recorded chloride: ______ ppm
Maximum chloride in 1987: ______ ppm

E. INSTALLED PUMP DATA
Pump type: [ ] Vertical shaft [ ] Submersible [ ] Centrifugal [ ] Other (specify): ____________________________
Power: [ ] Diesel, ______ HP [ ] Gas, ______ HP [ ] Electric, ______ HP [ ] Other (specify): ____________________________
Pump capacity: ______ gallons per minute
Pump installation contractor: ____________________________

(continued over)

For Official Use Only:
Date received: 5-20-89 Date accepted: ____________________________
Field checked by: ____________________________ Date: ____________________________
Comments: ____________________________

Latitude: 20° 03' 09" Hydrologic Unit: ____________________________
Longitude: 156° 32' 33" State Well No.: 5332-02

References: Hawaii Revised Statutes, Chapter 174C.
Hawaii Administrative Rules, Chapters 13-167 to 13-171.
NOTE: The purpose of the Declaration of Water Use is to obtain information necessary for the management of the State's water resources. The Declaration does not confer a legal right to water or its use.

Water use data are recorded:  
- [ ] Daily  
- [ ] Weekly  
- [ ] Monthly  
- [ ] Other ([describe]): ____________________ 

Method of measurement:  
- [ ] Flow Meter  
- [ ] Orifice  
- [ ] Other ([describe]): ____________________ 

Quantity of Use (Report measured or estimated monthly water use from the well described on the reverse side of this form, for the calendar years 1983 through 1987. For a battery of wells which are not individually metered, but which are connected to a single meter or other measuring device, report total use from the battery):

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<td>65,079</td>
<td>50,330</td>
<td>42,328</td>
<td>46,153</td>
<td>50,057</td>
</tr>
<tr>
<td>ANNUAL</td>
<td>644,111</td>
<td>655,305</td>
<td>543,250</td>
<td>515,242</td>
<td>540,448</td>
</tr>
</tbody>
</table>

Minimum day's use: ______________ gallons  
Maximum day's use: ______________ gallons  
Typical times of usage: ____________________

Type of Use (Check all category boxes that apply and provide additional information as indicated):  

**Category**  
- [ ] Municipal (including resorts, hotels, businesses)  
- [ ] Domestic (systems serving 25 people or less)  
- [ ] Irrigation  
- [ ] Industrial  
- [ ] Military  
- [ ] Other  

**Additional Information**  
- Number of service connections: ______________  
- Acres Irrigated: ______________  
- Crop(s):  
  - [ ] Sugar  
  - [ ] Pineapple  
  - [ ] Other ([specify]): ____________________  
- Non-Crop:  
  - [ ] Landscape  
  - [ ] Golf Course  
  - [ ] Other ([specify]): ____________________  
- Method:  
  - [ ] Drip  
  - [ ] Furrow  
  - [ ] Sprinkler  
  - [ ] Cooling  
  - [ ] Manufacturing  
  - [ ] Mill  
  - [ ] Other ([specify]): ____________________  
- Specify (livestock, aquaculture, etc.): ____________________  

I declare that the contents of the above Declaration of Water Use are, to the best of my knowledge and belief, true, correct, and complete.

Water User's Signature: ____________________  
Printed Name: ____________________  
Firm or Title (Well Operator, etc.): Director of Department of Water Supply  
County of Maui  

Date: ____________________
STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. BOX 2378
HONOLULU, HAWAII 96801

April 26, 1967

To:    Supervisor, Sanitary Engineering Section (Through Official Channels)

From:  Public Health Chemist, Laboratories Branch

Subject: WATER, CHEMICAL ANALYSIS: County System, Iao Tunnel Supply, Wailuku, Maui, 4/18/67

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>pH at 25°C</td>
<td>7.2</td>
</tr>
<tr>
<td>Color</td>
<td>0</td>
</tr>
<tr>
<td>Odor</td>
<td>0</td>
</tr>
<tr>
<td>Turbidity</td>
<td>0</td>
</tr>
<tr>
<td>NO₂</td>
<td>less than 0.01 ppm</td>
</tr>
<tr>
<td>NO₃</td>
<td>0.8 ppm</td>
</tr>
<tr>
<td>Hydroxide Alkalinity</td>
<td>0 ppm as CaCO₃</td>
</tr>
<tr>
<td>Carbonate Alkalinity</td>
<td>7.6 ppm as CaCO₃</td>
</tr>
<tr>
<td>Bicarbonate Alkalinity</td>
<td>30.8 ppm as CaCO₃</td>
</tr>
<tr>
<td>Total Alkalinity</td>
<td>38.4 ppm as CaCO₃</td>
</tr>
<tr>
<td>Total Hardness</td>
<td>26.1 ppm as CaCO₃</td>
</tr>
<tr>
<td>Total Solids</td>
<td>100 ppm</td>
</tr>
<tr>
<td>Loss on Ignition</td>
<td>20 ppm</td>
</tr>
<tr>
<td>SiO₂</td>
<td>32.0 ppm</td>
</tr>
<tr>
<td>Fe</td>
<td>less than 0.02 ppm</td>
</tr>
<tr>
<td>Al</td>
<td>less than 0.05 ppm</td>
</tr>
<tr>
<td>Ca</td>
<td>6.1 ppm</td>
</tr>
<tr>
<td>Mg</td>
<td>2.6 ppm</td>
</tr>
<tr>
<td>SO₄</td>
<td>2.0 ppm</td>
</tr>
<tr>
<td>Na</td>
<td>12 ppm</td>
</tr>
<tr>
<td>K</td>
<td>5.4 ppm</td>
</tr>
<tr>
<td>Chlorides</td>
<td>12 ppm</td>
</tr>
<tr>
<td>As</td>
<td>less than 0.01 ppm</td>
</tr>
<tr>
<td>F</td>
<td>0.08 ppm</td>
</tr>
<tr>
<td>Mn</td>
<td>less than 0.05 ppm</td>
</tr>
<tr>
<td>Pb</td>
<td>less than 0.01 ppm</td>
</tr>
<tr>
<td>Cu</td>
<td>less than 0.1 ppm</td>
</tr>
<tr>
<td>Zn</td>
<td>less than 0.1 ppm</td>
</tr>
<tr>
<td>Se</td>
<td>less than 0.01 ppm</td>
</tr>
<tr>
<td>Phenols</td>
<td>less than 0.001 ppm</td>
</tr>
</tbody>
</table>

FORWARDED:

RALPH H. TANIMOTO
Acting Chief, Laboratories Branch
To:       Chief, Sanitary Engineering Branch (Through Official Channels)
From:    Public Health Chemist, Laboratories Branch
Subject: WATER, CHEMICAL ANALYSIS: Iao Tunnel / 12-15-72

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>pH @30°C</td>
<td>8.3</td>
</tr>
<tr>
<td>Color</td>
<td>5</td>
</tr>
<tr>
<td>Odor</td>
<td>0</td>
</tr>
<tr>
<td>Turbidity</td>
<td>0</td>
</tr>
<tr>
<td>NO₂</td>
<td>&lt;.01 ppm</td>
</tr>
<tr>
<td>NO₃</td>
<td>.23 ppm</td>
</tr>
<tr>
<td>Hydroxide Alkalinity</td>
<td>0 ppm as CaCO₃</td>
</tr>
<tr>
<td>Carbonate Alkalinity</td>
<td>0 ppm as CaCO₃</td>
</tr>
<tr>
<td>Bicarbonate Alkalinity</td>
<td>56.0 ppm as CaCO₃</td>
</tr>
<tr>
<td>Total Alkalinity</td>
<td>56.0 ppm as CaCO₃</td>
</tr>
<tr>
<td>Total Hardness</td>
<td>32.0 ppm as CaCO₃</td>
</tr>
<tr>
<td>Total Solids</td>
<td>88.4 ppm</td>
</tr>
<tr>
<td>Loss on Ignition</td>
<td>38.0 ppm</td>
</tr>
<tr>
<td>SiO₂</td>
<td>18.2 ppm</td>
</tr>
<tr>
<td>Fe</td>
<td>&lt;.02 ppm</td>
</tr>
<tr>
<td>Al</td>
<td>&lt;.02 ppm</td>
</tr>
<tr>
<td>Ca</td>
<td>9.6 ppm</td>
</tr>
<tr>
<td>Mg</td>
<td>1.9 ppm</td>
</tr>
<tr>
<td>SO₄</td>
<td>1.0 ppm</td>
</tr>
<tr>
<td>Na</td>
<td>10.0 ppm</td>
</tr>
<tr>
<td>K</td>
<td>9.4 ppm</td>
</tr>
<tr>
<td>Chlorides</td>
<td>7.8 ppm</td>
</tr>
<tr>
<td>As</td>
<td>&lt;.003 ppm</td>
</tr>
<tr>
<td>F</td>
<td>.11 ppm</td>
</tr>
<tr>
<td>Mn</td>
<td>&lt;.05 ppm</td>
</tr>
<tr>
<td>Pb</td>
<td>&lt;.01 ppm</td>
</tr>
<tr>
<td>Cu</td>
<td>.04 ppm</td>
</tr>
<tr>
<td>Zn</td>
<td>&lt;.01 ppm</td>
</tr>
<tr>
<td>Se</td>
<td>&lt;.01 ppm</td>
</tr>
<tr>
<td>Phenols</td>
<td>&lt;.001 ppm</td>
</tr>
<tr>
<td>Silver</td>
<td></td>
</tr>
</tbody>
</table>

All parameters within USPHS Standards.

Analyst: C. Kavaliauskas
Supervisor: Helen S. Walentchuk

FORWARDED:
HENRI P. MINETTE, Dr. P.H.
Chief, Laboratories Branch

cc: San. Eng. Br. (2)
WATER, CHEMICAL ANALYSIS: Iao Tunnel, Wailuku, Maui, 6/4/68

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>pH at 28°C</td>
<td>7.3</td>
</tr>
<tr>
<td>Color</td>
<td>0</td>
</tr>
<tr>
<td>Odor</td>
<td>Sour</td>
</tr>
<tr>
<td>Turbidity</td>
<td>0</td>
</tr>
<tr>
<td>NO&lt;sub&gt;2&lt;/sub&gt;</td>
<td>0.00 ppm</td>
</tr>
<tr>
<td>NO&lt;sub&gt;3&lt;/sub&gt;</td>
<td>0.44 ppm</td>
</tr>
<tr>
<td>Hydroxide Alkalinity</td>
<td>0.5 ppm as CaCO&lt;sub&gt;3&lt;/sub&gt;</td>
</tr>
<tr>
<td>Carbonate Alkalinity</td>
<td>0.1 ppm as CaCO&lt;sub&gt;3&lt;/sub&gt;</td>
</tr>
<tr>
<td>Bicarbonate Alkalinity</td>
<td>34.6 ppm as CaCO&lt;sub&gt;3&lt;/sub&gt;</td>
</tr>
<tr>
<td>Total Alkalinity</td>
<td>34.6 ppm as CaCO&lt;sub&gt;3&lt;/sub&gt;</td>
</tr>
<tr>
<td>Total Hardness</td>
<td>32.6 ppm as CaCO&lt;sub&gt;3&lt;/sub&gt;</td>
</tr>
<tr>
<td>Total Solids</td>
<td>90.0 ppm</td>
</tr>
<tr>
<td>Loss on Ignition</td>
<td>20.0 ppm</td>
</tr>
<tr>
<td>SiO&lt;sub&gt;2&lt;/sub&gt;</td>
<td>37.0 ppm</td>
</tr>
<tr>
<td>Fe</td>
<td>less than 0.02 ppm</td>
</tr>
<tr>
<td>Al</td>
<td>less than 0.01 ppm</td>
</tr>
<tr>
<td>Ca</td>
<td>6.9 ppm</td>
</tr>
<tr>
<td>Ag</td>
<td>3.6 ppm</td>
</tr>
<tr>
<td>SO&lt;sub&gt;4&lt;/sub&gt;</td>
<td>2.0 ppm</td>
</tr>
<tr>
<td>Na</td>
<td>10.9 ppm</td>
</tr>
<tr>
<td>K</td>
<td>4.4 ppm</td>
</tr>
<tr>
<td>Chlorides</td>
<td>14.0 ppm</td>
</tr>
<tr>
<td>As</td>
<td>less than 0.001 ppm</td>
</tr>
<tr>
<td>F</td>
<td>0.06 ppm</td>
</tr>
<tr>
<td>Mn</td>
<td>less than 0.05 ppm</td>
</tr>
<tr>
<td>Pb</td>
<td>less than 0.01 ppm</td>
</tr>
<tr>
<td>Cu</td>
<td>less than 0.01 ppm</td>
</tr>
<tr>
<td>Zn</td>
<td>0.05 ppm</td>
</tr>
<tr>
<td>Se</td>
<td>less than 0.01 ppm</td>
</tr>
<tr>
<td>Phenols</td>
<td>less than 0.001 ppm</td>
</tr>
</tbody>
</table>

FORWARDED:

F. TAKAZANA, Ph.D.
KINGSTON S. WILCOX, Ph.D.
Chief, Laboratories Branch
Mr. G. A. Macdonald  
Acting District Geologist  
Geological Survey  
333 Federal Building  
Honolulu, Hawaii  

Dear Sir:  

We have for acknowledgement your letter of January 9, 1946, inquiring about the automatic water-stage recorder which was receipted for by our Joe Duarte sometime in 1939. This instrument was used in the Iao Tunnel which was being developed by the Wailuku Sugar Company.  

We have just been informed by this company that they have in the last two days, made arrangements to return this instrument to your office. Please advise us whether or not this instrument has reached you safely.  

Yours very truly,  

[Signature]  
A. H. Wong  
County Engineer
<table>
<thead>
<tr>
<th>Date</th>
<th>No. of Dikes</th>
<th>Thickness</th>
<th>Distance</th>
<th>Pressure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jul. 1, 1938</td>
<td>1</td>
<td>2 feet</td>
<td>149 feet</td>
<td>10 lbs.</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>2 &quot;</td>
<td>139 &quot;</td>
<td></td>
</tr>
<tr>
<td>Aug. 29, 1938</td>
<td>3</td>
<td>2 &quot;</td>
<td>162 &quot;</td>
<td></td>
</tr>
<tr>
<td>Sept. 21, 1938</td>
<td>4</td>
<td>2 &quot;</td>
<td>129 &quot;</td>
<td></td>
</tr>
<tr>
<td>Jan. 10, 1939</td>
<td>5</td>
<td>1 &quot;</td>
<td>207 &quot;</td>
<td></td>
</tr>
<tr>
<td>Mar. 3, 1939</td>
<td>6</td>
<td>1 &quot;</td>
<td>177 &quot;</td>
<td></td>
</tr>
<tr>
<td>Mar. 13, 1939</td>
<td>7</td>
<td>3 &quot;</td>
<td>23 &quot;</td>
<td></td>
</tr>
<tr>
<td>Apr. 7, 1939</td>
<td>8</td>
<td>2 &quot;</td>
<td>88 &quot;</td>
<td>24 lbs.</td>
</tr>
<tr>
<td>Apr. 11, 1939</td>
<td>9</td>
<td>2 &quot;</td>
<td>12 &quot;</td>
<td>15 lbs.</td>
</tr>
<tr>
<td></td>
<td>10</td>
<td>1 &quot;</td>
<td>6 &quot;</td>
<td>5 lbs.</td>
</tr>
<tr>
<td>Apr. 18, 1939</td>
<td>11</td>
<td>1 &quot;</td>
<td>13 &quot;</td>
<td>10 lbs.</td>
</tr>
<tr>
<td>Apr. 19, 1939</td>
<td>12</td>
<td>2 &quot;</td>
<td>4 &quot;</td>
<td>5 lbs.</td>
</tr>
<tr>
<td>Apr. 21, 1939</td>
<td>13</td>
<td>1 &quot;</td>
<td>7 &quot;</td>
<td>15 lbs.</td>
</tr>
<tr>
<td>May 2, 1939</td>
<td>14</td>
<td>2 &quot;</td>
<td>31 &quot;</td>
<td>5 lbs.</td>
</tr>
<tr>
<td>June 9, 1939</td>
<td>15</td>
<td>2 &quot;</td>
<td>170 &quot;</td>
<td></td>
</tr>
<tr>
<td>June 23, 1939</td>
<td>16</td>
<td>2 &quot;</td>
<td>20 &quot;</td>
<td></td>
</tr>
<tr>
<td>July 2, 1939</td>
<td>17</td>
<td>2 ½ &quot;</td>
<td>39 &quot;</td>
<td></td>
</tr>
</tbody>
</table>
June 2, 2011

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David Taylor, Director
County of Maui
Department of Water Supply
200 South High Street
Wailuku, HI 96793

A1 Modification of WUP No. 920 for Water Management Area. This letter transmits your water use permit (No. 5332-02) for use of 1.610 million gallons per day (mgd) of water that was administratively modified per Declaratory Ruling No. 1 letter, requesting modification of water use permits for various areas of the Water Management Area. As part of the previous Water Use Permit Number listed above. As part of the special conditions were added and are part of your permit under

Special Conditions

The Chairperson under the authority to allocate the use requirements of permit changed, the permittee shall thirty (30) days after the

Should any of the modified criteria, this permit shall be

Instructions

[Handwritten notes andModelState of Hawaii logo]
GROUND WATER USE PERMIT
WUP NO. 920

PERMITTEE

<table>
<thead>
<tr>
<th>Permittee/Water User</th>
<th>Landowner of Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>Address</td>
</tr>
<tr>
<td>Maui Department of Water Supply</td>
<td>Maui Department of Water Supply and Wailuku Water Company</td>
</tr>
<tr>
<td>200 South High Street</td>
<td>255 East Waiko Road</td>
</tr>
<tr>
<td>Wailuku, Hawaii 96793</td>
<td>Wailuku, HI 96793</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>Maui</td>
</tr>
<tr>
<td>Aquifer Sector</td>
<td>Wailuku</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>Iao Tunnel (Kepaniwai)</td>
</tr>
<tr>
<td>State Well No.</td>
<td>5332-02</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>1.610 mgd</td>
</tr>
<tr>
<td>Location of water use</td>
<td>Central Maui Service Area</td>
</tr>
<tr>
<td>TMK #</td>
<td></td>
</tr>
<tr>
<td>State land use classification</td>
<td>NA</td>
</tr>
<tr>
<td>County zoning classification</td>
<td>NA</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 in its June 10, 2010 Decision and Order 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.

WILLIAM J. AILA, JR., Chairperson
Commission on Water Resource Management

Attachment

c: Wailuku Water Company
**Commission on Water Resource Management**

**Route Slip for New Applications**

**From:** CHARLEY FUBUI, N. HARDY, R. HOAGBIN, S. ICE, C. IMATA, R. 

**Date:** 9-May-11 

**Suspense Date:** 16-May-11 

**TO:** KUNIMURA, I. TAM, W. NAKAMA, L. UYENO, D. YODA, K. YOSHINAGA, M. 

**PLEASE:** 
1. Review & Comment 
2. Take Action 
3. Type Draft acknowledgment letter 
4. File & Input Issue Date 
5. Xerox copies

---

**WELL NUMBER** 5332-02  
**WELL NAME** Iao Tunnel  
**WUP Number** Old= 680/New= 920

- [ ] WELL CONSTRUCTION  
- [x] PUMP INSTALLATION  
- [x] WUPA  
- [ ] WUP Transfer

**Attachments for Application Processing** - Both applicant & staff generated

1. TRANS. LETTER  
2. PERMIT PROCESS TABLE  
3. CWRM MAPS  
4. APPL. FORM (11 COPIES)  
5. USGS MAPS (11 COPIES)  
6. TAX MAPS (11 COPIES)  
7. PARCEL OWNER VERIF.  
8. CONTRACTOR VERIF.  
9. ALL INFO FILLED IN  
10. BACKGROUND CHECK  
11. $25 FEE DEPOSIT SLIP  
12. DHCP/CDUP/SMA pre-screen  

- (SMA map printout http://gis.hicentral.com/website/parcезoning/viewer.htm., or INGRID'S SMA/CD MAP)  
- (LUC map printout http://luc.state.hi.us/luc_maps.htm., or INGRID'S SMA/CD MAP)

13. EA 343 (a) triggers?  
   - [ ] NO  
   - [ ] YES - trigger identified is: ____________________________
     (if triggered, exemption analysis memo must be attached before accepting)

**Folder:**  
- [ ] MADE NEW FILE FOLDER, ATTACHED  
- [x] FILE FOLDER ALREADY MADE, IN FILE CABINET

**Incomplete Action Dates:**

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>submitted during week, never accepted check acceptance date of related WUPA 852-10/1/08? Status? OBJECTION</td>
</tr>
<tr>
<td></td>
<td>(stacked)</td>
</tr>
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<td></td>
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</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

5/14/11  

What about 821 - 923 WUP transfers must go with this?  

5/24/11
April 13, 2011

Mr. William M. Tam, Deputy Director
Commission on Water Resource Management
State Department of Land & Natural Resources
PO Box 621
Honolulu, Hawaii 96809

Re: Water Use Permit Modification of WUP No. 699 for Kepaniwai Well (Well No. 5332-05), WUP No. 680 for Iao Tunnel (Well No. 5332-02), WUP No. 817 for Waiehu Heights 1 Well (Well No. 5430-01) and WUP No. 818 for Waiehu Heights 2 Well (Well No. 5430-02).

Dear Mr. Tam:

The Department of Water Supply respectfully requests modification of the above mentioned water use permits within the Iao Aquifer Water Management Area to address rising chlorides and allow better flexibility within our permitted allocations from basal and high level sources. The requested redistribution would result in a net zero increase in withdrawals. We understand that this request can be accommodated administratively without submittal of new water use permit applications. Please find below our requested modification of existing allocations.

<table>
<thead>
<tr>
<th>Well</th>
<th>Existing Allocation</th>
<th>Requested Allocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waiehu Heights 1 Well, WUP No. 817</td>
<td>500,000</td>
<td>200,000</td>
</tr>
<tr>
<td>Waiehu Heights 2 Well, WUP No. 818</td>
<td>500,000</td>
<td>800,000</td>
</tr>
<tr>
<td>Kepaniwai Well WUP No. 699</td>
<td>1,042,000</td>
<td>791,000</td>
</tr>
<tr>
<td>Iao Tunnel WUP No. 680</td>
<td>1,359,000</td>
<td>1,610,000</td>
</tr>
<tr>
<td>Subtotal:</td>
<td>3,401,000</td>
<td>3,401,000</td>
</tr>
</tbody>
</table>

We propose shifting pumpage from Waiehu Heights 1 Well to Waiehu Heights 2 Well due to rising chlorides in the former. Shifting pumpage from Kepaniwai Well to Iao Tunnel would allow the Department the flexibility to withdraw additional source when available from Iao Tunnel while the yield from Kepaniwai well is limited to .792 mgd. The Department of Water Supply’s new water use permit application for an additional 841,000 from Iao Tunnel was deemed complete on October 10, 2008. There are no conflicting new water use permit applications.

“By Water All Things Find Life”
applications for any of the four subject sources according to public notices issued by the Commission on Water Resource Management.

If you have any questions regarding this request, please contact me at (808) 270-7816.

Sincerely,

[Signature]

David Taylor, Director

Copy: 1. Engineering Division
  2. Plant Operations Division
  3. Jane Lovell, Deputy Corporation Counsel
  4. Edward Kushi, Jr., Deputy Corporation Counsel
<table>
<thead>
<tr>
<th>FROM</th>
<th>Charley</th>
<th>DATE:</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO</td>
<td>IMATA, R.</td>
<td>INIT.</td>
</tr>
<tr>
<td></td>
<td>UYENO, D.</td>
<td>INIT.</td>
</tr>
<tr>
<td></td>
<td>CHONG, R.</td>
<td>INIT.</td>
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<tr>
<td></td>
<td>FUJII, N.</td>
<td>INIT.</td>
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<tr>
<td></td>
<td>KIMURA, J.</td>
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<td></td>
<td>YOSHINAGA, M.</td>
<td>INIT.</td>
</tr>
<tr>
<td></td>
<td>KUNIMURA, I.</td>
<td>INIT.</td>
</tr>
<tr>
<td></td>
<td>YODA, K.</td>
<td>INIT.</td>
</tr>
</tbody>
</table>

PLEASE:
- Review & Comment
- Type Draft
- Type Final
- File
- Copies: ___
- Take Action:
  - Please See Me

5430-02 (W. Hts. 2) no PT on file; original declaration shows p cap. @ 1250 gpm (unchanged)
5330-02 (IaoT) does not effect use of 738 (wmc) since (incomplete)
Basal Sources:

**Existing Uses** as of July 21, 2003 and completed applications submitted by the July 21, 2004 deadline

<table>
<thead>
<tr>
<th>Name</th>
<th>Well No</th>
<th>Appl</th>
<th>TMK</th>
<th>WUP#</th>
<th>reg</th>
<th>---12-MAVs ---</th>
<th>---</th>
<th>---</th>
<th>10Jun10</th>
<th>---</th>
<th>---</th>
<th>---</th>
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<tbody>
<tr>
<td></td>
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<td></td>
<td></td>
<td>staff rec</td>
<td>CWRM</td>
<td>11/26/07 (DecRul)</td>
<td>18Feb09 newT</td>
<td>WUP</td>
<td>WUP</td>
<td>amt</td>
<td>D&amp;O</td>
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<td>3-3-2-24</td>
<td>700</td>
<td>1.994</td>
<td>1.810</td>
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<td>815</td>
<td>1.500</td>
<td>nc</td>
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<td>Mokuhau Well 3</td>
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<td>MDWS</td>
<td>3-3-2-24</td>
<td>701</td>
<td>2.221</td>
<td>2.308</td>
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<td>816</td>
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<td>847</td>
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<td>698</td>
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<td>Waiehu Well 1</td>
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<td>3-3-17-31</td>
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<td>1.423</td>
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<td>Kehalani</td>
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<td>865</td>
<td>0.613</td>
<td>transfer Kehalani</td>
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<td>5330-05</td>
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<td>5.771</td>
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<td>4.800</td>
<td>864</td>
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<td>0.498</td>
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<td>Waikapū Tank Site</td>
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<td>16.998</td>
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* based on corrections from original readings; listed as report date 7/31 rather than designation date 7/21 (CWRM)

** transfer from Waihee Aquifer

High-Level Sources:

(not counted against SY)

<table>
<thead>
<tr>
<th>Name</th>
<th>Well No</th>
<th>Appl</th>
<th>TMK</th>
<th>WUP#</th>
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<th>---12-MAVs ---</th>
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<th>10Jun10</th>
<th>---</th>
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<tbody>
<tr>
<td>Kepaniwai</td>
<td>5332-05</td>
<td>MDWS</td>
<td>3-3-3-5</td>
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<td>921</td>
<td>0.791*</td>
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<tr>
<td>Iao Tunnel (Kepaniwai)</td>
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<td>MDWS</td>
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<td>660</td>
<td>1.719</td>
<td>852</td>
<td>0.841</td>
<td>1.359</td>
<td>(as 680)</td>
<td>920</td>
<td>1.610*</td>
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</table>

** transfer from Waihee Aquifer

Non-Municipal Basal Sources

<table>
<thead>
<tr>
<th>Name</th>
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<th>TMK</th>
<th>WUP#</th>
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<tbody>
<tr>
<td>Living Waters</td>
<td>5531-01</td>
<td>3-3-13-15</td>
<td>704</td>
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<tr>
<td>John Varel</td>
<td>5631-07</td>
<td>3-2-1-1</td>
<td>825</td>
<td>0.006</td>
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<tr>
<td>Bryan Sarasin</td>
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<td>3-2-7-11</td>
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</tr>
</tbody>
</table>

** transfer from Waihee Aquifer System (no WMA)
August 12, 2010

680.wup

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jeffrey Eng, Director
County of Maui
Department of Water Supply
200 South High Street
Wailuku, HI 96793

Dear Mr. Eng:

Approval of Water Use Permit (WUP No. 680) for Well No. 5332-02
Iao Ground-Water Management Area, Hawaii

This letter transmits your water use permit for Iao Tunnel (Kepaniwai) (Well No. 5332-02) for the existing use of 1.359 million gallons per day (mgd) of water on a 12-month moving average basis that was approved by the Commission on Water Resource Management (Commission) on June 10, 2010. 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. The Commission shall delegate to the COUNTY Water Supply the authority to allocate the use of water for municipal purposes, in accordance with §174C-48(b) HRS.

2. COUNTY Water Supply shall be exempt from the requirements of permit modifications as provided in §174C-57.

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.

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.
**GROUND-WATER USE PERMIT**  
**WUP NO. 680**

**PERMITTEE**

<table>
<thead>
<tr>
<th>Permittee/Water User</th>
<th>Landowner of Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>Address</td>
</tr>
<tr>
<td>Maui Department of Water Supply</td>
<td>Maui Department of Water Supply and Wailuku Water Co.</td>
</tr>
<tr>
<td>200 South High Street</td>
<td>255 E. Waiko Road</td>
</tr>
<tr>
<td>Wailuku, HI 96793</td>
<td>Wailuku, HI 96793</td>
</tr>
</tbody>
</table>

**PERMITTED SOURCE INFORMATION**

<table>
<thead>
<tr>
<th>Island</th>
<th>Maui</th>
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</thead>
<tbody>
<tr>
<td>Water Management Area</td>
<td>Maui</td>
</tr>
<tr>
<td>Aquifer Sector</td>
<td>Wailuku</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>Iao Tunnel (Kepaniwai)</td>
</tr>
<tr>
<td>State Well No.</td>
<td>5332-02</td>
</tr>
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</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>1.359 mgd</td>
</tr>
<tr>
<td>Location of water use</td>
<td></td>
</tr>
<tr>
<td>TMK #</td>
<td></td>
</tr>
<tr>
<td>State land use classification</td>
<td>na</td>
</tr>
<tr>
<td>County zoning classification</td>
<td>na</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 in its June 10, 2010 Decision and Order in CCH-MA-06-01 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.

LAURA H. THIELEN, Chairperson
Commission on Water Resource Management

c: Wailuku Water Company
August 9, 2010

MEMORANDUM

TO: File 5332-05 WUP 699
FROM: Roy Hardy

SUBJECT: 343 Requirement Analysis for WUPA 680

After 6/10/10 D&O CCH-MA06-01, and then informed that 343 analysis may apply, especially since county source and funds trigger such and action, this memo is a record of the staff analysis of exempting this action.

No specific exemptions cited for existing use type WUPAs for this situation though arguably some end uses to the Central Maui Service Area may apply. It is assumed such municipal end uses that trigger an EA were performed through other land use approvals. Impacts have already been addressed sufficiently through the USGS numerical modeling report SIR 2008-5236.

Attached email to AG’s responded via phone call from Linda Chow that since source was built before 1974 it should be ok to go without the typical EA requirement and grandfathered.

R.H.
Given our discussion today about 343 requirements, should we be holding up issuance of water use permits for 'existing' use diked, high-level well and tunnel sources approved in the final D&O since no 343 review for Maui Department of Water Supply's Kepaniwai well and lao tunnel? I don't think there are any exemptions for these actions though the sources existed prior to 1974.
March 2, 2009

Mr. Jeffery K. Eng, Director
Department of Water Supply
County of Maui
200 South High Street
Wailuku, HI 96793

Dear Mr. Eng:

Notice of Commission Action
Water Use Permit Applications
846 for Well No. 5230-03; 847 for Well No. 5330-11; 848 for Well No. 5131-01; and 852 for Well No. 5332-02

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 February 18, 2009, the Commission:

1. Approved partial requests for new water uses in water use permits for the captioned wells, resulting in total water use from these sources, based on a 12-month moving average, as follows:

<table>
<thead>
<tr>
<th>Well No.</th>
<th>Well Name</th>
<th>WUP No.</th>
<th>New Use</th>
<th>Current Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>5230-03</td>
<td>Iao Tank Site Well</td>
<td>846</td>
<td>0.481 mgd</td>
<td>0.979 mgd</td>
</tr>
<tr>
<td>5330-11</td>
<td>Mokuhau 3</td>
<td>847</td>
<td>0.353 mgd</td>
<td>2.353 mgd</td>
</tr>
<tr>
<td>5131-01</td>
<td>Waikapu Tank Site</td>
<td>848</td>
<td>0.540 mgd</td>
<td>0.940 mgd</td>
</tr>
</tbody>
</table>

These water use permits are attached herein.

2. Deferred the remainder of the application requests for the sources in item (1) until a decision and order for CCH-MA06-01 is approved by the Commission.

3. Deferred action on WUP 852 for Iao Tunnel, Well No. 5232-02, until a Decision and Order for CCH-MA06-01 is approved by the Commission.

If you have any questions, please contact Charley Ice of Commission staff at 587-0218.

Sincerely,

[Signature]

KEN C. KAWAHARA, P.E.
Deputy Director

Cl:ss
Enclosures
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL
for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT
February 18, 2009
Honolulu, Oahu

Mr. Bryan Sarasin
Mr. John Varel
Maui Department of Water Supply (MDWS)
APPLICATIONS FOR WATER USE PERMITS

Waihee-Sarasin Well (Well No. 5631-08)
WUPA 853, TMK 3-2-007:016
Future (Domestic and Agricultural) Use of 0.051 mgd

Waihee-Varel Well (Well No. 5631-07)
WUPA 825, TMK 3-2-001:001
Future (Domestic and Agricultural) Use of 0.041 mgd

Iao Tank Site Well (Well No. 5230-03)
WUPA 846, TMK 3-5-001:021
New (Additional Municipal) Use of 0.802 mgd

Mokuhau Well 3 (Well No. 5330-11)
WUPA 847, TMK 3-3-002:024
New (Additional Municipal) Use of 0.589 mgd

Waikapu Tank Site Well (Well No. 5131-01)
WUPA 848, TMK 3-5-004:099
New (Additional Municipal) Use of 0.900 mgd

Iao Tunnel - Kepaniwai (Well No.5332-02)
WUPA 852, TMK 3-3-003:003
New (Additional Municipal) Use of 0.840 mgd
Iao Ground Water Management Area, Maui

APPLICANT:
Mr. Bryan Sarasin
P.O. Box 218
Wailuku HI 96793

Mr. John Varel
P.O. Box 1468
Wailuku HI 96793

Mr. Jeffrey K. Eng, Director
Maui Department of Water Supply
200 South High Street
Wailuku HI 96793

LANDOWNER:
Same

Same

Same and (for 5332-02)
Wailuku Water Co.
255 East Waiko Road
Wailuku HI 96793

SUMMARY OF REQUEST:

Two private applicants request that the Commission approve ground water use permit applications (WUPAs) for potable basal ground water for new agricultural and domestic uses in the northern portion of the Iao Aquifer System Area. The Maui Department of Water Supply (MDWS) seeks approval of four permits – three for basal and one for high-level sources in the mid- to southern portion of the Iao Aquifer System Area for new (additional) municipal uses, as follows:

Sarasin: an allocation of 0.051 million gallons per day (mgd), for one domestic household and 0.85 acres of agricultural irrigation.

Varel: an allocation of 0.041 mgd for 5 domestic households and 350.5 acres of agricultural irrigation (request amended at the hearing to 0.400 mgd)

Maui Department of Water Supply (MDWS): additional allocations totaling 3.132 mgd for municipal uses from four distinct sources.
<table>
<thead>
<tr>
<th>Well Name</th>
<th>Existing mgd (WUP)</th>
<th>New request mgd (WUP)</th>
<th>Total mgd</th>
</tr>
</thead>
<tbody>
<tr>
<td>5230-03 Iao Tank Site Well</td>
<td>0.498 (823)</td>
<td>0.802 (846)</td>
<td>1.300</td>
</tr>
<tr>
<td>5131-01 Waikapu Tank Site</td>
<td>2.000 (816)</td>
<td>0.900 (848)</td>
<td>2.589</td>
</tr>
<tr>
<td>other MDWS basal</td>
<td>0.400 (824)</td>
<td>2.291</td>
<td>1.300</td>
</tr>
<tr>
<td>total MDWS basal</td>
<td>14.178</td>
<td></td>
<td>14.178</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Well Name</th>
<th>Existing mgd (WUP)</th>
<th>New request mgd (WUP)</th>
<th>Total mgd</th>
</tr>
</thead>
<tbody>
<tr>
<td>5330-05 Kehalani Mauka</td>
<td>0.613 (865)</td>
<td>--</td>
<td>0.613</td>
</tr>
<tr>
<td>5531-01 Living Waters</td>
<td>0.020 (704)</td>
<td>--</td>
<td>0.020</td>
</tr>
<tr>
<td>total other basal</td>
<td>0.633</td>
<td></td>
<td>0.633</td>
</tr>
<tr>
<td>Total Iao</td>
<td>17.709</td>
<td>2.291</td>
<td>20.000</td>
</tr>
<tr>
<td>high-level applications pending,</td>
<td>subject to CCH-MA06-01</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5332-03 Iao Tunnel</td>
<td>1.359 (a)</td>
<td>0.841</td>
<td>2.200</td>
</tr>
<tr>
<td>5332-05 Kepaniwai Well</td>
<td>1.042</td>
<td>1.042</td>
<td></td>
</tr>
<tr>
<td>total MDWS high-level (a)</td>
<td>2.401 (b)</td>
<td></td>
<td>3.242</td>
</tr>
<tr>
<td>Total MDWS</td>
<td></td>
<td>3.132</td>
<td></td>
</tr>
</tbody>
</table>

(a) Original GWUPA 680 for 1.418 revised to 1.359; signed by both Wailuku Water Co. (WWC) and MDWS. By private agreement, WWC takes overflow not used by MDWS, assigned GWUPA 738, but never accepted as complete, as the amount was not identified (staff averaged use for estimate of 0.527 mgd as of July 2003).

(b) not yet permitted, pending contested case hearing CCH-MA06-01 D&O on high-level and IIFS.

Objections to these water use permits led to a public hearing on December 16, 2008 to gather further public testimony. This is the first time the Commission must decide between competing GWUPA applications that cannot all be accommodated within the present sustainable yield estimate for a Ground Water Management Area (GWMA).

**LOCATION MAP:** See Exhibit 1

**BACKGROUND:**

**January 23, 2003**

Well Construction Permit Application received from John Varel; issued February 25, 2003.

**May 14, 2003**

Well Construction Permit Application received from Bryan Sarasin; issued June 4, 2003.

**July 21, 2003**

Iao Ground Water Management Area officially designated through publication of public notice on that date. Actual existing users, other than individual domestic users who are exempted under the Code, had one year from this date to apply for continued existing uses.
June 21, 2004  The Supreme Court rendered 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 emphasized the importance of practicable alternatives and the careful calculation of appropriate “duties” (per-unit water use).

June 25, 2004  Earthjustice filed a petition on behalf of Hui O Na Wai Eha and Maui Tomorrow to amend the interim instream flow standards (IIFS) for four Wailuku District Streams (Na Wai Eha): Waihee, Waiehu, Iao, and Waikapu, which overlap the Iao GWMA.

July 21, 2004  The one-year deadline for filing Iao GWUPAs for existing use. Applications were received for sources in the caprock, basal, and high-level portions of the Iao Aquifer System Area.

September 22, 2004  Due to objections to many GWUPAs, the Commission approved a public hearing for all existing and new water use permit applications from the Iao Ground Water Management Area.

September 7, 2005  At the close of the third session of the public hearing, objections to the caprock aquifer water use applications were withdrawn, and these applications were scheduled for action.

September 28, 2005  The Commission approved GWUPAs for the caprock aquifer. It also deferred action on the high-level source applications due to the filing of the petition to amend the IIFS, because of probable interaction between high-level sources and stream flow.

January 11, 2006  In a pre-hearing conference between contesting parties, the petitioning parties announced that discussions between applicant and petitioners had resolved the objections to basal GWUPAs. They withdrew their petition for a contested case hearing on the basal GWUPAs, which now allows them to be scheduled for action. The hearing officer directed staff to proceed for action on these GWUPAs.

February 15, 2006  As objections to the basal GWUPAs were withdrawn, the Commission proceeded to approve them. At this point, outstanding applications for new uses from the basal aquifer could be processed for action.

In separate action, the Commission approved a combined contested case hearing for the high-level aquifer GWUPAs and the petition to amend the interim instream flow standards for four Wailuku District Streams (Na Wai Eha): Waihee, Waiehu, Iao, and Waikapu, because of probable interaction between high-level sources and stream flow.
December 6, 2006  
EarthJustice, on behalf of Hui O Na Wai Eha and Maui Tomorrow, filed a petition to designate the four hydrologic units of the Wailuku District as surface water management areas. A public hearing was held in Wailuku on April 26, 2007.

Following the compiling of Findings of Fact, the Commission approved the designation of the four hydrologic units of Na Wai Eha as a surface water management area.

August 10, 2007  
John Varel’s Well Completion Report accepted as complete, following two extensions of the permit expiration.

December 3-14, 2007  
Following the standing hearing, motions, scheduling, and evidentiary filings, the contested case hearing for high-level sources and instream flow standards began on this date. Further hearings continued in January through October of 2008.

March 7, 2008  
Completed GWUPAs for three basal wells were received from MDWS by the Commission. On April 3, 2008, a completed water use permit application was received for a MDWS high-level source.

March 16, 2008  
The surface waters of the four Wailuku District streams (Na Wai Eha) were designated as Surface Water Management Areas. The public notice of this decision was April 30, 2008, the effective date of designation. Existing users have one year (to April 30, 2009) to file water use applications for uses in effect as of that date.

June 23, 2008  
Bryan Sarasin’s Well Completion Report accepted as complete, following two extensions of the permit expiration.

July 28, 2008  
The first of two private well GWUPAs was filed as a consequence of the applicants’ inability to acquire a reliable supply from their former source, the Waihee Ditch, which is now under the combined contested case hearing. On August 28, 2008, a GWUPA for a second private well was received.

September 26, 2008  
The original deadline for filing proposed findings of fact in the Na Wai Eha combined contested case hearing on high-level sources and instream flow standards. This was was superceded by a motion to reopen evidentiary offerings, which were heard on October 14, 2008, and set a new deadline of December 5, 2008 for proposed Findings of Fact and Decision and Order.

December 5, 2008  
Proposed Findings of Fact, Conclusions of Law, and Decision and Order by parties to the contested case hearing CCH-MA06-01 were submitted to the hearings officer.
December 16, 2008 Following objections to all six current GWUPAs, a public hearing was held in Wailuku. No contested case was requested by the close of the public hearing.

December 26, 2008 By the end of ten days following the public hearing, additional public comments were received.

ANALYSIS/ISSUES:

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 mgd as the sustainable yield for the Iao (basal) Aquifer System Area. Individual existing water use permits in this aquifer system area are shown in Exhibit 2. Table 1 summarizes the current aquifer ground water conditions:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>Iao Aquifer System Area (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>17.709</td>
</tr>
<tr>
<td>Reservation to DHHL</td>
<td>0.000</td>
</tr>
<tr>
<td>Subtotal (Current Available Allocation)</td>
<td>2.291</td>
</tr>
<tr>
<td>Less: Mr. Bryan Sarasin</td>
<td>0.051</td>
</tr>
<tr>
<td>Mr. John Varel (all applications shown in Exhibit 3)</td>
<td>0.041</td>
</tr>
<tr>
<td>MDWS*</td>
<td>2.291</td>
</tr>
<tr>
<td></td>
<td>2.383</td>
</tr>
<tr>
<td>Subtotal (Potential Available Allocation/Allocation Deficit)</td>
<td>-0.092</td>
</tr>
</tbody>
</table>

* The Iao Tunnel is a high-level source, and assumed to reduce discharge to stream flow but not counted against basal aquifer yield. The high-level aquifer also contributes to the basal aquifer, but the assumption that high-level sources affect surface water in a one-to-one relationship reduces accounting of underflow to zero.

Exhibit 2 shows ten MDWS sources totaling 17.076 mgd, which includes a recent transfer of 78,000 gpd from Kehalani, making it apparent that the MDWS request intended to capture all the remaining estimated sustainable yield from the Iao Basal Aquifer. Such a transfer from Kehalani was allowed by the contested case concerning Waikuku Shaft, CCH-MA05-01, and may be administratively reallocated to MDWS by their request under Declaratory Rule ADM97-A1.

There is not enough water to satisfy all the competing requests at this time. The County’s numerical modeling efforts over the past 6 years may show that with appropriate well spacing and
construction, the resource may accommodate these application requests. However, until the sustainable
yield is officially increased by the Commission, these requests cannot all be accommodated as
requested.

The high-level request for 0.841 mgd is separate and subject to an impending decision in the Na
Wai Eha contested case (CCH-MA06-01) concerning the interaction of high-level sources and stream
flow, the amending of interim instream flow standards, and the identification of surface water amounts
available for off-stream use. This request is for an amount in addition to the existing application
(initially 1.418 mgd but revised to 1.359 mgd), for a new total request of 2.2 mgd. The portal of the
tunnel opens onto property owned by WWC, which co-signed for the original application. The main
portion of the tunnel is on property under Executive Order 751 from the State of Hawaii to Maui
County.

(2) Reasonable-beneficial

Section 174C-3 HRS defines "reasonable-beneficial use" as
"...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".

Sarasin:
I. Purpose of Use
Individual domestic use: one household;
Irrigation: 0.1 acres of garden; 0.75 acres of commercial nursery.

II. Quantity Justification

<table>
<thead>
<tr>
<th>Use:</th>
<th>Requested Amount:</th>
<th>Standard:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual household use*</td>
<td>600 gpd per day</td>
<td>County planning standard</td>
</tr>
<tr>
<td>Irrigation - garden*</td>
<td>600 gpd for 0.1 ac</td>
<td>experience on this property (equivalent of 6,000 gad)</td>
</tr>
<tr>
<td>(* legally exempt)</td>
<td></td>
<td>experience on this property (equivalent of 66,667 gad)</td>
</tr>
<tr>
<td>nursery</td>
<td>50,000 gpd for 0.75 ac.</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>51,200 gpd or 0.051 mgd.</td>
<td></td>
</tr>
</tbody>
</table>

III. Efficiency of Use
The applicant has not explained how the operation is as water-efficient as possible. As a
guideline, Staff has used the Irrigation Water Requirement Estimation Decision Support System (IWREDSS) developed by the University of Hawaii’s College of Tropical Agriculture and Human Resources (UH/CTAHR), contracted by the Commission. This
parcel requires a range from 1,964 to 3,697 gad for irrigating both typical garden crops and
nursery crops. The median figure, 2,768 gad, represents an amount that will meet crop
requirements 50% of the time based on historical rainfall. Based on the suggestion of
CTAHR, staff selected an amount that assumes a five-year drought (80% probability of
exceedence), 3,162 gad expressed as a 12-month moving average. For 0.85 acre, this comes
to 2,688 gpd for garden and nursery irrigation.
IV. Analysis of Practical Alternatives

The applicant has responded to four potential alternatives to the proposed use of potable basal water. An analysis of each of the alternatives is as follows:

1. Ditch - The proposed ground water use is, in itself, an alternative to the original source for these activities, the Waihee Ditch. Mr. Sarasin has been unable to get commitments from the purveyor for continued access to ditch water.

2. Municipal water is unavailable for agricultural use;

3. Municipal reclaimed water is not available at this site;

Household effluent is proposed to be used at the rate of from 200-300 gpd for the garden, in addition to the requested allocation. This requires action by Department of Health.

4. Desalting is neither commercially available nor a practical alternative for this land-locked parcel.

Varel:

I. Purpose of Use
   Individual domestic use: five households;
   Irrigation: 340 ac of macadamia nuts; 5 ac other fruit trees; 2 ac nursery crops; 3.5 ac native reforestation

II. Quantity Justification

<table>
<thead>
<tr>
<th>Use</th>
<th>Requested Amount:</th>
<th>Standard:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual household use*</td>
<td>600 gallons per day (gpd)</td>
<td>County planning standard</td>
</tr>
<tr>
<td>Irrigation - mac nuts</td>
<td>39,000 gpd</td>
<td>(experience on this property)</td>
</tr>
<tr>
<td>fruit trees</td>
<td>500 gpd</td>
<td>&quot;</td>
</tr>
<tr>
<td>nursery</td>
<td>250 gpd</td>
<td>&quot;</td>
</tr>
<tr>
<td>native reforestation</td>
<td>350 gpd</td>
<td>&quot;</td>
</tr>
<tr>
<td>Total</td>
<td>40,700 gpd or 0.041 mgd.</td>
<td>(experience on this property)</td>
</tr>
</tbody>
</table>

At the December 16, 2008 public hearing, Mr. Varel requested an increase of total allocation to 0.400 mgd.

III. Efficiency of Use

The applicant states that its operations need to be water-efficient to avoid pumping costs; the preferred irrigation will be naturally-occurring rainfall. Using IWREDSS as a guideline, this parcel requires a range from 1,756 to 3,526 gad for irrigating macadamia nuts. The median figure, 2,671 gad, represents an amount that will meet crop requirements 50% of the time based on historical rainfall. Based on the suggestion of CTAHR, staff selected an amount that assumes a five-year drought (80% probability of exceedence), 3,065 gad expressed as a 12-month moving average. For 340 acres, this comes to 1,042,128 gpd (1.042 mgd).
Applying this model to fruit trees, nursery, and native forest as perennial generic crops, this parcel requires a range from 1,967 to 3,861 gad. The median figure, 2,916 gad, represents an amount that will meet crop requirements 50% of the time based on additional rainfall, based on the suggestion of CTAHR. Staff selected an amount that assumes a five-year drought (80% probability of exceedence), 3,333 gad expressed as a 12-month moving average. For 10.5 acres, this comes to 34,996 gpd.

The combined irrigation total needed is therefore estimated by the model at **1,077,124 gpd**.

**IV. Analysis of Practical Alternatives**

The applicant has responded to four potential alternatives to the proposed use of potable basal water. An analysis of each of the alternatives is as follows:

1. Ditch - The proposed ground water use is, in itself, an alternative to the original source for these activities, the Waihee Ditch. Mr. Varel has been unable to get commitments from the purveyor for continued access to ditch water.
2. Municipal water is not being allocated to agricultural uses;
3. Municipal reclaimed water is not available at this site;
4. Desalting is neither commercially available nor a practical alternative for this mauka parcel.

**Maui Department of Water Supply (MDWS)**

**I. Purpose of Use**

The enumerated municipal uses include domestic, commercial, industrial, hotel, schools, landscape irrigation, and others.

**II. Quantity Justification**

MDWS identifies the total number of service connections to be served by these sources as a pro-rata share of the total available supply from all sources to the Central Maui Service Area (CMSA). The County plans for these uses according to adopted standards; the Commission accepts these standards in deference to County authority.

The filings indicate that the four sources will provide percentages of the total number of service connections for all types of uses in the CMSA, and although it is anticipated that each source will increase its use after the first year (2008), each will remain static for the remaining three years of the request (2009-2011), a declining percentage of the ever-growing number of service connections in the CMSA, on the order of about one-quarter the total service connections.

**III. Efficiency of Use**

MDWS has adopted rules to encourage conservation, and water availability rules to enforce shortfalls in available source supplies.
IV.  Analysis of Practical Alternatives

The applicant has variously responded to four potential alternatives to the proposed use of potable basal water. An analysis of each of the alternatives is as follows:

1. Ditch - MDWS treats between 2 and 3 mgd of diverted stream flows from the Iao Ditch, and is cooperating in a private proposal to expand surface water treatment from the Waihee Ditch.
2. Municipal water is provided as potable water, regardless of the required water quality of the end use;
3. Municipal reclaimed water is used as much as possible, still in limited quantities;
4. Desalting is not currently economically viable.

However, public comments from former mayor Alan Arakawa (Exhibit 4) list several additional alternatives that could be effectuated.

(3) Interference with other existing legal uses
The Maui DWS objected to the Sarasin and Varel applications in part, later repeated by reference by the Office of the Mayor, because those proposed GWUPs compete with MDWS applications for water to be used for municipal purposes. Also, an earlier request by MDWS to create a municipal water reservation for the balance of the aquifer’s sustainable yield was deferred by staff pending adoption of a Water Use and Development Plan, which is to lay out the total projected need and to identify available sources to serve those uses.

Pump test data for all these wells show that the proposed pumping rates will not interfere with other neighboring wells. The two private wells in the northern portion of Iao are spatially separated from other wells and will draw relatively small amounts from an area of the aquifer that shows rapid recovery time after cessation of pumping. This indicates that the impact zone of the proposed pumping is small and will not affect nearby wells. The County is attempting to spread the pumpage formerly overconcentrated in a few well fields in the southern portion of Iao, thereby enabling them to increase total pumpage from a better optimized configuration of wells. The County has been using a yet-to-be-published 3-D numerical model with the U.S. Geological Survey (USGS), as offered by the County and adopted by the Commission to avoid designation under previous actions.

Bryan Sarasin objected to the County applications in the belief they may affect availability of water for his well. John Varel raises a similar objection, in that the County’s request may hamper his ability to use water from a well he developed. Both stated at the public hearing that they would not have drilled their wells if they had known the County could take the remaining available ground water. However, both of these wells were applied for and approved just prior to the official date of designation and both were granted extensions to finish the wells for several years pending decisions on water use applications for existing ground water use as of the date of designation.
Both Mr. Sarasin and Mr. Varel point out in their applications that the only reason they had drilled wells was that the former reliance on use of the Waihee Ditch was lost and that the County would not provide agricultural service. Potable ground water was not their first choice but is now their only choice. In normal weather, rainfall accounts for a major portion of their irrigation requirements, but continuing drought raised the necessity of a more reliant backup source.

(4) **Public interest**

The Public interest is defined under §174C-2 - Declaration of policy, as follows:

"(c) The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest."

Additionally, there have been Public comments / objections to these applications, which are summarized as follows:

1. Mr. Clyde Kahalehau: a) there should be no urban development in this agricultural area that used to be in taro; b) use of the Waihee and Spreckels Ditches should be sufficient for both Sarasin and Varel; c) there is no water in the streams; d) Sarasin has not made his nursery yet.

Development is a county planning function, not under the Commission’s jurisdiction; the current proposal is consistent with existing county zoning. The use of the Waihee Ditch is currently in a contested case hearing (CCH MA06-01), with proposed findings and decision-making due in Spring 2009. The deadline for filing surface water use permits for diverted streamflow from the ditch system is April 30, 2009. While all the applicants have indicated their intention to file, the outcome of this process cannot be known at this time. No diversion from any stream is contemplated in these applications, although MDWS is currently purchasing service from Iao Waikapu Ditch and has indicated plans to participate in a new treatment plant using water from the Waihee and Spreckels Ditches at Hopoi.

2. MDWS: private wells in MDWS’ service area may lack comprehensive conservation and resource protection programs, because “private wells may be poorly sited or inadequately designed... (and) may provide contamination routes to the aquifer if they are not subject to the same wellhead protection scrutiny applied to DWS’s (sic) wells... (the applications) do not provide sufficient information to demonstrate that (they) are appropriately sited and designed, will not interfere with legally-permitted wells, and that necessary wellhead protection measures are in place.”
The Department did not cite any particular siting, construction, or wellhead protection deficiencies, nor has it provided information or evidence of its own wells' siting, construction, and wellhead protection considerations. Also, the Department of Health did not raise any siting concerns during review. The Well Construction and Pump Installation Permit Application contains minimum construction requirements that should address protection of the aquifer from contamination. All well construction permits are required to meet Hawaii Well Construction and Pump Installation Standards and be constructed by a licensed driller. The same licensed driller who constructed the two private wells has done several MDWS wells.

(5) **State & county general plans and land use designations**
The proposed uses for Sarasin and Varel are in the State **Agriculture** District, and the county zoning is **Agriculture**. Therefore, the proposed use is consistent with these land use designations.

Normal agency review includes:

1) the State's Department of Land and Natural Resources (DLNR) divisions for State Parks, Aquatic Resources, Historic Preservation, and Land; the Department of Health (DOH) branches for Clean Water, Safe Drinking Water, and Wastewater; the Department of Hawaiian Home Lands (DDHL); the Land Use Commission (LUC); and the Office of Hawaiian Affairs (OHA).
2) the County's County Council, Department of Planning and Permitting, and the Department of Water Supply;

Constructive and due care comments have been made through this review. Sarasin's and Varel's proposed domestic and agricultural uses are consistent with the state and county general plans and land use designations. The land is zoned agriculture and lies outside the main urban development area on land reputed to be of high agricultural productivity.

(6) **County land use plans and policies**
Normal County review includes County Council, Department of Planning and Permitting, and MDWS. MDWS has objected that the private well withdrawals interfere with County desire to reserve all remaining available supply for its municipal uses.

(7) **Interference with Hawaiian home lands rights**
All permits are subject to the prior rights of Hawaiian home lands. DHHL and OHA have reviewed this application and made no comments or objections. Further, standard water use permit conditions 3.g., 6., and 9.f. notify all water use permittees that their permits are subject to and cannot interfere with Hawaiian home land rights. MDWS represents that anticipated uses by the DHHL are incorporated into the County’s water supply commitments. There are additional Hawaiian Home Lands in Puunene, toward Kihei, with very general plans and no timeline for implementation.

**DISCUSSION:**

The major issues concerning these competing GWUPAs are:
1) Lack of clarity on alternative sources

MDWS questioned the professed lack of alternatives for Varel and Sarasin, as they are not yet pumping but nonetheless apparently are using water. This contradicts Mr. Kahalehau's public hearing testimony that they are not farming, thus do not need the additional water. No further evidence was offered that alternatives had been exhausted or prevented. Staff does not believe it yet has a full and objective view of alternative water availability to these applicants.

MDWS challenged the staff's public hearing submittal statement that the County "conceivably has alternatives in other locales to augment the Iao Aquifer System Area supply". MDWS contends that it has no real, practical alternatives to its proposed uses from the Iao Aquifer System Area. They note the practical difficulty and doubtful hydrological advisability of new wells either to the north, in the Waihee Aquifer, or south, in the Waikapu Aquifer, and MDWS Director Jeffrey Eng's supplemental testimony dated December 22, 2008, following the public hearing, points to a consent decree requiring exhaustion of surface water options in the Wailuku District before contemplating ground water development in East Maui.

Post public hearing testimony (Exhibit 4) submitted by former Mayor Alan Arakawa emphasized alternatives for MDWS:

1) acquiring the Wailuku Water Distribution Company (WWDC) and its service capacity; or alternatively, acquiring the surface water system of WWDC; or negotiating for service from WWDC;
2) expedite completion of Maui Lani Wells 5, 6, & 7 (Well Nos. 5229-04, 05, & 06), for which there is already a shared use agreement;
3) rescind the law banning use of Hamakuapoko Wells 1 & 2 (Well Nos. 5420-02 & 5320-01), which have Department of Health and EPA approvals for completed contaminant treatment;
4) implementation of distribution lines for 11 mgd wastewater effluent going into injection wells;
5) complete the surface water treatment plant planned for Hopoi;
6) purchase water from private users;
7) develop wells in other (unspecified) aquifers;
8) desalting;
9) stricter application of the "Show Me the Water" bill requiring private developers to provide their own sources;
10) require more conservation practices of both the County system (service upgrades) and private users (more efficient use).

Staff's position is that all of these are viable alternatives, although probably all require more time and expense to implement than this request by MDWS for potable demands.

It has also been brought to staff's attention that the two private well owners have access to county domestic water meters. The well owners have represented that they made a decision to proceed with their own wells instead, to establish greater self-reliance, to avoid the costs of lengthy piping from the County water line up to their storage, and in Mr. Varel's case a booster system from the existing meter.
They also wished to avoid paying domestic water rates for irrigation water. They have not provided a comparison of their own well construction and pump operation costs to an exploration of the costs of alternatives, but having been informed of the Commission's need to understand this comparison, they are preparing information for the Commission.

2) Varel's request to amend his application at the hearing

At the public hearing and with subsequent post-hearing written testimony (Exhibit 5), MDWS challenged the ability of the Commission to allow Varel's amended request from 0.041 to 0.400 mgd, a tenfold increase, at the hearing without adequate public notice. They stated their belief that more contrary interest would have been shown if the enlarged request had been legally noticed in advance. They conclude that a new application with the enlarged request should follow normal procedure. Otherwise, MDWS expressed that they would request a contested case hearing by the close of the public hearing if 0.400 mgd became the requested amount to go before the Commission.

Staff concurs that, while appropriate amendment is always welcome before the close of the hearing, in the interest of gathering complete information, the significance of the tenfold increase in the request is tantamount to invalidating the terms of the accepted application. To take favorable action at this point does raise the question of adequate public notice for testimony, including wider options toward a contested case hearing. Staff's recommendation provides a rationale for Commission priorities at the present time and does not foreclose a new application for additional amounts.

3) Accommodating requests with limited water availability

Limiting total pumpage from the Iao basal Aquifer to the estimated sustainable yield requires the staff to find a solution that eliminates the excess request total of 0.092 mgd. Water Code Section 174C-54 states:

"If two or more applications which otherwise comply with section 174C-49 are pending for a quantity of water that is inadequate for both or all, or which for any other reason are in conflict, the commission shall first, seek to allocate water in such a manner as to accommodate both applications if possible; second, if mutual sharing is not possible, then the commission shall approve that application which best serves the public interest."

Thus, it provides that competing applications be accommodated as far as possible, and failing that approve allocations that best serve the public interest, as described in 174C-2(c):

"The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the state for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest."
As a preliminary issue, individual domestic water uses are exempt from obtaining a water use permit. The applicable Maui County standard is 600 gpd as household use or 3,000 gpd for large lots. Applying this to the two private well applicants would result in a total of 6,000 gpd (0.006 mgd), in contrast to the accepted application total of 0.092 mgd or the requested amended total of 0.451 mgd.

Second, two of the wells for which MDWS is requesting a water use permit, the Waikapu Tank Site Well (5131-01) and the Iao Tank Site Well (5230-03) do not yet have pumps installed nor pump installation permits (PIPs). The Waikapu Tank Site PIP was issued January 29, 2009, but the Iao Tank Site pump installation permit application, while anticipated, is not yet submitted (may be in process by the date of this meeting).

Third, Spring 2009 is the anticipated issuance date for the decision in the Na Wai Eha contested case hearing to amend the interim instream flow standards for the four streams currently diverted into the Wailuku ditch system, the availability of water for diversion to off-stream use, and disposition of high level GWUPAs. The two private well owners have also verbally indicated they intend to apply for a share of this water (deadline April 30, 2009), as has the MDWS for another portion of its supply to the Central Maui Service Area (CMSA). The process of reviewing and issuing surface water use permits will follow the determination of IIFS – first the uses existing as of the April 30, 2008 designation date, and second, new uses proposed after April 30, 2008, and it is therefore conceivable that the non-potable requests represented here have alternatives. Rather than anticipating a decision accommodating the amount of these requests, the Commission could nonetheless defer some of the uses requested here for the short period required to identify the potential of this alternative, and return to these issues contingent upon its decision in the contested case.

Fourth, the overriding priorities for potable ground water, a public trust resource, are a short list of uses that includes domestic use. Municipal uses include domestic use – an estimated 60% thereof, looking at a bar chart presented by MDWS at the public hearing (see Exhibit 6) – but also non-domestic consumption classes: commercial, industrial, hotel, irrigation, and recreational uses. These non-individual public trust uses are candidates for finding alternative sources, and hopefully the Na Wai Eha case and/or the Water Use and Development Plan (WUDP) will address this issue, as it was not directly addressed at the public hearing. Consequently, there is a presumptive priority for about 60% of the total requested from these municipal wells (2.291 mgd), or 1.375 mgd. Conversely, agriculture and other non-public trust uses are a lower priority in competition for public trust resources, and the Supreme Court’s emphasis on finding alternatives for non-public trust uses has become an important consideration. The private properties in question were formerly sugar lands, historically irrigated from the Waihee Ditch diverting surface flows from Waihee Stream. The proprietors of the ditch system have been barred by the Public Utilities Commission (PUC Docket 2008-0025) from offering new service, pending the decision and order by the Commission in CCH-MA06-01 (Na Wai Eha) and the issuance of water use permits for the Na Wai Eha Surface Water Management Area (SWMA) and will be regulated to serve water use permit holders in their publicly defined service area. The well owners plan to apply for surface water use permits by the existing use filing deadline of April 30, 2009, and it is unknown whether they can be accommodated.

It is understood that MDWS’ CMSA does not currently have the capacity to deliver water to demands with different water quality requirements, to distinguish between potable and non-potable classes, nor to enforce conservation practices. It delivers potable water to all customers. While the WUDP may begin to address these capabilities, total demand drives the delivery of service. Commitments will be
made according to water availability. In short, denying portions of the total MDWS request may not be completely debilitating, and marginal limitations on allocation may be absorbed by decisions in process. Unfortunately, we do not yet have the total aggregate profile of region-wide demand to be provided by the WUDP.

Staff is given to understand that MDWS is proceeding with deliberate speed on the installation of pumps in the Iao Tank Site and Waikapu Tank Site Wells. These are intended to spread pumpage in the Iao basal aquifer and phase out the concentrated pumpage at Wailuku Shaft 33, the largest single source for MDWS and one with increasing safety issues. The Mokuau Wells 1-3 were pumped heavily in the past, and the deepest of the three, Mokuau 2, has been taken off-line due to rising chloride problems. The current request raises the pumpage at Mokuau 3, which seems to have steady water levels and chlorides in this shallower well.

Consequently, the staff’s recommendation reflects a maximum commitment that can be made by the Commission at this time, while respecting that decisions to come may provide some relief from the consequent deferral of these applications.

The private well users are resorting to ground water for lack of immediate alternatives on their own land, while the County conceivably has alternatives in other locales to augment the Iao Aquifer System Area supply. Because individual domestic use is exempt from ground water use permitting, each applicant may use 3,000 gpd for this purpose without a water use permit. They will, however, need a water use permit for needs above and beyond these amounts.

RECOMMENDATION:

1. Approve a pump installation permit for Well No. 5631-08 for a 160 gpm pump with the understanding that the well will only be used for domestic purposes at this time. Monthly flowmeter readings shall be recorded and reported to the Commission. The Certificate of Pump Installation Completion will reflect these limitations.

2. Defer action on the request for new non-public trust ground water irrigation uses in Water Use Permit Application No. 853, Waihee-Sarasin Well (Well No. 5631-08) until a decision and order for CCH-MA06-01 is approved by the Commission.

3. Approve a pump installation permit for Well No. 5631-07 for a 65 gpm pump with the understanding that the well will only be used for domestic purposes at this time. Monthly flowmeter readings shall be recorded and reported to the Commission. The Certificate of Pump Installation Completion will reflect these limitations.

4. Defer action on the request for new non-public trust ground water irrigation uses in Water Use Permit Application No. 825, Waihee-Varel Well (Well No. 5631-07) until a decision and order for CCH-MA06-01 is approved by the Commission.

5. Approve Water Use Permits Nos. 846, 847, and 848 for the reasonable-beneficial for existing and requested additional new domestic use of potable ground water from Maui Department of Water Supply wells, or 60% of the requested amounts for a total of 1.374 mgd, as shown below (amounts in million gallons per day (mgd):

<table>
<thead>
<tr>
<th>WUP No.</th>
<th>Well No.</th>
<th>Well Name</th>
<th>Request</th>
<th>60% of Request</th>
</tr>
</thead>
<tbody>
<tr>
<td>846</td>
<td>5230-03</td>
<td>Iao Tank Site</td>
<td>0.802 mgd</td>
<td>0.481 mgd</td>
</tr>
</tbody>
</table>
847  5330-11  Mokuhaul 3  0.589 mgd  0.353 mgd
848  5131-01  Waikapu Tank  (total)  0.900 mgd  0.540 mgd
remaining Iao balance: 0.916 mgd

6. Defer action the additional new use amount of the balance of 40% of non-public trust needs of MDWS until a decision and order for CCH-MA06-01 is approved by the Commission.

7. Defer action on Water Use Application No. 852 for reasonable beneficial use of a new total of 2,200 mgd from Iao Tunnel (Well No. 5232-02), pending a decision on the Na Wai Eha contested case hearing (CCH-MA-06-01).

Respectfully submitted,

KEN C. KAWAHARA, P.E.
Deputy Director

Attachment(s):
A (Water Use Permit Detailed Information)
B (Water Use Permit Standard Conditions)
C (Pump Installation Permit Standard Conditions)
Exhibit(s):
1 (Location Map)
2 (Existing Water Use Permits and 12-Month Moving Average Withdrawal)
3a-f (Pending Water Use Permit Applications)
4 (Letter from Alan Arakawa on behalf of Sarasin and Varel)
5 (Letter from Jeffrey Eng, Director of Maui DWS)
6 (Bar chart comparing use amounts by consumption class, provided by MDWS through its CMSA, presented at public hearing December 16, 2008)

APPROVED FOR SUBMITTAL:

LAURA H. THIELEN
Chairperson
3) We also wish to restate that under item (5), State & County general plans and land use designations, both the Varel and Sarasin properties are zoned Agricultural under the State and Maui County.

Both the State and County of Maui highly encourage the development and maintenance of active agriculture.

Both John Varel and Bryan Sarasin are trying to continue active agriculture on their property. Varel's property has huge orchards of mature Macadamia Nut trees (worth a small fortune) and these trees are in extreme jeopardy because their water resources have been removed.

We again emphasize that the water requests for these two properties should not be entangled in the Na Wai Eha controversy. This is not a request for ditch water. This is a request for well water permits on private property and should be considered on its own merit.

Thank you very much for your consideration.

Sincerely,

[Signature]

Alan M. Arakawa
Former Mayor of Maui County
On Behalf of John Varel and Bryan Sarasin
State of Hawaii  
Department of Land and Natural Resources  
State Commission on Water Resource Management  
P.O. Box 621  
Honolulu, Hawaii 96809

RE: Water Use Permit Application for Waihee-Sarasin Well (Well No. 5631-08),  
WUPA 853, TMK-3-2-007:016

and

Water Use Permit Application for Waihee-Varel Well (Well No. 5631-07),  
WUPA 825, TMK 3-2-001:001

Dear State Commission on Water Resource Management,

We were disappointed to learn that our application requests were not scheduled for the January 22, 2009 meeting.

For the record, we would like to point out that we have made every effort to be available to this body and stand ready today to answer any questions. We want to emphasize our desire for a timely review of our application. We wish to protect our ability to respond to any and all contestation of our applications.

It has come to our attention that the County of Maui is contesting Well Permit Applications both in and around the Iao Aquifer. We fear that this will create unreasonable delays and cause your body (The State Commission on Water Resource Management) to defer decision making on our applications. We ask to be scheduled as soon as practicable. We further understand that the comments we submitted need to be responded to in a timely manner and ask that you require respondents to submit any and all responses accordingly.

In the interim we request pumping permits for domestic and gardening use of our wells. It is our understanding that household and gardening use that fit into the State Water Commission’s limitations on usage can be granted without a water use permit application.

We thank you most humbly for your attention and indulgence.

Sincerely,

Bryan Sarasin and John Varel
December 22, 2008

Honorable Laura H. Thielen
Chairperson
State of Hawaii
Department of Land and Natural Resources
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. Box 621
Honolulu, Hawaii 96809

Dear Chairperson Thielen:

Re: Water Use Permit Application
Iao Ground Water Management Area, Maui
WUPA No. 825, Waihee-Varel Well, Well No. 5631-07

Please accept this letter as supplemental written testimony submitted on behalf of the County of Maui’s Department of Water Supply (“DWS”) in opposition to WUPA No. 825 submitted by John Varel for Well No. 5631-07.

When the DWS reviewed and commented on Mr. Varel’s WUPA No. 825, the first page of Mr. Varel’s application, filed on August 28, 2008, stated the amount requested as 40,000 gpd (although the amount was stated as 43,100 gpd on page 2 of Mr. Varel’s Form GWUPA-N). On November 14, 2008, the public hearing notice for Mr. Varel’s and five concurrent applications was published in the Maui News. The December 16, 2008 public hearing notice for WUPA No. 825 stated that the amount requested by Mr. Varel was 0.043 mgd. In declining to request a contested case at the end of the December 16, 2008 public hearing, the DWS was proceeding on the assumption that Mr. Varel would not be allowed to make an ad hoc, nearly 10-fold increase in the requested amount, from 0.043 mgd to 0.400 mgd, without advance notice to the parties and the public.

"By Water All Things Find Life"

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5964 (voice and TDD)
We do not believe that the State Water Code or the Commission's own rules allow for an "amendment" of a WUPA of such magnitude without advance notice to the public and interested parties. Neither the DWS nor the public had any notice that Mr. Varel was going to orally "amend" his WUPA at the hearing to request 0.400 mgd instead of 0.043 mgd. If Mr. Varel wishes to amend WUPA No. 825, the appropriate procedure would be for him to withdraw his existing application in the amount of 0.043 mgd and to replace it with a new or amended application in whatever other amount he deems appropriate, followed by a public hearing on the new or amended application.

The only WUPA on file with the Commission at this time for Well No. 5631-07 is the WUPA No. 825 in the amount of 0.043 mgd. However, if the Commission has any inclination to consider Mr. Varel's oral "amendment" to WUPA No. 825, the DWS asks that the public hearing on WUPA No. 825 be re-opened, after appropriate notice to the public, so that all interested persons can comment on the newly-stated amount. Should Mr. Varel revise his WUPA to request 0.400 mgd, DWS will request a contested case at the close of the re-opened hearing.

I also wish to respond to a comment made in the Staff Submittal dated December 16, 2008 concerning both the Varel and Sarasin WUPAs. Page 11 of the Staff Submittal states that WUPA Nos. 825 and 853 are for "agricultural uses [which] are not public trust uses but in this case without viable non-potable alternatives at this time." The DWS requests proof that both Varel and Sarasin have pursued non-potable water sources to an exhaustive extent, being that non-potable water would be the water source of choice for their intended uses, and further because their properties apparently had at one time non-potable water sources available to them. Therefore, since only 2.291 mgd remain in the lao basal aquifer, that water should remain available solely for the DWS' municipal and domestic uses.

Finally, page 10 of the Staff Submittal dated December 16, 2008 states that "the County conceivably has alternatives in other locales to augment the lao Aquifer System Area supply." The DWS takes exception to this statement. The DWS has no real, practical alternatives to its proposed new uses from the lao aquifer. The DWS has considered drilling new wells in the Northern portion of the Waihee aquifer and in the Kahakuloa aquifer, but CWRM has asked the DWS to limit its withdrawals from the Waihee aquifer, and recent discussions with USGS have led us to conclude that new wells in these areas may not be as productive or cost-effective as previously hoped. USGS has advised that the Waikapu aquifer may be a better place to seek new sources of supply, but the current sustainable yield of that aquifer is only 2 mgd and the DWS is competing with private landowners for the available water in the Waikapu aquifer. The DWS is
Honorable Laura H. Thielen  
December 22, 2008  
Page 3

precluded from developing more wells in East Maui in the immediate future due to the entry on December 22, 2003 of a consent decree in The Coalition to Protect East Maui Water Resources et al. v. Board of Water Supply et al., Civil No. 03-1-0008(3). In that case, the Consent Decree requires that before looking to East Maui as a source of groundwater, the DWS look first to surface water drawn from the Waikapu, Iao, and/or Waihee hydrologic units.

The DWS is in discussions with Alexander & Baldwin concerning the potential for another surface water treatment plant. However, those discussions are still in a preliminary phase, and Alexander & Baldwin’s ability to supply surface water to the DWS may be limited, depending on the outcome of the Petition for Amendment of Instream Flow Standards for Na Wai Eha and on the outcome of the proposed designation of a surface water management area. In short, the remaining sustainable yield of the Iao basal aquifer is the DWS’s most reasonable and cost effective potable source for the County.

Sincerely,

JEFFREY K. ENG  
Director of Water Supply

copy: Jane E. Lovell, Deputy Corporation Counsel  
       Edward S. Kushi, Jr., Deputy Corporation Counsel
State of Hawaii
Department of Land and Natural Resources
State Commission on Water Resource Management
c/o Deputy Director Ken Kawahara
P.O. Box 621
Honolulu, Hawaii 96809

RE: Water Use Permit Application for Waihee-Sarasin Well (Well No. 5631-08), WUPA 853, TMK-3-2-007:016
and
Water Use Permit Application for Waihee-Varel Well (Well No. 5631-07), WUPA 825, TMK 3-2-001:001

Dear State Commission on Water Resource Management,

Please receive the follow-up comments below pertaining to the December 16, 2008 discussion at the State Commission on Water Resource Management committee meeting:

1) Applications for Water Use Permits for Waihee-Sarasin Well (Well No. 5631-08), WUPA 853, TMK-3-2-007:016 and your Public Hearing Draft submittal. (Mr. Bryan Sarasin)

2) Applications for Water Use Permits for Waihee-Varel Well (Well No. 5631-07), WUPA 825, TMK 3-2-001:001 and your Public Hearing Draft submittal. (Mr. John Varel)

We note that:

On August 28, 2008, a completed WUPA was received from Mr. John Varel by the Commission.

On September 17 and 24, 2008, Public Notice for John Varel’s application was published in the Maui News (Maui County’s largest and most comprehensive source for written public information.)

On September 26, 2008 Maui County Department of Water Supply submitted an objection to Mr. Varel’s application for which the reasons are still not clear.

On October 23 and 30, 2008, Public Notice for Maui County’s WUPA for Well No. 5131-01 – Waikapu Tank Site Well, Well No. 5230-03 Iao Tank Site Well, and Well No. 5330-09 Mokuhaui Well 3 was published in the Maui News.

On October 29, 2008, Bryan Sarasin and John Varel submitted preliminary objections to Maui County Water Department Applications for the wells listed above.
(5) **State & County general plans and land use designations**

We agree with State Commission on Water Resource Management staff assessment that both the Sarasin and Varel properties and their water use are consistent with State and County land use designations.

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

We concur with State Commission on Water Resource Management staff assessment and comments. We furthermore point out that it is the County’s inability to provide the necessary water to allow the property owners the capability to meet the County and State land use intents. The County should not be allowed to use the argument that granting water to our wells would diminish the County’s ability to provide water for municipal users, unless this can be proven. To our knowledge, the County has yet to identify future users and the water resources it expects to provide services for these unidentified users.

(7) **Interference with Hawaiian Home lands rights**

We agree with State Commission on Water Resource Management staff analysis. Varel and Sarasin wells will have virtually no impact on Hawaiian Home Lands projects.

From a historical perspective, we would like to point out that for generations past, both of these properties were heavily farmed and irrigated. These properties contained hundreds of taro loi. Wailuku Sugar Company also planted this area with sugar cane. The properties were traditionally flooded or furrow irrigated with quantities of water that in all probability would be greater than the amounts we are requesting. In essence, we’re asking for volumes of water that have traditionally been used to irrigate these lands before Wailuku Water Company diverted water off-site through their irrigation ditches.

Thank you very much for your consideration.

Sincerely,

Alan M. Arakawa  
Former Mayor of Maui County  
On Behalf of John Varel and Bryan Sarasin

Attachments: Certificate of Well Construction Completion for Well No. 5631-08, TMK 3-2-007:016  
Certificate of Well Construction Completion for Well No. 5631-07, TMK 3-2-001:001
Mr. Bryan Sarasin
P.O. Box 218
Wailuku, HI 96793

Dear Mr. Sarasin:

Certificate of Well Construction Completion for Well No. 5631-08 (TMK 3-2-007:016)

We are pleased to inform you that the Well Construction work permitted for the Waihee-Sarasin Well (Well No. 5631-08) is complete and acceptable and welcome you as a new member to the community of well owners and groundwater users in Hawaii.

To protect Hawaii's natural ground water resources for the benefit of all, the following requirements apply to the use of your well:

1. Before this well can be pumped on a regular basis, a certificate of pump installation completion must be obtained.

2. If the well is not in use it must be properly capped.

3. If the well is to be abandoned then the landowner must cause a licensed contractor to apply for a well abandonment permit in accordance with §13-168-12(f) prior to any well sealing or plugging work.

4. In the event that the well operator and/or landowner changes, the Commission shall be notified of the change prior to the change, and all forms shall be transferred to the new owner.

5. In the event the benchmark in the concrete base of the well is altered in any way, an updated elevation survey (page 5 of the Well Completion Report Part I) shall be submitted to the Commission. The Well Completion Report Part I can be obtained by contacting staff or at www.hawaii.gov/dlnr/cwrmlforms.htm

Because groundwater in Hawaii is a public trust, and adverse effects at one well may affect other water resources, any violation of the above conditions, or any other provision of the Hawaii Administrative Rules, may be subject to fines of up to $5,000/day. The Commission needs your help and asks that you do your part in utilizing this shared resource. We prefer to work with you in meeting the goal of protecting our ground water resources together.

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

Sincerely,

Ken C. Kawahara, P.E.
Deputy Director

Cl: ss

c: Maui Department of Water Supply
Wailani Drilling, Inc.
Mr. John Varel  
P. O. Box 1468  
Wailuku, HI 96793

Dear Mr. Varel:

Certificate of Well Construction Completion for Well No. 5631-07

We are pleased to inform you that the Well Construction work permitted for the Waihee-Varel Well (Well No. 5631-07) is complete and acceptable and welcome you as a new member to the community of well owners and groundwater users in Hawaii.

To protect Hawaii's natural groundwater resources for the benefit of all, the following requirements apply to the use of your well:

1. Before this well can be pumped on a regular basis, a certificate of pump installation completion must be obtained.
2. If the well is not in use it must be properly capped.
3. If the well is to be abandoned then the landowner must cause a licensed contractor to apply for a well abandonment permit in accordance with §13-168-12(f) prior to any well sealing or plugging work.
4. In the event that the well operator and/or landowner changes, the Commission shall be notified of the change prior to the change, and all forms shall be transferred to the new owner.
5. In the event the benchmark in the concrete base of the well is altered in any way, an updated elevation survey (page 5 of the Well Completion Report Part I) shall be submitted to the Commission. The Well Completion Report Part I can be obtained by contacting staff or at www.hawaii.gov/dlnr/cwnm/forms.htm

Because groundwater in Hawaii is a public trust, and adverse effects at one well may affect other water resources, any violation of the above conditions, or any other provision of the Hawaii Administrative Rules, may be subject to fines of up to $5,000/day. The Commission needs your help and asks that you do your part in utilizing this shared resource. We prefer to work with you in meeting the goal of protecting our groundwater resources together.

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

Sincerely,

KEN C. KAWAHARA, P.E.  
Deputy Director

Cl:  
c: Maui Department of Water Supply  
Waianl Drilling, Inc.
Testimony of Jeffrey K. Eng, Director, County of Maui, Department of Water Supply, to Support Water Use Permit Applications No. 846, Iao Tank Site Well, Well No. 5230-03, WUPA No. 847, Mokuhau Well 3, Well No. 5330-11, WUPA No. 848, Waikapu Tank Site Well, Well No. 5131-01, and WUPA No. 852, Iao Tunnel Well, Well No. 5332-02

Thank you for allowing me the opportunity to comment on WUPA Nos. 846, 847, 848 and 852.

WUPA Nos. 846, 847 and 848 are for additional new groundwater uses above the existing permitted uses within the Iao groundwater management area, and specifically from the basal portion of the Iao aquifer.

WUPA No. 852 is for additional new use from a high-level source within the Iao groundwater management area, and which is not from the Iao basal aquifer.

Background

To date, the Commission has issued permits to the DWS from the basal portion of the Iao aquifer in the amount of 17.076 mgd and permits to other parties in the total amount of 0.633 mgd.

The Commission has issued interim permits to the DWS in the amount of 2.401 mgd from the Iao high-level sources.

Current and future demands on the DWS' Central Maui water system warrant our requests for additional allocations.

"By Water All Things Find Life"

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5964 (voice and TDD)
The DWS' new use requests in WUPAs 846, 847 and 848 total 2.291 mgd and would result in total permitted DWS withdrawals of 19.367 mgd.

The DWS' new use request in WUPA 852 for Iao Tunnel of 0.841 mgd would result in total permitted high-level withdrawals of 3.242 mgd, if current applications being adjudicated in Contested Case Hearing CCH-MA06-01 are approved by the Commission. This CCH is entitled the Iao Groundwater Management Area High-Level Source Water Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihee, Waiehu, Iao and Waikapu Streams CCH.

Seven Conditions

Under HRS Section 174C-49, there are seven conditions the DWS and all applicants must address regarding their proposed use of water. Since the proposed new uses of water for all the DWS' WUPAs are similar, I will attempt to combine and simplify my responses.

1. Can be accommodated with the available water source.

   The Commission has set the SY of the basal portion of the Iao aquifer at 20 mgd. The DWS' WUPA Nos. 846, 847 and 848 request additional use of only the remaining, unpermitted amount of SY, so that the total withdrawal from the Iao basal aquifer would be no more than 20 mgd. Therefore, the DWS' requests for new groundwater uses can be accommodated by the basal aquifer.

   The Commission's FOF, COL and D&O dated January 31, 2007 in the Wailuku Shaft CCH suggested the DWS could reserve the remaining SY in the Iao basal aquifer for its municipal uses. Therefore, the Commission has already determined that additional allocations for the public water supply, up to the entire remaining portion of the 20 mgd SY, would be appropriate and in the public interest.

   In fact, back in September 2006, the DWS wrote to the Commission requesting reservation of the remaining SY. However, at that time the Commission informed the DWS they did not have administrative rules in place to accept such reservations.

   Earlier this year, the Commission confirmed that the DWS should request the remaining SY by new WUPAs, which we have done, and which brings us here today.

   In regard to the DWS' WUPA No. 852, the Iao Tunnel, the DWS' existing interim
permit of 1.359 mgd was based on the 12-month moving average at the date of the designation of lao aquifer, in July 2003. However, records show that at times the DWS has withdrawn much greater than 1.359 mgd. Records show a monthly high of 2.4 mgd and a 12-month moving average of greater than 2.0 mgd. In addition, it has been reported that currently an unpermitted quantity of some 250,000 to 350,000 gpd overflows from the lao Tunnel into a private ditch. Therefore, the DWS believes its request for an additional new use of 0.841 mgd for a total withdrawal of 2.2 mgd can be accommodated by the tunnel source.

2. **Is a reasonable–beneficial use as defined in section 174C-3.**

   The DWS' requested new use applications would all serve municipal uses in its Central Maui service area. The declaration of policy found in HRS section 174C-2(c) requires the preservation and enhancement of waters of the State for municipal uses. Most of the DWS' municipal use of water is for domestic use, which is a protected public trust use.

   Therefore, the DWS believes its requests for new uses are reasonable and beneficial.

3. **Will not interfere with any existing legal use of water.**

   Within the lao groundwater management area the only other legal permittees of the basal source are Kehalani Mauka, whose permit is for 0.613 mgd, and Living Waters Foundation, whose permit is for 0.020 mgd.

   In regard to the high-level lao Tunnel, the County of Maui has used the source since the 1930s, and we believe we are the only legal permittee of that source.

   Therefore, the DWS believes its requests will not interfere with any existing legal use of water.

4. **Is consistent with the public interest.**

   As I mentioned earlier, the new uses would serve municipal and domestic uses, which are entitled to a high priority under the public trust doctrine.

   Therefore, the DWS' requests for new uses are consistent with the public interest.

   I would like to combine the next two conditions and address them together.
5. Is consistent with state and county general plans and land use designations.

6. Is consistent with county land use plans and policies.

All of the DWS' WUPAs, whether for basal sources, high-level sources or surface sources, are consistent with state and county general plans and land use designations, including the County's General Plan and the Wailuku-Kahului Community Plan. The Commission has already determined that the DWS' existing basal sources from the lao aquifer are consistent with applicable plans, land use classifications and land use policies. The same evidence supports the same finding with respect to the DWS' requested new uses.

7. Will not interfere with the rights of the department of Hawaiian Home Lands as provided in section 221 of the Hawaiian Homes Commission Act.

The new uses sought by the DWS in its WUPAs will not interfere with the rights of the Department of Hawaiian Home Lands. In fact, the DWS' Central Maui water system serves homes built by the Department of Hawaiian Home Lands.

Other Reasons to Support the DWS' WUPAs

1. DWS Resource Protection Programs

The DWS believes it is in the public interest to allow it to implement resource management and protection for as much of the lao aquifer as possible. The DWS has proven success in its management and financial support of resource management, resource protection and conservation programs, and the DWS is continually expanding its efforts and programs in these areas. Private well owners do not share the same responsibility of stewardship as the DWS, the steward of the municipal water system. I personally come from a background of private water purveyorship. I can attest that in the private sector the focus is not at all on resource protection, but rather on growth of earnings per share and stockholder dividend payments.

2. Allows the DWS the Ability to Manage Distribution of Withdrawals within the lao Groundwater Management Area

Approval of DWS' WUPAs would allow the DWS to have greater operational flexibility to respond to possible changes in the aquifer, such as chloride levels and water levels.
3. Practicability and Cost Effectiveness

Alternative new source options are much more costly, and some are even cost prohibitive. The DWS has a duty to provide cost effective new sources to the County of Maui. The requested new uses in the lao management area would be our most practicable and cost effective sources of water. Furthermore, the requested new uses would allow the DWS to continue to provide fair water rates to the entire County of Maui.

4. Provision of Service

The requested new uses would provide the DWS the ability to serve current and future municipal and domestic users in accordance with the County of Maui's planned growth. Furthermore, the DWS currently has significant deficits in source capacity and redundancy relative to the water system standards. The proposed new uses would enable the DWS to meet some of its source capacity deficits.

In conclusion, there are only 2.291 mgd of remaining SY in the lao basal aquifer and it should not be parceled out to private purveyors or well owners in a manner that could jeopardize the public trust. Therefore, I respectfully ask that the Commission approve the four DWS WUPAs in the amounts requested.
**7 Statutory Criteria**

The proposed use of water:

1. Can be accommodated with available source
2. Is reasonable & beneficial as defined in §174C-3
3. Will not interfere with existing legal uses
4. Is consistent with the public interest
5. Is consistent with state and county general plans and land use designations
6. Is consistent with county land use plans and policies
7. Will not interfere with the rights of the Department of Hawaiian Home Lands as provided in section 221 of the Hawaiian Homes Commission Act.

"MDWS may petition the Commission to reserve the remaining sustainable yield of the Iao basal aquifer for municipal uses. If and when such a reservation is established, then only MDWS would have the right to apply for a water-use permit from the reserved water. [HRS § 174C-49(d); HAR §§ 13-171-13(d), 13-171-60]"

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**Requested Uses**

<table>
<thead>
<tr>
<th>Well Name</th>
<th>Current Use</th>
<th>Additional Use</th>
<th>Total Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>MWSS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Makakai 1</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>Makakai 2</td>
<td>2,000</td>
<td>0.500</td>
<td>2,500</td>
</tr>
<tr>
<td>Waipahu Site 1</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>Waipahu Site 2</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>Waipahu Site 3</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>Waipahu Site 4</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>Shaft 10 - MWSS</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>Iao Tank Site</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>Waipahu Tank Site</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>MWSS SUBTOTAL (BASAL)</td>
<td>17,071</td>
<td>2,211</td>
<td>19,287</td>
</tr>
<tr>
<td>High Level Water</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>Iao Tunnel</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>Kapahulu</td>
<td>1,000</td>
<td>0.500</td>
<td>1,500</td>
</tr>
<tr>
<td>MWSS SUBTOTAL - HIGH LEVEL</td>
<td>3,061</td>
<td>0.941</td>
<td>3,025</td>
</tr>
</tbody>
</table>

"Can be accommodated with available source"
ref: wupa853.etal.sub

STAFF SUBMITTAL
for a PUBLIC HEARING of the
COMMISSION ON WATER RESOURCE MANAGEMENT

December 16, 2008

Wailuku, Maui

Mr. Bryan Sarasin
Mr. John Varel

Maui Department of Water Supply (MDWS)

APPLICATIONS FOR WATER USE PERMITS

Waihee-Sarasin Well (Well No. 5631-08)
WUPA 853, TMK 3-2-007:016
Future (Agricultural) Use of 0.051 mgd

Waihee-Varell Well (Well No. 5631-07)
WUPA 825, TMK 3-2-001:001
Future (Domestic and Agricultural) Use of 0.041 mgd

Iao Tank Site Well (Well No. 5230-03)
WUPA 846, TMK 3-5-001:021
Additional (Municipal) Use of 0.802 mgd

Mokuhau Well 3 (Well No. 5330-11)
WUPA 847, TMK 3-3-002:024
Additional (Municipal) Use of 0.589 mgd

Waikapu Tank Site Well (Well No. 5131-01)
WUPA 848, TMK 3-5-004:099
Additional (Municipal) Use of 0.900 mgd

Iao Tunnel - Kepaniwai (Well No.5332-02)
WUPA 852, TMK 3-3-003:003
Additional (Municipal) Use of 0.840 mgd

Iao Ground Water Management Area, Maui

APPLICANT:
Mr. Bryan Sarasin
P.O.Box 218
Wailuku HI 96793

Mr. John Varel
P.O.Box 1468
Wailuku HI 96793

Mr. Jeffrey K. Eng, Director
Maui Department of Water Supply
200 South High Street
Wailuku HI 96793

LANDOWNER:
Same
Same
Same
SUMMARY OF REQUEST:

Two applicants request that the Commission approve water use permits for potable basal ground water for new agricultural and domestic uses. One applicant seeks approval of four permits – three for basal and one for high-level sources for existing and new municipal uses, as follows:

**Sarasin:** an allocation of 0.051 million gallons per day (mgd), for one domestic household and 0.85 acres of agricultural irrigation.

**Varel:** an allocation of 0.041 mgd for 5 domestic households and about 350 acres of agricultural irrigation.

**Maui Department of Water Supply (MDWS):** additional allocations totalling 3.131 mgd for four distinct sources that will bring these sources to a new total of 5.189 mgd for municipal uses in the Central Maui Service Area. These represent changes from three existing basal aquifer water use permits with a net increased average of 2.291 mgd, and a new application for an increase of 0.841 mgd from a high-level source, whose original WUPA for 1.359 is still a matter in the Na Wai Eha contested case hearing (CCH MA 06-01) on high-level sources and instream flow standards. The total withdrawal from this high-level source would then be 2.2 mgd.

These water use permit applications (WUPAs) are competing for the remaining 2.291 mgd in the Iao Aquifer System Area.

Objections to these WUPAs have been received, asserting that the private and County wells are in conflict. This public hearing is required due to these objections and gives additional opportunity to present relevant information to the Commission about the reasonable and beneficial nature of the respective uses.

Staff is presenting these water use permit applications (WUPAs) together to meet public hearing requirements under § 174C, HRS, and to minimize costs to applicants and the Commission.

LOCATION MAP: See Exhibit 1

FILING BACKGROUND:

**Mr. Bryan Sarasin:**
July 28, 2008  Mr. Bryan Sarasin submitted a completed WUPA to the Commission on Water Resource Management (Commission).

August 11 & 18, 2008  Public notice (Exhibit 2a) for Bryan Sarasin’s application was published in the *Maui News*.

August 21, 2008  Mr. Clyde Kahalehua submitted an objection to this application.
Public Hearing Draft Staff Submittal

September 3, 2008  Maui Department of Water Supply (MDWS) submitted an objection to this application.

November 14, 2008  Public Hearing Notice for six concurrent applications was published in the Maui News: Bryan Sarasin’s and John Varel’s individual wells, and four Maui Department of Water Supply sources.

Mr. John Varel:

August 28, 2008  A completed WUPA was received from Mr. John Varel by the Commission.

September 17 & 24, 2008  Public notice (Exhibit 2b) for John Varel’s application was published in the Maui News.

September 26, 2008  Maui Department of Water Supply (MDWS) submitted an objection to this application.

November 14, 2008  Public Hearing Notice for six concurrent applications was published in the Maui News: Bryan Sarasin’s and John Varel’s individual wells, and four Maui Department of Water Supply sources.

Maui Department of Water Supply

March 7, 2008  Completed WUPAs for three basal wells were received from MDWS by the Commission:
5131-01 – Waikapu Tank Site Well
5230-03 – Iao Tank Site Well
5330-09 – Mokuau Well 3

April 3, 2008  A completed water use permit application for the Iao Tunnel (5332-02) was received from MDWS by the Commission.

October 23 & 30, 2008  Public notice (Exhibit 2c) for John Varel’s application was published in the Maui News.

October 29, 2008  Bryan Sarasin and John Varel submitted preliminary objections to these applications.

November 14, 2008  Bryan Sarasin and John Varel submitted written objections to these applications.

November 14, 2008  Public Hearing Notice for six concurrent applications was published in the Maui News: Bryan Sarasin’s and John Varel’s individual wells, and four Maui Department of Water Supply sources.
ANALYSIS/ISSUES:

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 mgd as the sustainable yield for the Iao Aquifer System. Individual existing water use permits in this aquifer system are shown in Exhibit 3. A summary of the current groundwater conditions in the aquifer is provided in Table 1:

<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 3)</td>
<td>17.709</td>
</tr>
<tr>
<td>Reservation to DHHL</td>
<td>0.000</td>
</tr>
<tr>
<td>Subtotal (Current Available Allocation)</td>
<td>2.291</td>
</tr>
<tr>
<td>Less: Mr. Bryan Sarasin</td>
<td>0.051</td>
</tr>
<tr>
<td>Mr. John Varel</td>
<td>0.041</td>
</tr>
<tr>
<td>MDWS*</td>
<td>2.291</td>
</tr>
<tr>
<td>Subtotal (Potential Available Allocation/Allocation Deficit)</td>
<td>2.383</td>
</tr>
</tbody>
</table>

* The Iao Tunnel is a high-level source, potentially reducing discharge to stream flow but not counted against basal aquifer yield. The high-level aquifer also contributes to the basal aquifer, but the assumption that high-level sources affect surface water in a one-to-one relationship reduces accounting of underflow to zero.

Exhibit 3 shows ten MDWS sources totalling 17.076 mgd, a reflection of a recent transfer of 78,000 gpd from Kehalani, making it apparent that the MDWS request intended to capture the remaining estimated sustainable yield from the Iao Basal Aquifer.

There is not enough water to satisfy all the competing requests at this time. The County’s numerical modeling efforts over the past 6 years may show that with appropriate well spacing and construction, the resource may accommodate these application requests. However, until the sustainable
yield is officially increased by the Commission, these requests cannot all be accommodated as requested.

The high-level request for 0.841 mgd is separate, and subject to an impending decision in a contested case concerning the interaction of high-level sources and stream flow, the setting of interim instream flow standards, and the identification of surface water amounts available for off-stream use. This request is for an amount in addition to the existing application (initially 1.418 mgd but revised to 1.359 mgd), for a new total request of 2.2 mgd.

(2) **Reasonable-beneficial**

Section 174C-3 HRS defines "reasonable-beneficial use" as

"...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".

**Sarasin:**

I. **Purpose of Use**

- Individual domestic use: one household;
- Irrigation: 0.1 acres of garden; 0.75 acres of commercial nursery.

II. **Quantity Justification**

<table>
<thead>
<tr>
<th>Use</th>
<th>Amount</th>
<th>Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual household use*</td>
<td>600 gallons per day (gpd)</td>
<td>County planning standard</td>
</tr>
<tr>
<td>Irrigation – garden*</td>
<td>600 gpd for 0.1 ac</td>
<td>experience on this property</td>
</tr>
<tr>
<td>(* legally exempt) nursery</td>
<td>50,000 gpd for 0.75 ac</td>
<td>(equivalent of 66,667 gad)</td>
</tr>
</tbody>
</table>

Total: 51,200 gpd or 0.051 mgd.

III. **Efficiency of Use**

The applicant has not explained how the operation is as water-efficient as possible. Using the Irrigation Water Requirement Estimation Decision Support System (IWREDSS) as a guideline, this parcel requires 1,001 gpd for irrigating typical garden crops, and 1,001 gpd for irrigating nursery crops. For 0.85 ac, this comes to **850 gpd** for irrigation needs.

IV. **Analysis of Practical Alternatives**

The applicant has responded to **four** potential alternatives to the proposed use of potable basal water. An analysis of each of the alternatives is as follows:

1. Ditch - The proposed ground water use is, in itself, an alternative to the original source for these activities, the Waihee Ditch. Mr. Sarasin has been unable to get commitments from the purveyor for continued access to ditch water.
2. Municipal water is unavailable for agricultural use;
3. Municipal reclaimed water is not available at this site; Household effluent will be used at the rate of from 200-300 gpd for the garden, in addition to the requested allocation.

4. Desalting is neither commercially available nor a practical alternative for this land-locked parcel.

On the basis of the presentation to date, the total reasonable amount may be closer to 2,000 gpd than 51,000 gpd.

**Varel:**

_I. Purpose of Use_

Individual domestic use: five households; Irrigation: 340 ac of macadamia nuts; 5 ac other fruit trees; 2 ac nursery crops; 3.5 ac native reforestation

_II. Quantity Justification_

<table>
<thead>
<tr>
<th>Use</th>
<th>Amount:</th>
<th>Standard:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual household use*</td>
<td>600 gallons per day (gpd)</td>
<td>County planning standard</td>
</tr>
<tr>
<td>(*legally exempt)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Irrigation – mac nuts</td>
<td>39,000 gpd</td>
<td>(2.5% of )</td>
</tr>
<tr>
<td>fruit trees</td>
<td>500 gpd</td>
<td>(12.5 %)</td>
</tr>
<tr>
<td>nursery</td>
<td>250 gpd</td>
<td>(5%) native</td>
</tr>
<tr>
<td>reforestation</td>
<td>350 gpd</td>
<td>(8.75 %)</td>
</tr>
<tr>
<td>Total</td>
<td><strong>40,700 gpd or 0.041 mgd.</strong></td>
<td>(experience on this property)</td>
</tr>
</tbody>
</table>

Note the mistake on the public notice: “0.043 mgd”

_III. Efficiency of Use_

The applicant states that its operations need to be water-efficient to avoid pumping costs; the preferred irrigation will be naturally-occurring rainfall.

Using the Irrigation Water Requirement Estimation Decision Support System (IWREDSS) as a guideline, the Macadamia areas require 965 gad. The standard expectation for 340 acres would therefore be 328,100 gpd.

Applying this model to fruit trees, nursery, and native forest as perennial generic crops yields an estimated 1,081 gad, for the 10.5 acres in question a total of 11,350 gpd. The combined total needed is therefore estimated by the model at 339,450 gpd.

_IV. Analysis of Practical Alternatives_

The applicant has responded to four potential alternatives to the proposed use of potable basal water. An analysis of each of the alternatives is as follows:

1. Ditch - The proposed ground water use is, in itself, an alternative to the original source for these activities, the Waihee Ditch. Mr. Varel has been unable to get commitments from the purveyor for continued access to ditch water.
2. Municipal water is not being allocated to agricultural uses;
3. Municipal reclaimed water is not available at this site;
4. Desalting is neither commercially available nor a practical alternative for this mauka parcel.

On the basis of the presentation to date, the total reasonable amount may be closer to 339,450 gpd than 41,600 gpd.

**Maui Department of Water Supply (MDWS)**

**I. Purpose of Use**
The enumerated municipal uses include domestic, commercial, industrial, hotel, schools, landscape irrigation, and others.

**II. Quantity Justification**
MDWS identifies the total number of service connections to be served by these sources as a pro-rata share of the total available supply from all sources to the Central Maui Service Area (CMSA). The County plans for these uses according to adopted standards; the Commission accepts these standards in deference to County authority.

The filings indicate that the four sources will provide percentages of the total number of service connections for all types of uses in the CMSA, and although it is anticipated that each source will increase its use after the first year (2008), each will remain static for the remaining three years of the request (2009-2011), a declining percentage of the ever-growing number of service connections in the CMSA, on the order of about one-quarter the total service connections.

**III. Efficiency of Use**
MDWS has adopted rules to encourage conservation, and water availability rules to enforce shortfalls in available source supplies.

**IV. Analysis of Practical Alternatives**
The applicant has variously responded to four potential alternatives to the proposed use of potable basal water. An analysis of each of the alternatives is as follows:

1. Ditch - MDWS treats between 2 and 3 mgd of diverted stream flows from the Iao Ditch, and is cooperating in a private proposal to expand surface water treatment from the Waihee Ditch.
2. Municipal water is provided as potable water, regardless of the required water quality of the end use;
3. Municipal reclaimed water is used as much as possible, still in limited quantities;
4. Desalting is not currently economically viable.
Interference with other existing legal uses

The Maui DWS objected to the Sarasin and Varel applications in part, later repeated by reference by the Office of the Mayor, because those proposed WUPs compete with MDWS applications for water to be used for municipal purposes; an earlier request to create a water reservation for the balance of the aquifer's sustainable yield was deferred pending adoption of a Water Use and Development Plan, which is to lay out the total projected need and to identify available sources to serve those uses, with strategies for meeting the former with the latter.

Commission policy favors approval of a County Water Use and Development Plan (WUDP) in support of a reservation, which requires rule-making, in order to bring all demands into consideration, both private and public, and to assure adequate provision for traditional and customary Hawaiian rights. While Maui County is working diligently toward a very comprehensive WUDP, it is not yet adopted, and the statement that the County desires to reserve all remaining sustainable yield for municipal purposes seems premature without formalizing this through the WUDP process. The private applicants state they are unable to get municipal service and have been denied service also from the Waihee Ditch, their former source, by its proprietor, Wailuku Water Company.

Pump test data for all these wells show that the proposed pumping rates will not interfere with other neighboring wells. The two private wells are spatially separated from other wells and will draw relatively small amounts from an area of the aquifer that shows rapid recovery time after cessation of pumping. This indicates that the impact zone of the proposed pumping is small and will not affect nearby wells. The County sources represented here attempt to spread the pumpage formerly overconcentrated in a few well fields.

Bryan Sarasin objected to the County applications in the belief they may affect availability of water for his well, which is true.

John Varel raises a similar objection, in that the County's request may hamper his ability to use water from a well he developed.

Both Mr. Sarasin and Mr. Varel point out in their applications that the only reason they had drilled wells was that the former reliance on use of the Waihee Ditch was lost and that the County would not provide agricultural service. Potable ground water was not their first choice but now their only choice. In normal weather, rainfall accounts for a major portion of their irrigation requirements, but continuing drought raised the necessity of a more reliant backstop source.
Public Hearing Draft Staff Submittal

December 16, 2008

(4) Public interest

The Public interest is defined under §174C-2 - Declaration of policy, as follows:

"(c) The state water code shall be liberally interpreted to obtain maximum beneficial use of the waters of the State for purposes such as domestic uses, aquaculture uses, irrigation and other agricultural uses, power development, and commercial and industrial uses. However, adequate provision shall be made for the protection of traditional and customary Hawaiian rights, the protection and procreation of fish and wildlife, the maintenance of proper ecological balance and scenic beauty, and the preservation and enhancement of waters of the State for municipal uses, public recreation, public water supply, agriculture, and navigation. Such objectives are declared to be in the public interest."

Additionally, there have been Public comments / objections to this application, other than state & county general plans and land use designation comments noted in following criterion (5), which are summarized as follows:

1. Mr. Clyde Kahalehau: a) there should be no development in this area; b) use of the Waihee and Spreckels Ditches is sufficient; c) there is no water in the streams.

Development is a county planning function, not under the Commission’s jurisdiction; the current proposal is consistent with existing county zoning. The use of the Waihee Ditch is currently in a contested case hearing (CCH MA06-01), with proposed findings and decision-making due this Fall. At this time, it is not known whether the applicants have also made claims for use of ditch water in these proceedings or if they would be awarded ditch water at the conclusion of this case. No diversion from any stream is contemplated in these applications.

2. MDWS: private wells in MDWS’ service area may lack comprehensive conservation and resource protection programs; because “private wells may be poorly sited or inadequately designed... (and) may provide contamination routes to the aquifer if they are not subject to the same wellhead protection scrutiny applied to DWS’s (sic) wells... (the applications) do not provide sufficient information to demonstrate that (they) are appropriately sited and designed, will not interfere with legally-permitted wells, and that necessary wellhead protection measures are in place.”

The Department did not cite any particular siting, construction, or wellhead protection deficiencies, nor has it provided information or evidence of its own wells’ siting, construction, and wellhead protection considerations. Also, the Department of Health did not raise any siting concerns during review. The Well Construction and Pump Installation Permit Application contains minimum construction requirements that should address protection of the aquifer from contamination. All well construction permits are required to meet Hawaii Well Construction and Pump Installation Standards and be constructed by a licensed driller. The same licensed driller who constructed the two private wells has done several MDWS wells.
(5) **State & county general plans and land use designations**

The proposed uses for Sarasin and Varel are in the State Agriculture District, and the county zoning is Agriculture. Therefore, the proposed use is consistent with these land use designations.

Normal agency review includes:

1) the State’s Department of Land and Natural Resources (DLNR) divisions for State Parks, Aquatic Resources, Historic Preservation, and Land; the Department of Health (DOH) branches for Clean Water, Safe Drinking Water, and Wastewater; the Department of Hawaiian Home Lands (DDHL); the Land Use Commission (LUC); and the Office of Hawaiian Affairs (OHA).

2) the County’s County Council, Department of Planning and Permitting, and the Department of Water Supply;

Constructive and due care comments have been made through this review. The proposed domestic and agricultural uses are consistent with the state and county general plans and land use designations. The land is zoned agriculture and lies outside the main urban development area on land reputed to be of high agricultural productivity.

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

Normal County review includes County Council, Department of Planning and Permitting, and MDWS. MDWS has objected that the private well withdrawals interfere with County desire to reserve all remaining available supply for its municipal uses. While the issuance of these permits would create a significant reduction in the number of service connections available to the MDWS, current applications have not yet exhausted the total sustainable yield, nor has the County developed a configuration of sources to adequately spread pumpage and therefore approach fuller use of the sustainable yield, although that is clearly its long term intent and ongoing effort, as evidenced by the numerical ground water modeling efforts over the past several years. This continues to be a public interest that Commission staff will respect once a pumping scenario is formally established by the County.

The private user applicants should expect action now. Moreover, the private well users are resorting to this approach for lack of alternatives on their own land, while the County conceivably has alternatives in other locales to augment the Iao Aquifer System Area supply. Finally, we have assigned special conditions to the private well use in the event a preferred alternative presents itself, that after a hearing on the matter, the Commission reserves the right to adjust the water use permit to require use of the alternative(s).
Interference with Hawaiian home lands rights

All permits are subject to the prior rights of Hawaiian home lands. DHHL and OHA have reviewed this application and made no comments or objections. Further, standard water use permit conditions 3.g., 6., and 9.f. notify all water use permittees that their permits are subject to and cannot interfere with Hawaiian home land rights. Anticipated uses by the DHHL are incorporated into the County’s water supply commitments. There are additional Hawaiian Home Lands in Puunene, toward Kihei, with very general plans and no timeline for implementation.

PRELIMINARY RECOMMENDATION BASED ON CURRENT INFORMATION:

1. None at this time for basal sources. Staff will incorporate public hearing testimony when drafting a submittal for official Commission action unless a contested case hearing is requested. Standard conditions for water use permits (attached) provide for the protection of public trust needs and reduce any permitted amounts after a hearing.

It should be noted that domestic needs of MDWS are public trust uses, although not distinguished in these applications from commercial and other municipal uses for the benefit of decision-makers, while agricultural uses are not public trust uses but in this case without viable non-potable alternatives at this time.

Testimony at today’s public hearing will help guide the Commission in its decision for these competing WUPAs.

2. Defer action on the Water Use Application No. 852 for a new total of 2.2 mgd from Iao Tunnel, pending a decision on the Na Wai Eha contested case hearing (CCH-MA-06-01).

Respectfully submitted,

KEN C. KAWAHARA, P.E.
Deputy Director

Attachment(s): A (Water Use Permit Detailed Information)  
B (Water Use Permit Standard Conditions)

Exhibit(s): 1 (Location Map)  
2a-c (Public Notices)
Public Hearing Draft Staff Submittal

December 16, 2008

3 (Pending Water Use Permit Applications)
4 (Existing Water Use Permits and 12-MAV Withdrawal)

APPROVED FOR SUBMITTAL:

LAURA H. THIELEN
Chairperson
WATER USE PERMIT DETAILED INFORMATION

Source Information

AQUIFER:
Iao System, Wailuku Sector, Maui
Sustainable Yield: 20 mgd
Existing Water Use Permits:
Available Allocation:
Total other pending applications:
This application:

WELL:
Waihee-Sarasin Well (Well No. 5631-08)
Location: 54-345 Kamehameha Hwy, Maui, TMK: 3-2-007:016
Year Drilled: 2006
Casing Diameter: 8 in.
Elevations (msl= 0 ft.)
Water Level: 10 ft.
Ground:
Bottom of Solid Casing:
Bottom of Perforated:
Bottom of Open Hole:
Total Depth: 185 ft.
Grouted Annulus Depth: 120 ft.
Pump Capacity 160 gpm

ATTACHMENT A
Use Information

Quantity Requested: 0.051 gallons per day.
Future Type of Water Use: Agricultural
Place of Water Use: TMK: 3-2-007:016

Reported Water Usage: 0 gpd
Nearby Similar Water Usage: 0 gpd

Iao Aquifer System
Current 12-Month Moving Average Withdrawal (See Exhibit 4): 17 mgd

Nearby Surrounding Wells and Other Registered Ground Water Use

There are 1 other wells within a mile of the well (see Exhibit 1). 0 of these wells are currently in use. Information from the registration program indicates there are possibly 16 existing wells in the Iao Aquifer System.

Public Notice

In accordance with HAR §13-171-17, a public notice was published in the Honolulu Advertiser on August 11, 2008 and August 11, 2008 and a copy of the notice was sent to the Mayor's office. Copies of the completed application were sent to the Department/Board of Water Supply, Planning Department, Department of Land Utilization (Oahu only), Department of Health, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, the various divisions within the Department of Land and Natural Resources, and other interested parties for comments. Written comments and objections to the proposed permit were to be submitted to the Commission by August 28, 2008.
WATER USE PERMIT DETAILED INFORMATION

Source Information

AQUIFER:
- Iao System, Wailuku Sector, Maui
- Sustainable Yield: 20 mgd
- Existing Water Use Permits: 17.709 mgd
- Available Allocation: 2.291 mgd
- Total other pending applications: 2.383 mgd
- This application: 0.041 mgd

WELL:
- Waihee-Varel Well (Well No. 5631-07)
- Location: Waihee Valley Road, Maui, TMK: 3-2-001:001
- Year Drilled: 2007
- Casing Diameter: 6 in.
- Elevations (msl= 0 ft.)
  - Water Level: 8.5 ft.
  - Ground: 240 ft.
  - Bottom of Solid Casing: 245 ft.
  - Bottom of Perforated: 265 ft.
  - Bottom of Open Hole: na ft.
- Total Depth: 265 ft.
- Grouted Annulus Depth: 200 ft.
- Pump Capacity: 60 gpm
Use Information

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| Reported Water Usage: | 0 gpd |
| Nearby Similar Water Usage: | 0 gpd |

Iao Aquifer System

- Current 12-Month Moving Average Withdrawal (See Exhibit 4): 17 mgd

Nearby Surrounding Wells and Other Registered Ground Water Use

There are 1 other wells within a mile of the well (see Exhibit 1). 0 of these wells are currently in use. Information from the registration program indicates there are possibly 16 existing wells in the Waihee Aquifer System.

Public Notice

In accordance with HAR §13-171-17, a public notice was published in the Honolulu Advertiser on September 17, 2008 and September 24, 2008 and a copy of the notice was sent to the Mayor’s office. Copies of the completed application were sent to the Department/Board of Water Supply, Planning Department, Department of Land Utilization (Oahu only), Department of Health, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, the various divisions within the Department of Land and Natural Resources, and other interested parties for comments. Written comments and objections to the proposed permit were to be submitted to the Commission by August 28, 2008.
STANDARD WATER USE PERMIT 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 October 24, 2008 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;
   c. insure adequate conservation measures;

ATTACHMENT B
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 Waihee 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 Waihee 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 which 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

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

19. 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.
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- Available: 2.291

Friday, December 12, 2008
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**REMARKS:**

LINE (1) Reimbursement for Public Notice for new WUPA and Public Hearing notice costs for WUP No. 846, 847, 848 & 852.
November 28, 2008

Mr. Ken Kawahara, Deputy Director
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai‘i 96809

Dear Mr. Kawahara:

SUBJECT: Chapter 6E- Historic Preservation Review [County/State] – Water Use Permit Application (WUPA Nos. 846, 847, 848, & 852) for Well Numbers 5230-03, 5330-11, 5131-01, & 5332-02, Wailuku Ahupua‘a, Wailuku District, Island of Maui

TMK (2) 3-5-001:021, 3-3-002:024, 3-5-004:099, & 3-3-003:003 (Portions)

There are historic properties documented in the general area. We understand there are no ground altering plans for the subject TMK parcels at this time.

We believe no historic properties will be affected because:

☐ Intensive cultivation has altered the land
☐ Residential development/urbanization has altered the land
☒ Previous grubbing/grading has altered the land
☐ An archaeological survey found no historic properties
☐ SHPD previously reviewed this project and mitigation has been completed
☒ Other: The current subject action does not appear to involve any ground disturbing construction activities. Proposed actions involve existing water storage and transport systems. We appreciate the opportunity to provide comments for any future proposed construction activities or ground alterations related to the subject parcels.

In the event that any historic resources including bottles, ceramics, rock alignments, terraces, walls, potted grants, artifacts, charcoal, shell midden, or skeletal remains (etc.) are identified on the subject parcel, the find needs to be protected from any disturbance, and the State Historic Preservation Division, Maui Section, needs to be contacted at (808) 243-1285 or (808) 243-4640. Please feel free to contact Jenny Pickett at (808) 243-4641 with any concerns about this review.
Aloha,

Nancy McMahon
Historic Preservation Manager
State Historic Preservation Division

c: Dept of Planning, FAX 270-7634
Maui Cultural Resources Commission, Dept. of Planning, 250 S. High Street, Wailuku, HI 96793
November 24, 2008

Honorable Laura H. Thielen, Chairperson
State of Hawaii Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Re: Objection to application for Water Use Permit Applications for Mokuhau 3, Well No. 5330-11 (WUPA 847); Waikapu Tank Site Well, Well No. 5131-01 (WUPA 848); Iao Tank Site Well, Well No. 5230-02 (WUPA 846), and Iao Tunnel, Well No. 5332-02 (WUPA 852).

Dear Chairperson. Thielen:

This is in response to Mr. Brian Sarasin’s objection of November 14, 2008 to the above mentioned Maui County Department of Water Supply (DWS) Water Use Permit Applications:

These permit applications may affect other water uses in the same water management area, including my well (Well # 5631-08 and WUPA # 853)

The Department WUPAs 846, 847, 848 and 852 submitted March 5, 2008 and March 31, 2008 and deemed complete on October 1, 2008 all ascertained that the new uses would not interfere with any existing legal uses of water within Iao aquifer. The only permitted water uses from the designated Iao aquifer, other than DWS sources, were the allocations to Living Waters Foundation’ well and Wailuku Shaft. WUPA # 853 was submitted on June 13, 2008 and was deemed complete on July 28, 2008 although it does not meet the statutory requirements set forth in HRS § 174C-49 as stated in our objection to WUPA # 853. As stated in the Findings of Fact, Conclusions of Law and Decision and Order dated January 31, 2007 in the Wailuku Shaft contested case (CCH-MA-05-01) the Commission suggested that DWS could and should reserve all remaining amounts, up to the full 20 MGD sustainable yield, for its municipal water supply. These sources serve existing and anticipated demand in the communities extending from Waiehu through Wailuku, Kahului, Puunene, Spreckelsville, Paia and Kuau in the North, and from Maalaea through Kihei to Makena in the South, including the property of WUPA # 853. The

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public interest would be served best by allowing DWS the requested withdrawals from Lao aquifer, in that they would be subject to more rigorous regulatory oversight and conservation and resource protection programs than the applicant’s private well would be.

We respectfully ask that the Commission grant DWS our requested new use applications.

Sincerely,

Jeffrey K. Eng, Director

cc:
Engineering division
Jane Lovell, Deputy Corporation Counsel
Ed Kushi, Jr. Deputy Corporation Counsel
November 24, 2008

Honorable Laura H. Thielen, Chairperson
State of Hawaii Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Re: Objection to application for Water Use Permit Applications for Mokuhau 3, Well No. 5330-11 (WUPA 847); Waikapu Tank Site Well, Well No. 5131-01 (WUPA 848); Iao Tank Site Well, Well No. 5230-02 (WUPA 846), and Iao Tunnel, Well No. 5332-02 (WUPA 852).

Dear Chairperson. Thielen:

This is in response to Mr. John Varel’s objection of November 14, 2008 to the above mentioned Maui County Department of Water Supply (DWS) Water Use Permit Applications:

I am objecting out of concern that if the County’s permit applications are approved, I will be severely hampered in my ability to access and maintain a sustainable ground water supply in my own well (Well #5631-07 and WUPA #825), which is in the same ground water management area. I already drilled and paid for my well, and am only awaiting a permit from the Water Commission to pump it. My pending WUPA is for 400,000 gallons per day.

Please find attached the Department of Water Supply’s letter of March 7, 2003 opposing permit to construct private wells in Iao aquifer, including the subject Well # 5631-07 and WUPA #825, which is in the same ground water management area. I already drilled and paid for my well, and am only awaiting a permit from the Water Commission to pump it. My pending WUPA is for 400,000 gallons per day.

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all remaining amounts, up to the full 20 MGD sustainable yield, for its municipal water supply. These sources serve existing and anticipated demand in the communities extending from Waiehu through Wailuku, Kahului, Puunene, Spreckelsville, Paia and Kuau in the North, and from Maalaea through Kihei to Makena in the South, including the property of WUPA # 853. The public interest would be served best by allowing DWS the requested withdrawals from Iao aquifer, which are subject to more rigorous regulatory oversight and conservation and resource protection programs than private wells would be.

We respectfully ask that the Commission grant DWS our requested new use applications.

Sincerely,

Jeffrey K. Eng, Director

attachment:

Department of Water Supply letter dated March 7, 2003

c:
Engineering division
Jane Lovell, Deputy Corporation Counsel
Ed Kushi, Jr. Deputy Corporation Counsel
March 7, 2003

Honorable Ernest Lau, Deputy Director
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Proposed Well Permits in Iao & Waihee Aquifers:
   TMK 3-2-001:001 - Waihee-Varel Well - 50,000 GPD for MacNut trees & other irrigation
   TMK 3-2-013:015 - Waihee Mauka / Living Water Well #1 - 40,000 GPD for Mac Nut trees
   TMK 3-2-002:007 - Waihee Rivermouth Living Waters Well #2 - 40,000 GPD for Fruit trees
   TMK 3-2-001:001 - Waihee Laquidara Well - 30,000 GPD for trees & horse stockwater/pasture

Dear Mr. Lau,

Thank you for the opportunity to submit comments regarding the proposed wells.

We would oppose the approval of any wells in the Iao & Waihee aquifers apart from those to be dedicated to the county for the purposes of distribution of withdrawals.

The Commission is well aware of the challenges we face in managing these aquifers even under current conditions. To add private wells to a system in such straits would only exacerbate the situation.

With the aid of the county, we are currently in negotiation for watershed lands and surface water collection facilities in these areas. We would recommend that such surface water sources, should the county be successful in acquiring them, would be a more appropriate source of water for the proposed irrigation projects.

We believe that the highest priority should be given to maintaining the health of these aquifers for municipal and drinking water uses, and that additional burden other than county distribution of withdrawals should not be placed on these aquifers pending acquisition of surface collection facilities and/or drilling in East Maui.

For the Commission's information, we are also currently in the process of preparing a letter for the County Planning Department, requesting that additional land use approvals be slowed.

In addition, we note that download of PDF from the web can be problematic at times, and would prefer to receive hard copies of all well applications for Maui County. We have the responsibility for protecting the water resources of the County at the County level, and are unable to do so unless we reliably receive pertinent information.

Thank you for your assistance in protecting these aquifers. Please feel free to contact me at (808) 270-7816, or Ellen Kraftsow of my staff at (808) 270-8045 (phone), kraftsow@mauigateway.com, or FAX (808) 270-7833, should you have any questions.

Sincerely,

George V. Veling, Director

Rip Water All Things Find Life
TO: Dan Davidson, Executive Officer
   Land Use Commission

FROM: Laura H. Thielen, Chairperson
   Commission on Water Resource Management

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

Transmitted for your review and comment is a copy of a water use permit application (WUPA Nos. 846, 847, 848, & 852) for Maui Department of Water Supply for Well Nos. 5230-03, 5330-11, 5131-01 & 5332-02. Public notice of this application will be published in the Maui News issues of October 23, 2008 and October 30, 2008.

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 November 14, 2008, which is the legal deadline for objections. If we do not receive your comments by this date, we will assume you have no objections to this application.

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 587-0218.

Cl: ss
Attachment(s)

Response:

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

Contact person: Bert Jaruwatari
Phone: 587-3822
Signed: Bert Jaruwatari
Date: October 22, 2008

Signed: Laura H. Thielen
Date: November 18, 2008
November 19, 2008

TO: Laura H. Thielen, Chairperson
Commission on Water Resource Management
Department of Land and Natural Resources

FROM: Orlando Davidson, Executive Officer

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

We have reviewed the subject application forwarded by your transmittal dated October 22, 2008. Based on the representation of the well sites on the USGS maps, we find that the Iao Tank Site Well, Mokuha 3 Well, and Waikapu Mauka Well are located within the State Land Use Agricultural District. The Iao Tunnel Well is located within the State Land Use Conservation District.

With respect to your request as to whether the current designation is appropriate for the proposed project, 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 Agricultural 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 parcels.

With respect to the Iao Tunnel Well that is located in the Conservation District, we have no comments to offer on this matter 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.

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

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

Enclosure
PUBLIC HEARING NOTICE

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

The following applications for new ground water use permits for uses arising after July 21, 2003 (the date Iao Aquifer became a Ground Water Management Area), have received objections and are subject to a public hearing. The hearing will be held:

December 16, 2008, 2:00 - 4:00 p.m.
State Office Bldg., 3rd Floor Conference Room B
54 South High Street, Wailuku, Hawaii 96793

The Hearing Officer will gather testimony and information on these applications. Testimony should focus on reasonable-beneficial water use, practicable alternatives, Hawaiian rights, and possible conflicts with public trust uses.

<table>
<thead>
<tr>
<th>Applicant Name</th>
<th>Well No</th>
<th>WUPA #</th>
<th>TMK</th>
<th>Amount</th>
<th>Purpose</th>
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<tr>
<td>John Varel</td>
<td>5631-07</td>
<td>825</td>
<td>3-2-1:1</td>
<td>0.043 mgd</td>
<td>Irrigation of 350 ac: mac nuts, fruit trees, nursery, reforestation</td>
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<td>Bryan Sarasin</td>
<td>5631-08</td>
<td>853</td>
<td>3-2-7:16</td>
<td>0.051 mgd</td>
<td>Irrigation of 0.85 ac: nursery and garden</td>
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<td>Maui Department of Water Supply</td>
<td>5230-03</td>
<td>846</td>
<td>3-5-1:21</td>
<td>0.802 mgd</td>
<td>Municipal uses (Iao Tank Site Well)</td>
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<td>5330-11</td>
<td>847</td>
<td>3-3-2:24</td>
<td>0.589 mgd</td>
<td>&quot; (Mokuahu Well 3)</td>
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<td>5131-01</td>
<td>848</td>
<td>3-5-4:99</td>
<td>0.900 mgd</td>
<td>&quot; (Waikapu Tank Site Well)</td>
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<tr>
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<td>5332-02</td>
<td>852</td>
<td>3-3-3:3</td>
<td>0.841 mgd</td>
<td>&quot; (Iao Tunnel – Kepaniwai)</td>
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Materials related to the noticed items are available for review at the Commission office located at 1151 Punchbowl St., Rm. 227, Honolulu or may be requesting by calling (808) 587-0218, and will also be available at this public hearing.

The Hearing Officer 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

KEN C. KAWAHARA, Deputy Director for
LAURA H. THIELEN, Chairperson

Dated: November 10, 2008

Publish in: Maui News issue of November 14, 2008
November 24, 2008

Honorable Laura H. Thielen, Chairperson
State of Hawaii Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Re: Objection to application for Water Use Permit Applications for Mokuhau 3, Well No. 5330-11 (WUPA 847); Waikapu Tank Site Well, Well No. 5131-01 (WUPA 848); Iao Tank Site Well, Well No. 5230-02 (WUPA 846), and Iao Tunnel, Well No. 5332-02 (WUPA 852).

Dear Chairperson, Thielen:

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These permit applications may affect other water uses in the same water management area, including my well (Well # 5631-08 and WUPA # 853)

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November 24, 2008

VIA MAIL AND FACSIMILE

Honorable Laura H. Thielen, Chairperson
State of Hawaii Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

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Sincerely,

Jeffrey K. Eng, Director
emb

attachment:

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c:
Engineering division
Jane Lovell, Deputy Corporation Counsel
Ed Kushi, Jr. Deputy Corporation Counsel
March 7, 2003

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Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Proposed Well Permits in Iao & Waihee Aquifers:
TMK 3-2-001:001 - Waihe-Vailae Well - 50,000 GPD for MacNut trees & other irrigation
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TMK 3-2-001:001 - Waihee Laquidara Well - 30,000 GPD for trees & horse stockwater/pasture

Dear Mr. Lau,

Thank you for the opportunity to submit comments regarding the proposed wells.

We would oppose the approval of any wells in the Iao & Waihee aquifers apart from those to be dedicated to the county for the purposes of distribution of withdrawals.

The Commission is well aware of the challenges we face in managing these aquifers even under current conditions. To add private wells to a system in such straits would only exacerbate the situation.

With the aid of the county, we are currently in negotiation for watershed lands and surface water collection facilities in these areas. We would recommend that such surface water sources, should the county be successful in acquiring them, would be a more appropriate source of water for the proposed irrigation projects.

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Thank you for your assistance in protecting these aquifers. Please feel free to contact me at (808) 270-7816, or Ellen Kraftsow of my staff at (808) 270-8045 (phone), kraftsow@mauigateway.com, or FAX (808) 270-7833, should you have any questions.

Sincerely,

George V. Vergera, Director

Try Water All Change First Life
October 22, 2008

TO: Honorable Micah Kane, Director
   Department of Hawaiian Home Lands
   Honorable Chiyome L. Fukino, M.D., Director
   Department of Health
   Attn: Mr. Tomas See, Chief, Wastewater Branch
   Attn: Stuart Yamada, Chief, Safe Drinking Water Branch
   Mr. Clyde W. Namuo, Administrator
   Office of Hawaiian Affairs
   Honorable G. Riki Hokama, Chairperson
   County Council
   County of Maui
   Mr. Jeffrey Hunt, Director
   Planning Department
   County of Maui

FROM: Laura H. Thielen, Chairperson
   Commission on Water Resource Management

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

Transmitted for your review and comment is a copy of a water use permit application (WUPA Nos. 846, 847, 848, & 852) for Maui Department of Water Supply for Well Nos. 5230-03, 5350-01, 5131-01, & 5332-02. Public notice of this application will be published in the Maui News issues of October 23, 2008 and October 30, 2008.

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 November 14, 2008, which is the legal deadline for objections. If we do not receive your comments by this date, we will assume you have no objections to this application.

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 587-0218.

Class: Attachment(s)

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

Contact person: Robyn Loudermilk
Signed: ____________________________
Phone: 270-7180
Date: 11/14/08
TO:  
Honorable Micah Kane, Director  
Department of Hawaiian Home Lands  
Honorable Chiyome L. Fukino, M.D., Director  
Department of Health  
Attn: Mr. Tomas See, Chief, Wastewater Branch  
Attn: Stuart Yamada, Chief, Safe Drinking Water Branch  

Mr. Clyde W. Namuo, Administrator  
Office of Hawaiian Affairs  
Honorable G. Riki Hokama, Chairperson  
County Council  
County of Maui  
Mr. Jeffrey Hunt, Director  
Planning Department  
County of Maui  

FROM:  
Laura H. Thielen, Chairperson  
Commission on Water Resource Management  

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

Transmitted for your review and comment is a copy of a water use permit application (WUPA Nos. 846, 847, 848, & 852) for Maui Department of Water Supply for Well Nos. 5230-03, 5330-11, 5131-Q3, & 5332-02. Public notice of this application will be published in the Maui News issues of October 22, 2008 and October 30, 2008. 

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 November 14, 2008, which is the legal deadline for objections. If we do not receive your comments by this date, we will assume you have no objections to this application.

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 587-0218.

Cl: ss  
Attachment(s)  

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

Contact person:  
Roland Tejano on Maui  
984-8232  

Signed:  
Chun Monkami ono  
Date: 586-4294 10-27-08
Nov. 20, 2008

Mr. Jeffrey K. Eng, Director
County of Maui
Department of Water Supply
200 South High Street
Wailuku, HI 96793

Dear Mr. Eng:

Public Notice Costs for Water Use Applications and Public Hearing

Pursuant to a Commission ruling, this is your invoice for expenses incurred to provide legal notices of your water use applications and of the public hearing to take testimony on your water use applications. The invoice has two parts: notice of the applications, published in the Maui News October 23 and 30, 2008, and the notice of the public hearing, deemed necessary because of objections filed.

The notice of applications cost $325.00. The cost of the public hearing notice is being shared by the parties to the hearing, by application. Six applications were noticed for the public hearing scheduled for December 16, 2008, at a total of $262.50, or $43.75 each.

Amount Due:  $325.00
+175.00
$500.00

Due Date:  December 9, 2008

If you have any questions, please contact Charley Ice of our staff at (808) 587-0218, or toll free from Maui at 984-2400, extension 70218.

Sincerely,

Ken C. Kawahara, P.E.
Deputy Director

CI:ss
11/14/08

State Of Hawaii
Department Of Land And Natural Resources
Commission On Water Resource Management
PO Box 621
Honolulu, Hawaii 96809

Dear Water Commissioners,

I am objecting to the County of Maui’s water use permit applications for:

Iao Tank Site Well, Well #5230-03, Water Use Permit Application #846,
Mokuhaul 3, Well #5330-11, Water Use Permit Application #847,
Waikapu Tank Site Well, Well #5131-01, Water Use Permit Application # 848, and
Iao Tunnel, Well #5332-02, Water Use Permit Application #852.

The basis of my objection is that these permit applications may affect other water uses in the same water management area, including my well (Well #5631-08 and WUPA # 853).

My well was legally permitted and the certificate of completion was issued on June 4th 2008. I have a WUPA for 51,000 gallons per day for domestic uses, gardening, and for my nursery. I am trying to live a self sufficient lifestyle on my land. Although I have Kuleana water rights, that water is not supplied on a consistent basis. At the time of this letter, I have just been informed that the Kuleana water that I use to farm with will be shut off for maintenance between November 16-22nd. This is a perfect example of why I need to use my well.

This well came at a great expense to me, and the inability to use it would be a significant blow to my farm and pocket book. The County of Maui’s Water Department has contested my small use WUPA, and I feel that the County is trying to take away my ability to pump water from my well.

I object to the County’s applications, and I humbly ask the Water Commission to grant my WUPA.

Sincerely,

Bryan Sarasin
November 14, 2008

State of Hawaii Commission on Water Resource Management
Attn: Deputy Director Ken Kawahara
PO Box 621
Honolulu, Hawaii 96809

Dear Deputy Director Kawahara:

I am objecting to the County of Maui's water use permit applications for: Iao Tank Site Well, Well #5230-03, Water Use Permit Application #846, Mokuahau 3, Well #5330-11, Water Use Permit Application #847, Waikapu Tank Site Well, Well #5131-01, Water Use Permit Application #848, and Iao Tunnel, Well #5332-02, Water Use Permit Application #852.

I am objecting out of concern that if the County’s permit applications are approved, I will be severely hampered in my ability to access and maintain a sustainable ground water supply in my own well (Well #5631-07 and WP A #825), which is in the same ground water management area. I already drilled and paid for my well, and am only awaiting a permit from the Water Commission to pump it. My pending WUPA is for 400,000 gallons per day.

At this time, my well is the only source of water to support my family’s domestic uses (including our garden), a full-scale nursery, and 340 tree acres of mac nuts and alternative crops on my 1000-acre farm. My options are limited because my land was stripped of its appurtenant rights when I purchased it from Wailuku Agribusiness. The only water I currently have for my farm and home is from a catchment system, which is extremely unreliable. In times of drought, like right now, I am consistently without water. This well came at a great expense, and the inability to use it would be a significant blow to our farm, our dozen workers and their families, and ag in general.

The County of Maui's Water Department recently contested the WUPA for my well. I understand that they also need water, but isn't there some other way the County can solve these macro issues, instead of going to the same aquifer yet again?

For these reasons, I object to the County's WUPAs and humbly ask the Water Commission to allow me to pump my well.

Sincerely,

John Varel
PO Box 1468
Wailuku, Hi, 96793
808.357.0702
Bryan Sarasin  
Po Box 218  
Wailuku, Hi. 96793  
(808)244-3546  

10/29/08  

State Of Hawaii  
Department Of Land And Natural Resources  
Commission On Water Resource Management  
PO Box 621  
Honolulu, Hawaii 96809  

Dear State of Hawaii Water Commission,  
I am objecting to the County of Maui's water use permit applications:  

Iao Tank Site Well, Well #5230-03, Water Use Permit Application #846  
Mokuhau 3, Well #5330-11, Water Use Permit Application #847  
Waikapu Tank Site Well, Well #5131-01, Water Use Permit Application #848  
Iao Tunnel, Well #5332-02, Water Use Permit Application #852  

I will be providing a more detailed objection tomorrow, 10/30/08  

Sincerely, Bryan Sarasin
To: State Water Commission

From: John Varel

Fax: 587-0219

Phone: 

Re: 

To Whom It May Concern

I am hereby contesting the County of Maui's Water Use Permit Application for the following:

Lao Tank Site Well #5230-03, WUPA #848; Mokuaua Well #5303-11, WUPA #847; Waikapu Tank Site Well #5131-01, WUPA #848; Lao Tunnel #5322-02 WUPA 852.

I will provide full contested report tomorrow.

Sincerely,

John Varel

357-0702
Mr. Jeffrey Eng, Director
County of Maui
Department of Water Supply
200 South High Street
Wailuku, HI 96793

Dear Mr. Eng:

We acknowledge receipt, on October 1, 2008, of your completed water use permit applications (WUPA Nos. 846, 847, 848 & 852) for the Iao Tank Site Well, Mokuaua 3, Waikapu Tank Site Well and the [redacted] (Well Nos. 5230-03, 5330-11, 5131-01 & [redacted]). You can expect your application to be processed within ninety (90) days from the date of receipt unless there are objections to your application.

Enclosed is a copy of the public notice for your water use permit application which will be published in the Maui News issues of October 23, 2008 and October 30, 2008. You will be required to pay for the cost of the public notice, which runs about $400. We will send you an invoice shortly after your notice is published.

Please be aware that there may be objections to your application. If objections are made, the objector is required to file such objections with the Commission and is also required to send you a copy of the objections.

You, or any other party, may respond to objections by filing a brief in support of your application with the Commission within ten (10) days of the filing of an objection. You, or the other party, must also send a copy of the response to the objector.

If you have any questions, please contact Charley Ice at 587-0218.

Sincerely,

KEN C. KAWAHARA, P.E.
Deputy Director

Enclosure
TO:  Aquatic Resources  
     Forestry and Wildlife/Natural Area Reserve System  
     Historic Preservation  
     State Parks  
FROM:  Ken C. Kawahara, P.E., 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 is a copy of a water use permit application (WUPA Nos. 846, 847, 848, & 852) for Maui Department of Water Supply for Well Nos. 5230-03, 5330-11, 5131-01 & 5332-02. Public notice of this application will be published in the Maui News issues of October 23, 2008 and October 30, 2008.

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 November 14, 2008 which is the legal deadline for objections. If we do not receive your comments by this date, we will assume you have no objections to this application.

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 587-0218.

Response:

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

Contact person: ________________________________  Phone: ____________________
Signed: ________________________________  Date: ____________________

Attachment(s)
TO: Morris Atta, Administrator
Land Division

FROM: Ken C. Kawahara, P.E., 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 is a copy of a water use permit application (WUPA Nos 846, 847, 848 & 852) for Maui Department of Water Supply for Well Nos. 5230-03, 5330-11, 5131-01 & 5332-02. Public notice of this application will be published in the Maui News issues of October 23, 2008 and October 30, 2008.

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 November 14, 2008, which is the legal deadline for objections. If we do not receive comments by this date, we will assume you have no objections to this application.

If you have any questions, require additional information, or would like to request an extension of review period for this application, please contact Charley Ice at 587-0218.

CI: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.
( ) Other relevant Land Division rules/regulations, information, or recommendations are attached.
( ) No objections
( ) Other comments:

Contact person: __________________________ Phone: _______________________

Signed: __________________________ Date: _______________________
TO: Dan Davidson, Executive Officer  
Land Use Commission

FROM: Laura H. Thielen, Chairperson  
Commission on Water Resource Management

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

Transmitted for your review and comment is a copy of a water use permit application (WUPA Nos. 846 847, 848, & 852) for Maui Department of Water Supply for Well Nos. 5230-03, 5330-11, 5131-01 & 5332-02. Public notice of this application will be published in the Maui News issues of October 23, 2008 and October 30, 2008.

We would appreciate your review of the proposed use that is described in the attached application (i line item 6 or Table 1). Specifically, we request that you inform us of the current state land use designation (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 only on 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 November 14, 2008, which is the legal deadline for objections. If we do not receive your comments by this date, we will assume you have no objections to this application.

If you have any questions, require additional information, or would like to request an extension of review period for this application, please contact Charley Ice at 587-0218.

CI:ss  
Attachment(s)

Response:

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

Contact person: ___________________________ Phone: ___________________________

Signed: ___________________________ Date: ___________________________
October 22, 2008

TO: Honorable Micah Kane, Director
Department of Hawaiian Home Lands
Honorable Chiyome L. Fukino, M.D., Director
Department of Health
Attn: Mr. Tomas See, Chief, Wastewater Branch
Attn: Stuart Yamada, Chief, Safe Drinking Water Branch
Mr. Clyde W. Namuo, Administrator
Office of Hawaiian Affairs
Honorable G. Riki Hokama, Chairperson
County Council
County of Maui
Mr. Jeffrey Hunt, Director
Planning Department
County of Maui

FROM: Laura H. Thielen, Chairperson
Commission on Water Resource Management

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

Transmitted for your review and comment is a copy of a water use permit application (WUPA Nos. 846, 847, 848, & 852) for Maui Department of Water Supply for Well Nos. 5230-03, 5330-11, 5131-01, & 5332-02. Public notice of this application will be published in the Maui News issues of October 23, 2008 and October 30, 2008.

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 November 14, 2008, which is the legal deadline for objections. If we do not receive your comments by this date, we will assume you have no objections to this application.

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 587-0218.

Cl:ss
Attachment(s)

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

Contact person: ___________________________ Phone: ___________________________
Signed: ___________________________ Date: ___________________________
October 22, 2008

Honorable Charmaine Tavares, Mayor
County of Maui
200 South High Street
Wailuku, HI 96793

Dear Mayor Tavares:

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

In accordance with the Department of Land and Natural Resources Administrative Rules, Section 13-171-17(a), we are sending you a copy of the public notice for the water use permit application (WUPA Nos. 846, 847, 848, & 852) for the Maui Department of Water Supply for Well Nos. 5230-03, 5330-11, 5131-01, & 5332-02 which will be published in the Maui News.

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 a copy of the application 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.

Sincerely,

Laura H. ThieLEN
Chairperson

CI:ss
Enclosures
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

October 22, 2008

TO: Other Interested Parties

FROM: Ken C. Kawahara, P.E., Deputy Director
Commission on Water Resource Management

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

In addition to serving you notice as required by 174C-52 (a), Hawaii Revised Statutes, we transmit for your review and comment a copy of a water use permit application (WUPA Nos. 846, 847, 848, & 852) for Maui Department of Water Supply for Well Nos. 5230-03, 5330-11, 5131-01, & 5332-02. Public notice of this application will be published in the Maui News issues October 23, 2008 and October 30, 2008.

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 November 14, 2008 deadline. If we do not receive your comments by this date, we will assume you have no objections to this application.

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 587-0218.

CI: ss
Attachment(s)

Response:

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

Contact person: ___________________________ Phone: ____________________

Signed: ___________________________ Date: ____________________
PUBLIC NOTICE

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

The following application for water use permit has been received by the Commission on Water Resource Management and is hereby made public in accordance with Section 13-171, Hawaii Administrative Rules, "Designation and Regulation of Water Management Areas."

WUPA Nos. 846, 847, 848 & 852 Iao Tank Site Well, Mokuau 3, Waikapu Tank Site Well and Iao Tunnel (Well Nos. 5230-03, 5330-11, 5131-01 & 5332-02, respectively)

Applicant: County of Maui
Department of Water Supply
200 South High Street
Wailuku, HI 96793

Landowner: Same

Date Application Filed as Complete: October 1, 2008
Hydrologic Unit: Aquifer Areas: Iao System, Wailuku Sector, Maui
Water Source: Iao Tank Site Well, Mokuau 3, Waikapu Tank Site Well and Iao Tunnel (Well Nos. 5230-03, 5330-11, 5131-01 & 5332-02) at Wailuku, Maui, Tax Map Key 3-5-1:21, 3-3-2:24, 3-5-4:99 & 3-3-3:03
Quantity Requested: 0.802, 0.589, 0.900 & 0.840 million gallons per day
Existing/New Use: New municipal service to Central Maui Service Area
Place of Water Use: Waihee to Makena at Tax Map Key: various

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 November 14, 2008. 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.

COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA, P.E., Deputy Director for
LAURA H. THIELEN, Chairperson

Dated: October 17, 2008

October 8, 2008  
Mr. Ken C. Kawahara, P.E., Deputy Director  
Commission On Water Resource Management  

Page 4

7. You have used the name “Waikapu Tank Site Well” on several occasions, referring to 5131-01, which was originally called “Waikapu Mauka”. We have also heard reference to a “Waikapu South”. Should we officially change the name of 5131-01?

The “Waikapu Tank Site Well” is the correct name for Well No. 5131-01 that was previously known as “Waikapu Mauka”. We will do a separate request for an official name change. “Waikapu South” is a proposed future site in the Waikapu aquifer, not related to the subject well.

We hope that with this additional information, our “new use” applications for Mokuhau 3, Well No. 5330-11; Waikapu Tank Site Well, Well No. 5131-01; and Iao Tank Site Well, Well No. 5230-02 will now be deemed complete. We are happy to assist should you or your staff have any additional questions, but we ask that any such requests be made formally, rather than informally by e-mail, and that our attorney, Deputy Corporation Counsel Jane Lovell, be copied on any such inquiries.

Sincerely,

[Signature]

[Signature]
Director

emb

c: Engineering Division  
   Jane Lovell, Deputy Corporation Counsel  
   Ed Kushi, Jr. Deputy Corporation Counsel
COMMISSION ON WATER RESOURCE MANAGEMENT

FROM: ROY

TO: CHENG, C.
CHING, F.
CHONG, R.
DANBARA, S.
ENGLAND, D.
FUJII, N.
HARDY, R.
HOAGBIN, S.
ICE, C.
IMATA, R.
KAWAHARA, K.
KIMURA, J.

INIT: TO: KUNIMURA, I.
LEROUX, E.
MILLS, D.
OHYE, L.
OHYE, M.
OSHIRO, K.
SAKODA, E.
SWANSON, S.
TORRES, R.
UYENO, D.
YODA, K.
YOSHINAGA, M.

DATE: OCT 3, 2008

SUSPENSE DATE:

FOR: Approval
Signature
Information

PLEASE:
See Me
Review & Comment
Take Action
Type Draft
Type Final
File
Xerox ___ copies

'=' Tano Tunnel

ORIG
September 30, 2008

Mr. Ken C. Kawahara, P.E., Deputy Director
Commission on Water Resource Management
State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Kawahara:

SUBJECT: APPLICATION FOR WATER USE PERMIT (WUPA 852)
NEW USE FROM IAO TUNNEL (WELL NO. 5332-02)

This is in response to your letter of May 29, 2008 notifying us that Water Use Permit application for Iao Tunnel new use submitted by the County of Maui's Department of Water Supply ("DWS") is incomplete. We address your concerns in the same order they were posed.

1. We note that the Mayor has signed as landowner of the source tunnel at TMK: 3-3-003:003, while show it is owned by Wailuku Water Company, LLC. Please clarify as this prevents the application from being accepted as complete as the landowner of the source must sign the application.

DWS is the owner of the original and arguably most productive portion of the Iao Tunnel, as well as the pipeline between the Iao Tunnel and the County water system. The original portion of the Iao Tunnel lies within lands formerly owned by the State of Hawaii and transferred to the County of Maui by Executive Order No. 751. Based on these facts, the County is entitled to apply and sign as a source landowner.

2. In reviewing the applications, it appears that the new requested amounts are in addition to approved amounts existing as of July 21, 2003. The application itself does not distinguish between them. Please identify the quantity of new uses that have arisen since July 21, 2003, and the shortfall of current sources in meeting the new demand. Please complete Table 2 of the new application form (enclosed; please disregard the term "Existing Use" for this purpose). We recommend for the future either that 1) Application Item 14 ("Remarks") identify this fact, or 2) the table should reflect both the existing and additive new use to

"By Water All Things Find Life"

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5964 (voice and TDI
reflect the correct pumpage total. If you wish to explain the request in contrast to total use in the Central Maui Service Area, please attach a separate statement clarifying this distinction between pre and post July 21, 2003 uses.

The requested identification of existing and new uses must be described in relation to the Central Maui System as a whole, because water from the lao Tunnel, along with water from DWS wells in the lao and Waihee aquifers and surface water, are mixed. Thus, water from the lao Tunnel can serve different areas within the system. As stated on Table 2 of the existing use and new use application forms, the number of services for the Central Maui system has increased from 17,391 at the time of designation to 20,827 as of December 31, 2007. The actual number of new services since designation, based on corrected billing data, is 3,054. Production demand for the Central Maui system has increased by 2.04 mgd from 23.309 mgd at the time of designation to 25.349 mgd. Consumption for the 3,054 meters that have been issued since designation was .635 mgd. The new use request of .841 mgd from the lao Tunnel would serve existing services, meters issued before designation that was not yet in active use, as well as new use anticipated in the near future. Please find below water use categories, quantity in gallons per day, and number of services per water use category for new uses with active consumption. The table also shows anticipated consumption from newly-issued meters that are not yet active.

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<th># Services</th>
<th>Average Consumption GPD</th>
<th>Inferred Use GPD</th>
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<td>1</td>
<td>6,600.00</td>
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<td></td>
<td><strong>635,265.00</strong></td>
<td><strong>624</strong></td>
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</table>

DWS billed 22.16 mgd consumption as of December 31, 2007 which leaves 3.18 mgd for uses that are not billed, such as water used for line flushing and firefighting. Potential system losses are
aggressively addressed through leak detection by on staff conservation specialist. The shortfall or current sources necessitates pumpage in excess of the Commission on Water Resources Management (CWRM) recommended 4 mgd limit from the Waihee aquifer. Please find attached the availability calculations for the Central Maui system as of March 31, 2008.

3. The column requesting gpd/unit is filled in using the term “services.” This does not provide a clear basis for evaluating units and “duties” (per unit use) to determine reasonable-beneficial use, nor distinguish between uses requiring drinking water and those that may use non-potable water. Please complete Table 2 of the “new” use application (enclosed).

Please refer to Table 1 “New Use Active Meters and Installed Meters with Inferred Use” to clarify per unit use. The table also shows the number of services and use by irrigation meters. At this time, DWS does not serve non-potable water on our Central Maui system. Some preliminary research of potential commercial projects where reclaimed water can off-set potable sources have been initiated in the Water Use and Development Plan (WUDP) process. DWS strongly encourages new developments to utilize non potable sources where available, such as, on site brackish wells. Commercial properties are required to use reclaimed water for non potable needs if located within 100 feet of a R-1 reclaimed water distribution line.

4. Please provide a discussion on consistency with land use designations. This may be an opportunity to describe how the County meets commitments to planned authorized use, and what administrative tools protect the public trust.

All of DWS’s WUPAs, whether for basal sources, high-level sources, or "new uses," are consistent with state and county land use designations, including the County’s General Plan and the Kahului-Wailuku Community Plan. CWRM has already determined that DWS’s basal aquifer sources are consistent with applicable plans, land use classifications, and land use policies. The same evidence supports the same finding with respect to the requested "new uses." Moreover, source development is consistent with land use planning and designations as demand projections prepared in the WUDP process are derived directly from the County Planning Department’s socio-economic forecast. Therefore, DWS strives to develop sources and infrastructure to meet demand for authorized planned projects if these projects are included in the Planning Department’s socio economic forecast. DWS tracks and estimates demand for pending and approved subdivisions, committed projects with all land use approvals, projects with community plan designations, and conceptual projects without land use approvals to determine short and long term availability. Projects subject to the County’s availability policy, codified in Title 14, Chapter 12 of the Maui County Code, must identify a long-term, reliable supply of water for subdivision approval. DWS’s implementation of Chapter 12 has resulted in denial of subdivision construction plans where a long-term reliable supply of water cannot be verified.

Chapter 12 specifically creates an administrative tool to protect public trust uses. The policy’s purpose is stated as follows: “The Council acknowledges and affirms that water is a natural and cultural resource that must be protected, preserved, and managed as a public trust, and hereby establishes a policy that requires verification of a long-term, reliable supply of water before subdivisions are approved.”

Another administrative tool to protect the public trust uses is the Iao Water Shortage Plan (Maui County Administrative Rule, Title 16). Its purpose is to prevent over pumping of the Iao aquifer.
Pumpage and chloride conditions define when mandatory restrictions must be implemented. Restrictions include a moratorium on meter issuance and installation.

5. Practicable alternatives must be addressed. As municipal supplies serve multiple uses, including both potable and non-potable, public trust and non-public trust, the application must show that the requested amounts cannot be met by practicable alternatives to potable public trust resources. Please use Table 3 of the “new” use application.

DWS notes that the various categories on CWRM’s Table 3 are not specified in the State Water Code. HRS § 174C-49 sets forth the criteria that applicants must meet. Nonetheless, DWS will address each category on Table 3 to the best of its ability. In doing so, DWS does not waive its legal objections to the imposition of these specific categories.

Municipal Sources

DWS has no real, practical alternatives to the requested new use. DWS has considered drilling new wells in the Northern portion of the Waihee aquifer and in the Kahakuloa aquifer, but CWRM has asked DWS to limit its withdrawals from the Waihee aquifer, and recent discussions with USGS have led DWS to conclude that new wells in these areas may not be as productive or cost-effective as previously hoped. USGS has advised DWS that the Waikapu aquifer may be a better place to seek new sources of supply, but the current sustainable yield of that aquifer is 2 mgd, and DWS faces competition from private landowners for the available water in the Waikapu aquifer.

Moreover, DWS is precluded from developing more wells in East Maui in the immediate future due to the entry on December 22, 2003 of a consent decree in The Coalition to Protect East Maui Water Resources et al. v. Board of Water Supply et al., Civil No. 03-1-0008(3). In that case, the Plaintiffs demanded that before looking to East Maui as a source of groundwater, DWS look first to surface water drawn from the Waikapu, Iao, and/or Waihee hydrologic units. Therefore, DWS has vigorously pursued surface water sources as required under the Consent Decree.

Wastewater reuse

Use of recycled water would require extensive capital cost and further quantification of end-uses and technical potential. Based on preliminary analyses in the WUDP process, a $50 million capital cost to extend the County’s reclaimed water distribution system to the Wailea area would only displace 3 mgd of potable water. Expansion of the recycled water system in South and Central Maui will need to be funded by developers, major land owners, and State and Federal agencies, in addition to DWS. Thus, increased use of reclaimed water is a long-term goal, rather than an alternative that is available at this time to meet current demand.

Ditch system

The County does not own or operate a ditch system. As CWRM knows, diverted surface water currently conveyed through irrigation ditches owned or operated by HC&S and Wailuku Water Company, is directly affected by CWRM’s designation of a surface water management area for Na Wai Eha. DWS has entered into discussions with Alexander & Baldwin concerning the potential for another surface water treatment plant. However, those discussions are still in a preliminary phase, and Alexander & Baldwin’s ability to supply surface water to DWS, conveyed through HC&S’s or
Wailuku Water Company's ditch system, may be limited, depending on the outcome of the pending petitions to amend interim instream flow standards for the Na Wai Eha streams, and the allocations of surface water due to designation.

Desalination

A plant for desalination of Central Maui brackish ground water would have extensive energy needs and could potentially require new power generation plants. Other issues include cost volatility, disposal of brine, and how to meet greenhouse gas emission reduction objectives. While DWS continues to investigate the potential for desalination, this strategy does not present a viable alternative to meet current demand.

Surface water

See discussion above under "Ditch system."

Other

CWRM's chart does not include conservation as a specific category, but DWS recognizes that conservation efforts can be a very cost effective way to stretch a limited water supply. In response to specific questions and comments from CWRM staff and others, DWS has previously presented to CWRM supply side and demand side information for all of the WUPAs under consideration in the ongoing contested case hearings.

DWS has also previously demonstrated its efforts at conservation, including a program that provides low-flow fixtures, free of charge, and public education programs. These efforts have been successful in reducing demand by about 500,000 gallons per day. CWRM was satisfied with these efforts with respect to DWS's basal sources. These conservation efforts relate equally to the proposed new uses.

Moreover, DWS has taken additional steps to improve water conservation. DWS aggressively pursued filling a vacant position on its staff for a Conservation Specialist. On July 2, 2007, DWS filled that position. The Conservation Specialist is responsible for, among other things, helping to plan and implement all aspects of conservation work, including office and field operations. Among other things, field operations include leak detection in water systems, commercial and industrial operations, residences, and irrigation systems; repair or arranging for repair of leaks and other problems identified; replacement of fixtures as appropriate; suggestions for plant materials as appropriate; analysis and presentation of findings; and public presentations. DWS's new hire meets with community groups and homeowners' associations to increase awareness of and compliance with good conservation practices. The work of the Conservation Specialist is in addition to the conservation work performed by a staff member of DWS's planning branch on a part-time basis.

DWS has additional on-going conservation efforts. DWS continues its practice of having booths at community events, including the upcoming annual Maui County Fair, at which conservation information is provided and low flow shower heads, lavatory aerators, and garden hose nozzles are distributed free of charge.
In addition, I encourage conservation during a radio program on which I appear, and during weekly interviews I give to the Maui News. I also make conservation a cornerstone of my presentations to civic and professional organizations, such as the American Institute of Architects. In addition to my public outreach efforts, Jacky Takakura, DWS’s Administrative officer, visits schools to educate Maui children on water conservation.

As you know, on August 23, 2007, I appeared before the County of Maui’s Board of Water Supply, and requested the Board to issue a drought declaration, which it did. Immediately thereafter, I called for a voluntary 10% reduction in water use from customers on the Central Maui System. Although Upcountry Maui customers are frequently required to conserve due to drought conditions, this was the first time that Central Maui System users were also asked to cut back. DWS set a goal of 25.5 mgd, and I warned the public that if voluntary efforts were not sufficient, mandatory restrictions on Central Maui System customers would be necessary. To date, the customers of the Central Maui system have been remarkably successful in achieving the voluntary cutback goal of 25.5 mgd, even in the dry summer months.

6. How are the Department of Hawaiian Home Lands requests for water from lao incorporated in these applications?

DWS’s Central Maui system serves homes built by the Department of Hawaiian Homelands (DHHL). DWS places a high priority on DHHL and issued water reservations post designation so that water could be secured for planned expansion of Hawaiian Home Lands projects. DHHL’s current use and anticipated demand for reserved water are included in DWS’s request for an additional .841 mgd from the lao Tunnel.

7. Please provide a discussion on meeting the public interest. The Code provides that maximum beneficial use must still make adequate provision for enumerated uses declared to be in the public interest. Please provide a statement of how your maximum beneficial use makes adequate provision for these protected uses. Please complete item #15 of the new water use forms (enclosed; please disregard the term “Existing Use” for this purpose).

CWRM concluded on February 15, 2006 and January 31, 2007 that DWS’s basal source withdrawals serve the public interest. DWS’s proposed “new uses” from lao Tunnel serve the public interest in precisely the same way.

Domestic and municipal uses are protected public trust uses. The declaration of policy found in HRS § 174C-2(c) recognizes a high priority for municipal uses. As shown in Table 1, “New Use Active Meters and Installed Meters with Inferred Use,” domestic uses, such as single-family and multi-family uses, account for approximately two-thirds of the Central Maui system services. DWS’s proposed “new uses” from lao Tunnel are “municipal uses,” and approximately two-thirds are for domestic uses.

We appreciate your patience as my colleagues and I have sought to provide the information requested in your May 29, 2008 letter in the format that your letter specified. We understand that the application forms are new, and note that they were not yet in use when we submitted our new use applications. In some instances, the information sought on the new form did not seem to be applicable to a municipal purveyor of water such as DWS. In other instances, the information sought did not appear to be required under Chapter 174C. We expect that the application process will
continue to be refined, and we are certainly willing to assist in that regard. In the meantime, we trust that with the additional information provided, our new use application for Iao Tunnel will now be deemed complete.

Should you have any questions, please contact me at 808-270-7816. I also ask that you please copy Deputy Corporation Counsel Jane Lovell with all correspondence relating to this new use application.

Sincerely,

JEFFREY K. ENG
Director

emb

enc: DWS Availability sheet dated 03/31/08

copy w/enc: DWS Engineering Division
                Jane E. Lovell, Deputy Corporation Counsel
                Edward S. Kushi, Jr., Deputy Corporation Counsel
## Central Maui - Availability Information

### Iao Aquifer Basin

<table>
<thead>
<tr>
<th>Location</th>
<th>GPM</th>
<th>Pumping</th>
<th>2/3</th>
<th>2/3 of 2/3</th>
<th>Last 12 Mos</th>
<th>MAV Use</th>
<th>MAV +21%</th>
</tr>
</thead>
<tbody>
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<td>Mokuahi 1</td>
<td>2,500</td>
<td>3,600,000</td>
<td>2,400,000</td>
<td>1,600,000</td>
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<td>951,400</td>
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<td>2,572,600</td>
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<td>657,622</td>
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<th>Median Flow</th>
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<th>MAV Use</th>
<th>MAV +21%</th>
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### Iao Treatment Plant

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### Wailea Aquifer

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<th>Last 12 Mos</th>
<th>MAV Use</th>
<th>MAV +21%</th>
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### TOTAL BEFORE REMOVING PUMP

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### LARGEST PUMP OUT OF SERVICE

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<th>2/3 of 2/3</th>
<th>Last 12 Mos</th>
<th>MAV Use</th>
<th>MAV +21%</th>
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<td>3,022,261,000</td>
<td>5,540,441</td>
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<td>6,703,934</td>
<td>6,703,934</td>
<td>6,703,934</td>
</tr>
</tbody>
</table>

### DEMAND ADJUSTMENTS

- **Reserved Other Than DHHL**
  - 38,180
  - -8,308,873
- **DHHL Outstanding**
  - -12,000
  - -8,320,873
- **Near Term - Not Reserved**
  - -1,088,026
  - -9,408,899
- **Recently Issued Meters**
  - -2,013,545
  - -11,422,444
  - -18,130,021
Thanks -- I'll wait for Eva's response. Meanwhile, I note that the term "standard" is being applied in some totally different ways here. For the WUPA, we're referring to the standard of use that is reasonable and beneficial, and increasingly tailored to location; there is also the planning standard for projected use, generalized across the island as an average, which may currently be the same -- but I'm suggesting may be worth revisiting some day, given where we are headed. Completely different is the system standard for constructing your tanks, pipelines, sizing your pumps, etc. Let's not confuse them. We approve a pump size based on its performance in pump tests -- whether the aquifer can handle -- an entirely different proposition than whatever considerations you may have for peak day flow, fire flow, etc. Presumably, you design the system parts around what the pump is allowed to produce on a steady basis.

There was a comment in the DWS letter about questions or parts of the application that were not specified in the Code. They were highlighted by the Supreme Court as assumed considerations for CWRM, which is why we've called for assistance in addressing them. Putting them on the application conforms to "other requirements that the Commission may require from time to time" (174C-51 (8)).

As for the name of Well 5131-01, Please either use the number in all correspondence or make a very simple written request for a name change to "Waikapu Tank Site Well". As I understand it, there is no location or site for something called "Waikapu South". Until we receive some application for it, any reference to it should be couched as a future, unsited well.

"Ellen Kraftsow" <Ellen.Kraftsow@co.mau.hi.us>

hi charley -

you must have heard my mind -
just sent a response to your first e-mail
saying that it should go to eva/jane....
<table>
<thead>
<tr>
<th>FROM: ROY</th>
<th>DATE:</th>
<th>SUSPENSE DATE:</th>
<th>PLEASE:</th>
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<td>INIT.</td>
<td>TO:</td>
<td>FOR:</td>
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<td>KUNIMURA, I.</td>
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<td>LEROUX, E.</td>
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<td>KIMURA, J.</td>
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<td>YOSHINAGA, M.</td>
<td></td>
</tr>
</tbody>
</table>

Ready to accept? Yes, up questions: ag use, DHTL reservation to do: R-B

COP
hi charley -

this is unofficial response -
don't think i wrote that letter -
think it was eva, with possible edits from jane -
but thanks anyway......will forward this to eva and jane too, ok ?
they can add to or correct the preliminary responses below.

re: per-acre
we're still not quite there by acre.
we service parcel to tmk - mostly now -
but where diff uses on same property, or several uses on huge tmks,
or mixed uses or only portions of properties used etc.
we just don't really have it that way.

re: standard - interesting question.
my thinking is we'll try to get a bit further with our conservation before we
do that / count on that.

re: is this for additional water ?
yes - assuming that i understand which letter you're referring to properly -
this is for a new use request.
we had already done a request and had a re-distribution approved.
so yes, this is for additional water.

re: asking for water for wells not in service -
part of program resulting from both cwrn and usgs advice
to distribute withdrawals and optimize use of aquifer.

re: iao
limbo is a place we're getting too accustomed to.

- ellen

>>> <Charley.F.Ice@hawaii.gov> 10/1/2008 3:48 PM >>>
We received your response to our May 29 letter, and it looks pretty good
-- thanks!
Your table 1 lists the amounts for each class (is that your term?) of use,
including 16,048.5 mgd for 1 ag service. We measure in acres -- how many
acres are being (reasonably) served? Similarly, amounts used for
landscaping may not be tracked, but are the operative measure we use; in
lieu of that we'll use the weaker standard of 6000 gad (are you aware that
Maui is way higher than any other county? -- any thought of changing that
to reflect your conservation-minded outlook?).
To confirm: your requests on the applications are for new use, so the
amount you're asking from Mokuauhau 3 (for example) is an additional 0.589,
not a redistribution, as I thought earlier. Right?
Also, you're asking for additional amounts for two wells that are not in
service (no pumps, even) in the amount of 1.702 mgd, for a total of 2.6
mgd idle capacity?
We may continue in this vein until we uncover all the questions we may have -- if this is awkward, we'll figure a better way...

By the way, I think "emb" may be Eva, so perhaps she is the one to field these questions.

"You" supplied a table with both faxed responses (Mokuhau/IaoTank/WaikapuMauka and Iao Tunnel) without a title and unidentified column heads, and I don't know what to make of it -- maybe I don't need to. There's "2/3" and "2/3 of 2/3" and MAV use (which MAV would that be?). The "remaining capacity by system standards" lists negative numbers -- what does that mean? The table is not identified in the letter, unless I just missed it. Should we disregard some of this, and pay attention to certain things you'd like to point out?

Your page 6, par 1 says that DWS has previously presented to CWRM supply side and demand side information "for all the WUPAs under consideration in the on-going contested case hearings". Sorry to say this, but an ongoing hearing record is not yet public info, nor is the information shared with the rest of staff. It's an extremely voluminous record, with all sorts of unrelated materials, so the parts you have in mind are something akin to the proverbial needle in a haystack. Perhaps there is an Exhibit number or table within an exhibit (etc.) we can dig to find? With any bad luck, there are multiple versions of the information you note, and we certainly wouldn't want to pick the wrong one out of the "hat".

Page 7, par 3 (#5) notes that DHHL needs are covered by your request, and you have done an independent "reservation" for them from your supplies. Please share the specifics, as we are also accountable, and we have standing requests from DHHL that may be duplicated by your request.

Page 7, last par. makes reference to domestic and municipal uses as public trust uses and a Water Code policy high priority for municipal uses. Without wanting to put too fine a point on it, we believe it is very important to distinguish between four "public trust uses" identified by the Sup. Ct. (including "individual domestic") and the public interest declaration of Water Code Sec. 174C-2, identifying municipal uses. Municipal uses, by your own breakdown, go far beyond individual domestic use. We believe that, by extension, domestic uses of a municipal system ought to be ranked highly, even as "public trust", but are mindful that the original meaning of that term arose in a different era, when "individual domestic" use was tiny compared to today's potentially extravagant use for washing clothes & cars, watering lawns, etc. The time may come when the entitlement to water for individuals is more conservationally determined -- another reason for asking whether high "standard" use estimates on Maui might be revised downward at some point. It's just a rhetorical question for now, but we ask it in-house already. The competition for water, unpleasant as it may be, may drive higher scrutiny on how municipal purveyors qualify for public trust resources, and whether your own forward-looking efforts at conservation wouldn't lead to an example for others to follow and for sharpened legal guidelines.

Finally (for this note), you have used the name "Waikapu Tank Site Well" on several occasions, referring to 5131-01, which was originally called "Waikapu Mauka". We have also heard reference to a "Waikapu South". Should we officially change the name of 5131-01?
facsimile
TRANSMITTAL

PLEASE DELIVER ASAP TO:

Name: Ken C. Kawahara, CWRM Deputy Director
ATTN: Charley Ice
Fax: (808) 587-0219
Phone: (808) 587-0218
From: Jeffrey K. Eng, Director
County of Maui/Water Supply
Date: October 1, 2008
Subject: DWS Responses to CWRM May 29, 2008 re 1) Clarifications of DWS
"New Use" WUPAs for Mokuha 3 Well, Waikapu Tank Site Well and
Iao Tank Site Well; 2) Iao Tunnel
Pages: 18(includes cover sheet)

Aloha, Charley . . . originals will be mailed out today, Wednesday, October 1, 2008.

Mahalo!
September 30, 2008

Mr. Ken C. Kawahara, P.E., Deputy Director
Commission on Water Resource Management
State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Kawahara:

SUBJECT: WATER USE PERMIT APPLICATIONS FOR MOKUHAU 3, WELL NO. 5330-11 (WUPA 847); WAIKAPU TANK SITE WELL, WELL NO. 5131-01 (WUPA 848); AND IAO TANK SITE WELL, WELL NO. 5230-02 (WUPA 846)

This is in response to your letter of May 29, 2008 requesting clarifications of our "new use" water use permit applications for the above-captioned wells located within the Iao aquifer. We address your concerns in the same order they were posed.

1. In reviewing the applications, it appears that the new requested amounts are in addition to approved amounts existing as of July 21, 2003. The application itself does not distinguish between them. Please identify the quantity of new uses that have arisen since July 21, 2003, and the shortfall of current sources in meeting the new demand. Please complete Table 2 of the new application form (enclosed; please disregard the term "Existing Use" for this purpose). We recommend for the future either that 1) Application Item 14 ("Remarks") identify this fact, or 2) the table should reflect both the existing and additive new use to reflect the correct pumpage total. If you wish to explain the request in contrast to total use in the Central Maui Service Area, please attach a separate statement clarifying this distinction between pre and post July 21, 2003 uses.

"By Water, All Things Find Life."

The requested identification of existing and new uses must be described in relation to the Central Maui System as a whole, rather than limited to existing and new uses within the lao aquifer, because water from the lao Tunnel, DWS's wells in the lao and Waihee aquifers, and surface water are mixed. Thus, water from Mokuhau 3, the Waikapu Tank Site Well, and the lao Tank Site Well can serve different areas within the Central Maui system. As stated on Table 2 of the existing use and new use application forms, the number of service connections for the Central Maui system increased from 17,391 at the time of designation to 20,827 as of December 31, 2007. The actual number of new service connections since designation, based on corrected billing data, is 3,054. Production demand for the Central Maui system has increased by 2.04 mgd from 23.309 mgd at the time of designation to 25.349 mgd. Consumption for the 3,054 meters that have been issued since designation was 1.75% of 20,827 mgd. Estimated use for issued meters that do not yet serve uses are 3,054 mgd. The new use request of 2.291 mgd from Mokuhau Well, and the lao Tank Site Well before designation that are not yet in active use, and new future. Please find below water use categories, quantities of services per water use category for new uses within the Central Maui system.

Table 1. New Use Active Meters and Installed Meters with Inferred Use

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<thead>
<tr>
<th>Use Category</th>
<th>Total Consumption GPD</th>
<th># Services</th>
<th>Average Consumption GPD</th>
<th>Inferred Use GPD</th>
<th># Services</th>
<th>Average Inferred Use GPD</th>
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<td>1,998.06</td>
<td>70,726.00</td>
<td>12</td>
<td>5,893.83</td>
</tr>
</tbody>
</table>

Table 2. New Use Active Meters and Installed Meters with Inferred Use

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<th>Average Consumption GPD</th>
<th>Inferred Use GPD</th>
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<td>67</td>
<td>1,998.06</td>
<td>70,726.00</td>
<td>12</td>
<td>5,893.83</td>
</tr>
</tbody>
</table>
DWS billed 22.16 mgd consumption as of December 31, 2007, which leaves 3.18 mgd for uses that are not billed, such as water used for line flushing and firefighting. Potential system losses are aggressively addressed through leak detection by DWS’s staff conservation specialist. Please find attached the availability calculations for the Central Maui system as of March 31, 2008.

2. The column requesting gpd/unit is filled in using the term “services”. This does not provide a clear basis for evaluating units and “duties” (per unit use) to determine reasonable-beneficial use, nor distinguish between uses requiring drinking water and those that may use non-potable water. Please complete Table 2 of the “new” use application (enclosed).

Please refer to Table 1 “New Use Active Meters and Installed Meters with Inferred Use” to clarify per unit use. The table also shows the number of services and use by irrigation meters. At this time, DWS does not serve non-potable water on our Central Maui system. Some preliminary research of potential commercial projects where reclaimed water can off-set potable sources have been initiated in the Water Use and Development Plan (WUDP) process. DWS strongly encourages new developments to utilize non potable sources where available, such as on site brackish wells. Commercial properties are required to use reclaimed water for non-potable needs if located within 100 feet of a R-1 reclaimed water distribution line.

3. Please provide a discussion on consistency with land use designations. This may be an opportunity to describe how the County meets commitments to planned authorized use, and what administrative tools protect the public trust.

All of DWS’s WUPAs, whether for basal sources, high-level sources, or "new uses," are consistent with state and county land use designations, including the County’s General Plan and the Kahului-Wailuku Community Plan. CWRM has already determined that DWS’s basal aquifer sources are consistent with applicable plans, land use classifications, and land use policies. The same evidence supports the same finding with respect to the requested "new uses."

Moreover, source development is consistent with land use planning and designations as demand projections prepared in the WUDP process are derived directly from the County Planning Department’s socio-economic forecast. Therefore, DWS strives to develop sources and infrastructure to meet demand for authorized planned projects if these projects are included in the Planning Department’s socio economic forecast. DWS tracks and estimates demand for pending and approved subdivisions, committed projects with all land use approvals, projects with community plan designations, and conceptual projects without land use approvals to determine short and long term
availability. Projects subject to the County's availability policy, codified in Title 14, Chapter 12 of the Maui County Code, must identify a long-term, reliable supply of water for subdivision approval. DWS implementation of Chapter 12 has resulted in denial of subdivision construction plans where a long-term reliable supply of water cannot be verified.

Chapter 12 specifically creates an administrative tool to protect public trust uses. The policy's purpose is stated as follows: "The Council acknowledges and affirms that water is a natural and cultural resource that must be protected, preserved, and managed as a public trust, and hereby establishes a policy that requires verification of a long-term, reliable supply of water before subdivisions are approved."

Another administrative tool to protect the public trust uses is the Iao Water Shortage Plan (Maui County Administrative Rule, Title 16). Its purpose is to prevent over pumping of the Iao aquifer. Pumpage and chloride conditions define when mandatory restrictions must be implemented. Restrictions include a moratorium on meter issuance and installation.

4. Practicable alternatives must be addressed. As municipal supplies serve multiple uses, including both potable and non-potable, public trust and non-public trust, the application must show that the requested amounts cannot be met by practicable alternatives to potable public trust resources. Please use Table 3 of the "new" use application.

DWS notes that the various categories on CWRM's Table 3 are not specified in the State Water Code. HRS § 174C-49 sets forth the criteria that applicants must meet. Nonetheless, DWS will address each category on Table 3 to the best of its ability. In doing so, DWS does not waive its legal objections to the imposition of these specific categories.

Municipal Sources

DWS has no real, practical alternatives to the requested new uses. I considered drilling new wells in the Northern portion of the Waihee aquifer or Kahakuloa aquifer, but CWRM has asked DWS to limit its withdrawals from the aquifer, and recent discussions with USGS have led DWS to conclude that these areas may not be as productive or cost-effective as previously hoped. I advised DWS that the Waikapu aquifer may be a better place to seek new sources of supply, but the current sustainable yield of that aquifer is 2 mgd, and DWS faces competition from private landowners for the available water in the Waikapu aquifer.
Moreover, DWS is precluded from developing more wells in East Maui in the immediate future due to the entry on December 22, 2003 of a consent decree in The Coalition to Protect East Maui Water Resources et al. v. Board of Water Supply et al., Civil No. 03-1-0008(3). In that case, the Plaintiffs demanded that before looking to East Maui as a source of groundwater, DWS look first to surface water drawn from the Waipaku, Iao, and/or Waihee hydrologic units. Therefore, DWS has vigorously pursued surface water sources as required under the Consent Decree.

**Wastewater reuse**

Use of recycled water would require extensive capital cost and further quantification of end-uses and technical potential. Based on preliminary analyses in the WUDP process, a $50 million capital cost to extend the County’s reclaimed water distribution system to the Wailea area would only displace 3 mgd of potable water. Expansion of the recycled water system in South and Central Maui will need to be funded by developers, major land owners, and State and Federal agencies, in addition to DWS. Thus, increased use of reclaimed water is a long-term goal, rather than an alternative that is available at this time to meet current demand.

**Ditch system**

The County does not own or operate a ditch system. As CWRM knows, diverted surface water currently conveyed through irrigation ditches owned or operated by HC&S and Wailuku Water Company, is directly affected by CWRM’s designation of a surface water management area for Na Wai Eha. DWS has entered into discussions with Alexander & Baldwin concerning the potential for another surface water treatment plant. However, those discussions are still in a preliminary phase, and Alexander & Baldwin’s ability to supply surface water to DWS, conveyed through HC&S’s or Wailuku Water Company’s ditch system, may be limited, depending on the outcome of the pending petitions to amend interim instream flow standards for the Na Wai Eha streams, and the allocations of surface water due to designation.

**Desalination**

A plant for desalination of Central Maui brackish ground water would have extensive energy needs and could potentially require new power generation plants. Other issues include cost volatility, disposal of brine, and how to meet greenhouse gas emission reduction objectives. While DWS continues to investigate the potential for desalination, this strategy does not present a viable alternative to meet current demand.
Mr. Ken C. Kawahara  
Page 6  
September 30, 2008

Surface water

See discussion above under "Ditch system."

Other

CWRM's chart does not include conservation as a specific category, but DWS recognizes that conservation efforts can be a very cost effective way to stretch a limited water supply. In response to specific questions and comments from CWRM staff and others, DWS has previously presented to CWRM supply side and demand side information for all of the WUPAs under consideration in the on-going contested case hearings.

DWS has also previously demonstrated its efforts at conservation, including a program that provides low-flow fixtures, free of charge, and public education programs. These efforts have been successful in reducing demand by about 500,000 gallons per day. CWRM was satisfied with these efforts with respect to DWS's basal sources. These conservation efforts relate equally to the proposed new uses.

Moreover, DWS has taken additional steps to improve water conservation. DWS aggressively pursued filling a vacant position on its staff for a Conservation Specialist. On July 2, 2007, DWS filled that position. The Conservation Specialist is responsible for, among other things, helping to plan and implement all aspects of conservation work, including office and field operations. Among other things, field operations include leak detection in water systems, commercial and industrial operations, residences, and irrigation systems; repair or arranging for repair of leaks and other problems identified; replacement of fixtures as appropriate; suggestions for plant materials as appropriate; analysis and presentation of findings; and public presentations. DWS's new hire meets with community groups and homeowners' associations to increase awareness of and compliance with good conservation practices. The work of the Conservation Specialist is in addition to the conservation work performed by a staff member of DWS's planning branch on a part-time basis.

DWS has additional on-going conservation efforts. DWS continues its practice of having booths at community events, including the upcoming annual Maui County Fair, at which conservation information is provided and low flow shower heads, lavatory aerators, and garden hose nozzles are distributed free of charge.

In addition, I encourage conservation during a radio program on which I appear, and during weekly interviews I give to the Maui News. I also make conservation a cornerstone of my presentations to civic and professional organizations, such as the
American Institute of Architects. In addition to my public outreach efforts, Jacky Takakura, DWS Administrative Officer, visits schools to educate Maui children on water conservation.

As you know, on August 23, 2007, I appeared before the County of Maui's Board of Water Supply, and requested the Board to issue a drought declaration, which it did. Immediately thereafter, I called for a voluntary 10% reduction in water use from customers on the Central Maui System. Although Upcountry Maui customers are frequently required to conserve due to drought conditions, this was the first time that Central Maui System users were also asked to cut back. DWS set a goal of 25.5 mgd, and I warned the public that if voluntary efforts were not sufficient, mandatory restrictions on Central Maui System customers would be necessary. To date, the customers of the Central Maui system have been remarkably successful in achieving the voluntary cutback goal of 25.5 mgd, even in the dry summer months.

5. How are the Department of Hawaiian Home Lands requests for water from lao incorporated in these applications?

DWS's Central Maui system serves homes built by the Department of Hawaiian Homelands (DHHL). DWS places a high priority on DHHL and issued water reservations post designation so that water could be secured for planned expansion of Hawaiian Home Lands projects. DHHL's current use and anticipated demand for reserved water are included in DWS's request for an additional 2.291 mgd from Mokuhau 3, the Waikapu Tank Site Well, and the lao Tank Site Well.

6. Please provide a discussion on meeting the public interest. The Code provides that maximum beneficial use must still make adequate provision for enumerated uses declared to be in the public interest. Please provide a statement of how your maximum beneficial use makes adequate provision for these protected uses. Please complete item #15 of the new water use forms (enclosed; please disregard the term "Existing Use" for this purpose).

CWRM concluded on February 15, 2006 and January 31, 2007 that DWS's basal source withdrawals serve the public interest. DWS's proposed "new uses" from Mokuhau 3, the Waikapu Tank Site Well, and the lao Tank Site Well serve the public interest in precisely the same way.

Domestic and municipal uses are protected public trust uses. The declaration of policy found in HRS § 174C-2(c) recognizes a high priority for municipal uses. As shown in Table 1, "New Use Active Meters and Installed Meters with Inferred Use," domestic uses, such as single-family and multi-family uses, account for approximately two-thirds...
of the Central Maui system services. DWS's proposed "new uses" from Mokuhaup 3, the Waikapu Tank Site Well, and the Iao Tank Site Well are "municipal uses," and approximately two-thirds are for domestic uses.

We appreciate your patience as my colleagues and I have sought to provide the information requested in your May 29, 2008 letter in the format that your letter specified. We understand that the application forms are new, and note that they were not yet in use when we submitted our new use applications. In some instances, the information sought on the new form did not seem to be applicable to a municipal purveyor of water such as DWS. In other instances, the information sought did not appear to be required under Chapter 174C. We expect that the application process will continue to be refined, and we are certainly willing to assist in that regard. In the meantime, we trust that with the additional information provided, our March 5, 2008 new use application for Mokuhaup 3, Well No. 5330-11; Waikapu Tank Site Well, Well No. 5131-01; and Iao Tank Site Well, Well No. 5230-02 will now be deemed complete.

Should you have any questions, please contact me at 808-270-7816. I also ask that you please copy Deputy Corporation Counsel Jane Lovell with all correspondence relating to this new use application.

Sincerely,

JEFFREY K. ENG
Director

Enclosure: DWS Availability sheet dated 03/31/08

copy w/enc: DWS Engineering Division
Jane E. Lovell, Deputy Corporation Counsel
Edward S. Kushi, Jr., Deputy Corporation Counsel
DEPARTMENT OF WATER SUPPLY  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793-2155  
www.mauwata.org

September 30, 2008

Mr. Ken C. Kawahara, P.E., Deputy Director  
Commission on Water Resource Management  
State of Hawaii  
Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear Mr. Kawahara:

SUBJECT: APPLICATION FOR WATER USE PERMIT (WUPA 852)  
NEW USE FROM IAO TUNNEL (WELL NO. 5332-02)

This is in response to your letter of May 29, 2008 notifying us that Water Use Permit application for Iao Tunnel new use submitted by the County of Maui’s Department of Water Supply (“DWS”) is incomplete. We address your concerns in the same order they were posed.

1. We note that the Mayor has signed as landowner of the source tunnel at TMK: 3-3-003:003, while show it is owned by Wailuku Water Company, LLC. Please clarify as this prevents the application from being accepted as complete as the landowner of the source must sign the application.

DWS is the owner of the original and arguably most productive portion of the Iao Tunnel, as well as the pipeline between the Iao Tunnel and the County water system. The original portion of the Iao Tunnel lies within lands formerly owned by the State of Hawaii and transferred to the County of Maui by Executive Order No. 751. Based on these facts, the County is entitled to apply and sign as a source landowner.

2. In reviewing the applications, it appears that the new requested amounts are in addition to approved amounts existing as of July 21, 2003. The application itself does not distinguish between them. Please identify the quantity of new uses that have arisen since July 21, 2003, and the shortfall of current sources in meeting the new demand. Please complete Table 2 of the new application form (enclosed; please disregard the term “Existing Use” for this purpose). We recommend for the future either that 1) Application Item 14 (“Remarks”) identify this fact, or 2) the table should reflect both the existing and additive new use to

"By Water, All Things Find Life"

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USGSA, Director, Office of Civil Rights, Room 328-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-3041. Or call (202) 720-5954 (voice and TDD).
reflected the correct pumpage total. If you wish to explain the request in contrast to total use in the Central Maui Service Area, please attach a separate statement clarifying this distinction between pre and post July 21, 2003 uses.

The requested identification of existing and new uses must be described in relation to the Central Maui System as a whole, because water from the lao Tunnel, along with water from DWS wells in the lao and Waihe'e aquifers and surface water, are mixed. Thus, water from the lao Tunnel can serve different areas within the system. As stated on Table 2 of the existing use and new use application forms, the number of services for the Central Maui system has increased from 17,391 at the time of designation to 20,827 as of December 31, 2007. The actual number of new services since designation, based on corrected billing data, is 3,054. Production demand for the Central Maui system has increased mgd from 23.309 mgd at the time of designation to 26.349 mgd. Consumption for the 3,054 meters that have been issued since designation was 1,759 mgd as of December 31, 2007. Estimated use for issued meters that do not yet show consumption was 635 mgd. The new use request of 841 mgd from the lao Tunnel would serve existing services, meters issued before designation that was not yet in active use, as well as new use anticipated in the near future. Please find below water use categories, quantity in gallons per day, and number of services per water use category for new uses with active consumption. The table also shows anticipated consumption from newly-issued meters that are not yet active.

<table>
<thead>
<tr>
<th>Use Category</th>
<th>Total Use GPD</th>
<th># Services</th>
<th>Average Use GPD</th>
<th>Inferred Use GPD</th>
<th># Services</th>
<th>Average Inferred Use GPD</th>
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<tr>
<td>AG</td>
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<td>COMMERCIAL</td>
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DWS billed 22.16 mgd consumption as of December 31, 2007 which leaves 3.18 mgd for uses that are not billed, such as water used for line flushing and firefighting. Potential system losses are...
Mr. Ken C. Kawahara  
Page 3  
September 30, 2008

aggressively addressed through leak detection by on staff conservation specialist. The shortfall or current sources necessitates pumping in excess of the Commission on Water Resources Management (CWRM) recommended 4 mgd limit from the Waihee aquifer. Please find attached the availability calculations for the Central Maui system as of March 31, 2008.

3. The column requesting gpd/unit is filled in using the term “services.” This does not provide a clear basis for evaluating units and “duties” (per unit use) to determine reasonable beneficial use, nor distinguish between uses requiring drinking water and those that may use non-potable water. Please complete Table 2 of the “new” use application (enclosed).

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Mr. Ken C. Kawahara  
Page 5  
September 30, 2008

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7. Please provide a discussion on meeting the public interest. The Code provides that maximum beneficial use must still make adequate provision for enumerated uses declared to be in the public interest. Please provide a statement of how your maximum beneficial use makes adequate provision for these protected uses. Please complete item #15 of the new water use forms (enclosed; please disregard the term "Existing Use" for this purpose).

CWRM concluded on February 15, 2006 and January 31, 2007 that DWS's basal source withdrawals serve the public interest. DWS's proposed "new uses" from Iao Tunnel serve the public interest in precisely the same way.

Domestic and municipal uses are protected public trust uses. The declaration of policy found in HRS § 174C-2(c) recognizes a high priority for municipal uses. As shown in Table 1, "New Use Active Meters and Installed Meters with Inferred Use," domestic uses, such as single-family and multi-family uses, account for approximately two-thirds of the Central Maui system services. DWS's proposed "new uses" from Iao Tunnel are "municipal uses," and approximately two-thirds are for domestic uses.

We appreciate your patience as my colleagues and I have sought to provide the information requested in your May 29, 2008 letter in the format that your letter specified. We understand that the application forms are new, and note that they were not yet in use when we submitted our new use applications. In some instances, the information sought on the new form did not seem to be applicable to a municipal purveyor of water such as DWS. In other instances, the information sought did not appear to be required under Chapter 174C. We expect that the application process will
continue to be refined, and we are certainly willing to assist in that regard. In the meantime, we trust that with the additional information provided, our new use application for Iao Tunnel will now be deemed complete.

Should you have any questions, please contact me at 808-270-7816. I also ask that you please copy Deputy Corporation Counsel Jane Lovell with all correspondence relating to this new use application.

Sincerely,

JEFFREY K. ENG
Director

emb

enc: DWS Availability sheet dated 03/31/08

copy w/enc: DWS Engineering Division
Jane E. Lovell, Deputy Corporation Counsel
Edward S. Kushi, Jr., Deputy Corporation Counsel
September 30, 2008

Mr. Ken C. Kawahara, P.E., Deputy Director
Commission on Water Resource Management
State of Hawaii
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Kawahara:

SUBJECT: WATER USE PERMIT APPLICATIONS FOR MOKUHAU 3, WELL NO. 5330-11 (WUPA 847); WAIAKAPU TANK SITE WELL, WELL NO. 5131-01 (WUPA 848); AND IAIO TANK SITE WELL, WELL NO. 5230-02 (WUPA 846)

This is in response to your letter of May 29, 2008 requesting clarifications of our "new use" water use permit applications for the above-captioned wells located within the Iao aquifer. We address your concerns in the same order they were posed.

1. In reviewing the applications, it appears that the new requested amounts are in addition to approved amounts existing as of July 21, 2003. The application itself does not distinguish between them. Please identify the quantity of new uses that have arisen since July 21, 2003, and the shortfall of current sources in meeting the new demand. Please complete Table 2 of the new application form (enclosed; please disregard the term "Existing Use" for this purpose). We recommend for the future either that 1) Application item 14 ("Remarks") identify this fact, or 2) the table should reflect both the existing and additive new use to reflect the correct pumpage total. If you wish to explain the request in contrast to total use in the Central Maui Service Area, please attach a separate statement clarifying this distinction between pre and post July 21, 2003 uses.

"By Water All Things Find Life"
The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenues, SW, Washington DC 20250-9410. Or call (202) 720-9364 (voice and TDD)
The requested identification of existing and new uses must be described in relation to the Central Maui System as a whole, rather than limited to existing and new uses within the lao aquifer, because water from the lao Tunnel, from DWS's wells in the lao and Waihee aquifers, and surface water are mixed. Thus, water from Mokuhau 3, the Waikapu Tank Site Well, and the lao Tank Site Well can serve different areas within the Central Maui system. As stated on Table 2 of the existing use and new use application forms, the number of service connections for the Central Maui system increased from 17,391 at the time of designation to 20,827 as of December 31, 2007. The actual number of new service connections since designation, based on corrected billing data, is 3,435. Production demand for the Central Maui system has increased by 2.049 mgd from 23.309 mgd at the time of designation to 25.349 mgd. Consumption for the 3,054 meters that have been issued since designation was 1.759 mgd as of December 31, 2007. Estimated use for issued meters that do not yet show consumption was 3.635 mgd. The new use request of 2.291 mgd from Mokuhau 3, the Waikapu Tank Site Well, and the lao Tank Site Well will serve existing service connections, meters issued before designation that are not yet in active use, and new use anticipated in the near future. Please find below water use categories, quantity in gallons per day, and number of services per water use category for new uses with active consumption. The table also shows anticipated consumption from newly-issued meters that are not yet active.

Table 1. New Use Active Meters and Installed Meters with Inferred Use

<table>
<thead>
<tr>
<th>Use Category</th>
<th>Total Consumption GPD</th>
<th># Services</th>
<th>Average Consumption GPD</th>
<th>Inferred Use GPD</th>
<th># Services</th>
<th>Average Inferred Use GPD</th>
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<tr>
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<tr>
<td>COMMERCIAL</td>
<td>133,735.74</td>
<td>67</td>
<td>1,996.06</td>
<td>70,726.00</td>
<td>12</td>
<td>5,893.83</td>
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</thead>
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<td>1,080.66</td>
<td>47,708.00</td>
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<td>47,708.00</td>
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<td>3,990.19</td>
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<td>13,532.67</td>
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<td>RELIGIOUS</td>
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<td>3,602.95</td>
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<td>SCHOOLS</td>
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<td>1,350.82</td>
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<tr>
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<td>472.22</td>
<td>410,930.00</td>
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<td>690.63</td>
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<tr>
<td>STATE FACILITY</td>
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<td>6,439.56</td>
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<td>3,384.10</td>
<td>26,000.00</td>
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<td>13,000.00</td>
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<td>480.96</td>
<td>6,500.00</td>
<td>1</td>
<td>6,500.00</td>
</tr>
<tr>
<td>TOTAL</td>
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<td>2,430</td>
<td>635,288.00</td>
<td>624</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
DWS billed 22.16 mgd consumption as of December 31, 2007, which leaves 3.18 mgd for uses that are not billed, such as water used for line flushing and firefighting. Potential system losses are aggressively addressed through leak detection by DWS's staff conservation specialist. Please find attached the availability calculations for the Central Maui system as of March 31, 2008.

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5. How are the Department of Hawaiian Home Lands requests for water from lao incorporated in these applications?

DWS’s Central Maui system serves homes built by the Department of Hawaiian Homelands (DHHL). DWS places a high priority on DHHL and issued water reservations post designation so that water could be secured for planned expansion of Hawaiian Home Lands projects. DHHL’s current use and anticipated demand for reserved water are included in DWS’s request for an additional 2.291 mgd from Mokuhau 3, the Waikapu Tank Site Well, and the lao Tank Site Well.

6. Please provide a discussion on meeting the public interest. The Code provides that maximum beneficial use must still make adequate provision for enumerated uses declared to be in the public interest. Please provide a statement of how your maximum beneficial use makes adequate provision for these protected uses. Please complete item #15 of the new water use forms (enclosed; please disregard the term “Existing Use” for this purpose).

CWRM concluded on February 15, 2006 and January 31, 2007 that DWS’s basal source withdrawals serve the public interest. DWS’s proposed “new uses” from Mokuhau 3, the Waikapu Tank Site Well, and the lao Tank Site Well serve the public interest in precisely the same way.

Domestic and municipal uses are protected public trust uses. The declaration of policy found in HRS § 174C-2(c) recognizes a high priority for municipal uses. As shown in Table 1, “New Use Active Meters and Installed Meters with Inferred Use,” domestic uses, such as single-family and multi-family uses, account for approximately two-thirds
of the Central Maui system services. DWS's proposed "new uses" from Mokuhau 3, the Waikapu Tank Site Well, and the Iao Tank Site Well are "municipal uses," and approximately two-thirds are for domestic uses.

We appreciate your patience as my colleagues and I have sought to provide the information requested in your May 29, 2008 letter in the format that your letter specified. We understand that the application forms are new, and note that they were not yet in use when we submitted our new use applications. In some instances, the information sought on the new form did not seem to be applicable to a municipal purveyor of water such as DWS. In other instances, the information sought did not appear to be required under Chapter 174C. We expect that the application process will continue to be refined, and we are certainly willing to assist in that regard. In the meantime, we trust that with the additional information provided, our March 5, 2008 new use application for Mokuhau 3, Well No. 5330-11; Waikapu Tank Site Well, Well No. 5131-01; and Iao Tank Site Well, Well No. 5230-02 will now be deemed complete.

Should you have any questions, please contact me at 808-270-7816. I also ask that you please copy Deputy Corporation Counsel Jane Lovell with all correspondence relating to this new use application.

Sincerely,

JEFFREY K. ENG
Director

Enclosure: DWS Availability sheet dated 03/31/08

copy w/enc: DWS Engineering Division
            Jane E. Lovell, Deputy Corporation Counsel
            Edward S. Kushi, Jr., Deputy Corporation Counsel
### Central Maui - Availability Information

<table>
<thead>
<tr>
<th>Iao Aquifer Basal</th>
<th>05 Oct 08 hr</th>
<th>Production</th>
<th>Safety Factor</th>
<th>03/31/09</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>GPM</td>
<td>225</td>
<td>225 of 225</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Molokai 1</td>
<td></td>
<td>2,500</td>
<td>3,600,000</td>
<td>2,400,000</td>
</tr>
<tr>
<td>Molokai 2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Molokai 3</td>
<td></td>
<td>4,040</td>
<td>5,817,000</td>
<td>3,878,000</td>
</tr>
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<td>Waimoku 1</td>
<td></td>
<td>2,620</td>
<td>3,852,000</td>
<td>2,572,000</td>
</tr>
<tr>
<td>Waimoku 2</td>
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<tr>
<td>Waimoku 3</td>
<td></td>
<td>2,310</td>
<td>3,693,000</td>
<td>2,572,000</td>
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<td>Waiehu Heights 1</td>
<td></td>
<td>830</td>
<td>1,368,000</td>
<td>912,000</td>
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<tr>
<td>Waiehu Heights 2</td>
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<td>1,264,000</td>
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<td>Waiehu Shalt</td>
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<td>3,512</td>
<td>5,657,000</td>
<td>3,371,200</td>
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<td></td>
</tr>
<tr>
<td>Waiehu Well</td>
<td></td>
<td>none</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>30,193,480</td>
<td>30,193,480</td>
<td>20,113,120</td>
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*REMARKS*
- REMAINING CAPACITY & MAXIMUM USE based on statistics in its source level per system standards.

### Iao Non-Basal

<table>
<thead>
<tr>
<th>Iao Non-Basal</th>
<th>Median Flow</th>
<th>Median Flow</th>
<th>68% inflow</th>
<th>Less one SD</th>
<th>Last 12 Mos MAV Use</th>
<th>MAV +21%</th>
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</thead>
<tbody>
<tr>
<td>Iao Tunnel</td>
<td>1,763,180</td>
<td>1,763,180</td>
<td>1,410,528</td>
<td>1,578,560</td>
<td>836,896,000</td>
<td>1,744,000</td>
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<tr>
<td>Kepaniwai</td>
<td>610</td>
<td>878,400</td>
<td>585,600</td>
<td>390,400</td>
<td>279,527,000</td>
<td>765,827</td>
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<tr>
<td></td>
<td>1,763,180</td>
<td>2,641,560</td>
<td>1,996,128</td>
<td>1,985,060</td>
<td>918,123,000</td>
<td>2,509,928</td>
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</table>

- Standard of 68% inflow is more conservative than 1 SD here.

### Iao Treatment Plant

<table>
<thead>
<tr>
<th>Iao Treatment Plant</th>
<th>Peak Day</th>
<th>Peak Day</th>
<th>Avg Day</th>
<th>Avg Day</th>
<th>Med Less 1 SD</th>
<th>Last 12 Mos MAV Use</th>
<th>MAV +21%</th>
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</thead>
<tbody>
<tr>
<td>Capacity</td>
<td>3,476,820</td>
<td>3,476,820</td>
<td>2,317,690</td>
<td>1,500,000</td>
<td>950,896</td>
<td>473,880,000</td>
<td>1,289,301</td>
</tr>
<tr>
<td></td>
<td>3,476,820</td>
<td>3,476,820</td>
<td>2,317,690</td>
<td>1,500,000</td>
<td>950,896</td>
<td>473,880,000</td>
<td>1,289,301</td>
</tr>
</tbody>
</table>

-Raised capacity of treatment plant is 2,317,690 out actual performance varies.

### Washes Aquifer

<table>
<thead>
<tr>
<th>Washes Aquifer</th>
<th>GPM</th>
<th>Pumping</th>
<th>225</th>
<th>225 of 225</th>
<th>Last 12 Mos MAV Use</th>
<th>MAV +21%</th>
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</thead>
<tbody>
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<td>North Washes #1</td>
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<td>1,658,000</td>
<td>1,104,000</td>
<td>736,000</td>
<td>508,952,000</td>
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<tr>
<td>North Washes #2</td>
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<td>2,126,400</td>
<td>1,017,800</td>
<td>672,400</td>
<td>404,327,000</td>
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<tr>
<td>Kanoe 1</td>
<td></td>
<td>1,172,000</td>
<td>1,152,000</td>
<td>768,000</td>
<td>516,891,000</td>
<td>1,415,346</td>
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<tr>
<td>Kanoe 2</td>
<td>1,275</td>
<td>1,838,000</td>
<td>1,224,000</td>
<td>816,000</td>
<td>893,370,000</td>
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<tr>
<td>Malaia</td>
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</tr>
<tr>
<td>Wallawa</td>
<td>none</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SUBTOTAL</td>
<td>6,746,400</td>
<td>6,746,400</td>
<td>4,497,609</td>
<td>2,998,400</td>
<td>2,022,261,000</td>
<td>5,540,441</td>
</tr>
</tbody>
</table>

- 225 capacity is 4,497,600, however this was modified downward to account for aquifer limitations in historical method.

### TOTAL BEFORE REMOVING PUMP

| TOTAL BEFORE REMOVING PUMP | 42,183,060 | 43,061,460 | 28,844,738 | 19,887,440 | 9,335,942,000 | 25,977,553 | 30,847,790 |

- 225 capacity is 4,497,600, however this was modified downward to account for aquifer limitations in historical method.

### LARGEST PUMP OUT OF SERVICE

<table>
<thead>
<tr>
<th>LARGEST PUMP OUT OF SERVICE</th>
<th>(5,817,600)</th>
<th>(3,976,400)</th>
<th>(2,586,800)</th>
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<tr>
<td></td>
<td>48,882,060</td>
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<td>22,473,040</td>
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### DEMAND ADJUSTMENTS

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<th>23,015</th>
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</thead>
<tbody>
<tr>
<td>Reserved Other Than DHHL</td>
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<td>20,226</td>
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<tr>
<td>DHHL Outstanding</td>
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<td></td>
</tr>
<tr>
<td>Reserved</td>
<td>1,098,523</td>
<td>5,408,872</td>
</tr>
<tr>
<td>Near Term - Not Reserved</td>
<td>1,022,543</td>
<td>11,522,144</td>
</tr>
</tbody>
</table>
May 29, 2008

Mr. Jeffrey K. Eng, Director
County of Maui
Department of Water Supply
200 South High Street
Wailuku, HI 96793

Dear Mr. Eng:

Application for Water Use Permit (WUPA 852)
New Use from Iao Tunnel (Well No. 5332-02)

We have received, on April 3, 2008, your water use permit application for reasonable-beneficial uses of the Iao Tunnel arising after July 21, 2003, the date the Iao Aquifer System area was designated a Water Management Area.

As you note, the existing uses from this tunnel are among those being adjudicated in the Iao Ground Water Management Area High-Level Source Water use Permit Applications and Petition to Amend the Interim Instream Flow Standards of Waihee, Waiehu, Iao, and Waikapu Streams Contested Case Hearing, Case No. CCH-MA06-01 (“Na Wai Eha” CCH). Until that decision is rendered, identifying the Instream Flow Standard and amounts available for non-instream use, we will be unable to take action on this captioned application.

Pending that decision, our review of this application finds that it is incomplete for the following reasons:

1. We note that the Mayor has signed as landowner of the source tunnel at TMK: 3-3-003-003, while show it is owned by Wailuku Water Company, LLC. Please clarify as this prevents the application from being accepted as complete as the landowner of the source must sign the application.

2. In reviewing the applications, it appears that the new requested amounts are in addition to amounts requested as of July 21, 2003. The application itself does not distinguish between them. Please identify the quantity of new uses that have arisen since July 21, 2003, and the shortfall of current sources in meeting the new demand. Please complete Table 2 of the new application form (enclosed; please disregard the term “Existing Use” for this purpose). We recommend for the future either that 1) Application Item 14 (“Remarks”) identify this fact, or 2) the
The table should reflect both the existing and additive new use to reflect the correct pumpage total. If you wish to explain the request in contrast to total use in the Central Maui Service Area, please attach a separate statement clarifying this distinction between pre and post July 21, 2003 uses.

3. The column requesting gpd/unit is filled in using the term “services”. This does not provide a clear basis for evaluating units and “duties” (per unit use) to determine reasonable-beneficial use, nor distinguish between uses requiring drinking water and those that may use non-potable water. Please complete Table 2 of the new use application (enclosed).

4. Please provide a discussion on consistency with land use designations. This may be an opportunity to describe how the County meets commitments to planned authorized use, and what administrative tools protect the public trust.

5. Practicable alternatives must be addressed. As municipal supplies serve multiple uses, including both potable and non-potable, public trust and non-public trust, the application must show that the requested amounts cannot be met by practicable alternatives to potable public trust resources. Please use Table 3 of the new use application.

6. How are the Department of Hawaiian Home Lands requests for water from Iao incorporated in these applications?

7. Please provide a discussion on meeting the public interest. The Code provides that maximum beneficial use must still make adequate provision for enumerated uses declared to be in the public interest. Please provide a statement of how your maximum beneficial use makes adequate provision for these protected uses. Please complete item #15 of the new water use forms (enclosed; please disregard the term “Existing Use” for this purpose).

Bear in mind that your applications will be circulated for public comment and potential objection. Given recent experience in the Na Wai Eha contested case hearing, we must expect applications to address these matters before accepting them as complete for review. We recommend a review of Water Code section 174C-49 as a format guide to addressing these issues.

If you have any questions, please contact Charley Ice of our staff at 587-0251 or toll-free at 984-2400 (Maui) extension 70251.

Sincerely,

KEN C. KAWAHARA, P.E.
Deputy Director

CI:ss
Enclosure
COMMISSION ON WATER RESOURCE MANAGEMENT

FROM: ROY
DATE: APR - 3 2008
TO: CHENG, C.
INIT: KUNIMURA, I.
FOR: 

TO: CHING, F.
INIT: LEROUX, E.
FOR: 

TO: CHONG, R.
INIT: NAKAMA, L.
FOR: 

TO: DANBARA, S.
INIT: OHYE, M.
FOR: 

TO: ENGLAND, D.
INIT: OSHIRO, K.
FOR: 

TO: FUJII, N.
INIT: SAKODA, E.
FOR: 

TO: HARDY, R.
INIT: SWANSON, S.
FOR: 

TO: HOAGBIN, S.
INIT: TORRES, R.
FOR: 

TO: ICE, C.
INIT: UYENO, D.
FOR: 

TO: IMATA, R.
INIT: YODA, K.
FOR: 

TO: KAWAHARA, K.
INIT: YOSHINAGA,
FOR: 

TO: KIMURA, J.
INIT: 
FOR: 

PLEASE: See Me
Review & Commer
Take Action
Type Draft
Type Final
File
Xerox ___ copies

Charley,
We finished Existing
WUPA! Year!
Please note the
Please use the
tables therein where
Please use the
tables therein where

Note: 
No filing fee attached.
No filing fee attached.

I deliberately did not send the entire form, focusing on the noted items:
But maybe we can send the complete form separately.

Thanks! 5/21
March 31, 2008

Mr. Ken C. Kawahara, P.E., Deputy Director
Commission on Water Resource Management
State of Hawaii Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Kawahara:

Subject: Water Use Permit Application for Iao Tunnel, Well No. 5332-02

Please find attached our "new use" Water Use Permit Application for .841 mgd from the Iao Tunnel, Well No. 5332-02.

The Commission on Water Resource Management (CWRM) has accepted as complete water use applications for two Department of Water Supply (DWS) high level sources, Iao Tunnel in the amount of 1.359 mgd (WUP No. 680) and Kepaniwai Well in the amount of 1.042 mgd (WUP No. 699). These applications are being adjudicated in Iao Ground Water Management Area High-Level Source Water Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihe'e, Waiehu, Iao & Waikapu Streams Contested Case Hearing, Case No. CCH-MA06-01. While DWS’s existing water use permit for 1.359 mgd for the Iao Tunnel reflects the 12 month moving average as of the date of designation, DWS needs, and has at certain times pumped in excess of, 2.1 mgd from this source. The County needs this additional source to serve both existing demand and anticipated needs in the next four years.

Under H.R.S. § 174C-49, DWS must establish that this proposed use of water (1) can be accommodated with the available water source; (2) is a reasonable-beneficial use as defined in § 174C-3; (3) will not interfere with any existing legal use of water; (4) is consistent with the public interest; (5) is consistent with state and county general plans and land use designations; (6) is consistent with county land use plans and policies; and (7) will not interfere with the rights of the Department of Hawaiian Home Lands. DWS’s new use application for additional source from Iao Tunnel meets each of these criteria, as shown below.

"By Water All Things Find Life"

Printed on recycled paper
March 31, 2008
Mr. Ken C. Kawahara, P.E., Deputy Director
Commission On Water Resource Management
Page 2

(1) **The new use can be accommodated with the available water source.**

DWS is not currently taking the full amount of water produced by Iao Tunnel. Currently, some 250,000 to 350,000 gpd (not metered) "overflows" from the Iao Tunnel into Wailulu Water Company’s ("WWC") ditch system, according to testimony and documents submitted by WWC in the contested case hearing, Case No. CCH-MA06-1. This "overflow" amount could be captured and served to customers of DWS’s municipal water system.

(2) **The new use is a reasonable-beneficial use as defined in § 174C-3.**

The proposed new use is both reasonable and beneficial. As a municipal provider, DWS would use any additional water from the high level aquifer to serve municipal users. High level dike water is the most preferred source for potable use as it requires minimal, if any, treatment.

(3) **The new use will not interfere with any existing legal use of water.**

DWS’s proposed new use of additional Iao Tunnel water will not interfere with any existing legal use. The County has used the Iao Tunnel since the 1930s and DWS has the only accepted and complete Water Use Permit Application on file for the Iao Tunnel. While WWC has advised the Commission that it has been using some 250,000 to 350,000 gpd that overflows from this source into WWC’s ditch system, WWC’s WUPAs for this source were rejected by the Commission as incomplete. (See May 13, 2005 letter from Dean A. Nakano to Clayton Suzuki.) WWC was advised to submit a new use application, but to DWS’s knowledge, no new use permit application was ever filed by WWC. Thus, WWC is deemed to have abandoned any use according to HRS 174C-50(c), and any current use of Iao Tunnel water by WWC is not a legal use.

4) **The new use is consistent with the public interest.**

The proposed use of additional Iao Tunnel water is consistent with the public interest. Iao Tunnel water is mixed with Iao and Waihee aquifer sources to serve the Central Maui System. This public water supply system serves 19,309 meters in the communities extending from Waiehu, through Wailuku, Kahului, Puunene, Spreckelsville, Paia and Kuau in the North, and from Maalaea through Kihei to Makena in the South.

(5) **The new use is consistent with state and county general plans and land use designations.**

The proposed use of water is consistent with state and county general plans and land use designations. DWS’s proposed additional use from the Iao tunnel would help meet the demand
March 31, 2008  
Mr. Ken C. Kawahara, P.E., Deputy Director  
Commission On Water Resource Management  
Page 3

generated by new homes and businesses built in accordance with State and County plans, approvals, designations, plans and policies. The WUDP is being updated in consistence with the 1990 Maui County General Plan, the County Community Plans, the State Water Resources Protection Plan, the State Water Quality Plan, the State Water Projects Plan, and the State Agricultural WUDP. Water systems are permitted uses in the zoning, community plan, and state land use districts in which the Iao Tunnel is located.

(6) The new use is consistent with county land use plans and policies.

The proposed use of water is also consistent with county general plans and general policies. The Department's ongoing source development and capital improvement programs support the General Plan objectives "to provide an adequate supply of potable and irrigation water to meet the needs of Maui County's residents" and "to make more efficient use of our ground, surface and recycled water sources".

(7) The new use will not interfere with the rights of the Department of Hawaiian Home Lands.

The proposed use of water will not interfere with the rights of the Department of Hawaiian Home Lands (DHHL). DHHL does not have its own sources. Instead, DWS's Central Maui System services DHHL projects.

(8) Other considerations support DWS's application for new use of additional Iao Tunnel Water.

In addition to meeting the statutory criteria, DWS notes that despite its considerable efforts to operate efficiently, DWS has not been able to supply the public's needs with its existing sources. In August 2007, the Department issued a request for customers in the Central Maui system to voluntarily cutback consumption by ten percent to mitigate current demand until new sources outside the Iao aquifer can be brought on line.

Please find below a list of planned Department source development and distribution projects within the next four years.

Distribution of withdrawals within Iao aquifer; development of new sources:
- Iao tank site well: Anticipated on line 2008. Capacity estimated at 0.896 MGD.
- Waikapu Tank Site well: Anticipated on line 2008. Capacity estimated at 0.896 MGD.

Development of new sources outside Iao aquifer:
- Kupaa 1: Anticipated on line 2008. Capacity estimated at 0.896 MGD.
- Maui Lani Wells: Anticipated on line 2008. Capacity estimated at 1 MGD
- Waiale Surface Water Treatment Plant: Anticipated on line 2011, contingent on surface water availability.
March 31, 2008
Mr. Ken C. Kawahara, P.E., Deputy Director
Commission On Water Resource Management
Page 4

- Waikapu South Well: Anticipated on line 2010. Production estimated at 0.896 MGD

The Department has a full time conservation specialist on staff and is implementing a more aggressive conservation program systemwide. To specifically curb demand on the Central Maui system, the Department stopped issuing temporary construction meters and water reservations. Conservation is and will be even more an important part of meeting current and future demand.

Please find below a list of conservation measures currently scheduled or implemented.
• Reclaimed water use at commercial properties within 100 ft of R-1 distribution systems and for dust control saves approximately 2 MGD in the summer months.
• Low flow fixtures required in new developments has resulted in approximate savings of 0.5 MGD for Central Maui.
• Community outreach programs (homeowners groups and community organizations) and public education
• Water audit to target conservation efforts
• Xeriscape projects in conjunction with Maui Nui Botanical Gardens and Maui Association of Landscape Professionals
• Leak detection
• Xeriscaping handbook
• Water Rate Design and Pricing Policies
• Draft Landscape Ordinance
• Developing a Toilet rebate/retrofit program
• Water conservation plan
• Automated radio-read meters to replace old, under-registering meters

Additional conservation programs and their potential savings are evaluated in the Water Use and Development Plan process.

DWS undertakes numerous conservation and resource protection measures to maximize efficiency and protect the resources that serve the municipal needs of Maui County. We are actively engaged in projects to improve the distribution of withdrawals within Iao aquifer with the addition of Waikapu Tank Site, Iao Tank Site and Kehalani wells, as indicated by preliminary results from USGS aquifer modeling.

DWS manages and contributes to a number of resource protection programs, including five watershed partnership programs throughout Maui County. The programs provide shared expertise and resources, leverage outside funds, and provide for early awareness and action. DWS has developed a Wellhead Protection Program for Maui County designed to protect the wells and groundwater from contamination. A well siting policy to reduce potential for contamination and treatment has been drafted.
March 31, 2008
Mr. Ken C. Kawahara, P.E., Deputy Director
Commission On Water Resource Management
Page 5

For all of the above reasons, we respectfully request that the Commission issue a new use permit to DWS for an additional .841 mgd from Iao Tunnel.

Should you have any questions, please contact me or our Water Resources and Planning Division at (808) 244-8550. We also ask that you copy our attorney of record in the contested case proceedings, Deputy Corporation Counsel Jane Lovell, with all correspondence relating to this new use application.

Sincerely,

Jeffrey K. Eng
Director

emb

c: Engineering Division
   Jane Lovell, Deputy Corporation Counsel
   Ed Kushi, Jr. Deputy Corporation Counsel

attachment:
  Iao Tunnel Well No. 5332-02 Water Use Permit Form (15 copies)
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 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 867-0225. For further information and updates to this application form, visit http://www.hawaii.gov/dlnr/cwrm.

PERMITTEE INFORMATION
1. (a) APPLICANT
   Firm/Name: Maui County Dept. of Water
   Contact Person: Jeffrey K. Eng, Director
   Address: 200 S High St., Wailuku, HI 96793
   Phone: 808-270-7816, Fax 808-270-7833
   E-mail: jeffrey.eng@co.maui.hi.us

   (b) LANDOWNER OF SOURCE
      Firm/Name: County of Maui
      Contact Person: Charmaine Tavares, Mayor
      Address: 200 S High St., Wailuku, HI 96793
      Phone: 808-270-7855, Fax 808-270-7870
      E-mail: jeffrey.eng@co.maui.hi.us

SOURCE INFORMATION
2. WATER MANAGEMENT AREA: Iao Aquifer
   ISLAND: Maui

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
   (If source doesn’t presently exist, please attach well construction/stream diversion permit or application.)

   (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME: Iao Valley, Wailuku, Maui

   (c) LOCATION: Address (Attach and show source location on a USGS map, scale 1"=2000", and a property tax map)
   Tax Map Key: 3-3-03-003

4. SOURCE TYPE: (check one):
   • Stream
   • Dike-confined
   • Perched
   • Caprock

5. METHOD OF TAKING WATER: (check one):
   • Artesian
   • Well & Pump
   • Diverted Surface

6. SPECIAL MANAGEMENT AREA PERMIT (SMAP)
   • Required, SMA # __________ date approved __________
   • Not Required (attach documentation from applicable County agency)

7. 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

8. QUANTITY OF WATER REQUESTED: 0.84 million gallons per day (averaged over 1 year)

9. METHOD OF MEASUREMENT:
   • Flowmeter
   • Open-pipe
   • Weir
   • Orifice

10. QUALITY OF WATER REQUESTED:
    • Fresh
    • Brackish
    • Salt
    • Potable
    • Non-Potable

11. PROPOSED USE:
    • Municipal (including hotels, stores, etc.)
    • Industrial
    • Military
    • Irrigation
    • Other

12. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 24 hours (daytime hours of operation; example, 7 a.m. to 2 p.m.)

13. 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.

14. REMARKS, EXPLANATIONS:

15. ☐ By checking this box, you acknowledge that you are responsible for paying the public notice fee associated with this application, and you will follow later instructions by staff regarding payment of these fees. If you do not check this box, your application will not be accepted as complete.

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; 3) 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) Jeffrey K. Eng
Signature __________________________
Date 3/3/20

Landowner (print) County of Maui
Signature __________________________
Date 04-01-20
<table>
<thead>
<tr>
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<th>Date:</th>
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**TABLE 1. TMKs TO USE REQUESTED WATER**

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<td>TOTAL GPD</td>
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*Note: All values are in GPD (gallons per day).*
# Zoning and Flood Confirmation

**Applicant Information:**

<table>
<thead>
<tr>
<th>APPLICANT</th>
<th>C of M Dept. of Water Supply, Water Resources &amp; Planning Division</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDRESS/LOCATION</td>
<td>lao Valley Road, Wailuku</td>
</tr>
<tr>
<td>TELEPHONE</td>
<td>(808) 244-8542</td>
</tr>
<tr>
<td>E-MAIL</td>
<td><a href="mailto:Eva.blumenstein@co.maui.hi.us">Eva.blumenstein@co.maui.hi.us</a></td>
</tr>
</tbody>
</table>

**Project Name:** lao Tunnel

**Address/Location:** lao Valley Road, Wailuku

**Tax Map Key No(s):** (2) 3-3-03:03

**Community Plan Designation(s):** Conservation, Open Space, Park & Rural

**County Zoning(s):** Interim

**State Land Use District(s):** Conservation

**Special District(s):** N.A.

**Flood Information:**

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<tr>
<td>Floodway</td>
<td>No</td>
</tr>
<tr>
<td>Flood Development Permit Required</td>
<td>No</td>
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</table>

*For flood hazard area zones B or C; a flood development permit would be required if any work is done in any drainage facility or stream area that would reduce the capacity of the drainage facility, river, or stream, or adversely affect downstream property.*

**Remarks/Comments:**

- [ ] Additional information required
- [ ] Required for Agricultural Subdivisions
- [ ] Correction has been made and initialed

Reviewed and Confirmed by:

[Signature]

Russell T. Higa
03/27/08

For: AARON SHINMOTO, Planning Program Administrator
Zoning Administration and Enforcement Division

(01.08)
Central Maui Sources
Service Area "B"

Central Maui Sources
service area
Tax Map Key
parcel

0 2 4 Miles
March 31, 2008

Mr. Ken C. Kawahara, P.E., Deputy Director
Commission on Water Resource Management
State of Hawaii Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Kawahara:

Subject: Water Use Permit Application for Iao Tunnel, Well No. 5332-02

Please find attached our "new use" Water Use Permit Application for .841 mgd from the Iao Tunnel, Well No. 5332-02.

The Commission on Water Resource Management (CWRM) has accepted as complete water use applications for two Department of Water Supply (DWS) high level sources, Iao Tunnel in the amount of 1.359 mgd (WUP No. 680) and Kepaniwai Well in the amount of 1.042 mgd (WUP No. 699). These applications are being adjudicated in Iao Ground Water Management Area High-Level Source Water Use Permit Applications and Petition to Amend Interim Instream Flow Standards of Waihe'e, Waiehu, Iao & Waikapu Streams Contested Case Hearing, Case No. CCH-MA06-01. While DWS’s existing water use permit for 1.359 mgd for the Iao Tunnel reflects the 12 month moving average as of the date of designation, DWS needs, and has at certain times pumped in excess of, 2.1 mgd from this source. The County needs this additional source to serve both existing demand and anticipated needs in the next four years.

Under H.R.S. § 174C-49, DWS must establish that this proposed use of water (1) can be accommodated with the available water source; (2) is a reasonable-beneficial use as defined in § 174C-3; (3) will not interfere with any existing legal use of water; (4) is consistent with the public interest; (5) is consistent with state and county general plans and land use designations; (6) is consistent with county land use plans and policies; and (7) will not interfere with the rights of the Department of Hawaiian Home Lands. DWS’s new use application for additional source from Iao Tunnel meets each of these criteria, as shown below.

"By Water All Things Find Life"

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5964 (voice and TDD)
March 31, 2008  
Mr. Ken C. Kawahara, P.E., Deputy Director  
Commission On Water Resource Management  
Page 2

(1) The new use can be accommodated with the available water source.

DWS is not currently taking the full amount of water produced by Iao Tunnel. Currently, some 250,000 to 350,000 gpd (not metered) "overflows" from the Iao Tunnel into Wailuu Water Company’s ("WWC") ditch system, according to testimony and documents submitted by WWC in the contested case hearing, Case No. CCH-MA06-1. This "overflow" amount could be captured and served to customers of DWS’s municipal water system.

(2) The new use is a reasonable-beneficial use as defined in § 174C-3.

The proposed new use is both reasonable and beneficial. As a municipal provider, DWS would use any additional water from the high level aquifer to serve municipal users. High level dike water is the most preferred source for potable use as it requires minimal, if any, treatment.

(3) The new use will not interfere with any existing legal use of water.

DWS’s proposed new use of additional Iao Tunnel water will not interfere with any existing legal use. The County has used the Iao Tunnel since the 1930s and DWS has the only accepted and complete Water Use Permit Application on file for the Iao Tunnel. While WWC has advised the Commission that it has been using some 250,000 to 350,000 gpd that overflows from this source into WWC’s ditch system, WWC’s WUPAs for this source were rejected by the Commission as incomplete. (See May 13, 2005 letter from Dean A. Nakano to Clayton Suzuki.) WWC was advised to submit a new use application, but to DWS’s knowledge, no new use permit application was ever filed by WWC. Thus, WWC is deemed to have abandoned any use according to HRS 174C-50(c), and any current use of Iao Tunnel water by WWC is not a legal use.

(4) The new use is consistent with the public interest.

The proposed use of additional Iao Tunnel water is consistent with the public interest. Iao Tunnel water is mixed with Iao and Waihee aquifer sources to serve the Central Maui System. This public water supply system serves 19,309 meters in the communities extending from Waiehu, through Wailuku, Kahului, Puunene, Spreckelsville, Paia and Kuau in the North, and from Maalaea through Kihei to Makena in the South.

(5) The new use is consistent with state and county general plans and land use designations.

The proposed use of water is consistent with state and county general plans and land use designations. DWS’s proposed additional use from the Iao tunnel would help meet the demand
generated by new homes and businesses built in accordance with State and County plans, approvals, designations, plans and policies. The WUDP is being updated in consistence with the 1990 Maui County General Plan, the County Community Plans, the State Water Resources Protection Plan, the State Water Quality Plan, the State Water Projects Plan, and the State Agricultural WUDP. Water systems are permitted uses in the zoning, community plan, and state land use districts in which the Iao Tunnel is located.

(6) **The new use is consistent with county land use plans and policies.**

The proposed use of water is also consistent with county general plans and general policies. The Department’s ongoing source development and capital improvement programs support the General Plan objectives “to provide an adequate supply of potable and irrigation water to meet the needs of Maui County’s residents” and “to make more efficient use of our ground, surface and recycled water sources”.

(7) **The new use will not interfere with the rights of the Department of Hawaiian Home Lands.**

The proposed use of water will not interfere with the rights of the Department of Hawaiian Home Lands (DHHL). DHHL does not have its own sources. Instead, DWS’s Central Maui System services DHHL projects.

(8) **Other considerations support DWS’s application for new use of additional Iao Tunnel Water.**

In addition to meeting the statutory criteria, DWS notes that despite its considerable efforts to operate efficiently, DWS has not been able to supply the public’s needs with its existing sources. In August 2007, the Department issued a request for customers in the Central Maui system to voluntarily cutback consumption by ten percent to mitigate current demand until new sources outside the Iao aquifer can be brought on line.

Please find below a list of planned Department source development and distribution projects within the next four years.

**Distribution of withdrawals within Iao aquifer; development of new sources:**
- Iao tank site well: Anticipated on line 2008. Capacity estimated at 0.896 MGD.
- Waikapu Tank Site well: Anticipated on line 2008. Capacity estimated at 0.896 MGD.

**Development of new sources outside Iao aquifer:**
- Kupaa 1: Anticipated on line 2008. Capacity estimated at 0.896 MGD.
- Maui Lani Wells: Anticipated on line 2008. Capacity estimated at 1 MGD
- Waiale Surface Water Treatment Plant: Anticipated on line 2011, contingent on surface water availability.
March 31, 2008
Mr. Ken C. Kawahara, P.E., Deputy Director
Commission On Water Resource Management
Page 4

- Waikapu South Well: Anticipated on line 2010. Production estimated at 0.896 MGD

The Department has a full time conservation specialist on staff and is implementing a more aggressive conservation program systemwide. To specifically curb demand on the Central Maui system, the Department stopped issuing temporary construction meters and water reservations. Conservation is and will be even more an important part of meeting current and future demand.

Please find below a list of conservation measures currently scheduled or implemented.
- Reclaimed water use at commercial properties within 100 ft of R-1 distribution systems and for dust control saves approximately 2 MGD in the summer months.
- Low flow fixtures required in new developments has resulted in approximate savings of 0.5 MGD for Central Maui.
- Community outreach programs (homeowners groups and community organizations) and public education
- Water audit to target conservation efforts
- Xeriscape projects in conjunction with Maui Nui Botanical Gardens and Maui Association of Landscape Professionals
- Leak detection
- Xeriscaping handbook
- Water Rate Design and Pricing Policies
- Draft Landscape Ordinance
- Developing a Toilet rebate/retrofit program
- Water conservation plan
- Automated radio-read meters to replace old, under-registering meters

Additional conservation programs and their potential savings are evaluated in the Water Use and Development Plan process.

DWS undertakes numerous conservation and resource protection measures to maximize efficiency and protect the resources that serve the municipal needs of Maui County. We are actively engaged in projects to improve the distribution of withdrawals within Lao aquifer with the addition of Waikapu Tank Site, Lao Tank Site and Kehalani wells, as indicated by preliminary results from USGS aquifer modeling.

DWS manages and contributes to a number of resource protection programs, including five watershed partnership programs throughout Maui County. The programs provide shared expertise and resources, leverage outside funds, and provide for early awareness and action. DWS has developed a Wellhead Protection Program for Maui County designed to protect the wells and groundwater from contamination. A well siting policy to reduce potential for contamination and treatment has been drafted.
March 31, 2008
Mr. Ken C. Kawahara, P.E., Deputy Director
Commission On Water Resource Management
Page 5

For all of the above reasons, we respectfully request that the Commission issue a new use permit to DWS for an additional .841 mgd from Iao Tunnel.

Should you have any questions, please contact me or our Water Resources and Planning Division at (808) 244-8550. We also ask that you copy our attorney of record in the contested case proceedings, Deputy Corporation Counsel Jane Lovell, with all correspondence relating to this new use application.

Sincerely,

Jeffrey K. Eng
Director

emb

c: Engineering Division
   Jane Lovell, Deputy Corporation Counsel
   Ed Kushi, Jr. Deputy Corporation Counsel

attachment:
Iao Tunnel Well No. 5332-02 Water Use Permit Form (15 copies)
PERMITTE INFORMATION

1. (a) APPLICANT
   
   Firm/Name: Maui County Dept. of Water
   
   Contact Person: Jeffrey K. Eng, Director
   
   Address: 200 S High St., Wailuku, HI 96793
   
   Phone: 808-270-7816  Fax: 808-270-7833
   
   E-mail: jeffrey.eng@co.maui.hi.us
   
   (b) LANDOWNER OF SOURCE
   
   Firm/Name: County of Maui
   
   Contact Person: Charmaine Tavares, Mayor
   
   Address: 200 S High St., Wailuku, HI 96793
   
   Phone: 808-270-7855  Fax: 808-270-7870
   
   E-mail: jeffrey.eng@co.maui.hi.us

SOURCE INFORMATION

2. WATER MANAGEMENT AREA:
   
   Tampa Aquifer
   
   ISLAND: Maui

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
   
   (If well construction/stream diversion permit or application presently exists, attach well construction/stream diversion permit or application.)

   (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME:

   Iao Valley, Wailuku, Maui

   (c) LOCATION: Address

   Tax Map Key: __-__-__-__-003
   
   (Attach and show location on a USGS map, scale 1:"000, and a property tax map)

4. SOURCE TYPE (check one):
   
   - Stream
   - Basal
   - Dike-confined
   - Perched
   - Caprock

5. METHOD OF TAKING WATER (check one):
   
   - Artesian
   - Well & Pump
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   - Other (explain)

6. SPECIAL MANAGEMENT AREA PERMIT (SMA)
   
   - Required, SMA #
   - Not Required (attach documentation from applicable County agency)

   * I have not checked with the county about whether or not a SMA Permit is required. I understand that checking with the County prior to making this application will expedite my review. I further understand that issues raised by this agency may delay or result in denial of the permit issuance, or revocation of the permit after it is issued.

USE INFORMATION

7. LOCATION OF PROPOSED WATER USE: (If possible, show on same maps as source location. Otherwise, attach similar maps)
   
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   - Intended Dedication to Dept. /Board of Water Supply
   - Non-PUC-Regulated Private System

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   * 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.

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Applicant (print)  
Jeffrey K. Eng
Signature  
Date  3/13/08

Landowner (print)  
County of Maui
Signature  
Date  04-01-08
<table>
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<tr>
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DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE __________________________ DATE _________________
# ZONING AND FLOOD CONFIRMATION

## APPLICANT INFORMATION:
*(To be completed by Applicant)*

<table>
<thead>
<tr>
<th>APPLICANT</th>
<th>C of M Dept. of Water Supply, Water Resources &amp; Planning Division 59 Kanoa Street, Wailuku, Hawaii 96793</th>
</tr>
</thead>
<tbody>
<tr>
<td>TELEPHONE</td>
<td>(808) 244-8542</td>
</tr>
<tr>
<td>E-MAIL</td>
<td><a href="mailto:Eva.blumenstein@co.mauhi.us">Eva.blumenstein@co.mauhi.us</a></td>
</tr>
</tbody>
</table>

## PROJECT NAME
*la'o Tunnel*

## ADDRESS/LOCATION
*la'o Valley Road, Wailuku*

## TAX MAP KEY NO(S)
*(2) 3-3-03:03*

## ZONING INFORMATION:
*(To be completed by ZAED)*

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## FLOOD INFORMATION:
*(To be completed by ZAED)*

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</thead>
<tbody>
<tr>
<td>BASE FLOOD ELEVATION(S)</td>
<td>N.A.</td>
</tr>
<tr>
<td></td>
<td>mean sea level, 1929 National Geodetic Vertical Datum; or</td>
</tr>
</tbody>
</table>

For Flood Zone AO, FLOOD DEPTH *N.A.*

**FLOODWAY**
*No*

**FLOOD DEVELOPMENT PERMIT REQUIRED**
*No*

*For flood hazard area zones B or C; a flood development permit would be required if any work is done in any drainage facility or stream area that would reduce the capacity of the drainage facility, river, or stream, or adversely affect downstream property.*

## REMARKS/COMMENTS:

- Additional information required
- Required for Agricultural Subdivisions
  - Agricultural Assessment RFS No:
- Information submitted is correct
- Correction has been made and initialed

**Reviewed and Confirmed by:**

*Russell T. Higa*

*Signature*

*03/27/08*

*For: AARON SHINMOTO, Planning Program Administrator*

*Zoning Administration and Enforcement Division*

*S:\ALL\FORMS\ZAED\ZoneFidConf\ZonFidConf.doc (01.08)*
Central Maui Sources Service Area "A"

Central Maui Sources service area
Tax Map Key parcel

0 4 8 Miles
Water Shortage Plan

Iao Water Management Rule (Maui County Administrative Rule Title 16, Ch 9) offered as the County's water shortage plan for wells in Iao. See copy in folder for Moku'aua 1-3 (Well Nos. 5330-09 through -11)
<table>
<thead>
<tr>
<th>FROM: ROY</th>
<th>DATE: MAR 15 2006</th>
<th>SUSPENSE DATE:</th>
</tr>
</thead>
<tbody>
<tr>
<td>TO:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ANAKALEA, P.</td>
<td>INIT.</td>
<td>TO:</td>
</tr>
<tr>
<td>CHING, F.</td>
<td></td>
<td>NAKIMURA, I.</td>
</tr>
<tr>
<td>DANBARA, S.</td>
<td></td>
<td>NAKANO, D.</td>
</tr>
<tr>
<td>FUJII, N.</td>
<td></td>
<td>OHYE, M.</td>
</tr>
<tr>
<td>GOODING, K.</td>
<td></td>
<td>SAKODA, E.</td>
</tr>
<tr>
<td>HARDY, R.</td>
<td></td>
<td>SWANSON, S.</td>
</tr>
<tr>
<td>HOAGBIN, S.</td>
<td></td>
<td>UYENO, D.</td>
</tr>
<tr>
<td>ICE, C.</td>
<td></td>
<td>YODA, K.</td>
</tr>
<tr>
<td>IMATA, R.</td>
<td></td>
<td>YOSHINAGA, M.</td>
</tr>
</tbody>
</table>

**PLEASE:**

- See Me
- Review & Comment
- Take Action
- Type Draft
- Type Final
- File
- Xerox ____ copies

*file in Tunnels.*
**DLNR - CHAIRPERSON'S OFFICE DEPARTMENT ROUTESLIP**

**DATE:** 3/14/04  
**TO:** CWRM

**CC:**
- CHAIRPERSON
- DEPUTY DIRECTOR
- DEPUTY WATER
- ATG/LAND TRANS.
- BOC
- CWRM
- DAR
- DATA
- DOBOR
- DOCARE
- DOFAW
- ENG.
- FISCAL
- KIRC
- LAND
- OCCL
- PARKS
- PERSONNEL
- PIO
- SHPD

**TRACK** (if circled)

**ACTION APPROVED BY:**

**ACTION:**
- Draft reply for my signature*
- Direct reply – copy to me*
- Investigate - reply to me*
- Update/comment – reply to me*
- For your information/files
- Distribute to office staff
- Other (see below comments)

*For tracking purposes, please refer to log number

**COMMENTS/REMARKS:**

__________________________________________________________________

__________________________________________________________________

__________________________________________________________________
March 8, 2006

Avery B. Chumbley
President
Wailuku Water Co.
255 East Waiko Road
Wailuku, Hawaii 96793-9355

Dear Mr. Chumbley:

Subject: OBJECTION TO YOUR UNILATERALLY-IMPOSED RATE INCREASE FOR IAO TUNNEL WATER

This letter is to inform you that, on behalf of County water system consumers, we object to the Iao Tunnel water rate increase unilaterally imposed by Wailuku Water Co. per your letter dated December 29, 2005. A copy of your letter is attached.

Our objections are summarized as follows:

- **Objection One:**

  Based on a review of extant records, the County of Maui owns the original, and arguably most productive, portion of the Iao Tunnel, as well as the pipeline between the Iao Tunnel and the County water system. Most of the Iao Tunnel lies within lands owned by the State of Hawaii and transferred to the County of Maui by Executive Order No. 751. The Iao Tunnel draws water from the Iao Aquifer, an aquifer designated by the Commission on Water Resource Management.

  The water, by State Constitution, is held in trust by the State for the people of Hawaii. Why is Wailuku Water Co. charging the County of Maui for this water? What costs, if any, does Wailuku Water Co. bear with regard to Iao Tunnel water used by the County of Maui?
Mr. George Y. Tengan, Director  
Department of Water Supply  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793  

Subject: DWS usage of water from Iao Tunnel

Dear Mr. Tengan;

The purpose of this letter is to provide notice that effective January 1, 2006, Wailuku Water Company will no longer be utilizing the fuel oil adjustment method for calculating the fees to be charged to the DWS for the additional water taken from the Iao Tunnel.

The rate to be used for the Iao Meter shall be $0.60 per 1,000 gallons, this change will be reflected in the January 2006 invoice.

If you have any questions please feel free to contact me at 244-7079.

Sincerely,

Avery B. Chumbley  
President

Cc: Fred Tacla, WWC office manager
1/25/05  1:15PM  Tacoma WA  Avery Otten

1954 agreement Mows & WAC1

\[ \text{Mows} = 1513900 \text{ ppl no change anything \#} \]

Ex: (1/03)

\[ r02 \text{ no cost \#} \]

\[ r33 \text{ Mows no need pay, remainder they have to pay \#} \]

\[ \text{WAC1} \]

\[ \text{B185 started paying} \rightarrow 0.250 \text{ \# and WAC1 portions} \]

\[ \text{their portion} \]

\[ \text{numbers in faxed tables from 7/10/05 /20/05 reflect Mows only have to add on WAC1 portion.} \]
<table>
<thead>
<tr>
<th>FROM: ROY</th>
<th>INIT. TO:</th>
<th>DATE:</th>
<th>INIT:</th>
<th>SUSPENSE DATE:</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Approval</td>
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<td>INIT:</td>
<td>Signature</td>
</tr>
<tr>
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<td>INIT:</td>
<td>OHYE, M.</td>
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<td>Information</td>
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<td>INIT:</td>
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<td>ICE, C.</td>
<td>INIT:</td>
<td>YOSHINAGA, M.</td>
<td>INIT:</td>
<td></td>
</tr>
</tbody>
</table>

PLEASE: See Me

Review & Comment
Take Action
Type Draft
Type Final
File
Xerox _____ copies
TO: Roy Hardy  
FROM: Avery B. Chumbley, President
COMPANY: Wailuku Water Co.
DATE: 1-24-06
FAX NUMBER: 587-0219
TOTAL NO. OF PAGES (Including cover):
CC: 
RE: IAO TUNNEL

☐ URGENT ☐ FOR REVIEW/COMMENT ☐ PLEASE CALL ☐ FOR YOUR FILES

NOTES/COMMENTS: Aloha Roy,

Here is the info on the daily flows which go to WW/ company from IAO Tunnel. The are in addition to the numbers reported on the monthly schedule of use by the DSB.

Call me if you have further questions.
Avery
<table>
<thead>
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<th>Date</th>
<th>Gallons/day</th>
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<tr>
<td>08-Aug-2005</td>
<td>250,000</td>
</tr>
<tr>
<td>15-Aug-2005</td>
<td>300,000</td>
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<tr>
<td>17-Aug-2005</td>
<td>300,000</td>
</tr>
<tr>
<td>22-Aug-2005</td>
<td>300,000</td>
</tr>
<tr>
<td>07-Sep-2005</td>
<td>300,000</td>
</tr>
<tr>
<td>12-Sep-2005</td>
<td>250,000</td>
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<tr>
<td>19-Sep-2005</td>
<td>250,000</td>
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<td>26-Sep-2005</td>
<td>225,000</td>
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<td>03-Oct-2005</td>
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<td>09-Jan-2006</td>
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<td>16-Jan-2006</td>
<td>150,000</td>
</tr>
<tr>
<td>23-Jan-2006</td>
<td>350,000</td>
</tr>
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</table>
Aloha Roy, thanks for your phone message, yes I was calling about the high level tunnel # 5332-02. Here is a copy of what I noted to Chelley's attention as a result of the request at the July 11, 05 meeting:

I have also provided a copy of the tunnel withdrawals through the end of CY 2005. (Nov)

I'll call you on Monday to go over this.
### Wailuku Water Co.

Iao Tunnel 5332-02 Water Use by Department of Water Supply

(Million Gallons)

<table>
<thead>
<tr>
<th>Year</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>September</th>
<th>October</th>
<th>November</th>
<th>December</th>
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<td>1996</td>
<td>48.94</td>
<td>48.97</td>
<td>45.52</td>
<td>53.27</td>
<td>42.28</td>
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<td>51.42</td>
<td>50.26</td>
<td>50.61</td>
<td>49.73</td>
<td>50.52</td>
<td>50.24</td>
<td>51.74</td>
<td>48.68</td>
<td>47.13</td>
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<td>49.44</td>
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<td>1998</td>
<td>48.88</td>
<td>49.93</td>
<td>45.34</td>
<td>48.84</td>
<td>47.14</td>
<td>48.57</td>
<td>44.51</td>
<td>38.31</td>
<td>39.22</td>
<td>39.03</td>
<td>40.58</td>
<td>39.95</td>
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<td>2000</td>
<td>39.48</td>
<td>40.66</td>
<td>37.57</td>
<td>40.30</td>
<td>39.13</td>
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<td>39.39</td>
<td>38.47</td>
<td>37.74</td>
<td>34.29</td>
<td>36.19</td>
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<td>2001</td>
<td>37.80</td>
<td>37.39</td>
<td>33.56</td>
<td>36.61</td>
<td>34.90</td>
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<td>32.34</td>
<td>36.26</td>
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<td>34.90</td>
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<td>2002</td>
<td>38.37</td>
<td>38.25</td>
<td>32.68</td>
<td>30.18</td>
<td>34.61</td>
<td>32.22</td>
<td>29.25</td>
<td>35.25</td>
<td>33.39</td>
<td>39.62</td>
<td>44.10</td>
<td>40.86</td>
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<tr>
<td>2003</td>
<td>45.89</td>
<td>43.86</td>
<td>39.43</td>
<td>44.25</td>
<td>42.17</td>
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<td>41.70</td>
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</tr>
</tbody>
</table>

> 5 months (-), ov + = 0.135 mgd

### G הסיפור

808 242-7666

Wailuku Water Co.

ROY - I will update

do dec 05 and fix it

do you at memory.

Avery

5332-02
Mr. Peter Horovitz  
Mancini, Welch, & Geiger LLP  
33 Lono Avenue, Ste. 470  
Kahului, HI 96732

Dear Mr. Horovitz:

Request to Transfer Water Use Permit Applications

Thank you for your October 20, 2005 notice of transfer of interest in the water system of Wailuku Agribusiness Co., Inc. to Wailuku Water Company LLC.

We are amending the applications for water use permits filed with the Commission on January 2, 2004 (and as may have been subsequently amended) to reflect the new entity’s assumption of interest. The Commission referred these applications to public hearing at its regular meeting on September 22, 2004. The hearing will be continued at a date to be announced. These include:

<table>
<thead>
<tr>
<th>WUP</th>
<th>Well No.</th>
<th>Source Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>680</td>
<td>5332-02</td>
<td>Iao Tunnel (Kepaniwai), shared by Maui Dept. of Water Supply</td>
</tr>
<tr>
<td>681</td>
<td>5132-01</td>
<td>Waikapu Tunnel #1</td>
</tr>
<tr>
<td>682</td>
<td>5132-02</td>
<td>Waikapu Tunnel #2</td>
</tr>
<tr>
<td>684</td>
<td>5333-01</td>
<td>Iao Needle Tunnel #1</td>
</tr>
<tr>
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<td>5333-02</td>
<td>Iao Needle Tunnel #2</td>
</tr>
<tr>
<td>685</td>
<td>5332-01</td>
<td>Black Gorge Tunnel</td>
</tr>
</tbody>
</table>

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,

DEAN A. NAKANO  
Acting Deputy Director

Cc: Wailuku Water Company LLC  
    Wailuku Agribusiness Co., Inc.
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Re: Request to Transfer Water Use Permit; Wailuku Agribusiness Co., Inc. to Wailuku Water Company LLC

To whom it may concern:

Enclosed please find a Request to Transfer Water Use Permit dated September 6, 2005 (the "Request"). The Request indicates an effective date, if allowed, of October 1, 2005. The permits and registrations at issue are set forth on Exhibit "A" attached to the Request.

The condition and purposes of the permits remain unchanged. Accordingly, pursuant to Hawaii Revised Statute §174C-59 it is our understanding that the enclosed Request suffices to transfer all listed permits and registrations to Wailuku Water Company, LLC. If this is not the case, or if you need any further information in order to affect the transfer, please contact me immediately so that we can address your requirements.

I look forward to hearing from you.

Very truly yours,

Peter A. Horovitz

PAH:lg
Enclosure
cc: Wailuku Water Company LLC
     Wailuku Agribusiness Co., Inc.
State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
REQUEST TO TRANSFER WATER USE PERMIT
☐ Groundwater or ☐ Surface Water

Instructions: Please print in ink or type and send completed application to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0225. For further information and updates to this application form, visit http://www.hawaii.gov/dlnr/cwrm.

CURRENT PERMIT HOLDER:
1. (a) PERMITTEE
   Firm/Name Wailuku Agribusiness Company Inc
   Contact Person Clayton S. Suzuki
   Address 255 East Waiko Road, Wailuku Hawaii 96793
   Phone 808-244-2208 Fax 808-242-7068
   E-mail csuzuki@ccc1826.com

   (b) LANDOWNER OF SOURCE
   Firm/Name Wailuku Agribusiness Company Inc
   Contact Person Avery B. Chumbley
   Address 255 East Waiko Road, Wailuku Hawaii 96793
   Phone 808-244-7079 Fax 808-242-7068
   E-mail abc@aloha.net

   Signing below indicates that the signatories understand and have no objection to this water use permit transfer request.
   
   Signature ________________________________________________ Date ____________

PERMIT TO BE TRANSFERRED TO:
2. (a) PERMITTEE
   Firm/Name Wailuku Water Company LLC
   Contact Person Clayton S. Suzuki
   Address 255 East Waiko Road, Wailuku Hawaii 96793
   Phone 808-244-2208 Fax 808-242-7068
   E-mail csuzuki@ccc1826.com

   (b) LANDOWNER OF SOURCE
   Firm/Name Wailuku Water Company LLC
   Contact Person Avery B. Chumbley
   Address 255 East Waiko Road, Wailuku Hawaii 96793
   Phone 808-244-7079 Fax 808-242-7068
   E-mail abc@aloha.net

   Signing below indicates that the signatories swear that: 1) the conditions of use of the transferred permit including place, quantity, and purpose of the use remain the same. I also understand that a new water use permit will be issued to document this transfer and the old water use permit and number will be void and superseded.
   
   Signature ________________________________________________ Date ____________

WATER USE PERMIT TRANSFER INFORMATION
3. WATER USE PERMIT NO.: see attached exhibit "A" EFFECTIVE DATE OF TRANSFER: October 1, 2005
4. WELL/STREAM DIVERSION NAME AND STATE NUMBER: see attached exhibit "A"

WUP TRANSFER FORM (01/20/2005)
**EXHIBIT "A"**

<table>
<thead>
<tr>
<th>Date</th>
<th>Water Management Area</th>
<th>Well/Stream Diversion Name and State Diversion Number</th>
<th>Location</th>
<th>Tax Key</th>
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<tbody>
<tr>
<td>12/29/03</td>
<td>Iao Aquifer</td>
<td>Iao Tunnel, 5332-02</td>
<td>Iao Valley</td>
<td>(2) 3-3-03-03</td>
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<tr>
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<td>Iao Needle Tunnel, 5333-01</td>
<td>Wailuku</td>
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<tr>
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<td>Wailuku</td>
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<td>Black Gorge Tunnel, 5332-01</td>
<td>Wailuku</td>
<td>(2) 3-3-03-03</td>
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<td>Waikapu</td>
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<td>Waiehu T.H. &quot;B&quot;, 5431-01</td>
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<td>(2) 3-2-17-18</td>
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</table>
FAX TRANSMITTAL SHEET

TO: Charlie Ice
FROM: Avery B. Chumbley, President
COMPANY: CWRM
DATE: July 14, 05
FAX NUMBER: 808-587-0217
TOTAL NO. OF PAGES (INCLUDING COVER)

CC: 
RE: Follow up on Inq

URGENT
FOR REVIEW/COMMENT
PLEASE CALL
FOR YOUR FILES

NOTES/COMMENTS:

Attached Charlie,

As a follow up from the public hearing held on Monday the 11th, here is the amounts of water taken by JWS and us at the tunnel. I am not aware of any alternatives to this source. The duties would remain at 100% of the diversions for economic use.

Call me if you have questions.

Avery
### Wailuku Agribusiness Co.

**Lao Tunnel 5332-02 Water Use by Department of Water Supply**

(Million Gallons)

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<tr>
<th>Year</th>
<th>January</th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
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PUBLIC HEARING NOTICE
Applications for Water Use Permits
Iao Ground Water Management Area, Maui

The following applications for water use permits for groundwater use in the Iao Ground Water Management Area were accepted for public hearing by the Commission at its meeting on September 22, 2004. The hearing originally commenced on October 28, 2004. It now continues on:

February 2, 2006, 1:00-4:30 pm (Thursday)
State Office Bldg 2, Conference Room B (3rd Floor)
54 South High Street, Wailuku HI 96793

The hearing officers will gather information on high-level sources (tunnels and the Kepaniwai Well). These applications will be combined with proceedings concerning a petition to amend the interim instream flow standard of four Wailuku District streams: Waihee, Waiehu, Iao, and Waikapu. Testimony should focus on practicable alternatives, water duties, Hawaiian rights, and definitions of public trust uses.

**High-level Sources:**

<table>
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<tr>
<th>Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA #</th>
<th>TMK</th>
<th>amount (mgd)</th>
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<td>WWC</td>
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<td>HC&amp;S</td>
<td>691</td>
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Applicants: Maui County Department of Water Supply (MDWS)
Hawaiian Commercial and Sugar (HC&S)
Wailuku Water Company, LLC
(note that the interests of Wailuku Agribusiness Company, Inc. (WACI) have been transferred to Wailuku Water Company, LLC, with the same respondents)

Materials related to the noticed items are available for review at the Wailuku Public Library, 251 South High Street, Wailuku, and at the Commission office located at 1151 Punchbowl Street, Room 227, Honolulu, and will also be available at this public hearing.

The hearing officers will close the hearing at the end of this session. Commission staff recommendations on these applications would then 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 the proposed action, you have a right to request an administrative contested case hearing (Hawaii Administrative Rules §13-167-52(a)). However, you must make the request for such a hearing either orally or in writing by the close of the public hearing and file (or mail and postmark) a written petition for a contested case with the Commission within ten days after the date of the public hearing noticed here. Petition forms are available from the Commission.

If you do not make such a request or fail to file a timely written petition for a 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 (Oahu) 587-0214 at least three days in advance of the public hearing or meeting 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: January 12, 2006

Publish in: Maui News issue of January 17, 2006
November 17, 2005

Mr. Peter Horovitz  
Mancini, Welch, & Geiger LLP  
33 Lono Avenue, Ste. 470  
Kihei, HI 96732

Dear Mr. Horovitz:

Request to Transfer Water Use Permit Applications

Thank you for your October 20, 2005 notice of transfer of interest in the water system of Wailuku Agribusiness Co., Inc. to Wailuku Water Company LLC.

We are amending the applications for water use permits filed with the Commission on January 2, 2004 (and as may have been subsequently amended) to reflect the new entity’s assumption of interest. The Commission referred these applications to public hearing at its regular meeting on September 22, 2004. The hearing will be continued at a date to be announced. These include:

<table>
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<tr>
<th>WUP</th>
<th>Well No.</th>
<th>Source Name</th>
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<tbody>
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<td>685</td>
<td>5332-01</td>
<td>Black Gorge Tunnel</td>
</tr>
</tbody>
</table>

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,

DEAN A. NAKANO  
Acting Deputy Director

cc: Wailuku Water Company LLC  
Wailuku Agribusiness Co., Inc.
October 20, 2005

Via U.S. Mail

Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Re: Request to Transfer Water Use Permit; Wailuku Agribusiness Co., Inc. to Wailuku Water Company LLC

To whom it may concern:

Enclosed please find a Request to Transfer Water Use Permit dated September 6, 2005 (the "Request"). The Request indicates an effective date, if allowed, of October 1, 2005. The permits and registrations at issue are set forth on Exhibit "A" attached to the Request.

The condition and purposes of the permits remain unchanged. Accordingly, pursuant to Hawaii Revised Statute §174C-59 it is our understanding that the enclosed Request suffices to transfer all listed permits and registrations to Wailuku Water Company, LLC. If this is not the case, or if you need any further information in order to affect the transfer, please contact me immediately so that we can address your requirements.

I look forward to hearing from you.

Very truly yours,

MANCINI, WELCH & GEIGER LLP

PAH:lg
Enclosure
cc: Wailuku Water Company LLC
     Wailuku Agribusiness Co., Inc.
June 1, 2005

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

Dear Mr. Tengan:

Meeting Confirmation
Information on Reasonable and Beneficial Use

Our public meeting to discuss information requested regarding water use permits in the Iao Ground Water Management Area is confirmed for the J. Walter Cameron Center, Room 1, in Kahului on June 8, 2005, from 2:30 to 6:30 p.m.

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

Sincerely,

DEAN A. NAKANO
Acting Deputy Director

Cl:ss
May 25, 2005

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

Dear Mr. Tengan:

Information on Reasonable and Beneficial Use

The hearing officers sent questions to all applicants and additional questions to individual objecting parties, dated August 25, November 15, and November 18, 2004. Without evaluating the adequacy of the responses, we have tabulated the response results (enclosed). Some of the questions have not been addressed at all by various applicants.

The interested public at the public hearing has expressed confidence that we are making progress in receiving better information to address their objections, and we are tentatively scheduling an informal meeting on June 8, 2005 at the Cameron Center in Kahului to offer the public the opportunity to review the latest responses before moving to a final session of the public hearing (public notice to be sent when confirmed).

The accompanying table for the applicants show three columns on the right-hand side that indicate (Yes or No) whether issues have been directly addressed, without evaluating the quality or adequacy of the response. These three issues were raised by the Supreme Court June 21, 2004 remand of the Waiahole case: whether alternatives have been explored, whether amounts per unit of use ("duties") are prescribed, and whether there are valued cultural, historical, or natural resources that are related to the water source for which you have a water use permit application.

If there are such resources, there are public trust presumptions in favor of maintenance of the water source in its natural state and for the practice of traditional and customary native Hawaiian rights related to those resources. Applicants must identify the extent to which those resources will be affected or impaired by their water uses, and the feasible actions, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist. The hearing officers have opined that it is the responsibility of individuals who claim such rights to provide evidence of their claims.

There is a higher level of scrutiny for private commercial uses in the balancing between public and private purposes. As for municipal uses, at least part of those uses—domestic use—is also a public trust purpose.

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,

DEAN A. NAKANO
Acting Deputy Director

Enclosure

C: Ellen Kraftsow, County of Maui, Department of Water Supply
Garret Hew, Hawaiian Commercial & Sugar Co.
Linnel T. Nishioka, Ishikawa Morihara Lau & Fong LLP
Clayton Suzuki, Wailuku Agribusiness Company, Inc.
Randy Gentry, County of Maui, Department of Parks and Recreation
Megan Wells, Living Waters Land Foundation, LLC
April 12, 2005

Honorable Dean Nakano, Acting Deputy Director
State of Hawaii
Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Re: Water Use Application Information: Waihee Wells (5431-02 to 04); Waiehu Heights Wells (5430-01 & 02); Mokuhau Wells (5330-09 & 11); Kepaniwai Well (5332-05) and Iao Tunnel (5332-02)

Dear Mr. Nakano,

Thank you for your inquiry dated November 18, 2004, pertaining to the subject Water Use Application Information. We answer your questions in the order in which they were posed. To facilitate understanding, we have repeated your questions in bold.

Accommodating Need with Available Resource
One objection to your water use permit applications is the lack of an estimate of the effectiveness of conservation or alternative source development would have on reducing demand from the aquifer.

As part of the evaluation of the reasonable and beneficial criteria, we request the following:

1) Has your department evaluated the impact of its conservation program on individual and overall demand?
The Department implements various conservation measures. Our preliminary estimate of savings is about ½ MGD. Conservation measures include the following:

Supply Side
- Flow & pressure monitoring
- Leak Detection
- Automated Meters
- Preventive and Predictive Maintenance
- Backup Sources
- Reclaimed Water Use

Demand Side
- Fixture Distribution
- Conservation Pricing / Rate Structure
- Regulations Prohibiting Water Waste,
- Retrofit Pilots
- Education and Marketing
  - Media and Handouts
  - Permit Review
  - Activities and Events
  - Demonstration Gardens
  - Participatory Learning
The graph below shows our current estimate of the effect of conservation programs of the Department. Additional empirical data will be gathered and estimates will be re-visited during the WUDP process.

As part of the preparatory work for the Water Use & Development Plan process, our consultant has been gathering data and compiling a model for evaluation of costs and benefits of potential conservation programs. Enhanced conservation funding was requested in the FY06 budget proposal in anticipation of some of this work.

Other measures undertaken to help prepare for escalated conservation efforts include development of improved consumption history and forecasts by use class, efforts to better tie consumption to locations, and pressure and flow measurements within the system to enable establishment of diurnal curves and peaking factor information. These measures are not quantified in terms of effectiveness, but they lay the necessary groundwork for development of a more effective conservation program.

2) Does your department have a budget schedule of identified alternative (non-lao groundwater) source development that shows a probable meeting of projected demand - (which currently exceeds projected supply) by a given date?

Yes. Our Central Maui Source schedule is attached as Attachment A. A graph indicating how this source schedule compares to anticipated demand is attached as Attachment B.

The Commission is aware that the designation process has unfolded in large part due to the concentration of pumpage in a limited area rather than to exceedence of the sustainable yield, and that a current study being conducted by the USGS is intended to improve understanding of the aquifer to the benefit of optimal pumping operations management.

Public Trust for Domestic Use
On a related subject, the definition of "domestic use" as used by the Supreme Court is subject to clarification. It could conceivably mean general public use of potable water for drinking and sanitation, which could extend beyond household use to municipal activities at parks and schools, as well as sanitation throughout the panoply of municipal uses. Have your analyses achieved any insight on what proportion might represent basic potable requirements versus...
irrigation or industrial requirements?

Aside from the breakdown of estimated and projected use by customer class provided in Attachment C, probable domestic use portions can be estimated by looking at demand curves. While not 100% attributable to outdoor use, still the lion’s share of seasonal peaks tend to represent the difference between indoor domestic and outdoor use. Another way to get at this can be to compare Water Supply demands versus wastewater system demands where these can be evaluated in comparable periods. Historical reviews of this type indicate that the answer varies with location. Kahului tends to use 70% of its water indoors, whereas South Maui uses 40%-60% of its water outdoors.

Public Trust Purposes and Hawaiian Rights
Commissioner Milke asked for opinions from various parties concerning who may bear the burden of proof concerning public trust purposes, such as the traditional and customary and other Native Hawaiian water rights. These fall within what may be generally called the public interest, defined by the Water Code to include additional purposes. Your initial application addressed the public interest by identifying the public utility service area, a municipal system that includes probably most, if not all of the public interests in the water code. It does not address Native Hawaiian rights per se, but you have commented to OHA that OHA was in a better position to assess this issue. Does the County feel it bears no responsibility for addressing potential Native Hawaiian water rights that may be affected by the County's use of ground water supplying its service system?

As stated, DWS serves most if not all of the public interest uses identified in the State Water Code, including those of Hawaiian Homelands and other Hawaiians.

With regard to Native Hawaiian Water Rights, the Department is prepared to make a fair and good faith effort to identify and address Native Hawaiian rights. Toward that effect, staff made an effort to identify all LCAW (land commission awards) and Kuleana parcels using existing GIS data. This was followed by research at the Bailey House Museum & Bureau of Conveyances to gather information and acquire copies of the Hawaiian language documents pertaining to these historical awards. The Department has negotiated a proposal with a Hawaiian language expert to translate these. The proposal to translate and provide additional evaluation of some of this data is provided as Attachment D. However, the fact remains that a means or mechanism to address these rights has never been spelled out in the Code. OHA has better access to the relevant information, and better understanding of how to properly research Hawaiian rights and traditional uses than the Department does. That is why we proposed in our response to OHA to work with them in this regard.

DHHL Reservations
We understand that your Department not only serves existing Department of Hawaiian Home Lands residential projects but has also issued water meter reservations for projects not yet served by the County system. The DHHL request for a groundwater reservation from the lao aquifer does not distinguish between project already served, projects with meter reservations and other projects yet to receive discretionary approvals. Your reply to the notice of the reservation request notes the meter reservations and indicates that future needs will be given priority. While the Commission has not yet acted on the request for groundwater reservations from lao, we would be inclined to recommend that such reservations would apply only to projects not yet served. Our question is whether the County's commitment to issue meters is revocable or otherwise subject to further decision making.

The Department places a high priority on Hawaiian Homes. We are also making a good faith effort to limit withdrawals from the lao & Waihee aquifers. We were not expressing a lack of willingness to serve the existing DHHL projects, but rather a reluctance to specify the source from which future projects would draw water, given other water development efforts.
Water commitments are valid for a period of two years. They are revocable in the limited sense that *Any event, occurrence or condition not caused by the Department which prevents the Department from performing its obligations excuses the Department from those obligations except to refund the fee.*

The Water System Development Fee rule §16-8-9 (b) *Applicant not ready for water service*

Upon payment of the fee by an applicant who, to the Director's satisfaction is unable to accept water service immediately, the Department may reserve an allocation of service capacity available at that time. The duration of any such reservation shall not exceed one year plus two six-month extensions, each for good cause shown and approved by the Department if water service is available. The Department and the applicant shall agree in writing on the amount of any allocation.

If within one year, or longer with extensions, the applicant is not able to accept installation of water service, unless for good cause shown and approved by the Department, the application and the reservation of the allocation shall expire and the fee paid shall be deemed a penalty and forfeited, to be applied to the Department's operating fund with no credit of any kind toward any future application.

*Any event, occurrence or condition not caused by the Department which prevents the Department from performing its obligations excuses the Department from those obligations except to refund the fee.*

(emphasis added)

Please feel free to contact our Water Resources & Planning Division at (808) 270-7199, should you have any questions.

Sincerely,

George Y. Tenagan, Director

Attachments:
A Central Maui Source Schedule (tentative pending WUDP process)
B Central Maui Demand vs. Source Schedule Graph
C Demand Projections by Customer Class
D Proposal for translation of Hawaiian Documents

c: Ed Kushi, Corporation Counsel
   Jane Lovell, Corporation Counsel
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<th>Source Schedule</th>
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<td>THIS ASSUMES FAST TRACK SCHEDULE</td>
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<td>assuming DOH approvals &amp; CT adjustments can be made,</td>
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<td>installation of filter can be designed &amp; constructed together.</td>
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<td>if tank enlargement required - could take longer.</td>
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<td>include transmission land with well land project</td>
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<td>land acquisition may require condemnation.</td>
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### Waiehe Plant

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<td>Development</td>
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<td>COMPLETION</td>
<td>2012</td>
<td>2012 2012 6 may start with 2 MGD - increase as needed</td>
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### Central Maui Raw Water Storage - Waiehe

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<td>Design &amp; Land</td>
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<td>Construction</td>
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### Wailele Well

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### Desal Plant

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<td>Construction</td>
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<td>transmission construction</td>
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**SCHEDULE PENDING RESULTS OF FEASIBILITY STUDY**

Source Projects are Unscheduled Beyond 2013 at this time Pending WUDP Update In Progress.
Central Maui System  
Capacity vs. Demand

- Actual Plus 15%
- Base Case plus 15%
- Medium High Case plus 15%
- 2/3 Installed with Aquifer Limits
- 2/3 & Other Limits Except Aquifer
- Updated Base Case Plus 15%
- Updated Medium High Plus 15%
## Metered Consumption: Historical and Econometric Projection with Class Share by Class Trend Projection

**Millions of Gallons per Day**

*Calendar Year*

Consumption based on projections in "Hist and Econ FY CV Proj 18.qpw"

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**Central Total**

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## North Central

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**North Central Total**

|-------|-------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|

**South Central Total**

|-------|-------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
Contract:

Project: Translation of Hawaiian Language Documents
-Project Assessment
Company: County of Maui - Water Department

Below are my recommendations. Mahalo.

**Immediate Project Needs:**
Below is a list of my assessment of immediate project needs, to begin as soon as possible.

- Translation of documents (300 total) to clearly identify kuleana water rights; original location of streams; traditional place names
- Site Visits to determine exact boundaries and location of streams
  - Include photos and maps
- Establishment of an Advisory Board/Team, thus promoting community involvement, input and support.

**Cultural Assessment of Ahupua’a:**
Purpose: to assess the current status of the Nā Wai ‘Ehā Ahupua’a and further research the traditional functions within this Ahupua’a; to establish water resources that will support the traditional functions of the Ahupua’a; provide water resources that will support and maintain a healthy, functioning, traditional Ahupua’a.

**Goals:**
- Determine cultural sites & significance
- Record original Place Names
- Research traditional agriculture
- Identify location and remnants of lo‘i and other Native Hawaiian agricultural crops
- Determine original stream flows leading back to the ocean

**Work Timeline:**
**Phase I: Document Translation**
300 documents @ $10 per page
Total: $3,000.00

Proposed start date: immediate
Completion date: May 31st, 2005

Payment Schedule: (please make checks payable to Luana Kawa’a)
- Retainer fee of $500
  - Due and payable now
- $1000 due April 30th, 2005
- $1500 due May 31st, 2005

**Phase I Total: $3,000.00**

**Phase II: Site Visits & Establishment of Board/Team**
- upon completion of translations, schedule site visits
- (2) site visits 3-4 hrs each
- 2 board/team meetings (2 hrs. each)
- take photos of area and record

Proposed Start Date: June 1, 2005
Completion Date: August 1, 2005

Payment Schedule:
- $200 per site visit (2 minimum)
- $100 facilitation fee per board/team meeting (2 minimum)
- $100 data compilation fee

**Phase II Total: $700.00**

**Phase III: Cultural Assessment**
- Identification of cultural sites
- Identification of traditional agricultural sites
- Periodic site visits
- Research

Proposed Start Date: on going during duration of project
Completion Date: to be determined

Payment Schedule:
- to be determined

Contact me @ 357-9503
email: luanakawaa@earthlink.net
Please make checks payable to Luana L. Kawa’a.
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>
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<tr>
<td>Mokuhau Well 1</td>
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<td>700</td>
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<td>MDWS</td>
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<td>Waiehu Heights Well 1</td>
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<td>MDWS</td>
<td>697</td>
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<td>Waiehu Heights Well 2</td>
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<td>MDWS</td>
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<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>
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<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>
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<td>Living Waters #1</td>
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<td>LWLF</td>
<td>704</td>
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<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>
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<td>Baldwin High School</td>
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<td>MP&amp;R</td>
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<td>3-8-7:55</td>
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<tr>
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<td>5329-14</td>
<td>MP&amp;R</td>
<td>713</td>
<td>3-8-7:55</td>
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<td>MP&amp;R</td>
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<td>5529-02</td>
<td>MP&amp;R</td>
<td>711</td>
<td>3-2-13:6</td>
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<tr>
<td>Waiehu Golf 1</td>
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<tr>
<td>Waiehu Golf 2</td>
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<td>MP&amp;R</td>
<td>714</td>
<td>3-2-13:29</td>
<td>0.324?</td>
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<tr>
<th>Name</th>
<th>Well No.</th>
<th>Applicant</th>
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<th>TMK</th>
<th>Amount (mgd)</th>
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<tbody>
<tr>
<td><strong>New Uses</strong> arising after July 21, 2003 or completed applications submitted after the July 21, 2004 deadline</td>
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<tr>
<td>None</td>
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</table>
• **High-level Dike Sources** (impacting stream flows, to be later combined with the IIFS petition proceedings)

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<tr>
<th>Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Amount (mgd)</th>
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<td>Existing Uses</td>
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<td>and accepted as</td>
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<td>complete applications</td>
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<tr>
<td>submitted by</td>
<td></td>
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<td></td>
<td></td>
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<tr>
<td>the July 21', 2004</td>
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<td></td>
<td></td>
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<tr>
<td>deadline</td>
<td></td>
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<tr>
<td>Kepaniwai Well</td>
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<td>MDWS</td>
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<td>Lao Tunnel</td>
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<td>MDWS</td>
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<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
TO: Ellen Kraft
FROM: Charley Ice
Date: 17 March 05

Transmitting the letter accepting WUPAs for eight sources. A similar letter went out August 9, 2004 accepting Waihee 3 WUPA as complete, making nine in all.

The only one I believe is not officially accepted is Wailuku Shaft, although it is essentially complete. Because we are at the public hearing stage already, because the application may be competing with Kehalani Mauka's, and because the present state of affairs is such that the hearing officer is treating both of them as "new uses", we have not officially accepted it as existing or new — not that it has significant bearing on the continued use, as that is statutorily accepted until a decision on the application is reached. We understand that Kehalani and MDWS are in negotiation to resolve the issues involved with having separate applications, and we await any resolution that may be forthcoming, as the presumption is that any resolution will include amendment of the applications. Meanwhile, barring resolution, the hearing officers will recommend action in due time — hopefully at the next opportunity following closing of the hearing April 22 (announcement to follow) — unless it ends up being contested.

Maui Lani Wells Reliance

You’ll be interested to know that the communications to the effect that the owners should not place reliance on these wells because of limitations on the source are not documented. They have been phone conversations with Tom Nance.

The document review I was speaking of was for a Maui Lani development project, which had identified the County system for its source, and we issued the standard comment about the lao situation. Subsequently, we are told that the source will be either Maui Lani Wells or surface water treatment, and we have had conversations with Office of Planning on this, as the result of being asked for assistance in their review. However, a revised comment was developed but not sent, as it determined that the request for assistance was to provide backup at some point in the process at the Land Use Commission. We have that information available for comment at that time.

In general, our view is that the water to be tapped by the Maui Lani Wells is coming primarily from irrigation return flows, which are completely dependent on continued sugar cultivation, and from the unlined Waiale Reservoirs, which are subject to available flows from stream sources under petition to have flows restored/diversions restricted and a separate petition alleging waste of stream diversion, in some part due to system losses such as the unknown amount of reservoir loss through leakage/recharge.

Tom Nance has stated he believes that underflow from Makawao Aquifer through Paia Aquifer, or alternatively from lao, would sustain the flows from Maui Lani Wells (pump data at 1&2 show low chlorides). We are unofficially doubtful without better information, such as silica monitoring.

The potential for surface water treatment is subject to the same petition to amend interim instream flow standards (to restore stream flows). We cannot predict the outcome of these processes, but long-term reliance is not a sure thing at all.

Return Fax: 587-0219
Return Post: P.O.Box 621, Honolulu 96809
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, Hawaii 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 ʻlao 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 1920.1 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).
Letter to Yvonne Izu Re: Oiurdens Of Proof And Legal Standards Regarding: (1) Traditional & Customary Native Hawaiian Rights & Practices; & (2) Municipal Uses December 17, 2004
Page 2 of 13

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 ‘Iao Aquifer. See generally In re Waiahole 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 ‘Iao. 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 ‘Iao 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 Hawai‘i, including ‘Iao. As part of the Hawai‘i 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 Hawai‘i 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 `Iao 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.

Waiāhole I, 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
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 4 of 13

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 'opiihi 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.” Id. at 50.

Pursuant to Ka Paʻakai, given the information already provided to this Commission in objections to water use permit applications for ʻIao, at the October 28, 2004 public hearing on Maui, and in the petition to restore stream flow in Waiheʻe, North and South Waiehu, ʻIao and Waikapū streams and their tributaries (“Nā Wai ʻEhā”) 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 ʻIao, 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 Nā Wai ʻEhā 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 Hawaiʻi Water Plan, we understand the enormity of the task facing this Commission and the applicants seeking water use permits for ʻIao. Although the Hawaiʻi 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 Liliʻuokalani 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 for contact information for local practitioners or other resources; (8) contact culturally-based groups from the area including hula hālau, Hawaiian Civic Clubs, ‘Onipaʻa Nā 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 Wai‘ola, 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 I 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 Hawaii 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 Hawaii 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 [Hawaii]").

"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 Mokuhaul 1. MDWS has also admitted that it transports potable water from 'Iao to Central and South Maui and Paia 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

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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 'Iao 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 I, 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 statutes 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 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 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 Wai‘ola 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 Waiāhole I must not lose sight of the forest for the trees. A larger view of the public trust purposes recognized in Hawai‘i 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 ʻīao, 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 Waiāhole 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 Waiāhole I decision adopted this reasoning without qualification. 94 Haw. at 138. Indeed, Waiāhole 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 way.

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

In short,  *Waiahole 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, *Waiahole 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 *Waiahole 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.

**B.  *Waiahole I* States The Standard For Municipal Use Applicants Under The Public Trust And Code.**

The November 15 letter also points out that municipal uses are not “private commercial uses” discussed in *Waiahole I*. Of course, the only uses at issue in *Waiahole I* were private commercial uses,” so claiming that *Waiahole 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 *Waiahole 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 *Waiahole 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 *Wa‘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.” Wai‘ahole 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 Wai‘ahole 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.

Me ke aloha,

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 ʻEhā
    (via U.S. Mail)
Yvonne Izu, Deputy Director
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawai‘i 96809

RE: Questions raised regarding objections to Water Use Permit Applications in the ‘Iao Ground Water Management Area, Maui.¹

Dear Ms. Izu,

The Office of Hawaiian Affairs appreciates the opportunity to reply to your letter regarding issues raised at the hearing for the above referenced permits. We are also grateful to you for allowing us additional time beyond your requested response date to contemplate and react to your provocative questions. The issues raised are of significance to all the people of Hawai‘i, and to our beneficiaries and the people of Maui in particular. We are encouraged that the Commission wishes to engage in a thoughtful discussion of how each of us should shoulder our particular kuleana to protect the resources on which we all depend.

¹ Applications by:

**Hawaiian Commercial and Sugar Company for:**
- ‘Iao Tunnel (Well No. 5330-02, WUP No. 691, source TMKs 3-4-033:029 and 3-4-34, location of use TMKs 3-8-5, 6, 7: various);

**Maui County for:**
- Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-17:31, location of use TMKs unspecified and multiple);
- Waiehu Heights Wells 1 & 2 (Well Nos. 5430-011 & 002, WUP Nos. 697 & 698, source TMK 3-3-2:28, location of use TMKs unspecified and multiple);
- Kepaniwai Well (Well No. 5332-05, WUP No. 699, source TMK 3-3-3:5, location of use TMKs unspecified and multiple);
- Mokuhau Wells 1 & 3 (Wells Nos. 5330-09 & 11, WUP Nos. 700 & 701 source TMK 3-3-2:24, location of use TMKs unspecified and multiple);
- ‘Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-3:3, location of use TMKs unspecified and multiple);
- Waihee Well 3 (Well No. 5431-04, WUP 703, source TMK No. 3-2-17:018, location of use TMKs unspecified and multiple); and

**Kehalani Manka LLC for:**
- Wailuku Shaft 33 (Well No. 5330-05, WUP 707, source TMK No. 3-5-1-1, location of use TMK Nos. 2-3-04-07, Parcel 2; 2-3-5-01, Parcels 1, 17, 60, 61, 63, and 66.)
We have styled our analysis as responses to the assertions made and questions posed. For each issue, we first give the quote we are responding to, and then offer our analyses and answers as applicable.

1. Hawaiian Water Rights

A. “At the public hearing, Commissioner Miike opined that, while such rights are public trust purposes, they accrue to individuals.”

We begin our responses by noting that a key underlying assumption of Commissioner Miike’s line is correct, but only partially so. We are referring to the idea that traditional and customary rights solely “accrue to individuals.” This opinion of Commissioner Miike is key because it supports an implied line of reasoning that an individual holder of these rights must come forward, bear the burden of showing that they have these rights, and only then would a private commercial user and the Commission have the need to (or even be empowered to) consider these rights. The assumption is only partially correct, and therefore the line of reasoning is false in assuming that an individual must demonstrate their rights for the Commission to consider the issue. This is the case for the following reasons.

i. In Hawaiian tradition and custom, individual rights are integral with the rights of larger groups of Hawaiians; individuals do not hold rights solely or separately from the larger group. We first note that, self-evidently, traditional and customary rights exist in these islands because kanaka maoli developed these traditions and practices prior to the coming of any other group of people in the islands. Thus to meaningfully understand the basis for which later guarantees of traditional and customary rights were made, one must have an understanding of how these rights originated, were held, and were exercised prior to outside influence in the islands.

We do not here have the space or time to offer a full explanation of the background that supports such an understanding. What we will note is the fundamental point that individual and group traditional and customary rights are integral to each other. While it is unarguable that individual Hawaiians in ancient times exercised traditional and customary rights, most if not all practices, including practices around water such as building and maintaining ‘auwai, depended upon exercising the practices as part of a group. Indeed those practices could not be undertaken or the resource effectively managed without group effort.² It would be meaningless to consider one individual’s right to a practice without examining the rights of that person’s extended family and community.

ii. The Hawai‘i State Constitution does not guarantee or assign traditional and customary rights solely to individuals. The state constitutional provision that provides a guarantee of these rights implies in its wording that these rights are possessed by a whole group as well as individuals. Namely, the rights are possessed by at least the groups of ahupua‘a tenants who are the descendants of native Hawaiians:

Section 7. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

We first note that the wording of this section does not explicitly mention individuals and emphasizes the groups' status. Compare it, for instance, to the specific heading of Article I, Section ii: "Rights of individuals." Secondly and more importantly, we point out that these rights could not logically be held solely by individuals for the purposes said rights are exercised. The language acknowledges that the exercise of such rights are not only for subsistence purposes, but for cultural purposes. By definition, cultural purposes are related to the entire group of native Hawaiians.

iii. The Kuleana Act does not guarantee these rights solely to individuals. It is our observation that the most relevant law to our understanding of the guarantee of traditional and customary rights does not state that these rights only accrue solely to individuals. The language from the Kuleana Act of 1850, as it is incorporated into the Hawai'i Revised Statues (HRS 7-1), is key:

Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.

We note that the translation of the Kuleana Act chosen by the legislature for incorporation into the HRS does not say, for instance, "...each individual person on their own land shall not be deprived of the right....", but rather says "the people on each of their lands." Later in the section the word "individuals" is used in reference to wells and watercourses, where they could have again used the word "the landlords" or "the people" if they meant to discuss wells or watercourses developed by a group. If traditional and customary rights were solely held by individuals, the language in this law would not make sense.

If these rights, however, are best understood as belonging both to individuals and the people, the language in the Kuleana Act makes sense. Individuals may exercise such rights, but the guarantee is in the Act so that the practices and the group of people who perpetuate those practices could continue into the future. Flowing from that intent is the need to guarantee these rights to individuals as part of the larger group.

This view is, of course, consistent with the overall purpose behind the passages of the acts collectively known as the Māhele, which was to benefit the commoner class as a group and the Nation as a whole, as well as give all citizens, including the King, clear title to land.³

Because traditional and customary rights are not solely held by individuals, the Commission or any other administrative agency can not and should not require a showing that any such rights

accrue to individuals. Referring to our discussion above when necessary, we now continue with our response.

B. "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?"

i. Traditional and customary rights to water must be assumed to exist throughout 'Iao and everywhere in the islands as a matter of fact and law. To begin our examination of this section of your letter, we need to highlight the phrase “when such rights exist.” Not only do such rights accrue to more than individuals, but such rights as a matter of law and fact, clearly exist throughout the 'Iao Ground Water Management Area. In the recent petition by Earthjustice on behalf of Hui o Nā Wai 'Eha seeking amendment of the interim instream flow standards for streams including those that fall in this area, information has already been provided to the Commission that details the cultural and historical significance of water in this area, including information on population, heiau, and springs. Beyond that evidence, the fact that thousands of Hawaiians lived in this area for hundreds of years developing and practicing custom and tradition is generally known and does not need citation.

Beyond the specific area considered with these WUPA, we must note that the proper question when the Commission considers a WUPA is not to ask whether these rights exist. These rights exist across the islands as a matter of tradition and custom. They were later guaranteed by the state constitution (Article XII, Section 7) and law (HRS 1-1, HRS 7-1, and in specific relation to water, in HRS 174C-101). Indeed, because of the obligation placed on state agencies by this constitutional provision and statutes cited, there is a burden on agencies to demonstrate in any area that these rights do not exist if that is the position they desire to pursue.

ii. Not even assertion is necessary. Because traditional and customary rights must be assumed to exist in all areas of the island as a matter of fact and law, the idea that specific rights need to be “asserted” in order to be considered in the water use permitting process is, to us, nonsensical. While we at OHA are compelled by our kuleana to remind the Commission and applicants of their duties, we or any individual or group need not “assert” rights which clearly exist as a matter of law.

iii. An individual showing of rights is not necessary. As noted above, traditional and customary rights do not accrue solely to individuals or exist only in places where proven. Therefore, while showing that “specified individuals have such rights” can be useful understand some interests involved, it is not a required trigger for having the Commission and applicant(s) assume their burden. However, if an individual who also possesses such rights appeared before the Commission on a WUPA, they would have standing to do so.

iv. The Commission and the Applicant have an affirmative duty to determine the extent of these rights. Given the above points, we feel there are other questions which would better guide all of us to understanding our own particular kuleana in protecting rights and the resource during the WUPA process. Some of these questions are: Who has the burden of inventorying the traditional and customary Hawaiian rights in an area? How would having an updated Hawai'i Water Plan
aid applicants in undertaking the work they have to meet their burden? What kind of efforts and evidence should the Commission consider as adequate when an applicant submits required information?

In response to these questions, two recent Hawai‘i Supreme Court cases rule.

In Wai‘ola (re Wai‘ola o Moloka‘i, Inc. 103 Haw. 401 (2004)), which addressed an issue quite similar to that in ‘Iao, the court bound the Commission and the applicant to actively search for information regarding the impact of the proposed use on traditional and customary rights. The court ruled (442) that "the absence of evidence that its [the applicant's] proposed use would affect native Hawaiians' rights was insufficient to meet the burden imposed by the public trust doctrine, the Hawai‘i Constitution, and the Code."

As to what specific findings would prove sufficient, the Hawai‘i Supreme Court offers binding guidance in Ka Pa‘akai. There they addressed the need of the Land Use Commission (LUC) to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible. The court noted (Ka Pa‘akai o ka ‘Āina et al. v. Land Use Commission et al., 94 Haw, 47-49 (2000) (footnotes omitted)):

Article XII, section 7 of the Hawai‘i Constitution obligates the LUC to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible when granting a petition for reclassification of district boundaries. See PASH, 79 Haw. at 450 n.43, 903 P.2d at 1271 n.43 (emphasis added). In order for the rights of native Hawaiians to be meaningfully preserved and protected, they must be enforceable. In order for native Hawaiian rights to be enforceable, an appropriate analytical framework for enforcement is needed. Such an analytical framework must endeavor to accommodate the competing interests of protecting native Hawaiian culture and rights, on the one hand, and economic development and security, on the other...

We therefore provide this analytical framework in an effort to effectuate the State’s obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests: In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the LUC, in its review of a petition for reclassification of district boundaries, must -- at a minimum -- make specific findings and conclusions as to the following: (1) the identity and scope of "valued cultural, historical, or natural resources" in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources -- including traditional and customary native Hawaiian rights -- will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.

We have no reason to conclude that the constitutional burden on CWRM to consider these rights is any less than that held by the LUC, or that the analytical framework offered is inapplicable.

So what might be adequate in this case as a response to the requirements set forth in Ka Pa‘akai and Wai‘ola? Here we note that in Earthjustice’s response to these same questions we address here in this letter, they point out that the work of the applicant would be greatly reduced if the Commission had by this point fully completed the duties assigned to them by the Code. They also suggest a number of ways the applicant and the Commission could undertake such a study. We agree with the points they raise and will not restate them here.
C. “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 a ruling from the state courts before the Commission can consider them in the water permitting process?”

Because of all of the reasons we mention above, drawing special attention to the language cited in Ka Pa‘akai and Wai‘ola, we feel it is clear that the Commission has the authority and duty to examine the extent to which these rights exist and are practiced in the ‘Iao Ground Water Management Area. We hope that the Commission begins to affirmatively do so; it will be of great assistance not only to us but to all WUP Applicants who desire a greater level of certainty in the process.

2. “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?”

While we appreciate that our objections to these permits has raised the general issue of municipal v. domestic use, we believe in general the issue has already been asked and answered in Hawai‘i law. We here again join in the discussions of this issue raised by Earthjustice in their response to these same questions. We also offer the following observations.

i. Maui County’s Department of Water Supply does not and apparently can not separate out domestic and non-domestic uses, but they should be required by the Commission to do so. We are unaware of any means the MDWS currently has to distinguish in detail and amount the kinds of uses encompassed by their municipal applications. Because this is the case, it would be illogical to let their industrial and commercial uses “piggyback” on their provision of domestic supplies when considering their WUPA. Carried to its logical extent, such an argument would allow any private commercial user avoid their evidentiary burdens simply by providing a little domestic water as part of their development.

What would be more appropriate in this case would be to require MDWS to provide some estimate of the different uses in their system. They also would then need to show how, in the case of shortage, they would protect domestic, public trust uses before serving their non-public trust uses. Indeed, in their letters to us and in their WUPA, they seem to indicate they desire to understand better their different system uses. We however must note that over 120 years ago, absent of an ability to separately meter domestic and non-domestic use, the city of Honolulu was able to create a legally acceptable management and regulatory scheme to protect domestic uses in its system while curtailing non-domestic uses and respecting other water claimants in their source area. We consider this example below.

ii. A municipal purveyor has the authority and duty to restrict its non-public trust uses when its supplies are restricted due the competing and superior demands of other uses. We believe Hawai‘i’s courts have already distinguished between the different kinds of uses in municipal systems, discussed how they weigh against competing demands of others outside the municipal
system, and the affirmed duty and authority of municipal purveyors to manage in this kind of environment. We draw your attention to Riemenschneider v. Wilson 6 Haw. 375 (1882).

In this case the plaintiff, Riemenschneider, was a Honolulu municipal water user. A scarcity of water in Honolulu had led the government to restrict the times when individual households could irrigate landscaping. The plaintiff continued to irrigate in a manner afoul of the restrictions, and his service was suspended. Riemenschneider subsequently filed a writ of mandamus to the Hawai‘i Supreme Court to order the city to turn his water on again.

The plaintiff lost, and the court’s ruling and reasoning is particularly applicable to the situation in ‘Iao. The court found the city had a legitimate need and a right to restrict water usage and could restrict the non-domestic uses of the plaintiff (379):

I have indicated that the Government has a right to make reasonable rules and regulations in respect to the water works and the supply of water to the inhabitants. The exercise of this authority is necessary for the public benefit, and in order to enable the Government properly to fulfil its obligations in distributing the water as fairly as may be possible. In times of water famine all [municipal users] must suffer reduction alike, and the Government then has the right to restrict the use of water by ratepayers, commencing the reduction with the least necessary use of water, i.e. irrigation [of residential landscaping].

Part of the court’s reasoning that justified this decision was that other protected uses outside of the City’s control restricted the City’s municipal water supply. Referring to the lower and upper Nu‘uanu reservoirs that supplied the system and the superintendent (Wilson) who controlled the City’s system, the court noted (378):

Moreover, he [Wilson] could not fill the lower reservoir nights because it interfered with the gas machines run by the water from the upper reservoir, and he had further difficulty in drawing off the water from the upper reservoir, as certain persons having kalo patches and lands between the two reservoirs, which had the privilege of riparian proprietors from the stream which supplies both reservoirs, would become short of water, unless the overflow from the upper reservoir was allowed to pass back into the stream for their benefit.

In other words, the municipal system in this case did not respond to the competing demands for use within its own system and the outside, superior claims to water itself competed with, by claiming it had a protected right and ignoring those with superior claims. Rather (and uncontested by the court), the purveyor properly restricted its own diversion and subsequently restricted the non-domestic, non public trust uses of its ratepayers. Furthermore, the court upheld the enforcement of these restrictions, even when that enforcement resulted in the cutting off of domestic water use by the plaintiff, because the system was not set up to cut off only irrigation.

Today, of course, we understand that kalo would be entitled to water as a traditional and customary use protected by the public trust, in addition to having riparian and appurtenant rights. We see this case as illustrative of what the County needs to do in this instance: understand the protected uses it is affecting and restrict its deliveries if necessary, prioritizing the public trust uses over non-public trust uses. The Commission should order it to do so.
Once again, we appreciate the creation of an open discussion on these issues and thank you for the opportunity to offer these comments. If you have further questions, please contact Dr. Jonathan Scheuer at 594-1946 or email him at jonathans@oha.org.

Sincerely,

[Signature]

Clyde W. Nāmu'o
Administrator

Cc: Kapua Sproat Esq.
Earthjustice
223 South King Street, Suite 400
Honolulu, Hawai'i 96813
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
Mr. George Tengan, Director  
County of Maui  
Department of Water Supply  
200 South High Street  
Wailuku, HI 96793

Dear Mr. Tengan:

Water Use Application Information  
Waihee Wells (5431-02 to 04), Waiehu Heights Wells (5430-01 & 02),  
Mokuhau Wells (5330-09 & 11), Kepaniwai Well (5332-05), Iao Tunnel (5332-02)

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  
all applicants.

Accommodating Need with Available Resource

One objection to your water use permit applications is the lack of an estimate of the  
effectiveness of conservation or alternative source development would have on reducing  
demand from the aquifer.

As part of the evaluation of the reasonable and beneficial criteria, we request the  
following:

1) Has your department evaluated the impact of its conservation program on  
individual and overall demand?
2) Does your department have a budget schedule of identified alternative  
(non-Iao ground water) source development that shows a probable meeting  
of projected demand (which currently exceeds projected supply) by a given  
date?

The Commission is aware that the designation process has unfolded in large part due to  
the concentration of pumpage in a limited area rather than to exceedence of the sustainable  
yield, and that a current study being conducted by the U.S. Geological Survey (USGS) is  
intended to improve understanding of the aquifer to the benefit of optimal pumping operations  
management.
Public Trust for Domestic Use

On a related subject, the definition of "domestic use", as used by the Supreme Court, is subject to clarification. It could conceivably mean general public use of potable water for drinking and sanitation, which could extend beyond household use to municipal activities at parks and schools, as well as sanitation throughout the panoply of municipal uses. Have your analyses achieved any insight on what proportion might represent basic potable requirements versus irrigation or industrial requirements?

Public Trust Purposes and Hawaiian Rights

Commissioner Miike asked for opinions from various parties concerning who may bear the burden of proof concerning public trust purposes, such as the traditional and customary and other Native Hawaiian water rights. These fall within what may be generally called the public interest, defined by the Water Code to include additional purposes. Your initial application addressed the public interest by identifying the public utility service area, a municipal system that includes probably most, if not all the public interests mentioned by the Water Code. It does not address Native Hawaiian water rights per se, but you have commented to OHA that OHA was in a better position to assess this issue. Does the County feel it bears no responsibility for addressing potential Native Hawaiian water rights that may be affected by the County's use of ground water supplying its service system?

DHHL Reservations

We understand that your Department not only serves existing Department of Hawaiian Home Lands (DHHL) residential projects but has also issued water meter reservations for projects not yet served by the County system. The DHHL request for a ground-water reservation from Lao Aquifer does not distinguish between projects already served, projects with meter reservations, and other projects yet to receive discretionary approvals. Your reply to the notice of the reservation request notes the meter reservations and indicates that future needs will be given priority. While the Commission has not yet acted on the request for ground-water reservations from Lao, we would be inclined to recommend that such reservations would apply only to projects not yet served. Our question is whether the County's commitment to issue meters is revocable or otherwise subject to further decision-making.

Sincerely,

[Signature]

[Vonne Y. Izu] [Deputy Director]

Cl: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?
Ms. Kapua Sproat  
Page 2  
November 15, 2004

“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,

YVONNE Y. IZU
Deputy Director

Ci:ss

C: 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.

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“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?

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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

c: Kapua Sproat, Earthjustice
November 4, 2004

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 Miike 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,

YVONNE Y. IZU
Deputy Director

RH:ss
Attachments
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)” 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.” 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

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1 94 Hawai‘i 97, 137; 9 P.3d 409, 449.
2 65 Hawai‘i 531, 560; 656 P.2d 57 (1982).
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.

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</tbody>
</table>

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>
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<tr>
<td>Wailuku Shaft 33</td>
<td>5330-05</td>
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<td>702</td>
<td>3-5-1:1</td>
<td>5.774</td>
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<td>710</td>
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<td>3-2-13:6</td>
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<td>714</td>
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<td>Black George Tunnel</td>
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<td>685</td>
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<td>*Living Waters #1</td>
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<td>LWLF</td>
<td>704</td>
<td>3-2-13:15</td>
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<td>&gt;6.890</td>
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</table>

**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

Dated: October 7, 2004

Publish in: Maui News issue of October 12, 2004
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT
September 22, 2004
Honolulu, Hawaii

 Maui Departments of Water Supply and Parks & Recreation
 Hawaiian Commercial & Sugar Company
 Kehalani Mauka, LLC
 APPLICATIONS FOR WATER USE PERMITS
 Iao Tunnel, Waihee Wells 1-3, Waiehu Heights Wells 1 & 2, Kepaniwai Well,
 Mokuuah Wells 1 & 3, Wailuku Shaft 33
 Existing Uses Only
 Iao Ground Water Management Area, Maui

APPLICANT 1:
Maui Department of Water Supply
200 South High Street
Wailuku, HI 96793

APPLICANT 2:
Hawaiian Commercial & Sugar Company
P.O. Box 791628
Paia, HI 96779

APPLICANT 3:
Maui Department of Parks & Recreation
700 Hali‘a Nakoa Street, Unit 2
Wailuku, HI 96793

APPLICANT 4:
Kehalani Mauka, LLC
1100 Alakea Street, 27th Floor
Honolulu, HI 96813

SUMMARY OF REQUEST:
Authorize a subcommittee of Commissioners to convene and take testimony at a public hearing on
Maui concerning water use permits for existing use only for reasonable-beneficial use of ground water
from the Iao Aquifer.

LOCATION MAP: See Exhibit 1

BACKGROUND:
July 16, 2003 The Commission designated the Iao Aquifer as a ground-water management area,
effective July 21, 2003, coincident with a public notice announcing it.

July 21, 2003 Public notice was issued, requiring all existing uses to be continued only upon
application for a water use permit. A one-year deadline was given, until July 21,
2004, to file applications.
September 17 & October 22, 2003

Notices were sent to each known water user in the Iao Water Management Area, specifying their requirement to apply for a water use permit to continue existing use, and enclosing the appropriate form. The October letter was sent via Registered/Return Receipt Mail.

July 21, 2004

By this date, applications for water use permits were received from Maui Department of Water Supply and Parks and Recreation, from Hawaiian Commercial and Sugar Company, and from Kehalani Mauka, LLC, for most but not all existing uses from the Iao Aquifer. Several of these were incomplete, but were allowed to clarify their applications and still be considered to have met the deadline. In the ensuing period, some incomplete applications remain incomplete, and may be addressed as “new” uses, as specified in the Water Code, §174C-50(c).

(See Exhibit 2, Complete Water Use Applications for Existing Use from the Iao Water Management Area.)

Receipt of each complete application was announced by public notice, with opportunity to raise objections within 10 working days. Objections were raised, to the effect that all the applications failed to establish that the uses are consistent with the public interest or are reasonable beneficial, or identify potential impacts on traditional and customary Hawaiian rights or Hawaiian Home Lands rights. For this reason, staff recommends that a public hearing be convened on Maui to air the objections and to hear testimony clarifying the applications in full.

RECOMMENDATION:

That the Commission authorize a subcommittee of commissioners to convene a public hearing to hear objections to and clarifications of water use applications only for existing uses of ground-water from the Iao Ground-Water Management Area. Only complete applications for existing uses will be considered. Late, incomplete, or absent applications for existing uses will be considered abandoned and required to file applications for new use at a subsequent time.

Respectfully submitted,

[Signature]

YVONNE Y.EZU
Deputy Director

Exhibit(s): 1 (Location Map)
2 (Complete Water Use Applications for Existing Use from Iao Water Management Area)

APPROVED FOR SUBMITTAL:

[Signature]

PETER T. YOUNG
Chairperson
August 25, 2004

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

Dear Mr. Tengan:

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
August 13, 2004

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

Re: Objection to application for Water Use Permits for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 685 & 696, source TMK 3-3-27:31), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-02:28), Kepaniwai Well 2 (Well No. 5332-05, WUP No. 699, source TMK 3-3-03:05), Mokuha Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701, source TMK 3-3-02:24), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-03:03).

Dear Chairperson Young and Commissioners:

This is in response to Earthjustice's objection of July 14, 2004 to the above-mentioned Water Use Permit Applications.

Earthjustice Objection 1. The applications fail to establish that the proposed uses are consistent with the public interest and will not interfere with existing legal uses of water, pursuant to HRS §§ 174C-49(a)(3) and 174C-49(a)(4)

Water served to the public for domestic uses has long been recognized as being not only consistent with, but the highest and best use of public resources. See In re Water Use Permit Applications ("Waiakolu"), 94 Hawa. 97, 137, citing, inter alia, Restatement (Second) of Torts § 850A cmt. c (1970); McBryde Sugar Co. v. Robinson, 54 Haw. 174, 191-198 (1973); Carter v Territory, 24 Haw. 47, 66 (1917). There is not much danger that the Department of Water Supply's (DWS's) proposed uses will interfere with existing legal uses of the water, as DWS is by far the major user. Moreover, other proposed legal users include public parks and schools. Existing legal users of groundwater, public and private wells and tunnels developed within Iao aquifer, according to CWRM data, are listed below.

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<td>Waiale Prototype</td>
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"By Water All Things Find Life"
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<thead>
<tr>
<th>Code</th>
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</table>
a. Maui County Department of Water Supply (MDWS) failed to address any impacts of its proposed uses on resource protection.

The Department of Water Supply (DWS) recognizes that the maintenance of water in their natural state constitutes a distinct use. We also recognize that public and private uses of surface water within the Iao aquifer area include all the purposes and activities listed in the objection on behalf of Hui o Na Wai Eha (the Hui) and Maui Meadows Homeowners Association (MMHA). To identify uses dependent on surface water, including the maintenance of surface water in their natural state, the impact (if any) from groundwater withdrawals on surface water in the area would first have to be scientifically established. Studies of dike impounded water discharge to streams conducted in 1942 and 1970 suggested that development tunnel flow would have discharged naturally into stream channels below the diversions had it not been intercepted by the tunnels. (Stearns, H.T., and Macdonald, G.A., 1942, Geology and ground-water resources of the island of Maui, Hawaii: Hawaii Division of Hydrography Bulletin 7; and Yamanaga, George, and Huxel, C.J., 1970, Preliminary report on the water resources of the Wailuku area, Maui: State of Hawaii, Department of Land and Natural Resources, Division of Water and Land Development, Circular C61). DWS addressed this assumption in the water use application for Iao Tunnel, Well No. 5332-02. There, we noted that the high-level tunnel is not considered pumping from the Iao aquifer, according to the Commission on Water Resource Management’s ("CWRM’s") "Iao and Waihee Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact", dated November 14, 2002, at p. 20. Accordingly, any potential for the high level tunnel to impact streams should not be an issue in this groundwater management area proceeding.

Moreover, the potential for discharge from the Iao basal aquifer to streams has not been extensively studied using modern technology and methodology. Studies by United States Geological Service under contract with DWS are ongoing to quantify any discharge from the Iao basal and dike-impounded aquifer to streams. Seepage runs have been performed for Waihee stream this year and data from that activity should be available shortly.

DWS has documented resource protection measures in the application, including distribution of withdrawals within the Iao aquifer, relocation of withdrawals outside of the aquifer, development of alternative sources, conservation and resource protection programs. DWS manages and contributes to a number of resource protection programs: DWS funds and participates in four watershed partnership programs throughout Maui County. The programs provide shared expertise and resources, leverage outside funds and provide for early awareness and action. DWS initiated and manages a Wellhead Protection Program for Maui County designed to protect the wells and groundwater from contamination.

DWS would be happy to assist MMHA in implementing a water conservation program to reduce demand in the Maui Meadows area and thereby alleviate peak demand stress on the Iao aquifer. Average water use for single-family services in Maui Meadows is about 31% higher than Kihei single-family services, and about 70% higher than single-family services in Waikapu. The Department provides free material on appropriate climate-adapted native plant landscaping, water conserving irrigation techniques and other in- and out-door conservation measures.
b. MDWS failed to address traditional and customary Native Hawaiian rights & practices.

As discussed under objection 1(a), determining impact on uses dependent on surface water requires scientific study of whether pumpage from particular wells impacts flow in particular streams, and if so, to what extent. While Earthjustice’s letter alleges that Waiola spring is now dry as a result of ground and surface water conditions in the aquifer, it does not cite to any scientific studies supporting this claim. DWS concurs that an inventory and assessment of traditional and customary Native Hawaiian rights dependent on surface water, including kalo cultivation and traditional use of springs, would be useful. However, DWS notes that CWRM has not designated the lao as a surface water management area. Many of these surface water issues, including the issues specifically relating to the spring named Waiola, have been raised in the Petition to Amend Interim Instream Flow Standards for Waie‘e, North & South Waiehu, lao, and Walkapu Streams and Their Tributaries recently filed by Hui ʻO Na Wai Eha and Maui Tomorrow Foundation, Inc., and will no doubt be addressed in that proceeding.

Earthjustice Objection 2. MDWS’ applications fail to establish that its proposed uses of water are "reasonable-beneficial", pursuant to HRS § 174C-49(a)(2).

"Reasonable-beneficial use" is defined in § 174C3 of the Water Code as "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." As stated above, Hawaii law, as well as the law in other jurisdictions, has consistently placed the highest priority on domestic use, which DWS serves in the Central Maui area from the lao aquifer. DWS’s use of this water will not interfere with public trust uses because it is a public trust use. Indeed, members of the MMHA receive their domestic water supply from this source.

As for DWS’s proposed uses, DWS clarified projected demand in a revised Table 1 of the application for each source in a supplemental letter to CWRM dated June 16, 2004 (attached). Estimated cumulative demand for each source is based on the requested amount of water as a fraction of the 12-month moving average (MAV) for the Central system at the time of designation. The demand exceeding the requested amount of water for each source is expected to be met by sources outside the lao aquifer, including Waie‘e aquifer and surface water sources. Thus, there is no conflict with state and county land use plans and the public interest.

The requested amount for each well differs from June 30, 2004 MAV pumpage since requested amounts reflect MAV at the time of designation. The subject water use permit applications were filed in February and May of 2004. June 2004 pumpage may have been significantly lower than June 2003 for several reasons, including demand effects from rainfall and redistribution of pumpage. Precipitation for the year 2003 was well below the mean with the exception of two wet months (January and February).
As stated in DWS’s application, current acreage breakdown to compare use calculations for all use classes are not available. An analysis of water usage by customer classification and district, including irrigation use, will be addressed in the update to the Central Maui Water Use and Development Plan. Preliminary use class breakdown of consumption data indicate that single-family use consumption is about 43% of total use in Central Maui, not 16% as DWS incorrectly stated in the application. Preliminary use class breakdown by percentage for 2003 consumption for the Central Maui system is provided below:

<table>
<thead>
<tr>
<th>Use</th>
<th>Consumption (1,000 gal)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family</td>
<td>3,382,741</td>
</tr>
<tr>
<td>Multi-Family</td>
<td>1,530,930</td>
</tr>
<tr>
<td>Commercial</td>
<td>849,847</td>
</tr>
<tr>
<td>Hotel</td>
<td>842,122</td>
</tr>
<tr>
<td>Industrial</td>
<td>347,580</td>
</tr>
<tr>
<td>Government</td>
<td>627,089</td>
</tr>
<tr>
<td>Agriculture</td>
<td>186,823</td>
</tr>
<tr>
<td>Religious</td>
<td>51,026</td>
</tr>
<tr>
<td>Central Maui Total</td>
<td>7,818,158</td>
</tr>
</tbody>
</table>

To provide further information regarding DWS’s alternate source development, below is an update and (where available), expected production estimates for the Central system:

**Development of new sources to distribute withdrawals within Iao aquifer:**

- Iao well, development anticipated end 2005. Production estimated at 896,000 GPD.
- Waikapu Mauka well: Development anticipated end 2004.

**Development of new sources outside Iao aquifer**

- Camp Maluhia well: Acquisition of well site. No production estimate available at this time.
- Kupaa 1: Anticipated on-line end 2005. No production estimate available at this time.

**Earthjustice Objection 3.** MDWS failed to establish that the water source will accommodate its proposed uses, pursuant to HRS § 174C-49(a)(1).

In response to the Commission staff finding that in 2002 "..authorized planned uses exceed the sustainable yields", DWS has clarified to the CWRM in a letter dated November 4, 2002, that actual authorized planned use should be adjusted to reflect water commitments only. No commitment of water is granted or implied as a result of any DWS approval other than a water meter or water meter reservation. DWS has not been utilizing the Iao aquifer to provide for additional demands. Instead, it has been serving new demands from the Waihee wells, and has been advising new developments of the need to develop additional source. DWS stopped

DWS has also set specific criteria to prevent overdraft and exceeding critical chloride levels in the lao Groundwater Management Rule. (Board of Water Supply Rules and Regulations Title 16 Chapter 9). The rule specifies caution, alert and critical stages when chlorides at two well fields exceed given set points, or pumpage exceeds 95%, 98% and 100% of sustainable yields, respectively. The rule further specifies that if and when MAV pumpage equals or exceeds 95% and pumpage plus outstanding commitments equal or exceed 96%, no new meter applications will be accepted, and a waiting list will be maintained.

With respect to chlorides, DWS clarified in the November 4, 2002 letter to CWRM that chloride levels in lao sources have not exceeded the caution, alert or critical stages for a three-month moving average since inception of the lao Groundwater Management Rule. Moreover, in the "lao and Waihee Aquifer Systems State Aquifer Code 60102 and 60103 Ground-Water Management Area Designation Findings of Fact", dated November 14, 2002, at p. 78, the CWRM noted that "recent declines in chloride concentration in sensitive wells show some improvement since early 2001. Ultimately chlorides are still acceptably below EPA guidelines that help define the utility of existing sources." CWRM concluded that criterion 5 for designation, pursuant to HRS § 174C-44(5) (whether the chloride contents of existing wells are increasing to levels which materially reduce the value of their existing uses), was not met.

In addition to development of new sources, distribution of withdrawals within the aquifer, conservation measures, watershed and groundwater protection programs and monitoring and modeling of aquifer status, DWS proposed eight additional suggestions for protecting the long-term viability and sustainability of the aquifer:

1. Approval of well permits at County level: Benefits could include setting an allocation based on proposed use and reporting requirements and would better enable the county to track and monitor resource use, as to pace the growth of demand.

2. Community agreements regarding resource availability and development of an availability policy: The Water Use and Development Plan process could be utilized to establish availability policies that could help assure aquifer stability over the long term.

3. County permit conditions: Requiring private water uses to submit regular reports to DWS would improve tracking resource use.

4. Improved enforcement of reporting and monitoring requirements: Improved enforcement by CWRM would help address outstanding questions.

5. Expedite inspection of existing wells of unknown status: Identifying status would ensure proper reporting and unused wells that need to be properly sealed.

7. Inclusion of operational guidelines and policies in the Water Use and Development Plan: In depth investigation could result in a program or rule.

8. CWRM support for DWS published plans: Reserving water or setting conditions on proposals conflicting with municipal needs.

Earthjustice Objection 4. Although MDWS' applications indicate that the proposed uses are in accordance with State and Maui County general plans, land use designations, and policies, this is insufficient for the Commission to determine whether the proposed uses are reasonable-beneficial, pursuant to HRS §§ 174C-49(a)(5) & 174C-49(a)(6).

HRS § 174C-49(5) requires a permit applicant to establish that the proposed use of water "[is] consistent with state and county general plans and land use designation." DWS has done so in its application. DWS further notes that entities other than the applicant, such as the Maui Planning Commission, the Maui County Council, and the State Land Use Commission, have ultimate authority over land use decisions and priorities on the island of Maui. As clarified above in DWS's response to Objection 3, no commitment of water is granted or implied as a result of any DWS approval other than a water meter or water meter reservation. DWS intends to meet additional demand from sources outside of the lao aquifer.

Earthjustice Objection 5. MDWS failed to establish that its proposed uses will not interfere with the rights and needs of the Department of Hawaiian Home Lands, pursuant to HRS § 174C-49(a)(7).

DWS agrees that applications should consider whether the proposed use of water might interfere with the rights of the Department of Hawaiian Home Lands ("DHHL"). Unlike the situation in In re Wai'ola o Moloka'i, Inc., 103 Haw. 401 (2004), however, there are no wells owned or used by DHHL that potentially could be affected by the applicant's wells. Water service to DHHL properties is provided by DWS. Demand for proposed DHHL project Waiehu Kou Phase IV from the Central system is 57,600 gallons per day, according to DHHL. DWS approved meter reservations for the Waiehu Kou Phase III development totaling 97,000 gallons per day in estimated demand. According to DHHL, no other outstanding demand is anticipated. We therefore conclude that the proposed withdrawals would not interfere with the rights of DHHL.

Earthjustice Objection 6. MDWS integrated water management plan should be completed prior to issuance of any water use permits.

DWS recognizes that the Water Use and Development Plan process is crucial in planning effectively for future water use. DWS pledges its willingness to work cooperatively with the Hui and MMHA to resolve issues of mutual concern in this process. However, the public interest will
not be served by holding up the permit process while awaiting a final Water Use and Development Plan.

DWS thanks Earthjustice for its comment on behalf of the Hui and MMHA. However, the concluding request that DWS's applications be denied is neither practical nor helpful. Disrupting the ability of the County of Maui to deliver domestic water to its customers to such a degree would not serve any public trust purpose, and would lead to a public health calamity. DWS notes that members of the Hui and MMHA, along with thousands of other Central and South Maui residents and businesses, would be left without a supply of domestic water if this request were granted. DWS respectfully requests that the Hui and MMHA withdraw this demand.

Should you have further questions or comments regarding any of these matters, please do not hesitate to contact me at (808) 270-7816 or Ellen Kraftsow of my staff at (808) 270-7199.

Sincerely,

George V. Tengan
Director

enclosure:
DWS letter of November 4, 2002

cc.
Kapua Sproat, Esq.
Mayor Alan M. Arakawa, County of Maui
Jane Lovell, Esq., County of Maui
Edward Kushl, Esq., County of Maui
Dain Kane, Council Chair, County of Maui
Danny Mateo, WRC Chair, County of Maui
August 11, 2004

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

Re: Objection to application for Water Use Permits for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-27:31), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-02:28), Kepaniwai Well 2 (Well No. 5332-05, WUP No. 699, source TMK 3-3-03:05), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701, source TMK 3-3-02:24), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-03:03).

Dear Chairperson Young and Commissioners:

This is in response to the Office of Hawaiian Affairs’ (OHA) objection of July 13, 2004 to the above-mentioned Water Use Permit Applications.

OHA Objection 1. The applicant has failed to consider the impacts of continuing these withdrawals on Native Hawaiian Water Rights, as is required by law.

The Department of Water Supply (“DWS”) agrees that it should consider whether the proposed use of water might interfere with the rights of the Department of Hawaiian Home Lands (“DHHL”). Unlike the situation in In re Waiʻola o Molokaʻi, Inc., 103 Haw. 401 (2004), however, there are no wells owned or used by DHHL that potentially could be affected by the applicant’s wells. Water service to DHHL properties is provided by DWS. Demand for proposed DHHL project Waiehu Kou Phase IV from the Central system is 57,600 gallons per day, according to DHHL. DWS approved meter reservations for the Waiehu Kou Phase III development totaling 97,000 gallons per day in estimated demand. According to DHHL, no other outstanding demand is anticipated. We therefore conclude that the proposed withdrawals would not interfere with the rights of DHHL.

To identify uses dependent on surface water, including Native Hawaiian water rights, the impact (if any) from groundwater withdrawals on surface water in the area must be established. Studies of dike impounded water discharge to streams conducted in 1942 and 1970 suggested that development tunnel flow would have discharged naturally into stream channels below the diversions had it not been
intercepted by the tunnels. (Stearns, H.T., and Macdonald, G.A., 1942, Geology and ground-water resources of the island of Maui, Hawaii: Hawaii Division of Hydrography Bulletin 7; and Yamanaga, George, and Huxel, C.J., 1970, Preliminary report on the water resources of the Wailuku area, Maui: State of Hawaii, Department of Land and Natural Resources, Division of Water and Land Development, Circular C61). The Department addressed this assumption in the water use application for Iao Tunnel, Well No. 5332-02. There, we noted that the high-level tunnel is not considered pumpage from the Iao aquifer, according to the Commission on Water Resource Management's ("CWRM's") "Iao and Waihee Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact", dated November 14, 2002, at p. 20. Accordingly, any potential for the high level tunnel to impact streams should not be an issue in this groundwater management area proceeding.

Moreover, the potential for discharge from the Iao basal aquifer to streams has not been extensively studied using modern technology and methodology. Studies by United States Geological Service under contract with the Department are ongoing to quantify any discharge from the Iao basal and dike-impounded aquifer to streams. Seepage runs have been performed for Waihee stream this year and data from that activity should be available shortly.

While DWS concurs that an inventory and assessment of traditional and customary Native Hawaiian rights dependent on surface water, including kalo cultivation, would be useful, DWS notes that CWRM has not designated the Iao as a surface water management area. DWS believes that many of these issues will be addressed in connection with the Petition to Amend Interim Instream Flow Standards for Waihe'e, North & South Waiehu, Iao, and Waikapu Streams and Their Tributaries recently filed by Hui 0 Na Wai Eha and Maui Tomorrow Foundation, Inc. Moreover, DWS believes that OHA is in a better position to identify any traditional and customary Native Hawaiian rights than DWS is. DWS seeks OHA's assistance and cooperation in this regard.

OHA Objection 2. The applicant has not meaningfully addressed the question of how the proposed continuing withdrawals may threaten the sustainability of the aquifer.

In response to the Commission staff finding that in 2002 "...authorized planned uses exceed the sustainable yields", the Department has clarified to the CWRM in a letter dated November 4, 2002, that actual authorized planned use should be adjusted to reflect water commitments only. No commitment of water is granted or implied as a result of any DWS approval other than a water meter or water meter reservation. DWS has not been utilizing the Iao aquifer to provide for additional demands. Instead, it has been serving new demands from the Waihee wells, and has been advising new developments of the need to develop additional source.

To further quantify the impact of development of alternate sources and conservation measures, we provide updated and additional information below. The effectiveness of conservation programs is often difficult to evaluate since the interaction between such programs and use patterns of consumers often cannot be determined with any precision. For instance, automated meter replacement and low flow fixture installation occur simultaneously, and may have the effect of increasing registered water use per service, at the same time that the fixtures may have actually caused a decrease. Drier weather, changes to irrigation or landscaping, or the installation of the new meters can completely mask savings even when they have been achieved.


By Water All Things Find Life

3. Reclaimed water use at commercial properties within 100 ft of R-1 distribution systems and for dust control saves approximately 2 MGD in the summer months.

4. Low flow fixtures required in new developments has resulted in approximate savings of 0.5 MGD for Central Maui. Savings for distribution of free fixtures during 2005 is estimated at 129,000 gpd.

5. Other non-quantified conservation measures currently implemented include leak detection, in-house repairs; automated radio-read meters to replace old, under-registering meters; outdoor conservation, public education, conservation rules, conservation pricing and rate structures, monitoring and modeling of aquifer status and resource protection. Additional conservation programs and their potential savings are being considered during the Water Use and Development Plan process.

OHA Objection 3. The permit application should be considered simultaneously with other permit applications for existing uses with this ground water management area.

This objection refers to the CWRM's procedures; accordingly, any response to this objection should come from CWRM.

DWS thanks OHA for its comments, and pledges its willingness to work cooperatively with OHA to resolve any issues of mutual concern.

Should you have further questions, please contact me at (808) 270-7816 or Ellen Kraftsow of my staff at (808) 270-7199.

Sincerely,

George Y. Tengan
Director

enclosures:
DWS letter of November 4, 2002

cc.
Clyde W. Namu’o, State of Hawaii Office of Hawaiian Affairs
Mayor Alan M. Arakawa, County of Maui
Jane Lovell, Esq., County of Maui
Edward Kushi, Esq., County of Maui
Dain Kane, Council Chair, County of Maui
Danny Mateo, WRC Chair, County of Maui

By Water All Things Find Life
November 4, 2002

Re: Response to Iao and Waihee Aquifer Systems Ground Water Management Area Designation Findings of Fact

Dear Ms. Nishioka,

Thank you for the opportunity to respond to the DRAFT findings of fact regarding Iao and Waihee Aquifer Systems Groundwater Management Area Designation, issued 9/17/2002.

Analysis of Demand
No commitment of water is granted or implied as a result of any approval other than a water meter or water meter reservation. This statement is made clear with all permit approvals other than meter issuance. Therefore, actual authorized planned use should be adjusted to reflect water commitments only. Outstanding water meter reservations on the Central Maui system total about 415,000 GPD. No other permit or approval represents a commitment of water.

Discretionary approvals do not represent a commitment to provide water. The document's estimate uses a June report on discretionary approvals, some of which can take 20 to 30 years to build out, and which are not likely to pan out over the short term. It should also be noted that the Department has informed developers of the larger projects reviewed, about 3.8 MGD worth, that they may be required to develop source to accommodate these projects. Water is only granted to developments if it is available without adverse effects to other customers on the system. This would include adverse effects to the resources on which the system relies. This caveat applies to CMJV developments as well. DWS would not be forced to provide more water from the Iao or Waihee aquifer to serve the CMJV projects, if such withdrawals would bring aquifer use over the sustainable yield. Again, the FOF should be adjusted to acknowledge that these demands will not be met by the Iao aquifer.

However, building permit approvals can provide an idea of requests likely to come in within the next 2 years. A total of 1,225 building permits approved and pending on the Central Maui system represent about 900,000 gallons per day of likely additional demand, some of which will be accounted for by existing reservations. While 900,000 GPD is a rough estimate only, it is consistent with recent trends, and errs above average annual increase of the past 7 years. Linear regression on metered consumption, using billing data corrected and cleaned in preparation for the WUDP also indicates an increase of roughly 1.6 MGD to the year 2005. This table is attached. While these are not our final forecast numbers, they are also relatively consistent with recent trends.

The Department has not been utilizing the Iao aquifer to provide for additional demands, but has been serving new demands from the Waihee wells. We intend to continue utilizing sources other than the Iao to meet new demands to the extent possible. As mentioned below, when demand or demand plus commitments reach 98% of sustainable yield, no new meters will be granted. In addition, we will endeavor to maintain pumpage below 90% of sustainable yield to the extent possible and will honor the water quality guidelines in our Iao Groundwater Management Rule. Additional planned sources to meet new demand are delineated below.

Iao Water Management Rule
The FOF errs in stating that the Department has not enforced the Iao Groundwater Management Rule. Attached is a graph of Iao chlorides from the period 1990 to present. The rule specifies caution, alert and critical stages when chlorides at two well fields exceed given set points, or pumpage exceeds 95%, 98% and 100% of sustainable yields, respectively. The rule further specifies that if and when MAV pumpage ≥ 95% (19 mgd) AND pumpage plus outstanding commitments ≥98%, no new meter applications will be accepted, and a waiting list maintained.

As the attached graph indicates, no two wellfields have exceeded their caution, alert or critical stages for a three month moving average since the inception of the rule. Nor has pumpage exceeded 95% nor pumpage plus outstanding commitments exceeded 98% of sustainable yield.

**Fundamental Issue is How Best to Protect the Aquifers**

Article XI, Section 1 of the State constitution indicates that the State and its political subdivisions have the responsibility to conserve and protect resources, including water. Section 7 establishes the CWRM.

The State Water Code, HRS 174C-44, sets forth criteria which the Commission shall consider in designating the aquifer, and enables the CWRM, when withdrawals reach 80% of sustainable yield, to assess the water situation and devise mitigative measures.

We believe that a reading of the State Constitution combined with the language in the State Water Code indicates that the fundamental issue in this designation proceeding should be how best to protect the long term viability and sustainability of the aquifers in question, and that consideration of eight criteria should be with a view to the best way to address these for aquifer health.

We agree with concerned parties that attention needs to be given to mitigating impacts to the aquifer, but we respectfully submit that the ongoing steps delineated below would be more effective toward protection of the aquifer than designation, and that these steps could best be implemented by the Department of Water Supply.

We also have some concern, given staffing and budget limitations, that the time-consuming and complex permitting process mandated by designation could even have the net effect of distracting the limited staff of both agencies away from the very jobs of source development, planning and resource protection on which we all agree we need to focus.

**Steps Being Taken to Protect the Aquifers**

1. Development of New Sources
   - Iao-Waikapu Ditch & Iao Treatment Plant - agreement received. Anticipated back on line by end Nov 02. 0.3 MGD avg, with provision to take up to 1.2 MGD depending upon flows.
   - Kuapa 1 - completion anticipated 2003 (sept) 1 MGD avg
   - Maluhia 1 - completion anticipated 2004 (june) 1 MGD avg
   - Waioalai 1 - design fy04 completion anticipated dec 05 1 MGD avg

Purchase of Iao / Waihee watershed, collection and distribution infrastructure. After environmental studies and resolution of "Waihole" issues, this purchase may be followed by construction of additional treatment. GPD available to DWS will depend upon a number of factors. However, it would seem reasonable to hope for at least a few MGD by about 2007 or 2008. The attached graph assumes 2 MGD.

The East Maui Source Development schedule unclear due to possible legal challenges. However, we would hope and expect that these could be resolved within the next 5 years, enabling us to commence with that project by around 2007. The attached graph assumes water delivery by 2009. Also assumes average well capacity of 1 MGD, though we expect 1.5 MGD based on hydrologists reports.

2. Distribution of Withdrawals within existing sources to minimize impacts
   - Waikapu Well - anticipated completion by Dec 03 1400 gpm capacity for distribution of withdrawals only

3. Conservation Measures
   - DWS and Maui County conservation program includes both demand and supply side measures. Demand side measures include fixture distribution, conservation pricing and tiered rate structure, an ordinance drafted with a
DWS committee and passed in 1992 mandating use of low flow fixtures in new developments, educational efforts including radio, news, movie ads, events, tours and other items, support of a demonstration garden and funding of a nursery for same, and population of the IWR-Main model to enable better planning of future conservation measures, including benefit-cost analysis. Supply side measures include leak detection, flow and pressure monitoring, replacement of old, under-registering meters, preventive maintenance scheduling, back-up source development to improve reliability, and the reclaimed water use program run by the Dept of Public Works.

4. Watershed protection
The DWS is a co-founding member of the West Maui Watershed Partnership, dedicated to protection and management of 50,000 acres of watershed land in the West Maui mountains. DWS has also been in the process of attempting to purchase watershed areas to insure continued protection of valuable watershed forest. DWS is also a member and also contributes funds to the Maui Invasive Species Committee (MISC) project, dedicated to management of the county’s most invasive and problematic weeds.

5. Groundwater protection
Several years ago, DWS initiated a source water protection project and within the past two years, has been working with a source water advisory committee to develop a preliminary draft of a wellhead protection program and ordinance. These will be included in the WUDP. Preliminary draft of the program from the Maui committee will be mailed to committee in time for November 26th meeting. The process will be repeated for the Molokai committee. Tasks from earlier years of the project involved: preliminary delineation of wellhead protection areas with help from EPA and DOH, to be replaced by the new WHPAs resulting from HISWAP; inventory of potential contaminant sources within those areas; review and annotated bibliography of management programs throughout the country; development of a data base covering land uses and activities within the county that could generate pollutants, best management practices for those activities, and health effects and environmental characteristics of the pollutants involved; work with an advisory committee to review management options and potential management programs, and posting of best management practice educational materials on the DWS website.

We have also inquired with EPA and DOH regarding possible funding to help expedite inspection of wells of unknown status. CWRM could also assist with such research.

6. Monitoring and modeling of aquifer status
Proposal for joint funding agreement with USGS to study groundwater availability in Central Maui presented to Board in October, currently under consideration. The proposed study involves 1) a review and analysis of existing data to obtain a better understanding of groundwater flow in the study area, which includes all of West Maui, the central isthmus, and the western third of East Maui; 2) collection of climate, stream flow and groundwater data; 3) a water budget computation to estimate groundwater recharge rates in the study area; 4) development of a regional model of groundwater flow for the entire study area, and 5) development of a second model that provides a detailed simulation of flow in Central Maui, including the Iao aquifer. The second model would be used to estimate the effects of selected withdrawal scenarios on water levels, the transition zone between fresh water and salt water, and groundwater discharge in Central Maui. The overall goal of the modeling effort would be to simulate existing conditions of groundwater flow and pumping, and also to investigate alternate or additional sources of groundwater in Central Maui.

Additional Suggestions for Resolution of Concerns
1. Approval of Well Permits at County Level
Projects involving well permits should be required to obtain county permits as well as State permits. County permits could insure, not only compliance with state well construction standards, but also compliance with standards for adequate back-up and for storage & etc.; as well as setting an allocation based on proposed use and reporting requirements. Continued, verifiable reporting could become a condition of this permit... with project approvals subject to being rescinded for failure to comply. This would result in an easier time managing and keeping track for both county and state... and it might also decrease the number of inappropriately sited and poorly designed private wells. Such steps would both enable the county to better track and monitor resource use, as well as to pace the growth of demand.

2. Community Agreements Regarding Resource Availability and Development of an Availability Policy
The WUDP process could be used to identify the community's wishes regarding resource availability and commitment. DWS proposed an availability rule in 1995 which attempted to pace water commitment to...
infrastructure capacity. The WUDP process could be utilized to establish implementable availability policies in coordination with the public and other agencies. This could help to assure aquifer stability over the long term, and CWRM support and input on this matter would be appreciated.

3. County Permit Conditions:
The Department needs to be able to receive reporting on pumpage and water quality monitoring. Currently the best Department can do is to request that such reporting be made a requirement of discretionary permit approvals. Such requests should carry the weight of a requirement. A county policy could be established whereby any private water use or regular chemical application should submit regular reports to DWS, so that we can better track resource use around the island.

4. Improved Enforcement of Reporting and Monitoring Requirements
CWRM often states that the pumpage data provided is incomplete, due to under-reporting. Improved enforcement of such reporting could also help to address outstanding questions.

5. Expedite Inspection of Existing Wells of Unknown Status
For those wells which have not been reporting, it is important to identify which wells are and are not in use, to inventory those that need to report vs. those that need to be properly sealed for groundwater protection. This effort has been discussed between DWS and CWRM as well as DWS & DOH. It is a possible measure of the Department’s source water protection program, if adequate funds are made available.

6. Operational Guidance:
CWRM could assist with more guidance relative to aquifer management. CWRM has historically refrained from setting recommended pumpage limits, short of designation. However, where questions arise, some clear guidance would be appreciated, and should be able to be provided in the form of a recommendation even without designation. If such guidance were offered for the Waihee aquifer for example, it could be incorporated into a Waihee Groundwater Management Rule.

7. Inclusion of Operational Guidelines and Policies in the WUDP:
The issue of operational guidelines could be investigated in more depth during the WUDP process, with a program and proposed rule resulting as products of this work, just as we have done with our wellhead protection program.

8. CWRM Support for DWS Published Plans:
As a government agency, DWS capital projects are subjected to a higher degree of environmental review and public scrutiny than those of other entities. This is as it should be. However, it does have the effect of making our source projects slower to reach completion. For that reason, in the future once a plan or direction has been set forth, gone through public process, and been approved, it would be helpful if CWRM would honor DWS requests to reserve water, or at least to set conditions requiring coordination or deny proposals that would conflict with municipal needs. If not before, such support for projects identified in the next WUDP update would be appreciated.

Should you have any questions, please feel free to contact me at 270-7816 or Ellen Kraftsow of our Water Resources & Planning Division at 270-8045.

Sincerely,

David Craddick
Director

By Water All Things Find Life
July 27, 2004

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711 Kapiolani Boulevard, Suite 500
Honolulu, Hawaii 96813

Re: Objection to application for Water Use Permits for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-27:31), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-02:28), Kepaniwai Well 2 (Well No. 5332-05, WUP No. 699, source TMK 3-3-03:05), Mokuau Wells 1 & 3 2 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701, source TMK 3-3-02:24), and lao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-03:03), filed by Earthjustice

Dear Ms. Sproat and Dr. Scheuer:

I understand that you have spoken to Jane Lovell in our Corporation Counsel's office, and that neither of you has an objection to a two-week extension of time for the County to respond to objections filed by your respective organizations. We will make our best efforts to respond by August 13, 2004.

We appreciate your courtesy and cooperation in this regard.

Sincerely,

George Y. Tengan
Director

cc:
Yvonne Izu, Esq.
Jane Lovell, Esq.
Edward Kushi, Esq.
Peter Young, Chairperson, Commission on Water Resource Management
Alan M. Arakawa, Mayor, County of Maui
Dain Kane, Council Chair, County of Maui
Danny Mateo, WRC Chair, County of Maui
Micah Kane, Director, Department of Hawaiian Homelands

By Water All Things Find Life
July 27, 2004

Ms. D. Kapua Sproat, Esq.
Earthjustice
223 S. King Street, Suite 400
Honolulu, Hawaii 96813-4501

Dr. Jonathan Likeke Scheuer
State of Hawaii Office of Hawaiian Affairs
711 Kapiolani Boulevard, Suite 500
Honolulu, Hawaii 96813

Re: Objection to application for Water Use Permits for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-27:31), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-02:28), Kepaniwai Well 2 (Well No. 5332-05, WUP No. 699, source TMK 3-3-03:05), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701, source TMK 3-3-02:24), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-03:03), filed by Earthjustice

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By Water All Things Find Life
George,

Just got your letter requesting an extension to respond to the objection from OHA (there is also some from Earth Justice that was cc'd to you), and via this email you can have an extension past the 10 day deadline (which was June 28). For your information, we are trying to coordinate and schedule all the applications with objections for one public hearing on Maui, so there will be a notice for that date and your response should be ready at least a week or two before that date.

Two other matters we'd like some update on as well:

1) We had sent a letter on June 29 responding to the June 14 letter from your mayor requesting immediate designation for Waihee. Attached is the unsigned final draft of that letter in word, but without the petition attachments. Please provide us with an estimated time for your response.

WaiheeWMA.clar.ltr.doc

2) What is the status of Maui DWS's position on the latest MOA (5/19 draft) we sent to you (see attached)? Please provide us with an estimated time for your response.

Waihee.MoA.doc

Thanks.
July 19, 2004

MEMORANDUM

TO: Yvonne Izu, Deputy Director State of Hawaii Department of Land and Natural Resources Commission of Water Resource Management P.O. Box 621 Honolulu, Hawaii 96809

FROM: P. Holly McEldowney, Administrator Historic Preservation Division


TMK: (2) 3-2-017:031; 3-3-002:028; 3-3-003:005; 3-3-002:024, & 3-3-003:003

Thank you for the opportunity to review and comment on the Water Use Permit Applications for the Proposed Installation/Construction of Waihee Wells 1 & 2 (Wells Nos. 5431-02 &03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (5430-1& 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 Wells Nos. 5330-09 & 11, WUP Nos. 700 & 701), Iao Tunnel (Well No. 5332-02, WUP No. 680), received by our staff June 24, 2004. Our review is based on reports, maps, and aerial photographs maintained at the State Historic Preservation Division. In 1995 a field inspection was conducted of the Mokuhau Water Tank Site by Theresa Donham, formerly SHPD staff archaeologist. Field inspections were not conducted of the other proposed well sites.

We note the following discrepancies with the submitted permit applications. We did not receive a copy of the Iao Tunnel Well permit application (Well No. 5332-02, WUP No.680) to be located in TMK: (2) 3-3-003:003. Thus, we will reserve our comments until we have received the permit application for this well site. The TMKs for the Waihee Wells Nos. 1 & 2 were listed on the application as TMK: (2) 3-3-017:31.

However, the submitted TMK map depicting the proposed well sites indicates the proposed project area is located in TMK: (2) 3-2-017:031.
Yvonne Izu, Deputy Director State of Hawaii
Page 2

Waihee Wells 1 & 2 (Wells Nos. 5431-02 & 03, WUP Nos. 695 & 696), TMK: (2) 3-2-017:031
Our records indicate the proposed tank lot was formerly under intensive agriculture by Wailuku Agribusiness Co. and that there do not appear to be any Land Commission Award claims in the proposed tank lot. Thus, we believe it is unlikely historic sites remain on the subject property. Given this information, we believe there will be “no historic properties affected” by the proposed undertaking.

Waiehu Heights Wells 1 & 2 (5430-1& 02, WUP Nos. 697 & 698), TMK: (2) 3-3-002:028
Our records indicate the previous use of the subject property for a water tank site, as well as modern intensive agriculture have severely altered the land making it unlikely historic sites remain. Given this information, we believe there will be “no historic properties affected” by the proposed undertaking.

Kepaniwai Well (Well No. 5332-05, WUP No. 699), TMK: (2) 3-3-003:005
Our records indicate the proposed well site is located within the boundaries of Kepaniwai Park. Thus, we believe it is unlikely historic sites will be present. Given this information, we believe there will be “no historic properties affected” by the proposed undertaking.

In the event that historic sites (human skeletal remains, etc.) are identified during the construction/installation activities for the above mentioned well sites, all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the State Historic Preservation Office needs to be contacted immediately at 243-5169, on Maui, or at (808) 692-8023, on O’ahu.

Mokuhau Wells 1 & 3 Wells Nos. 5330-09 & 11, WUP Nos. 700 & 701
We have previously provided comments for the Proposed County of Maui Mokuhau Water Tank (SHPD Doc No.: 9504KD141Log No.: 14378). At that time we stated we could not determine whether the project will impact significant historic sites. We recommended that a subsurface inventory survey with background research and historic/archival research be conducted. To date we have not received a report documenting the findings of the survey. Thus, we are unable to provide comments at this time.

Therefore, in order to determine the effect of the proposed undertaking on historic sites, we recommend that no action be taken on the subject permit applications until an archaeological inventory survey, to be conducted in the form of subsurface testing, has been conducted of the subject property to determine whether significant historic sites are present. An acceptable report documenting the findings of the survey will need to be submitted to this office for review. If significant historic sites are identified, a mitigation plan may need to be developed, in consultation with this office, and executed.

As stated above, we are holding our comments pertaining to the proposed Iao Tunnel Well permit application (Well No. 5332-02, WUP No.680) to be located in TMK: (2) 3-3-003:003 until we receive the appropriate permit application.

If you have any questions, please call Cathleen A. Dagher at 692-8023.

CD: sky
c: Maui Cultural Resources Commission, Dept of Planning, 250 S. High Street, Wailuku, HI 96793
Michael Foley, Director, Dept of Planning, 250 S. High Street, Wailuku, HI 96793
July 26, 2004

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

Re: Objection to application for Water Use Permits for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 896, source TMK 3-3-27:31), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-02:28), Kepaniwai Well 2 (Well No. 5332-05, WUP No. 699, source TMK 3-3-03:05), Mokuau Wells 1 & 2 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701, source TMK 3-3-02:24), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-03:03),

Dear Chairperson Young and Commissioners:

The Department of Water Supply understands that our response to the Office of Hawaiian Affairs' (OHA) objection of July 13, 2004 to the above-mentioned Water Use Permit Applications must be submitted to the Commission 10 working days after receipt of said objection, or July 28, 2004. The Department would like to attempt to thoroughly answer all aspects of the pertinent objections, including doing a preliminary inventory of traditional and customary Native Hawaiian rights in the area that may be dependent on surface water.

We respectfully request an adequate time extension to respond in order to collect the necessary data for such an inventory.

Should you have any questions, please contact me at (808) 270-7816 or Ellen Kraftsow of my staff at (808) 270-7199.

Sincerely,

George Y. Tengan
Director

cc.
Clyde W. Namu'o, Administrator, State of Hawaii Office of Hawaiian Affairs
Alan M. Arakawa, Mayor, County of Maui
Dain Kane, Council Chair, County of Maui
Danny Mateo, WRC Chair, County of Maui
Micah Kane, Director, Department of Hawaiian Homelands

By Water All Things Find Life
July 14, 2004

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

Peter T. Young, Chair
Yvonne Y. Izu, Deputy Director
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai’i 96809

Re: Objection to Maui County Department of Water Supply’s Water Use Permit
Applications for: Waihe‘e Wells 1 & 2 (Well Nos. 5431-02 & 03), Waiehu
Heights Wells 1 & 2 (Well Nos. 5430-01 & 02), Kepaniwai Well (Well No. 5332-
05) Mokuhaul Wells 1 & 3 (Well Nos. 5330-09 & 11), ʻIao Tunnel (Well No. 5332-
02): ʻIao Ground Water Management Area, Maui, Hawai’i

Dear Chair Young and Deputy Director Izu:

On behalf of Hui o Nā Wai `Ehā and Maui Meadows Homeowners Association,
Earthjustice submits the following comments regarding Maui County Department of Water
Supply’s (“MDWS”) water use permit applications. The applications seek to pump various
wells in the ʻIao Ground Water Management Area to provide municipal water to the Central
Maui Service Area for both potable and nonpotable uses. For all of the reasons detailed herein,
MDWS’ applications fail to establish that its proposed uses comply with all of the requirements
of the law. We urge this Commission to require MDWS to supplement its applications before
holding a public hearing on this issue. We also request that you hold that public hearing on Maui
so that our clients and other affected stakeholders can provide more detailed testimony on this
important issue.

Maui Meadows Homeowners Association is an association of homeowners from the
Maui Meadows subdivision in Kīhei. The association’s filing of a July 2001 petition resulted in
the designation of the ʻIao 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 ʻIao 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 ʻIao and Waihe`e aquifers.

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

MDWS’ monthly pumpage reports confuse Waihe‘e 1 & 2 and Waiehu 1 & 2. For
purposes of this objection, we assume that Waihe‘e 1 & 2 refers to well numbers 5431-02 & 03.
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.

This Commission bears an affirmative burden to analyze and account for the impacts of its decisions on public trust resources. See In re Wai'ola o Moloka'i, Inc. ("Wai'ola"), 103 Haw. 401, 430 (2004); In re Water Use Permit Applications ("Waiahole I"), 94 Haw. 97, 141 (2000). When allocating water, the 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. Wai'ola, 103 Haw. at 429 (citing Waiahole I, 94 Haw. at 136-138, 142). The law mandates that this Commission "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.

The Hawai'i Supreme Court recently 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 Waiahole Ditch Combined Contested Case Hearing ("Waiahole II"), No. 24873, slip. op. at 26 (Haw. June 21, 2004). The Court delineated a water use permit applicant’s burden:

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. 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 public interest. . . . In addition, applicants must still demonstrate their actual needs and, within the constraints of available knowledge, the propriety of draining water from public [resources] to satisfy those needs.

Id. (citations and quotations omitted). If the Commission issues a water use permit without findings that "reasonably explain and justify its conclusions and rulings," that permit is especially vulnerable to being vacated. Id. at 26, 37-38, 45, 52-53 (remand with instructions for the Commission to make findings that demonstrate whether permit applicant met its burden; to articulate factors relied on in deciding whether a permit applicant has practicable alternative water sources; to establish factual basis for applicant’s actual need for water). See also Wai’ola, 103 Haw. at 432, 439. The Supreme Court has made clear that it will not rubber stamp water use permitting decisions where the Commission has not conducted adequate fact-finding and analysis. See id.
MDWS’ permit applications fail to provide the factual 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. Each of MDWS’ applications is insufficient for the following reasons:

1. The applications fail to establish that the proposed uses are consistent with the public interest and will not interfere with existing legal uses of water, pursuant to HRS §§174C-49(a)(3) and 174C-49(a)(4).

The consistent with the public interest and reasonable-beneficial use requirements for water use permit applications “demand examination of the proposed use not only standing alone, but also in relation to other public and private uses and the particular water source in question.” Waiahole I, 94 Haw. at 161. MDWS attempts to justify its proposed municipal uses as consistent with the public interest because it services customers of the Central Maui System. Haw. Rev. Stat. § 174C-49(a)(4). These claims neglect to address the relative importance of MDWS’ proposed uses in light of other public trust purposes, or establish that they will not interfere with existing legal uses of water, including public trust uses. Id. at § 174C-49(a)(3).

a. MDWS failed to address any impacts of its proposed uses on resource protection.

“[T]he maintenance of waters in their natural state constitutes a distinct ‘use’ under the water resources trust.” Waiahole I, 94 Haw. at 136. MDWS must therefore address the potential impact of its proposed municipal uses on the maintenance of water in its natural state, especially resource protection. This is especially important in ‘Iao, where the condition of the aquifer has long been in question and the true sustainable yield hotly debated. In fact, this Commission designated ‘Iao as a ground water management area after MDWS’ pumpage exceeded 18 million gallons per day (“mgd”), a level that this Commission determined should not be exceeded.

Additionally, tunnels in this water management area withdraw water that would otherwise flow into streams, eliminating a contribution of approximately 7.5 mgd to stream flow. See William Meyer and Todd K. Presley, The Response of the Iao Aquifer to Groundwater Development, Rainfall, and Land-use Practices between 1940 and 1998, Island of Maui, Hawaii”; USGS Water Investigations Report 00-4223 (2001). See also State Commission on Water Resource Management, Iao and Waiehe’e Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact 2002 (Nov. 14, 2002) at 10 (“COWRM ‘Iao-Waihe’e Final FOF & COL”) (“Some ground water also discharges into streams as baseflow”). Importantly, “discharge from the dike-impounded water body maintains perennial flow in Waihe’e River and Iao, Waikapu, and North and South Waiehu Streams.” Id. ‘Iao Stream’s ecological importance cannot be overemphasized, as it contributes to ground water recharge and, thus, the overall health of the ‘Iao aquifer. MDWS has failed to examine its proposed municipal uses in relation to existing public trust uses such as resource protection in this aquifer. This information must be provided before the Commission can make any determination on MDWS’ applications.
b. MDWS failed to address traditional and customary Native Hawaiian rights & practices.

MDWS must affirmatively demonstrate that its proposed uses will not harm existing and potential traditional and customary Native Hawaiian rights and practices. See Wai‘ola, 103 Haw. at 442 ("the absence of evidence that its proposed use would affect native Hawaiians’ rights was insufficient to meet the burden imposed ... by the public trust doctrine, the Hawai‘i Constitution, and the Code."). When considering whether MDWS has met its burden, the Commission must protect traditional and customary rights in accordance with the constitutional minimum delineated by the Hawai‘i Supreme Court. Specifically, the Commission has an affirmative duty to determine and must make specific findings regarding: (1) the identity and scope of cultural resources, including the extent to which traditional and customary practices are exercised, in the affected area, (2) the extent to which cultural resources, including traditional and customary practices, will be affected, and (3) where traditional and customary practices are found to exist, feasible action that the Commission can take to protect affected practices. See Ka Pa‘akai o Ka ‘Aina v. Land Use Comm’n, 94 Haw. 31, 47 (2000). MDWS has neglected to provide any information regarding these issues.

At a minimum, the law requires and we request that MDWS provide the information necessary for this Commission to make the above-described determinations. As just one example, oral history from what is now the ‘Iao ground water management area identifies a spring named Waiola (on what is now the Sevilla family property), which was renowned for its healing and purifying powers. Native Hawaiians from this area traditionally used this spring to purify themselves before entering heiau. Waiola is now dry as a result of ground and surface water conditions in the aquifer. MDWS’ applications lacks any information regarding Waiola or other cultural resources in the ‘Iao aquifer (such as springs or spring-fed lo‘i) that will be affected by MDWS’ and other uses of ground water.

In addition, the 1990 Hawai‘i Stream Assessment ("HSA") determined that streams associated with MDWS’ proposed municipal uses host a substantial population of native species, including varieties of ‘o‘o‘opu. In particular, ‘Iao Stream, which is in close proximity to the subject water sources, was one of only nine streams on Maui worthy of designation as a candidate stream for protection. ‘Iao was designated a Blue Ribbon Resource, meaning that it was selected as one of Hawai‘i’s very best recreational resources due to its outstanding hiking, fishing, swimming, parks, nature study, and scenic views. ‘Iao also has tremendous cultural importance and it once supported 10 to 50 acres of kalo cultivation. Without due consideration of the impacts of MDWS’ proposed uses on these resources, the applications cannot be approved.

MDWS’ failure to provide information demonstrating that its proposed uses are consistent with these important public interests and existing legal uses of water is a serious flaw in its applications and, therefore, Maui Meadows and Hui o Nā Wai ‘Ehā respectfully urge this Commission to deny the permit applications in their present form. In the alternative, we ask that this Commission order MDWS to provide necessary information within four weeks of the date of this objection, so that the community and the Commission can review and analyze this information before any public hearing and the Commission may, if necessary, request supplemental information.
2. MDWS' applications fail to establish that its proposed uses of water are "reasonable-beneficial," pursuant to HRS §174C-49(a)(2).

MDWS' applications also fail to demonstrate that its proposed uses are reasonable and beneficial by detailing actual water needs. The law requires that permit applicants demonstrate, at a minimum, that the requested amount of water reflects actual need. See Waiahole I, 94 Haw. at 162 ("Notwithstanding the present and uncertain nature of the permitting process, therefore, permit applicants must still demonstrate their actual 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.") (emphasis added).

MDWS' applications quantify total water needs over the next four years as: 25.703 mgd in 2004, 26.204 mgd in 2005, 26.705 mgd in 2006, and 27.207 mgd in 2007. MDWS' applications, however, request a total of only 12.115 mgd, less than half of their total water needs. It is our understanding that additional applications for Wailuku Shaft 33 and Waihe'e 3 are forthcoming. Even if those sources are included, MDWS will fall far short of satisfying its total water needs as described in the subject applications. MDWS must address this discrepancy between the amount requested and their claimed water needs. We also note that the amount that MDWS has requested from each well differs significantly from MDWS' June 30, 2004 moving average of pumpage. This discrepancy must also be addressed by MDWS before this Commission can consider its application.

MDWS' applications also fail to account for a large portion of their actual use. In fact, the applications note only that single-family use comprises about 16% of the proposed uses. Moreover, as MDWS has admitted in the past, potable water delivered to the Central Maui Service Area serves both potable and non-potable needs. MDWS, however, is unable to provide calculations or even estimates of other uses. This lack of information is particularly disconcerting because MDWS is the biggest water user in the Iao aquifer and has requested a large quantity of potable water that will ultimately serve non-potable needs. See COWRM Iao-Waihe'e Final FOF & COL at 66. Such information does not pass legal muster and MDWS must provide additional information before these applications can be considered.

Assuming, arguendo, that MDWS' applications can satisfy the actual needs requirement, the applications fail to adequately analyze alternative sources and more information is needed.

This alternatives analysis is necessary to evaluate whether the applicant has adequately established that its requested allocation would support a reasonable-beneficial use. The Supreme Court carefully defined the burden of proof for all water use applicants:

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2 This Commission determined that while potable water is delivered through the Central Maui system to provide for both potable and nonpotable needs, the County was unable to "differentiate between these major categories of use." COWRM Iao-Waihe'e Final FOF & COL at 66.
[B]esides 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 intrinsic to the public interest, the statutory instream use protection scheme, and the definition of 'reasonable-beneficial' use and is an essential part of any balancing between competing interests.

Waiahole I, 94 Haw. at 161.

MDWS' attempt to identify alternatives is commendable but requires additional information, including, among other things, details regarding concept, size, and timing. For example, the Commission must take a hard look at the use of potable water for non-potable needs in light of the demand for potable water and MDWS' alternatives. Since alternatives are available, MDWS cannot simply assert that the proposed use of potable water for non-potable needs is reasonable and beneficial, especially when existing public trust uses such as resource protection and Native Hawaiian practices are at issue. More information is also needed regarding the extent to which the Waihe'e aquifer is a practicable alternative given this Commission's 4.0 mgd limit on pumping from that aquifer. We urge the Commission to require a more detailed alternatives analysis that will address specifically the extent to which non-potable needs may be met via alternative sources.

This Commission cannot issue permits to MDWS absent additional information demonstrating that the requested amounts constitute reasonable beneficial uses of potable water. We urge this Commission to require such information before such applications are even deemed complete.

3. MDWS failed to establish that the water source will accommodate its proposed uses, pursuant to HRS §174C-49(a)(1).

The Code requires each applicant to establish that a water source can accommodate a proposed use. HRS §174C-49(a)(1). More information is needed, especially given the "[s]erious dispute between the interested public and the MDWS . . . related to the integrity of the aquifer and land use decisions that affect demand on the aquifer." COWRM 'Iao-Waihe'e Final FOF & COL at ix. In fact, this Commission recommended designating both the 'Iao and Waihe'e aquifers as ground water management areas because authorized planned use back in 2002 was 29.2 mgd, which "exceed[ed] the sustainable yields (Iao 20 mgd and Waihee 8 mgd = 28) available to the [Central Maui Service Area]." Id. This issue is even more critical now since this Commission has limited pumpage in Waihe'e to 4.0 mgd, yet it continues to receive requests for new ground water wells (such as the Betsill application). As you well know, authorized planned use has increased since 2002. Even if 29.2 mgd is used as a conservative figure, authorized planned use far exceeds the 24 mgd ('Iao 20 mgd and Waihe'e 4 mgd = 24) available to supply the Central Maui Service Area. We also highlight the fact that better information on the sustainable yields of the 'Iao and Waihe'e aquifers will not be available for several more years, when USGS completes its Central Maui model.
Additionally, MDWS’ applications lack analysis of how the ʻĪao aquifer can accommodate the requested allocation in light of recent indicators that the long-term viability of the aquifer is threatened. For instance, at least three of the wells that are the subject of these permit applications have chloride concentrations approaching limits set by the United States Environmental Protection Agency. Yet, the applicant makes no mention of these or other indicators that existing pumpage threatens the water source. Given current conditions in the ʻĪao aquifer, the applicant must provide a detailed discussion of how its applications satisfy this important permit condition, including a discussion of: (1) current water levels in the well fields, especially as they relate to the top and mid-point of the rising transition zone, (2) current chloride concentrations of each of the wells for which MDWS has applied for a permit, and (3) changes in chloride concentrations since pumping was started in each well.

4. Although MDWS’ applications indicate that the proposed uses are in accordance with State and Maui County general plans, land use designations, and policies, this is insufficient for the Commission to determine whether the proposed uses are reasonably-beneficial, pursuant to HRS §§ 174C-49(a)(5) & 174C-49(a)(6).

MDWS claims that its proposed uses will meet the demands outlined in state and county general plans, land use designations, and general policies. Where, as here, authorized land use outstrips the available water supply, this Commission ruled and the Hawai‘i Supreme Court affirmed that consistency with county plans and land use designations does not end the inquiry into whether a proposed water use may be permitted. In a situation similar to this one, this Commission concluded:

As competition for water resources increases, the analysis of both the public interest and of reasonableness must become both more rigorous and affirmative. The counties will be required to articulate their land use priorities with greater specificity. For example, even at the present time, there is more land zoned for various uses than available water to supply those proposed uses. Thus, it is not sufficient to merely conclude that a particular parcel of land is properly zoned and that the use is “beneficial.” That minimal conclusion may be inadequate to resolve situations in which competitive demand exceeds supply.

See also State Commission on Water Resource Management, Waiahole Conclusions of Law (Dec. 24, 1997) at 25, cited with approval in Waiahole I, 94 Haw. at 187. The Court rejected the proposition that a denial of a water use permit consistent with county land use approvals usurps a county’s power over land use management. “[W]e reject the City’s suggestion that the Commission will illegally restrict its land use planning authority unless it accedes to any and all of the City’s water demands.” Waiahole I, 94 Haw. at 188. The Court instead emphasized the Commission’s role as “the final authority over matters of water use planning and integration.” Id.

The situation on Maui is analogous, if not worse, than the situation in Honolulu addressed by this Commission in Waiahole I & II. Again, authorized planned use in the Central Maui Service Area exceeds both the 28 mgd sustainable yield of the aquifers supplying the Central
Maui Service Area, as well as the 24 mgd that this Commission has established as the maximum available now. COWRM ‘Iao-Waihe’e Final FOF & COL at ix. Be that as it may, the fact that MDWS’ proposed uses are consistent with county land use designations “only provides a minimal standard by which to judge applications.” Waiāhole I, 94 Haw. at 188. Additional information is needed.

5. MDWS failed to establish that its proposed uses will not interfere with the rights and needs of the Department of Hawaiian Home Lands, pursuant to HRS § 174C-49(a)(7).

MDWS’ blanket statement that its proposed uses will not interfere with the rights of the Department of Hawaiian Home Lands (“DHHL”) because there are no DHHL wells withdrawing water from the ‘Iao aquifer is wholly insufficient. By its own admission, MDWS services DHHL projects in the Central Maui Service Area and, therefore, MDWS must examine the impact of its proposed uses on DHHL’s present and future needs. MDWS must provide additional information regarding both existing and future DHHL projects within the Central Maui Service Area and how MDWS’ uses will impact those rights and needs. See Wai‘ola, 103 Haw. 401.

6. MDWS’ integrated water management plan should be completed prior to the issuance of any water use permits.

The aforementioned deficiencies in MDWS’ water use permit applications underscore the need for an integrated water management plan for Central Maui. The County plays a unique role in assisting the Commission in protecting water resources and planning effectively for future water use by developing water use and development plans. This Commission and the Hawai‘i Supreme Court have recognized that counties need to create integrated water resource plans “as a matter of sound planning policy,” Waiāhole I, 94 Haw. at 188. Such a plan would “prioritize competing demands” and “help decision makers incorporate uncertainties, environmental externalities, and community needs into decision-making.” State Commission on Water Resource Management, Waiāhole Decision and Order (Dec. 24, 1997) at 2, cited with approval in Waiāhole I, 94 Haw. at 188 n.105.

To approve MDWS’ applications without an updated and integrated plan to assist the Commission in its decisionmaking puts the cart before the horse. In February 2004, the Commission approved a scope of work and offered to provide technical assistance to update Maui County’s water use and development plan. Because the County is in the process of updating this plan, we request that the Commission defer action on the subject applications until that plan is completed.

Conclusion

The legal and factual sufficiency of MDWS’ applications are of grave importance, especially given that MDWS is the largest water user in the ‘Iao aquifer. MDWS must affirmatively demonstrate compliance with the state constitution, Water Code, and public trust principles. Absent all of the required components, MDWS’ applications cannot be approved.
Earthjustice's Objection to MDWS' Water Use Permit Application
July 14, 2004
Page 9 of 9

Maui Meadows and Hui o Nā Wai `Ehā respectfully urge this Commission to deny the applications or defer action on them until MDWS provides all of the information detailed in this objection. Such information is no more and no less than is required by law to adequately review and analyze all proposed water uses and to protect the public interest in our public trust resources.

Mahalo for this opportunity to comment. If you have any questions or require additional information, please don't hesitate to contact me.

Me ke aloha,

D. Kapua Sproat

cc: George Tengan, Maui County Department of Water
Via First-Class U.S. Mail
Mr. Peter Young, Chairperson  
Department of Land and Natural Resources  
Commission on Water Resource Management  
P. O. Box 621  
Honolulu, Hawaii 96809

Dear Mr. Young:

RE: Applications for Water Use Permits by the County of Maui Department of Water Supply for the Iao Ground Water Management Area

The Maui Planning Department (Department) has reviewed the above referenced applications and has the following comments to offer:

1. The Department supports the Water Use Permit applications as these sources currently provide potable water to the Maui Department of Water Supply (DWS) Central Maui System.

2. The DWS applications are consistent with the following Maui County General Plan objective:

   To provide an adequate supply of potable and irrigation water to meet the needs of Maui County's residents.

3. Waihee Wells #1 and #2, Waiehu Wells #1 and #2, and Mokuha’u Wells #1 and #3 are located on lands designated Agricultural by the State Land Use Commission; identified as Agricultural in the Wailuku-Kahului Community Plan Map; and Zoned Agricultural. The uses are allowable uses within these land use designations and are consistent with the intent of the Wailuku-Kahului Community Plan.

4. Kepaniwai Well is located on lands designated Conservation by the State Land Use Commission and not zoned by the County of Maui. Uses within the State Land Use Conservation District are under the jurisdiction of the Department of Land and Natural Resources.
5. Iao Tunnel is located on lands designated as Urban by the State Land Use Commission, identified as Single-Family by the Wailuku-Kahului Community Plan Map, and zoned R2 Residential. The use is an allowable use within these land use designations and is consistent with the intent of the Wailuku-Kahului Community Plan.

6. All wells are located outside of the Special Management Area, thus are not subject to the Special Management Area Rules of the Maui Planning Commission.

Thank you for the opportunity to comment. Should further clarification be required, please contact Ms. Robyn Loudermilk, Staff Planner, of this office at 270-7735.

Sincerely,

MICHAEL W. FOLEY
Planning Director

MWF:RLL:lar
c: Clayton I. Yoshida, AICP, Planning Program Administrator
    Aaron H. Shinmoto, PE, Planning Program Administrator (2)
    Robyn L. Loudermilk, Staff Planner
    George Tengan, Director Department of Water Supply
    General File
    K:\WP_DOCS\PLANNING\LETTERS\ltr2004\2218_DWSAppsIAO.wpd
June 21, 2004

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

Honorable Chiyome L. Fukino, M.D., Director
Department of Health
Attn: Mr. Harold Yee
Attn: Mr. William Wong

Honorable Haunani Apoliona, Chairperson
Office of Hawaiian Affairs

Honorable Dain P. Kane, Chairperson
County Council
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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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 comments
( ) We have no objections
(X) Comments attached in the mail

Contact person: Retain Loudermilk
Signed: Peter T. Young
Phone: 270-77365
Date: 7/12/04

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

From: Micah A. Kane, Chairman
Hawaiian Homes Commission

Subject: County of Maui, Water Use Permit Application, Iao Ground Water Management Area, Maui

Thank you for the opportunity to review the subject application. The Department of Hawaiian Home Lands (DHHL) has significant property interests in the Central Maui Water Service Area (CMWSA) that includes the following parcels:

<table>
<thead>
<tr>
<th>Location</th>
<th>TMK</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waiehu</td>
<td>3-2-12-03, 3-2-13-01 &amp; 09, 3-2-21-01-41</td>
<td>91.1</td>
</tr>
<tr>
<td>Paukukalo</td>
<td>3-3-5-01-91, 3-3-6-01-53 &amp; 55-101</td>
<td>61</td>
</tr>
<tr>
<td>Wailuku</td>
<td>3-4-11-32</td>
<td>0.2</td>
</tr>
<tr>
<td>Puunene</td>
<td>3-8-8-02 &amp; 08</td>
<td>726</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>878.3</strong></td>
</tr>
</tbody>
</table>

DHHL is concerned that the subject application, as submitted by the County of Maui, may not reflect the foreseeable water needs of the Hawaiian home lands program within the CMWSA.

In April, 2004 the Hawaiian Homes Commission adopted the Maui Island Plan which is the formal document that identifies land use designations for existing and proposed uses of Hawaiian home lands on Maui for the next 20 years. The Maui Island Plan designates a range of uses within the CMWSA that includes homestead residential, community uses, general agriculture, commercial and industrial uses. Since the plan was only recently adopted, it is likely that the subject application may not recognize and allocate water for all existing and foreseeable Hawaiian home land uses.
In addition to designating land uses, the Maui Island Plan surveyed approximately 3,000 applicants of the Maui island wait list to better understand their area preference in regards to the location of future residential homesteads. Five (5) regions were provided to choose from, one of which was Central Maui. Findings revealed that Central Maui ranked number one (1) for area preference amongst native Hawaiian beneficiaries on Maui with 39.7% or 1,122 applicants choosing to reside there.

Given this high demand for residential uses in Central Maui, DHHL has begun a process to identify and acquire additional lands within Central Maui to further expand the Hawaiian homesteading program in Central Maui.

Therefore, in addition to current and foreseeable water uses for existing Hawaiian home lands within the CMWSA, the DHHL is acquiring new lands for homestead development that will require water in the future.

DHHL is in the process of finalizing the Maui Island Plan to prepare it for printing and distribution for agency and public use. The final plan will include projected water demands for proposed land uses within Central Maui.

In the interim, my staff will contact the Commission on Water Resource Management and the County of Maui to develop a better understanding between our agencies as to the water needs of the Hawaiian home lands program and to ensure that water is available for our uses as mandated by law pursuant to the State Water Code, HRS 174C-101, and further clarified by the Hawaii State Supreme court via the Waiola decision, See In re Waiola o Molokai, Inc., 103 Haw. 401, 430 (2004) (Waiola).

I appreciate your assistance. If you have any questions, please call Darrell Yagodich of our Planning Office at 586-3836.
PAUKUKALO (61.0 acres)
TMK 3-3-05:01-91 (23.4 acres)
TMK 3-3-06:01-53, 55-101 (37.6 acres)
WAILUKU (0.2 acre)
TMK 3-4:11:32 (0.2 acre)

Figure 4-1
Central Region

Source: Department of the Hawaiian Homelands
June 21, 2004

TO: Honorable Micah Kane, Director
      Department of Hawaiian Home Lands
Honorable Chiyome L. Fukino, M.D., Director
      Department of Health
      Attn: Mr. Harold Yee
      Attn: Mr. William Wong
Honorable Haunani Apoliona, Chairperson
      Office of Hawaiian Affairs
Honorable Dain P. Kane, Chairperson
      County Council
      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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuaua Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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.

Classification:
Attachment(s)

Response:

( ) We have no comments
( ) We have no objections
( X) Comments attached

Contact person: Phone: Date: 7/13/04

Signed: Governor of Hawaii
July 13, 2004

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

RE: Objection to applications for Water Use Permits for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-27:31, location of use TMKs unspecified and multiple), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-2:28, location of use TMKs unspecified and multiple), Kepaniwai Well (Well No. 5332-05, WUP No. 699, source TMK 3-3-3:5, location of use TMKs unspecified and multiple), Mokuhau Wells 1 & 3 (Wells Nos. 5330-09 & 11, WUP Nos. 700 & 701 source TMK 3-3-2:24, location of use TMKs unspecified and multiple), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-3:3, location of use TMKs unspecified and multiple), all in the Iao Ground Water Management Area, Maui.

Mr. Young and Commissioners,

The Office of Hawaiian Affairs (OHA) appreciates the opportunity to comment on these related Water Use Permit Applications (WUPA). OHA objects to the acceptance of these permits by the Commission as they are incomplete as specified herein. OHA requests that:

a) The applications be found by the Commission to be incomplete and returned to the applicant so they may add further information and resubmit; or
b) If the Commission is unwilling to deem the applications incomplete, orders a public hearing on the applications on Maui; and
c) Defers holding that public hearing until further information legally required is submitted to the Commission and interested parties with sufficient time for review; and
d) Combines the hearing with the anticipated hearing for the WUPA by Hawaii Commercial & Sugar Company for water from this aquifer; and

---

1 OHA notes that the well number referenced on the actual WUPA 697 (Waiehu Well 1) is 5431-01 but is referenced on the cover memo form and public notice for these WUPA as 5430-01. The comments herein refer to the actual Waiehu Well 1, regardless of the numbering error on the WUPA and/or the cover memo form and public notice.
2 OHA did not receive the final WUPA on the Iao tunnel in the packet of WUPA transmitted, though it is our understanding it was substantively similar to the others.
June 21, 2004

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

Honorable Chiyome L. Fukino, M.D., Director
Department of Health
Attn: Mr. Harold Yee
Attn: Mr. William Wong

Honorable Haunani Apoliona, Chairperson
Office of Hawaiian Affairs

Honorable Dain P. Kane, Chairperson
County Council
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 is a copy of a water use permit application for Maui Department of Water Supply for the Waieha Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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 comments
We have no objections
Comments attached

Contact person: Jonathan Likoike Scheuer, Ph.D
Phone: (808) 574 1946
Date: 7/13/04

Signed:
June 21, 2004

TO: Honorable Micah Kane, Director
   Department of Hawaiian Home Lands
Honorable Chiyome L. Fukino, M.D., Director
   Department of Health
   Attn: Mr. Harold Yee
   Attn: Mr. William Wong
Honorable Haunani Apoliona, Chairperson
   Office of Hawaiian Affairs
Honorable Dain P. Kane, Chairperson
   County Council
   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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihele Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiku Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Keponani Wells (Well No. 5332-05, WUP No. 699), Mokohau Wells 1 & 2 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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 comments
We have no objections
Comments submitted in the mail

Contact person: ROBYN LOUDERMILK
Signed: ROBYN L. LOUDERMILK
Phone: 270-7785
Date: 7/12/04
July 7, 2004

TO: Peter T. Young, Chairperson
Commission on Water Resource Management
Department of Land and Natural Resources

FROM: Anthony J. H. Ching, Executive Officer

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

We have reviewed the subject application forwarded by your transmittal dated June 21, 2004, and find that Waihee 1 Well (No. 5431-02), Waihee 2 Well (No. 5431-03), Waiehu Heights 1 Well (No. 5430-01), Waiehu Heights 2 Well (No. 5430-02), Mokohau 1 Well (No. 5330-09), and Mokohau 3 Well (No. 5330-11), as generally represented on the USGS maps, are designated within the boundary of the State Land Use Agricultural District. Kepaniwai Well (No. 5332-05), as generally represented on the USGS map, is designated within the boundary of the State Land Use Conservation District.

With respect to your request as to whether the current designation is appropriate for the proposed project, please be advised that although sections 205-2(d) and 205-4.5(a), Hawaii Revised Statutes, do not explicitly list wells as permissible activities or uses within the Agricultural 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 Agricultural District. To the extent that the water requested in the subject application would be used for municipal use in Central Maui, we would defer to the County zoning designation of the respective parcels, which we understand permits water wells as minor utility facilities.

With respect to Kepaniwai Well, which is within the Conservation District, inasmuch as the establishment of permitted activities or uses within said district is under the jurisdiction of the Department of Land and Natural Resources pursuant to chapter 183C, Hawaii Revised Statutes, we have no comments to offer on this matter.
Thank you for the opportunity to comment on the subject application. As requested, we are returning the cover memo for the subject application.

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

Enclosure
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

June 21, 2004

Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuha Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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 comments  
( ) We have no objections  
( ) Comments attached

Contact person: BERT SAWATARI  
Phone: 587-3822

Signed: BERT SAWATARI  
Date: July 6, 2004
June 21, 2004

TO: Dede Mamiya, Administrator
   Land Division

FROM: Yvonne Y. Izu, 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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 693 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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:

( ) 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.
( ) 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: County of Maui-owned land.

Contact person: Gary Martin Phone: 587-0421
Signed: [Signature] Date: [Signature]
June 21, 2004

TO:
Honorable Micah Kane, Director
Department of Hawaiian Home Lands
Honorable Chiyome L. Fukino, M.D., Director
Department of Health
Attn: Mr. Harold Yee
Attn: Mr. William Wong
Honorable Haunani Apoliona, Chairperson
Office of Hawaiian Affairs
Honorable Dain P. Kane, Chairperson
County Council
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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiheu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepehiwai Well (Well No. 5332-05, WUP No. 699), Mokuahui Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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 comments
We have no objections
Comments attached

Contact person: Bill Worf
Phone: 586-4258

Signed: Bill Worf
Date: JUL - 2 2004
June 21, 2004

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

Honorable Chiyome L. Fukino, M.D., Director
Department of Health
Attn: Mr. Harold Yee
Attn: Mr. William Wong

Honorable Haunani Apoliona, Chairperson
Office of Hawaiian Affairs

Honorable Dain P. Kane, Chairperson
County Council
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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuiau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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 comments
☐ We have no objections
☐ Comments attached

Contact person: Loni N. Kajiwara
Phone: 586-4291
Date: 6-25-2004

Signed: Olani M. Kajiwara

(Original Signature)
TO: Honorable Micah Kane, Director
Department of Hawaiian Home Lands
Honorable Chiyoue L. Fukino, M.D., Director
Department of Health
Attn: Mr. Harold Yee
Attn: Mr. William Wong
Honorable Haunani Apoliona, Chairperson
Office of Hawaiian Affairs
Honorable Dain P. Kane, Chairperson
County Council
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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuaua Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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 Ige at 587-0251.

Class: Attachment(s)

Response:
- We have no comments
- We have no objections
- Comments attached

No Records

Contact person: Kealoha A. Kealoha
Phone: 20043294
Signed: Kealoha A. Kealoha
Date: 6-25-2004
June 21, 2004

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

Dear Mr. Tengan:

We acknowledge receipt, on May 20, 2004, of your completed water use permit applications for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuahau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680).

You can expect your application to be processed within ninety (90) days from the date of receipt unless there are objections to your application.

Enclosed is a copy of the public notice for your water use permit applications which will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

Please be aware that there may be objections to your application. If objections are made, the objector is required to file such objections with the Commission and is also required to send you a copy of the objections.

You, or any other party, may respond to objections by filing a brief in support of your application with the Commission within ten (10) days of the filing of an objection. You, or the other party, must also send a copy of the response to the objector.

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

Sincerely,

W. Roy Handy

YVONNE Y. IZU
Deputy Director

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

FROM: Yvonne Y. Izu, 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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, Wup Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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 comments
( ) We have no objections
( ) Comments attached

Contact person: ___________________________ Phone: ___________________________

Signed: ___________________________ Date: ___________________________
June 21, 2004

TO: Dede Mamiya, Administrator
   Land Division

FROM: Yvonne Y. Izu, 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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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:

( ) 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: ___________________________
June 21, 2004

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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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 comments
( ) We have no objections
( ) Comments attached

Contact person: ___________________________ Phone: ___________________________
Signed: ___________________________ Date: ___________________________
June 21, 2004

TO: Honorable Micah Kane, Director
Department of Hawaiian Home Lands
Honorable Chiyome L. Fukino, M.D., Director
Department of Health
Attn: Mr. Harold Yee
Attn: Mr. William Wong
Honorable Haunani Apoliona, Chairperson
Office of Hawaiian Affairs
Honorable Dain P. Kane, Chairperson
County Council
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 is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuaua Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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 comments
( ) We have no objections
( ) Comments attached

Contact person: ____________________________ Phone: ____________________________
Signed: ____________________________ Date: ____________________________
June 21, 2004

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
Iao Ground Water Management Area, Maui

In accordance with the Department of Land and Natural Resources Administrative Rules, Section 13-171-17(a), we are sending you a copy of the public notice for the water use permit application for the Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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 a copy of the application 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.

Sincerely,

Peter T. Young
Chairperson

Enclosures
Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waialua Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhaul Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the attached application for any conflicts or interferences 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 of our Administrative Rules and must be filed by the July 14, 2004 deadline. If we do not receive your comments by this date, we will assume you have no comments.

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 comments  
( ) We have no objections  
( ) Comments attached

Contact person: ____________________________ Phone: ____________________________

Signed: ____________________________ Date: ____________________________
Memo to File
21 June 04
Telephone conversation with Ellen Kraftsow regarding revised WUPAs for lao sources:

<table>
<thead>
<tr>
<th>Well No.</th>
<th>Well Name</th>
<th>amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5332-02</td>
<td>Iao Tunnel</td>
<td>1.359 mgd</td>
</tr>
<tr>
<td>5431-02</td>
<td>Waihee 1</td>
<td>1.480</td>
</tr>
<tr>
<td>5431-03</td>
<td>Waihee 2</td>
<td>2.439</td>
</tr>
<tr>
<td>5430-01</td>
<td>Waiehu Hts 1</td>
<td>0.165</td>
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<tr>
<td>5430-02</td>
<td>Waiehu Hts 2</td>
<td>1.415</td>
</tr>
<tr>
<td>5332-05</td>
<td>Kepaniwai</td>
<td>1.042</td>
</tr>
<tr>
<td>5330-09</td>
<td>Mokuhau 1</td>
<td>1.994</td>
</tr>
<tr>
<td>5330-11</td>
<td>Mokuhau 3</td>
<td>2.221</td>
</tr>
<tr>
<td>(total)</td>
<td></td>
<td>12.115 mgd</td>
</tr>
</tbody>
</table>

Table 1 reflects the 12-MAV for these sources, and shows a final row distributing a proportional increase in demand that must be supplied by alternative sources in the future. The middle row of numbers showing incremental increases are deleted from Table 1 as an artifact of arithmetic not related to these sources. The double-asterisks in the first row are likewise incorrectly located, and belong on the last row. The last row numbers are being disregarded for the purposes of these "existing use" applications.

The total for the 12-MAV existing as of July 16, 2003, for these 8 sources, is 12.115.

The existing uses are the sole amounts to be considered in these applications; the proportional growth will be considered as new use, to be considered upon application for new sources.
<table>
<thead>
<tr>
<th>FROM: ROY</th>
<th>DATE: JUN 21 2004</th>
<th>SUSPENSE DATE:</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>TO: BAUER, G.</th>
<th>INIT.</th>
<th>TO: MATHIAS, T.</th>
<th>INIT.</th>
<th>FOR: Approval</th>
<th>PLEASE: See Me</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHING, F.</td>
<td></td>
<td>NAKAMA, L.</td>
<td></td>
<td>Signature</td>
<td>Review &amp; Comment</td>
</tr>
<tr>
<td>DANBARA, S.</td>
<td></td>
<td>NAKANO, D.</td>
<td></td>
<td>Information</td>
<td>Take Action</td>
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<tr>
<td>FUJII, N.</td>
<td></td>
<td>OHYE, M.</td>
<td></td>
<td></td>
<td>Type Draft</td>
</tr>
<tr>
<td>GOODING, K.</td>
<td></td>
<td>SAKODA, E.</td>
<td></td>
<td></td>
<td>Type Final</td>
</tr>
<tr>
<td>HARDY, R.</td>
<td>F</td>
<td>STAHLE, K.</td>
<td></td>
<td></td>
<td>File</td>
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<tr>
<td>HIGA, D.</td>
<td></td>
<td>SUBIA, S.</td>
<td></td>
<td></td>
<td>Xerox ___ copies</td>
</tr>
<tr>
<td>ICE, C.</td>
<td></td>
<td>SWANSON, S.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IMATA, R.</td>
<td></td>
<td>UYENO, D.</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>IZU, Y.</td>
<td></td>
<td>YODA, K.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>KUNIMURA, I.</td>
<td></td>
<td>YOSHINAGA, M.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

unless you see something new from what you understand are the changes from before. file. Otherwise, let me know. Thanks.

duplicate copy; response dated same, w/public notice
June 16, 2004

Ms. Yvonne Y. Izu, Deputy Director
Commission on Water Resource Management
State of Hawaii Department of Land and Natural Resources
PO BOX 621
Honolulu, Hawaii 96809

Re: Revised Water Use Applications

Dear Ms. Izu:

This is in response to your letter of June 10, 2004 regarding clarification of Table 1 for the Water Use Permit application for Iao Tunnel (Well No. 5332-02). Please find attached revised Table 1 for all Iao source water use permits submitted by the Department. The revised Table reflects projected demand and number of services based on the fraction of moving average (MAV) pumpage of the source over MAV total pumpage for the Central system. As we clarified in our supplemental water use permit application for of Iao Tunnel, the Central system sources are co-mingled so that the exact number of services or demand served by an individual source can not be identified.

Where 4-year projected demand for all Iao sources combined exceed the MAV as of designation, excess demand will be met from either Waihee aquifer surface sources or other sources.

Should you have any questions, please contact me or Ellen Kraftsow of my staff at: (808) 270-7199.

Sincerely,

George Y. Tengan
Director

enclosures

c: engineering division

C:\WPdocs\WUPAs\Revised WUPA table 1.wpd

By Water All Things Find Life
### TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASES (include address if applicable)</th>
<th>EXISTING OR NEW USE (if existing, list date of first use)</th>
<th>POTABLE OR NONPOTABLE</th>
<th>TMK</th>
<th>STATE LAND USE</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS OF NET ACRES</th>
<th>GPD (UNIT)</th>
<th>GPD (AVERAGE)</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>YEAR 1 (year)</td>
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<tr>
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<td></td>
<td></td>
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<td></td>
<td>YEAR 2 (year)</td>
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<td></td>
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<td></td>
<td>YEAR 3 (year)</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>YEAR 4 (year)</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>** TOTALGPD **</td>
</tr>
</tbody>
</table>

1. Central system  
   - Potable multiple  
   - Various  
   - 17,391  
   - 25.703  
   - 26.204  
   - 26.705  
   - 27.207  
   - 27.207  

2. Mokuhau 1  
   - 1964  
   - 1437*  
   - 1.994**  
   - 1.994**  
   - 1.994**  
   - 1.994**  

** Based on fraction of MAW for this source versus Central system MAW. **  
- ** Additional demand to be met by Waihee, surface or other sources. **

---

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 660 South King Street, 7th Floor, Honolulu, HI 96813. Attn: Arthur D. Chaifacombe.
### TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>Project Name &amp; Phases (Include address if applicable)</th>
<th>Existing or New Use of Water (If existing, All in same year)</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>Current County Zoning Code</th>
<th>Units of Net Acres</th>
<th>4-Year Cumulative Projected Demand</th>
<th>Ultimate Demand (GPD)</th>
<th>Build Out</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. CENTRAL SYSTEM</td>
<td>POTTABLE</td>
<td>MULTIPLE</td>
<td>VARIOUS</td>
<td>17,391</td>
<td>25.703</td>
<td>26.204</td>
<td>26.705</td>
<td>27.207</td>
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<tr>
<td>2.</td>
<td></td>
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<td></td>
<td>SERVICES</td>
<td>MGD</td>
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<tr>
<td>3. NOKUHAU 3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1612*</td>
<td>2.221**</td>
<td>2.221**</td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>5.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>*BASED ON</td>
<td>2.383</td>
<td>2.429</td>
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<td>6.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>FRACTION OF</td>
<td>MGD</td>
<td>MGD</td>
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<tr>
<td>7.</td>
<td></td>
<td></td>
<td></td>
<td>MAV FOR THIS</td>
<td></td>
<td>-2.221</td>
<td>-2.221</td>
<td>-2.221</td>
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<td>8.</td>
<td></td>
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<td>SOURCE VERSUS</td>
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<td>MGD</td>
<td>MGD</td>
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<td>9.</td>
<td></td>
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<td>CENTRAL SYSTEM</td>
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<td>10.</td>
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<td>MAV</td>
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<td>0.208</td>
<td>0.255</td>
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<td>11.</td>
<td></td>
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<tr>
<td>12.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>**additional demand to be met by Waihee, surface or other source</td>
<td></td>
</tr>
<tr>
<td>13.</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>14.</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TOTA: GPD

DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE _____________________________ DATE ______________

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

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 Attn: Arthur D. Challacombe
<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASES (include address if applicable)</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS or NET ACRES</th>
<th>GPM/UNIT or GPD/ACRE</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>ULTIMATE DEMAND GPD (TO BUILD OUT)</th>
<th>TOTIGPD</th>
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</table>

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## TABLE 1. TMKs TO USE REQUESTED WATER

| Project Name & Phases (include address if applicable) | Existing or New Use (If existing, fill in date of first use) | POTABLE or Non-POTABLE | TMK | State | Current County Zoning Code | Units or Net Acres | GPM/FT² or GPD/ACRE | Year 01 | Year 02 | Year 03 | Year 04 | Year 05 | Year 06 | Year 07 | Year 08 | Year 09 | Year 10 | Ultimate Demand GPD (to build out) |
|-------------------------------------------------------|-------------------------------------------------------------|------------------------|-----|-------|-----------------------------|-------------------|---------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|-----------------------------|
| 1. CENTRAL SYSTEM                                     | POTABLE MULTIPLE                                            | VARIOUS                | 17,391 |       |                             |                   |                     | 25.703  | 26.204  | 26.705  | 27.207  | 27.207  |         |         |         |         |                             |
| 2.                                                     |                                                             |                        |       |       |                             |                   |                      |         |         |         |         |         |         |         |         |         |         |                             |
| 3. WAIHEE 2                                           |                                                             |                        | 1770* |       |                             |                   |                      | 2.439**| 2.439**| 2.439**| 2.439**| 2.439**|         |         |         |         |                             |
| 4.                                                     |                                                             |                        |       |       |                             |                   |                      |         |         |         |         |         |         |         |         |         |         |                             |
| 5.                                                     |                                                             |                        |       |       | *BASED ON                   |                   |                      | 2.439**| 2.439**| 2.439**| 2.439**| 2.439**|         |         |         |         |                             |
| 6.                                                     |                                                             |                        |       |       | FRACTION OF                 |                   |                      |         |         |         |         |         |         |         |         |         |         |                             |
| 7.                                                     |                                                             |                        |       |       | MAV FOR THIS                |                   |                      |         |         |         |         |         |         |         |         |         |         |                             |
| 9.                                                     |                                                             |                        |       |       | CENTRAL SYSTEM              |                   |                      | MGD     | MGD     | MGD     | MGD     | MGD     |         |         |         |         |                             |
| 10.                                                   |                                                             |                        |       |       | MAV                         |                   |                      | 0.178   | 0.229   | 0.280   | 0.331   | 0.331   |         |         |         |         |                             |
| 11.                                                   |                                                             |                        |       |       | **additional demand to be met by Waihee, surface or other source |                   |                      |         |         |         |         |         |         |         |         |         |                             |
| 12.                                                   |                                                             |                        |       |       |                             |                   |                      |         |         |         |         |         |         |         |         |         |         |                             |
| 13.                                                   |                                                             |                        |       |       |                             |                   |                      |         |         |         |         |         |         |         |         |         |         |                             |
| 14.                                                   |                                                             |                        |       |       |                             |                   |                      |         |         |         |         |         |         |         |         |         |         |                             |

**TOTA GPD

DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE ___________________________ DATE ____________

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</thead>
<tbody>
<tr>
<td>**PROJECT NAME &amp; PHASES (include address if applicable) Template</td>
<td><strong>EXISTING or NEW USE</strong></td>
<td><strong>REFERENCE</strong></td>
<td><strong>NUMBER</strong></td>
<td><strong>SITE</strong></td>
<td><strong>TYPE</strong></td>
<td><strong>COUNTY</strong></td>
<td><strong>ZONING CODE</strong></td>
<td><strong>UNITS</strong></td>
<td><strong>NET ACRE</strong></td>
<td><strong>GROSS UNIT</strong></td>
<td><strong>GROSS ACRE</strong></td>
<td><strong>YEAR 1</strong></td>
<td><strong>YEAR 2</strong></td>
<td><strong>YEAR 3</strong></td>
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<td>17,391</td>
<td>25.703</td>
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<td>26.705</td>
<td>27.207</td>
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<td><strong>0.177</strong></td>
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<td>3.</td>
<td><strong>FRACTION OF MAV</strong></td>
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<td><strong>0.016</strong></td>
<td><strong>0.019</strong></td>
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<td><strong>SOURCE VERSUS</strong></td>
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<td><strong>-0.165</strong></td>
<td><strong>-0.165</strong></td>
<td><strong>-0.165</strong></td>
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</table>

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TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASE (Include address if applicable)</th>
<th>EXISTING USE (New use if applicable)</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE</th>
<th>CURRENT COUNTY</th>
<th>UNITS</th>
<th>GDPUNIT</th>
<th>GPD/acre</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>ULTIMATE DEMAND GDP (TO BUILD OUT)</th>
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<td>ZONING CODE</td>
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<td>1. CENTRAL SYSTEM</td>
<td>POTABLE</td>
<td>MULTIPLE</td>
<td>VARIOUS</td>
<td>17,391</td>
<td>25.703</td>
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<thead>
<tr>
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<th>POTABLE</th>
<th>NONPOTABLE</th>
<th>TMK</th>
<th>STATE LUG</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS NET ACRE</th>
<th>GP/FOUR ACRES</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
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<td>YEAR 1 (yr)</td>
<td>YEAR 2 (yr)</td>
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<tr>
<td>1. CENTRAL SYSTEM</td>
<td>POTABLE</td>
<td>MULTIPLE</td>
<td>VARIOUS</td>
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<td>25.703</td>
<td>26.204</td>
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<td>2. KEPANIWAI</td>
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<td>8. MAV</td>
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<th>TMK</th>
<th>STATE</th>
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<tr>
<td>1. CENTRAL SYSTEM</td>
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<td>17,391</td>
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<td>2. IAO TUNNEL</td>
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<td>SERVICES</td>
<td>MGD</td>
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<td>3. IAO TUNNEL</td>
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<td>SOURCE VERSUS</td>
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</tbody>
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**additional demand to be met by Waihee, surface or other sources.**

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PUBLIC NOTICE

Application for Water Use Permit
lao Ground Water Management Area, Maui

The following application for water use permit has been received and is hereby made public in accordance with Department of Land and Natural Resources Administrative Rules 13-171, "Designation and Regulation of Water Management Areas."

Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), TMK:3-3-17:31; 1.480 mgd & 2.439 mgd.
Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), TMK:3-3-2:28; 0.165 mgd & 1.415 mgd.
Kepaniwai Well (Well No. 5332-05, WUP No. 699), TMK:3-3-3:5; 1.042 mgd.
Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), TMK:3-3-2:24; 1.994 mgd & 2.221 mgd.
lao Tunnel (Well No. 5332-02, WUP No. 680), TMK:3-3-3:3; 1.359 mgd.

Applicant: County of Maui
Department of Water Supply
200 South High Street
Wailuku, HI 96793

Date Completed Application Accepted: May 20, 2004
Aquifer: lao System, Wailuku Sector, Maui
Water Source: Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and the lao Tunnel (Well No. 5332-02, WUP No. 680).
Quantity Requested: see respective individual use amounts from each source, above, totaling 12.115 million gallons per day.
Existing/New Water Use: Existing
Place of Water Use: Central Maui Service Area at Tax Map Key: 2-1 (por) and 3-2 through 3-9, inclusive

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 July 14, 2004. 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.

COMMISSION ON WATER RESOURCE MANAGEMENT

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

Dated: JUN 15 2004

Publish in: Maui News issues of June 23, 2004 and June 30, 2004
FROM: Charley
DATE: 07 June 04

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I've retraced the WUPA ace, anticipating confirmation (ace. to be dated to confirm WUPA w/ome based on our WUPA discussions - O.K. approval.
June 10, 2004

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

Dear Mr. Tengan:

Revised Water Use Application
Iao Tunnel (Well No. 5332-02)

On May 27, 2004, we received a duplicate of the original water use permit application for this source, in response to our letter dated March 3, 2004 indicating that your application was incomplete. We had requested clarification of Table 1, which should reflect uses from the source and instead reflects total water system use as it is expected to grow over the next four years.

Based on a telephone communication with your staff on May 26, 2004, we are making changes on the application to reflect our understanding of your use. First, the amount of the source is identified as 1.418 mgd, the 12-MAV as of July 2003, even though you estimate the annual average over the longer term as 2.05 mgd. Over the next four years, we have no indication that the amount will change, and therefore the application will reflect 1.418 mgd for each succeeding year, not 21.193 mgd to 22.376 mgd as originally stated.

Second, the use area clearly is not covered entirely by this source. We believe this source is commingled with other sources for the entire Central Maui Water System, and the application will be amended to reflect that. The application should reflect that this source does not supply 17,391 service connections (at 81.5 gallons per day) but some portion of those service connections at the County standard rate of consumption (e.g. 2363 households at 600 gpd).

By this letter, we request your confirmation of this understanding prior to accepting your application complete as amended on May 27, 2004. Following that confirmation, you can expect the application to be processed within ninety days, if no objections are filed.

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
APPLICATION FOR WATER USE PERMIT

1. (a) APPLICANT: Maui County Dept of Water Supply
   Name: George Tengan, Director
   Contact Person: Avery Chumbley, President
   Address: 200 S. High St, Wailuku, HI 96793
   Phone: (808)270-7816, (808)270-7833
   Fax: (808)245-9570
   Email: george.tengan@co.maui.hi.us

2. WATER MANAGEMENT AREA: Iao aquifer
   ISLAND: Maui

3. (a) EXISTING WELLSTREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
   (b) PROPOSED (NEW) WELLSTREAM DIVERSION NAME:
   (c) LOCATION:

4. SOURCE TYPE (check one): Stream, River, Lake, Pond, Reservoir, Other (explain)

5. METHOD OF TAKING WATER (check one): Artesian, Well & Pump, Diverted Surface, Other (explain)

6. LOCATION OF PROPOSED WATER USE: (if possible, show on same map as source location. Otherwise, attach similar maps)
   (a) PUC-Regulated Private System
   (b) Non-PUC-Regulated Private System
   (c) Tax Map Key: Please complete Table 1 on back of application and submit applicable portion of property tax map.

7. QUANTITY OF WATER REQUESTED: 1.418 million gallons per day (averaged over 1 year)

8. METHOD OF MEASUREMENT: Foster Meter, Open Pipe, Well, Computer, Other (explain)

9. QUALITY OF WATER REQUESTED: Mains, Breakline, Silt, Mixture, Other

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

11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 24 hours

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) Is not interfered 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:

---

NOTE: Signing below indicates that the signatures understand and agree 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; 3) 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 to water rights, and current or future priorities, subject to approved plans as defined by the Commission; and Hawaii Home Lands Reserve Act; and 5) Upon permit approval, a water supply plan must be submitted by the applicant should the Commission require one.

Applicant (print) George Tengan
Signature
Date 2/11/04

Landowner (print) Avery Chumbley
Signature
Date 2/11/04

WUPAFORM (4/26/03)
DATE: 5/27/2004
FAX TO: Commission on Water Resource Management (808) 587-0251
ATTENTION: Charlie Ice
FROM: Maui County Department of Water Supply (808) 270-7833
SUBJECT: Copy of Water Use Permit for Iao Tunnel # 5332-02
PAGES: 5, including coversheet

Transmitter: Eva Blumenstein
APPLICATION FOR WATER USE PERMIT

Use Information

12(a) The proposed use of water can be accommodated with the available water source:
Proposed water use of 1.418 million gallons per day (MGD), is the moving average withdrawals (MAV) from the Iao Tunnel over 2003. Average annual draft according to the CWRM database is 2.1 MGD. Suggested historic yields would be between 2.05 and 2.30 MGD according to the USGS Report 00-4223 (The Response of the Iao Aquifer to Ground-Water Development, Rainfall, and Land-Use Practices Between 1940 and 1996, Island of Maui, Hawaii).

Iao tunnel along with Iao and Waihee aquifer sources and surface water treated by the Iao Treatment Plant serve the Central Maui System. These sources are mixed so that Iao Tunnel is not the single source serving any specific area. MAV from these sources combined were from July 1, 2002 to June 30, 2003 24.474 MGD, broken down as follows:
- Iao aquifer: 18.063 MGD
- Waihee aquifer: 4.535 MGD
- Iao Tunnel: 1.359 MGD
- Iao Treatment Plant: 0.489 MGD

Water meter reservations as of July 2003 were 565,150 gallons per day (GPD), with an additional 97,000 gpd for Department of Hawaiian Homelands. Withdrawals and reserved meters total 25.109 MGD.

Average yearly consumption for Central Maui during the period July 1, 2002 to June 30, 2003 was 20.955 MGD. System losses and unaccounted-for water makes up the difference.

12(b) The proposed use of water is a reasonable-beneficial use

The proposed quantity of water is 4% higher than the MAV for Iao Tunnel as of June 30, 2003 before Iao aquifer designation. The higher withdrawal is reasonable and consistent with a decreased pumpage overall from Iao and Waihee aquifers and a temporary ceased production from the Iao Ditch Treatment Plant.

Planning steps to protect the aquifer and utilize the source in a reasonable and beneficial manner:
a. Distribute the withdrawals within Iao aquifer; development of new sources:
   - Iao well. Currently in design. Development anticipated by end 2005
   - Waikapu Mauka – developed and pump installed. On hold until foreclosure of additional land required resolved
b. Relocate withdrawals outside of the aquifer; development of new sources within Waihee aquifer:
   - Well planned by private developer to be dedicated to the County.
   - Kupaa 1: On-line by end 2004
c. Provide additional surface water sources:
   - Iao Treatment Plant – Increase capacity to 2.4 MGD. Anticipated on-line by end 2004
d. Alternative sources: East Maui source development, temporary use of existing well
e. Conservation:
   - Leak detection, in-house repairs
   - Automated radio-read meters replace old, under-registering meters
   - Reclaimed water use at commercial properties within 100 ft of R-1 distribution systems.
   - Reclaimed water use encouraged for dust control
Conservation pricing and rate structures
Department of Land and Natural Resources
Attachment A, page 2

Low flow fixtures required in new developments. Code sets flow limits. Free fixture
distribution
Outdoor conservation
Public education: targeted conservation checklists, media, activities and events,
demonstration gardens, participatory learning.

f. Conservation rules: forestall water shortage, negligent or wasteful use
g. Resource protection: watersheds, surface water and wellhead protection programs
h. Monitoring and modeling of aquifer status. Agreement with USGS to study groundwater
availability in Central Maui

12(c) The proposed use of water will not interfere with any existing legal use
The Maui County Department of Water Supply is the only user of lao Tunnel. Water withdrawn
from the tunnel is developed from the high-level dike complex. The tunnel is not considered
pumpage from the lao aquifer, according to the CWRM's "lao and Waihee Aquifer Systems State
Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact",
of November 14, 2002. High level water withdrawals from development tunnels would probably
ultimately have reached lao Stream and the low level aquifer had they not been intercepted.
However, these withdrawals have long been in existence. The lao tunnel was constructed from
1938 - 1945, and realigned in 1956. The parcel 3-3-03:003 is owned by Wailuku Sugar
Co/Wailuku Agribusiness Co and is designated Conservation in the Community Plan and State
Land Use District. (County zoning not applicable). Water system is a permitted use in the
Conservation District.

12(d) The proposed use of water is consistent with the public interest
The lao Tunnel source is mixed with lao and Waihee aquifer sources to serve the entire Central
Maui System. This public system serves 17,070 customers in the communities extending from
Waiehu, through Wailuku, Kahului, Puunene, Sprecklesville, Paia and Kuau on the North, and
from Mālaealā through Kihei to Makena on the South.

12(e) The proposed use of water is consistent with state and county general plans and
land use designations
Proposed water use and withdrawals from the Central Maui sources will meet current demand as
built-out in accordance with the Wailuku, Paia-Haiku and Kihei-Makena Community Plan
designations and consistent with land use designations. The Water Use and Development Plan
(WUDP) is being updated in accordance with the 1990 Maui County General Plan, the County
Community Plans, the State Water Resources Protection Plan, the State Water Quality Plan, the
State Water Projects Plan, and the State Agricultural WUDP.

12(f) The proposed use of water is consistent with county general plans and general
policies
During the WUDP update process, the Department's ongoing source development and capital
improvement programs support the General Plan objectives "to provide an adequate supply of
potable and irrigation water to meet the needs of Maui County's residents" and "to make more
efficient use of our ground, surface and recycled water sources".

12(g) The proposed use of water will not interfere with the rights of the Department of
Hawaiian Home Lands
There are no DHHL wells withdrawing from the lao aquifer. The Central Maui System services
Hawaiian Home Land areas.
March 3, 2004

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

Dear Mr. Tengan:

Water Use Permit Application for Lao Tunnel (5332-02)

We have received your Water Use Permit Application for the Lao Tunnel. However, your application is incomplete. Matters which must be addressed before we accept your application as complete are as follows:

1. Table 1 (end uses) should reflect information consistent with the source but appears to register use throughout the Central Maui Service Area, rather than for the area served by this limited source. If your source cannot be said to have a discrete service area, but instead serves an integrated system, please clarify this on your application.

2. Table 1 should reflect the amount that this tunnel source will be used toward meeting the total demand of the use area, reflected in your map exhibit.

Upon receipt of the above information, we will accept your application as complete and you can then expect your application to be processed within ninety (90) days. The Commission may issue an interim permit good for up to five years, during which time further steps can be taken to verify source flows and analyze the reasonable beneficial end uses.

We look forward to receiving the remainder of your source applications.

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

Sincerely,

ERNEST Y.W. LAU  
Deputy Director

Cl:ss
## Commission on Water Resource Management

### Form Information

**From:** S. Subia  
**Date:** May 20, 2004  
**SUSPENSE DATE:** 

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### Notes

- 7 originals WUP applications from MCOA
- *15 copies to Subia

## Charley's Work

- Works w/ Lenore to get sh*t on the WUPA database 1st
- Then respond, should combine Public Notices into 1 to save money.
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 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 821, Honolulu, Hawaii 96809. Application fees accompanied by check and NOREFUNDABLE filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0295. For further information and updates to this application form, visit http://www.hawaii.gov/dlnr/cwm.

PERMITTEE INFORMATION
1. (a) APPLICANT
   Firm/Name: Maui County Dept of Water Supply
   Contact Person: George Tengan
   Address: 200 S. High St, Wailuku, HI
   Phone: (808) 270-7816
   E-mail: george.tengan@co.mauí.hi.us

   (b) LANDOWNER OF SOURCE
   Firm/Name: Wailuku Agribusiness
   Contact Person: Avery Chumbley, President
   Address: 255 E. Waiko Rd, Wailuku, HI 96793
   Phone: (808) 244-9570
   Fax: (808) 242-7068

SOURCE INFORMATION
2. WATER MANAGEMENT AREA: Iao aquifer
   ISLAND: Maui

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Iao Tunnel 5332-02
   (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME:
   (c) LOCATION: Address Iao Valley, Wailuku, Maui
   Tax Map Key: 3.3.03.003
   (Attach and show source location on a USGS map, scale 1"=2000', and a property tax map)

4. SOURCE TYPE (check one): □ Stream □ Dike-confined □ Perched □ Caprock
   □ Other (explain)

5. METHOD OF TAKING WATER (check one):
   □ Artesian □ Well & Pump □ Diverted Surface □ Other (explain)

USE INFORMATION
6. LOCATION OF PROPOSED WATER USE: (If possible, show on same maps as source location. Otherwise, attach similar maps)
   (a) □ PUC-Regulated Private System □ Edible 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: 1,416 million gallons per day (averaged over 1 year)

8. METHOD OF MEASUREMENT:
   □ Flowmeter □ Open-pipe □ Weir □ 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: 24 hours (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:

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; 3) 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 yield and stream 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 which the Commission must approve.

Applicant (print): George Tengan
Signature: [Signature]
Date: 2/14/04

Landowner (print): Avery Chumbley
Signature: [Signature]
Date: 2-11-04

WUP 687
TABLE 1. TMGs TO USE REQUESTED WATER

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Instructions for completing Table 1: Individual projects and phases must be listed separately and only be listed sequentially on Table 1. Copy Table 1 and attach additional sheets if necessary. Please indicate individual projects and phases on Table 1, and clearly delineate project areas on TMG maps. Indicate sequential numbers on TMG maps to coincide with Table 1. Please attach a separate sheet giving the address and a brief description of each project and phase. Please consult with the Department of Planning and Permitting regarding the proposed use is consistent with the zoning. If the proposed use is existing, please provide the WUP No. or indicate when the existing use was initiated.

In addition, the proposed use is allowed with respect to zoning. Please consult with the Department of Planning and Permitting before application is acceptably complete.
APPLICATION FOR WATER USE PERMIT – Use Information

12(a) The proposed use of water can be accommodated with the available water source: Proposed water use of 1.418 million gallons per day (MGD), is the moving average withdrawals (MAV) from the Iao Tunnel over 2003. Average annual draft according to the CWRM database is 2.1 MGD. Suggested historic yields would be between 2.05 and 2.30 MGD according to the USGS Report 00-4223 (The Response of the Iao Aquifer to Ground-Water Development, Rainfall, and Land-Use Practices Between 1940 and 1998, Island of Maui, Hawaii).

Iao tunnel along with Iao and Waihee aquifer sources and surface water treated by the Iao Treatment Plant serve the Central Maui System. MAV from these sources combined were from July 1, 2002 to June 30, 2003 24.447 MGD, broken down as follows:

- Iao aquifer 18.063 MGD
- Waihee aquifer 4.536 MGD
- Iao Tunnel 1.359 MGD
- Iao Treatment Plant 0.489 MGD

Water meter reservations as of July 2003 was 565,150 gallons per day (GPO), with an additional 97,000 gpd for Department of Hawaiian Homelands. Withdrawals and reserved meters total 25.109 MGD.

Average yearly consumption for Central Maui during the period July 1, 2002 to June 30, 2003 was 20.955 MGD. System losses and unaccounted-for water makes up the difference.

12(b) The proposed use of water is a reasonable-beneficial use
The proposed quantity of water is 4% higher than the MAV for Iao Tunnel as of June 30, 2003 before Iao aquifer designation. The higher withdrawal is reasonable and consistent with a decreased pumpage overall from Iao and Waihee aquifers and a temporary ceased production from the Iao Ditch Treatment Plant.

Planning steps to protect the aquifer and utilize the source in a reasonable and beneficial manner:

a. Distribute the withdrawals within Iao aquifer; development of new sources:
   - Iao well. Currently in design. Development anticipated by end 2005
   - Waikapu Mauka – developed and pump installed. On hold until foreclosure of additional land required resolved
b. Relocate withdrawals outside of the aquifer; development of new sources within Waihee aquifer:
   - Well planned by private developer to be dedicated to the County.
   - Kupaa 1: On-line by end 2004

c. Provide additional surface water sources:
   - Iao Treatment Plant – increase capacity to 2.4 MGD. Anticipated on-line by end 2004
d. Alternative sources: East Maui source development, temporary use of existing well
e. Conservation:
   - Leak detection, in-house repairs
   - Automated radio-read meters replace old, under-registering meters
   - Reclaimed water use at commercial properties within 100 ft of R-1 distribution systems.
   - Reclaimed water use encouraged for dust control
   - Conservation pricing and rate structures
Low flow fixtures required in new developments. Code sets flow limits. Free fixture distribution
Outdoor conservation
Public education: targeted conservation checklists, media, activities and events, demonstration gardens, participatory learning.
f. Conservation rules: forestall water shortage, negligent or wasteful use
g. Resource protection: watershed, surface water and wellhead protection programs
h. Monitoring and modeling of aquifer status. Agreement with USGS to study groundwater availability in Central Maui

12(c) The proposed use of water will not interfere with any existing legal use
The Maui County Department of Water Supply is the only user of Iao Tunnel. Water withdrawn from the tunnel is developed from the high-level dike complex. The tunnel is not considered pumped from the Iao aquifer, according to the CWRM’s “Iao and Waihee Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact”, of November 14, 2002. High level water withdrawals from development tunnels would probably ultimately have reached Iao Stream and the low level aquifer had they not been intercepted. However, these withdrawals have long been in existence. The Iao tunnel was constructed from 1938 – 1945, and realigned in 1956. The parcel 3-3-03:003 is owned by Wailuku Sugar Co/Wailuku Agribusiness Co and is designated Conservation in the Community Plan and State Land Use District. (County zoning not applicable). Water system is a permitted use in the Conservation District.

12(d) The proposed use of water is consistent with the public interest
The Iao Tunnel source is mixed with Iao and Waihee aquifer sources to serve the entire Central Maui System. This public system serves 17,070 customers in the communities extending from Waiehu, through Wailuku, Kahului, Puunene, Sprecklesville, Paia and Kuau on the North, and from Maalaea through Kihei to Makena on the South.

12(e) The proposed use of water is consistent with state and county general plans and land use designations
Proposed water use and withdrawals from the Central Maui sources will meet current demand as built-out in accordance with the Wailuku, Paia-Haiku and Kihei-Makena Community Plan designations and consistent with land use designations. The Water Use and Development Plan (WUDP) is being updated in consistence with the 1990 Maui County General Plan, the County Community Plans, the State Water Resources Protection Plan, the State Water Quality Plan, the State Water Projects Plan, and the State Agricultural WUDP.

12(f) The proposed use of water is consistent with county general plans and general policies
During the WUDP update process, the Department's ongoing source development and capital improvement programs support the General Plan objectives “to provide an adequate supply of potable and irrigation water to meet the needs of Maui County's residents” and “to make more efficient use of our ground, surface and recycled water sources”.

12(g) The proposed use of water will not interfere with the rights of the Department of Hawaiian Home Lands
There are no DHHL wells withdrawing from the Iao aquifer. The Central Maui System services Hawaiian Home Land areas.
State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
APPLICATION FOR WATER USE PERMIT

1. (a) APPLICANT
Mau County Dept of Water Supply
George Tengan, Director
(b) LANDOWNER OF SOURCE
Avery Chumbley, President

2. WATER MANAGEMENT AREA:
Iao aquifer

3. (a) EXISTING WELLSTREAM DIVERSION NAME AND STATE NUMBER:
Iao Tunnel 5332-02
(b) PROPOSED (NEW) WELLSTREAM DIVERSION NAME:

4. SOURCE TYPE (check one):
☐ Stream ☐ Subterranean ☐ Wastewater

5. METHOD OF TAKING WATER (check one):
☐ Artesian ☐ Well & Pump ☐ Diverted Surface Water

6. LOCATION OF PROPOSED WATER USE: (If possible, show on same maps as source location. Otherwise, attach similar maps)

7. QUANTITY OF WATER REQUESTED:
1,418 million gallons per day (averaged over 1 year)

8. METHOD OF MEASUREMENT:
☐ Flowmeter ☐ Open-pipe ☐ Weir ☐ 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: 24 hours

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 13-171-3, 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.

REMARKS, EXPLANATIONS:

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;
3) 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 unless the Commission require one.

Signatures:
Applicant (print) George Tengan
Landowner (print) Avery Chumbley

Date 2/14/04 2/11/04
## TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>TMK</th>
<th>POTABLE</th>
<th>NONPOTABLE</th>
<th>TOTAL GPD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1945?</td>
<td>multiple</td>
<td>various</td>
<td>17,391</td>
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Iao Tunnel Service Area "A"
Iao Tunnel Service Area "B"
Iao Tunnel opens into parcel 3
much of tunnel in parcel 4
balance in parcel 3