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

Dear Mr. Gentry:

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

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

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

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

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

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

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

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

Sincerely,

DEAN A. NAKANO
Acting Deputy Director

CI:ss
Ref: 710-713.wup

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Dear Mr. Gentry:

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

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

Special Conditions

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

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

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

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

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

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

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

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

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

Sincerely,

Peter T. Young
Chairperson

Attachments
GROUND-WATER USE PERMIT
WUP NO. 712

PERMITTEE

Permittee/Water User  Landowner of Source
Maui Department of Parks and Recreation  
Address  Address
700 Halia Nakoa, Unit 2  
Wailuku, HI 96793

PERMITTED SOURCE INFORMATION

Island  Maui
Water Management Area  Wailuku
Aquifer Sector  Iao
Aquifer System  System Sustainable Yield  20
Well Name  Papohaku Park Well
State Well No.  5429-02

PERMITTED USE INFORMATION

Reasonable beneficial use  Municipal
Withdrawal (12 month moving ave.)  0.004 mgd
Location of water use
TMK #  3-4-30:15
State land use classification  Urban
County zoning classification  Park

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

W. Roy Hardy

PETER T. YOUNG, Chairperson
Commission on Water Resource Management

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

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

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

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

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

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

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

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

Randy Gentry
County of Maui
Department of Parks and Recreation
Project Coordinator
Ref: IaoWUPA.28Sep05.sub

STAFF SUBMITTAL

For the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

September 28, 2005
Honolulu, Hawaii

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

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

Existing and New Uses
Iao Ground Water Management Area, Maui

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

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

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

LOCATION MAP:  See Exhibit 1

BACKGROUND:
July 21, 2003

Iao Ground Water Management Area officially designated through publication of public notice on that date. Actual existing users not exempted under the Code have one year from this date to apply for continued existing use.
The Supreme Court handed down its opinion ("Waiahole II") in the remanded Waiahole Decision and Order of December 28, 2001, clarifying the Commission’s consideration of water use permit criteria. This opinion specified the importance of practicable alternatives and the careful calculation of appropriate “duties”.

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

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

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

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

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

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

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

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

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

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

At this meeting staff also learned that there were continuing private discussions between objectors (EJ and OHA) and applicants (MP&R and Maui Department of Water Supply (MDWS)) concerning the objections to applications. Similarly, there were discussions between other parties concerning other applications. None of the substance of these discussions were disclosed.
September 7, 2005  A third and final session of the public hearing was held in Wailuku (see Exhibit 6). Objections to the MP&R applications were withdrawn following successful discussions between objectors and the applicant, and no other requests for contested case on these applications were made. There was no further testimony from objectors to the Living Waters Well, and no request for contested case hearing on this application was made at this final session. The public hearing was closed with instructions from the hearing officers to proceed with the uncontested WUPAs for the caprock wells and Living Waters.

September 19, 2005  Deadline for written requests for a contested case hearing to be filed on these applications. No written requests for a contested case hearing on these applications were filed as of this date.

ISSUES/ANALYSIS:

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

(1) Water availability

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

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

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

New Use: Waihee Mauka Well (5531-01)
The site of this well lies below the Spreckels Ditch at about 350 feet elevation. The well construction permit was approved February 25, 2003, and construction was completed February 4, 2004. The pump installation permit has not been approved and will not until a water use permit (WUP) is approved. The nearest wells are across Waihee Stream in the Waihee Aquifer, over 1.5 miles away; next nearest are the Waihee Wells toward Wailuku over 2 miles away. Three other wells are proposed in the same area, not as closely spaced as any of the County wellfields.
A summary of the current ground water conditions in the aquifer is provided in Table 1:

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

<table>
<thead>
<tr>
<th>ITEM</th>
<th>Iao Aquifer System (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sustainable Yield</strong></td>
<td>20</td>
</tr>
<tr>
<td>Less: Other Existing Water Use Permits (shown in Exhibit 2)</td>
<td>0</td>
</tr>
<tr>
<td>Reservation to DHHL</td>
<td>0</td>
</tr>
<tr>
<td><strong>Subtotal (Current Available Allocation)</strong></td>
<td>20</td>
</tr>
<tr>
<td>Less: Other Completed Applications (shown in Exhibit 3)</td>
<td>16.998*</td>
</tr>
<tr>
<td>Less: This Application</td>
<td>0.020**</td>
</tr>
<tr>
<td><strong>Subtotal (Potential Available Allocation/Allocation Deficit)</strong></td>
<td>2.982</td>
</tr>
</tbody>
</table>

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

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

Other detailed information on wells is found in Exhibit 8.

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

### (2) Reasonable-beneficial

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

### I. Purpose of Use:

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

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

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

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

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

   New Use: Waihee Mauka Well (5531-01)
   The proposed basal well likewise is intended to augment seasonal natural rainfall. Current acreage in production is 170 acres of macadamia nuts, requiring a total of about 4,000 gad and 20 acres of diversified crops including banana, papaya, kalo, tapioca, eggplant and other vegetables, at about 2,000 gad, both of which are conservative in meeting county standards of use for these crops. Macadamia nuts can withstand some irrigation shortfall, and the applicant is not expecting to rely on the well to provide a large portion of the total demand, which would come to 680,000 gallons per day (gpd). Diversified crops, on the other hand, are less tolerant of interruptions in irrigation, and the well production is based on being able to provide up to about 50% of the total irrigation demand, which would be 40,000 gpd. These estimates are based on several years' rainfall experience.

III. Efficiency of Use:

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

   New Use: Waihee Mauka Well (5531-01)
   The actual amount requested is far less than total demand because of normal abundant rainfall, but could be insufficient during drought periods. Over a normal 12-month period, the requested amount is very reasonable; over a longer period of wet and dry years, may still be reasonable. The property hopes to expand the acreage, which would require augmenting this source or increasing its yield. However, the basal water from this well would be of high quality, used for non-potable demand.

IV. Practicable Alternatives:

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

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

(3) Interference with other existing legal uses

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

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

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

(4) Public interest

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

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

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

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

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

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

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

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

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

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

**RECOMMENDATIONS:**

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

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

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

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

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

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

( amendment by Jim Frazier )

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

Respectfully submitted,

DEAN A. NAKANO  
Acting Deputy Director

APPROVED FOR SUBMITTAL:

PETER T. YOUNG  
Chairperson

Exhibit(s):

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

As I mentioned the second well which is noted as a "new well" at the golf course is in reality a set of two new frequency generated booster pumps (written testimony will have details, pictures and notes on operating software). This would be well #5530-04. While doing the written part of the testimony I noticed that we also have another "new well" that does not exist and this would most likely be my paperwork foul-up. This well would be located at the War Memorial Complex. I am not sure which number would be the non existant one- The Baldwin High School well is situated on the War Memorial Complex Grounds and is near Kaahumanu Avenue at the front of the complex by our offices, and is number 5329-05. The only other well at this complex is located in the Maintenance Area at the rear of the physical football stadium. I am not sure which number has been assigned to it through the years but it looks like it is well # 5329-04. (In the New use applications we show Maui Stadium Well as 5329-14 which would be the same well. If you have a idea on this I could really use your help. I am still having a problem with the well at Maui Community College and if you have the paper work that will help me to transfer the well that is on their property to the college I would appreciate if you could send it as an attachment to an e-mail and I will take care of it right away. I know that we have a well at Maui Central Park (Keopuolani Park) but I do not know what number it is and it is still inoperative. Pacific Excavation and water wells is at the present time trying to get it in operation and also 2 other wells at Maui Central Park that are on the Kahului Aquifer. Once these wells are in operation they will make a state of the art computer controlled frequency pump, radio frequency weather station to controller interrupt water conservation system. (explanation and pictures as well as specifications will be in written testimony.)
Now that I have given you your headache for the day , I can tell you that all of our pumpage rates have been brought down to about 70% of what they have been in the past by new equipment and software as well as plain old conservation.....Randy

---

You are quite correct in that thought Charlie. I am working on the written presentation at this time> The wells upgrade at the Waiehu Golf Course was for a water conserving type of booster pump and not for a new well. We are working on the new pumpage figure as well as a written presentation as to how the system operates. At this time it is turning out that the new booster pumps along with the Maxi 5 software and the RainBird ESP_Mc controller are realizing us a savings of about 126,000 gallons of water per day that the system is run. This will be documented along with conservation methods for other caprock wells in the Iao Aquifer System. Randy Gentry
TO: Other Interested Parties  
FROM: Dean A. Nakano, Acting Deputy Director  
SUBJECT: Request for Comments  
   Water Use Permit Application  
   Iao Ground Water Management Area, Maui

May 13, 2005

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

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

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

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

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

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

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

Response:

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

Contact person: D. Kapua Sproat
Phone: 599-2436, ext. 16
Signed:  
Date: June 20, 2005
June 20, 2005

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

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

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

Dear Chair Young and Acting Deputy Director Nakano:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

5. Conclusion.

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

Please do not hesitate to contact us for further information.

Me ke aloha,

[Signature]

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

TO: Other Interested Parties

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

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

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CI:ss
Attachment(s)

Response:

(*) We have no objections or comments
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Contact person: D. Kapua Sproat

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

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

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

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

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Earthjustice's Objection to the County of Maui Department of Parks and Recreation’s Water Use Permit Applications
June 20, 2005
Page 2 of 5

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Earthjustice’s Objection to the County of Maui Department of Parks and Recreation’s Water Use Permit Applications
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Earthjustice’s Objection to the County of Maui Department of Parks and Recreation’s Water Use Permit Applications
June 20, 2005
Page 4 of 5

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Earthjustice's Objection to the County of Maui Department of Parks and Recreation's Water Use Permit Applications
June 20, 2005
Page 5 of 5

Please do not hesitate to contact us for further information.

Me ke aloha,

[Signature]

D. Kapua Sproat

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

TO: Honorable Micah Kane, Director  
Department of Hawaiian Home Lands  
Honorable Chiyome L. Fukino, M.D., Director  
Department of Health  
Mr. Clyde W. Namuo, Administrator  
Office of Hawaiian Affairs  
Attn: Mr. Jonathan Scheuer  
Honorable Dain P. Kane, Chairperson  
County Council  
County of Maui  
Mr. George Y. Tengan, Director  
Department of Water Supply  
County of Maui  
Mr. Michael W. Foley, Director  
Planning Department  
County of Maui

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

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

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

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

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

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

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

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

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

CI:ss  
Attachment(s)

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

Contact person: Jonathan Likeke Scheuer  
Phone: (808) 594-1046

Signed: Jonathan Likeke Scheuer  
Date: 6/20/05
Peter Young, Chairperson
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, HI 96809

RE: Water Use Permit Applications in the 'Iao Ground Water Management Area, Maui

June 20, 2005

Dear Mr. Young and Commissioners,

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

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

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

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

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

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

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

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

OHA’s primary objection

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

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

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

Sincerely,

Clyde W. Nāmu'o
Administrator

cc: Randy Gentry, Maui Parks and Recreation (via First Class U.S. Mail)
    George Tengan, Ellen Kraftsow, and Jane Lovell, Maui County (via email)
    John V. Duey, Hui o Nā Wai `Ehā (via email)
    Jim Williamson, Maui Meadows Homeowners Association (via email)
    Kapua Sproat, Earthjustice (via email)
    Linnel Nishioka, HC&S and Kehalani Mauka (via email)
    Avery B. Chumbley and Clayton Suzuki, Wailuku Agribusiness (via email)
    Garrett Hew, HC&S (via email)
We are awaiting corrected/updated pumpage figures for Parks & Rec wells, as well as some details on the system upgrade work done at various locations. I understand from a phone conversation that the "replaced pumps" were in fact boosters from the storage pond, rather than well pumps.

It would be easier for filing to have these information bits transmitted by email rather than by phone, is that's agreeable. Also, you had some beautiful exhibits at the hearing, and I believe you hung on to them to send with the complete info packet.

If possible, we'd like to transmit available information to interested parties prior to the follow-up meeting, so they can be prepared for comments or questions. We look forward to that. Thanks, Randy.
We have set July 11, 2005, a Monday, from 1:00 - 5:00 pm, for our meeting at Cameron Center. All who responded indicated that was an agreeable date. We hope it works for the others. We may not need that much time, but hope to sort things out comprehensively within that time. This will be your only notice. We will still conduct another full session of the public hearing, yet to be determined, which we anticipate would be the last.
May 13, 2005

TO:  Harry M. Yada, Acting Administrator
     Land Division

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

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

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

Existing Use Applications
War Memorial Stadium Well (Well No. 5329-04), WUPA No. 709
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The latter applications are being treated as new uses because they were filed after the statutory deadline for existing use applications.

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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.

XX)  A water lease/permit is not required of this applicant.

( )  A water lease/permit has been obtained by the applicant through lease no.

XX)  This well project ( ) requires ( ) does not require a CDUP. If a CDUP is required it ( ) has ( ) has not been approved and ( ) is ( ) is not currently active.

( )  Other relevant Land Division rules/regulations, information, or recommendations are attached.

( )  No objections

XX)  Other comments: County of Maui owned lands.

Contact person:  Gary Martin

Phone: 587-0421

Signed:  Gary Martin

Date:  Jun 14, 2005
June 6, 2005

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

FROM: Skippy Hau, Aquatic Biologist

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

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

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

c: DAR - Oahu
May 13, 2005

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

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

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

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

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

Contact person: Skippy Hau

Signed: Skippy Hau

Phone: 243-5834

Date: 6/6/05
TO: Honorable Micah Kane, Director  
Department of Hawaiian Home Lands  
Honorable Chiyome L. Fukino, M.D., Director  
Department of Health  
Mr. Clyde W. Namuo, Administrator  
Office of Hawaiian Affairs  
Attn: Mr. Jonathan Scheuer  
Honorable Dain P. Kane, Chairperson  
County Council  
County of Maui  
Mr. George Y. Tengan, Director  
Department of Water Supply  
County of Maui  
Mr. Michael W. Foley, Director  
Planning Department  
County of Maui

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

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

May 13, 2005

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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 867-0251.

Response: We have no objections or comments

Contact person: George Y. Tengan, Director  
Phone: 270-7816  
Date: 6/6/05
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:  
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Ian Ground Water Management Area, Maui

May 13, 2005

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Class: Attachment(s)

Response:  
[ ] We have no objections or comments  
[ ] Objections attached  
[ ] Only comments attached

Contact person: George Y. Tengan, Director  
Phone: 270-7816  
Date: 6/14/05

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

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

---

**Response:**

- [x] We have no objections or comments
- [ ] Objections attached
- [ ] Only comments attached

**Contact person:** [Signature]

**Signed:** [Signature]

**Phone:**

**Date:** JUN - 2 2015
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

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

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

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

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

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

Response:

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

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

FROM: Anthony J. H. Ching, Executive Officer

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

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

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

<table>
<thead>
<tr>
<th>Existing Well</th>
<th>SLUD</th>
</tr>
</thead>
<tbody>
<tr>
<td>War Memorial Stadium Well</td>
<td>Urban</td>
</tr>
<tr>
<td>Baldwin High School Well</td>
<td>Urban</td>
</tr>
<tr>
<td>Papohaku Park Well</td>
<td>Agricultural¹</td>
</tr>
<tr>
<td>Waiehu Golf Course Well</td>
<td>Conservation</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Maui Stadium Well</td>
<td>Urban</td>
</tr>
<tr>
<td>Waiehu Golf Course Well 2</td>
<td>Agricultural²</td>
</tr>
</tbody>
</table>

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

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

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

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

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

Enclosure
May 13, 2005

TO:  
Honorable Micah Kane, Director  
Department of Hawaiian Home Lands  
Honorable Chiyome L. Fukino, M.D., Director  
Department of Health  
Mr. Clyde W. Namuo, Administrator  
Office of Hawaiian Affairs  
Attn: Mr. Jonathan Scheuer  
Honorable Dain P. Kane, Chairperson  
County Council  
County of Maui  
Mr. George Y. Tengan, Director  
Department of Water Supply  
County of Maui  
Mr. Michael W. Foley, Director  
Planning Department  
County of Maui

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

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

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Class:  
Attachment(s)

Response:  
\( \left\{ \begin{array}{l}
\text{We have no objections or comments} \\
\text{Objections attached} \\
\text{Only comments attached}
\end{array} \right. \)

Contact person: Phone: 270-7814

Signed: Date: 5-20-05
PUBLIC NOTICE

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

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

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

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

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

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

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

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

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

Date Application Received/Filed: July 21, 2004
Date Application Acknowledged as Complete: July 21, 2004
Aquifer: Iao System, Wailuku Sector, Maui
Quantity Requested: Currently uncertain; estimates total 340,000 gpd from caprock, not counted against basal sustainable yield.
Existing/New Water Use: Existing
Place of Water Use: Parks in Wailuku, Kahului, and Waiehu; TMKs: 3-8-7:15, 3-3-10:15, 3-2-13:6

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

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

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

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

COMMISSION ON WATER RESOURCE MANAGEMENT

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

Dated: May 10, 2005

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

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

Dear Mr. Gentry:

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

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

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

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

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

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

Sincerely,

DEAN A. NAKANO
Acting Deputy Director

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

FROM: Dean A. Nakano, Acting Deputy Director

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

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

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

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

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

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

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

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

Class
Attachment(s)

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

Contact person: __________________________  
Phone: __________________

Signed: __________________________  
Date: __________________
May 13, 2005

TO: Harry M. Yada, Acting Administrator
   Land Division

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

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

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

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

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

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

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

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

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

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

Contact person: _____________________________ Phone: __________________

Signed: _____________________________ Date: __________________
May 13, 2005

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

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

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

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

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

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

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

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

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

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

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

Cl:ss
Attachment(s)

Response:

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

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

TO: Honorable Mieah Kane, Director
    Department of Hawaiian Home Lands
Honorable Chiyome L. Fukino, M.D., Director
    Department of Health
Mr. Clyde W. Namua, Administrator
    Office of Hawaiian Affairs
Attn: Mr. Jonathan Scheuer
Honorable Dain P. Kane, Chairperson
    County Council
    County of Maui
Mr. George Y. Tengan, Director
    Department of Water Supply
    County of Maui
Mr. Michael W. Foley, Director
    Planning Department
    County of Maui

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

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

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

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

New Use Applications
    Maui Stadium Well (Well No. 5529-14), WUPA No. 713
    Waiehu Golf Course Well 2 (Well No. 5530-04), WUPA No. 714

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

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

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

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

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
Ian Ground Water Management Area, Maui

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

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

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

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

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

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

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

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

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

Sincerely,

[Signature]
Peter T. Young
Chairperson

Cl: ss
Enclosures
May 13, 2005

TO: Other Interested Parties
FROM: Dean A. Nakano, Acting Deputy Director
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), HRS, transmitted for your review and comment are copies of water use permit applications:

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

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

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

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

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

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

Class
Attachment(s)

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

Contact person: ____________________________ Phone: __________________________

Signed: ____________________________ Date: __________________________
PUBLIC HEARING NOTICE

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

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

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

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

- **Basal Sources:**
  
<table>
<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Amount (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Uses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Mokuhau Well 1</td>
<td>5330-09</td>
<td>MDWS</td>
<td>700</td>
<td>3-3-2:24</td>
<td>1.994</td>
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<tr>
<td>Mokuhau Well 3</td>
<td>5330-11</td>
<td>MDWS</td>
<td>701</td>
<td>3-3-2:24</td>
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<tr>
<td>Waiehu Heights Well 1</td>
<td>5430-01.</td>
<td>MDWS</td>
<td>697</td>
<td>3-3-2:28</td>
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<tr>
<td>Waiehu Heights Well 2</td>
<td>5430-02</td>
<td>MDWS</td>
<td>698</td>
<td>3-3-2:28</td>
<td>1.415</td>
</tr>
<tr>
<td>Waihee Well 1</td>
<td>5431-02</td>
<td>MDWS</td>
<td>695</td>
<td>3-3-17:31</td>
<td>1.480</td>
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<tr>
<td>Waihee Well 2</td>
<td>5431-03</td>
<td>MDWS</td>
<td>696</td>
<td>3-3-17:31</td>
<td>2.439</td>
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<tr>
<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>
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<td><strong>New Uses</strong></td>
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<td></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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<tr>
<td>Living Waters #1</td>
<td>5531-01</td>
<td>LWLF</td>
<td>704</td>
<td>3-2-13:15</td>
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</table>

- **Caprock Sources:**
  
<table>
<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Amount (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Uses</strong> as of July 21, 2003 and accepted as completed applications submitted by the July 21, 2004 deadline</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>War Memorial Stadium</td>
<td>5329-04</td>
<td>MP&amp;R</td>
<td>709</td>
<td>3-8-7:55</td>
<td>0.038?</td>
</tr>
<tr>
<td>Baldwin High School</td>
<td>5329-05</td>
<td>MP&amp;R</td>
<td>710</td>
<td>3-8-7:55</td>
<td>0.010</td>
</tr>
<tr>
<td>Maui Stadium</td>
<td>5329-14</td>
<td>MP&amp;R</td>
<td>713</td>
<td>3-8-7:55</td>
<td>0.039?</td>
</tr>
<tr>
<td>Papohaku Park</td>
<td>5429-02</td>
<td>MP&amp;R</td>
<td>712</td>
<td>3-2-13:29</td>
<td>0.324</td>
</tr>
<tr>
<td>Waiehu Golf</td>
<td>5529-02</td>
<td>MP&amp;R</td>
<td>711</td>
<td>3-2-13:6</td>
<td>0.039</td>
</tr>
<tr>
<td>Waiehu Golf 1</td>
<td>5530-03</td>
<td>MP&amp;R</td>
<td>708</td>
<td>3-2-13:29</td>
<td>0.324?</td>
</tr>
<tr>
<td>Waiehu Golf 2</td>
<td>5530-04</td>
<td>MP&amp;R</td>
<td>714</td>
<td>3-2-13:29</td>
<td>0.324?</td>
</tr>
<tr>
<td><strong>New Uses</strong> arising after July 21, 2003 or completed applications submitted after the July 21, 2004 deadline</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>None</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
December 17, 2004

BY U.S. MAIL & FACSIMILE TRANSMITTAL

Fax: (808) 587-0219

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

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

Dear Deputy Director Izu:

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

I. Traditional & Customary Native Hawaiian Rights & Practices.


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

1 Native Hawaiians may also possess appurtenant, riparian, or correlative rights, which may be used for traditional and customary purposes, such as the appurtenant, riparian, or correlative right to water for kalo cultivation on one’s own kuleana. See generally Lawrence H. Miike, M.D., J.D. Water and the Law in Hawai‘i 118 (University of Hawai‘i Press 2004).
Moreover, as trustee of the state’s water resources trust established under the state constitution, this Commission bears the ultimate burden of identifying and protecting Native Hawaiians’ traditionally and customarily exercised rights and practices in the context of water use permit applications for the ‘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.

Waiahole 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 placing[] the burden on the [practitioners] to establish that the proposed use would abridge or deny their traditional and customary gathering rights.” Id. In no uncertain terms the Court
held that the applicant “was obligated to demonstrate affirmatively that the proposed well would not affect native Hawaiians’ rights; in other words, the absence of evidence that the proposed use would affect native Hawaiians’ rights was insufficient to meet the burden imposed upon [the applicant] by the public trust doctrine, the Hawai‘i Constitution, and the Code.” Id. (emphases in original).

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

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

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

The Hawai‘i Supreme Court further ruled that state agencies, such as this Commission, “may not act without independently considering the effect of their actions on Hawaiian traditions and practices.” Ka Pa‘akai, 94 Haw. at 46 (emphasis added). The Court went on to specifically detail an “analytic framework in an effort to effectuate the state’s obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests[.]” Id. at 46-47. “Indeed,
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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 Pa‘akai, given the information already provided to this Commission in objections to water use permit applications for ‘Iao, at the October 28, 2004 public hearing on Maui, and in the petition to restore stream flow in Waihe’e, North and South Waiehu, ‘Iao and Waikapū streams and their tributaries (“Nā Wai ‘Ehā”) filed by Earthjustice on June 25, 2004, this Commission is tasked with investigating and making specific findings regarding: (1) the identity and scope of cultural, historical and natural resources in the area affected by the permit applications for ‘Iao, including the extent to which traditional and customary rights and practices are exercised in that area; (2) the extent to which those resources, rights, and practices will be affected by the proposed action; and (3) feasible action, if any, to reasonably protect Native Hawaiian rights and practices. 94 Haw. at 52. In particular, we note that the IIIFS petition detailed some cultural practices supported by ground and surface water in the Nā Wai ‘Ehā area. If the Commission determines that such rights exist, all water use permit applicants must overcome the presumption in favor of such protected public trust purposes.

Given the limitations of the outdated declarations of water use and Hawai‘i Water Plan, we understand the enormity of the task facing this Commission and the applicants seeking water use permits for ‘Iao. Although the Hawai‘i Supreme Court has made clear that this burden lies with the Commission and permit applicants, not the practitioners, several workable avenues are available to help provide the necessary information. The Commission, in partnership with the permit applicants, could, for example: (1) review declarations of water use for all TMKs and uses within the affected area; (2) request from plantation interests including Wailuku Agribusiness and HC&S, a list of all individuals who receive kuleana water; (3) publish notices in local papers and broadcast on local TV (Akaktu) and radio stations requests for information from practitioners from the affected area; (4) locally notice and hold public meetings in Central Maui for practitioners who may be affected by the pending applications; (5) contact Hawaiian agencies with offices or representatives in the affected area, including the Office of Hawaiian Affairs, Queen Lili‘uokalani Children’s Center, and Alu Like for lists of local practitioners or contacts; (6) contact elected representatives at the county, state, and federal levels for recommended contacts; (7) contact cultural consultants or experts from the area, including those listed in state Office of Environmental Quality Control’s list of cultural consultants and others potentially available through the Bailey House for contact information for local practitioners or other resources; (8) contact culturally-based groups from the area including hula hālau, Hawaiian Civic Clubs, ‘Onipa’a Nā Hui Kalo, Maui Cultural Lands, Maui Cultural Resources Commission and
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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 as a public
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trust purpose, citing the Water Code’s definition of “domestic use” as support. Commissioner Miike later modified this position in correspondence dated November 3 and 15, 2004, opining that Waiahole I suggested domestic uses could extend to municipal uses. We respectfully submit that the Commissioner’s first inclination was correct. In sum, although municipal use may serve the general public interest and partially (but not exclusively) includes many aggregate domestic uses, it constitutes a large-scale, consumptive, and diversionary use that differs, both qualitatively and quantitatively, from the uses that the public trust, both in Hawai’i and elsewhere, has traditionally protected. Thus, notwithstanding the “important public benefits” of municipal uses, long-established public trust precedent “stops short” of including such use as a public trust purpose. Waiahole I, 94 Haw. at 138.

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

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

2 This Commission determined that while potable water is delivered through the Central Maui system to provide for both potable and non-potable needs, the County was unable to “differentiate between these major categories of use.” State Commission on Water Resource Management, ‘lao 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.'" 3

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 I) 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). 4 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 lāo 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).
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 Waiahole I decision as potential support for the idea of municipal uses being a public trust purpose. The letter emphasizes Waiahole 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 Waia’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 Wai‘ahole 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 ‘Iao, may include aggregate domestic uses, but are otherwise qualitatively and quantitatively different because of their large-scale, consumptive, and diversionary nature. Inclusion of such uses (which include many other uses besides domestic, including commercial uses, and in most cases would drain a water source dry) as a public trust purpose would constitute an unprecedented, fundamental deviation from long-standing public trust principles.

Moreover, equating domestic and municipal uses would essentially resurrect the argument rejected by the California Supreme Court “Mono Lake” case that the public trust encompassed “all public uses,” including the municipal uses of the City of Los Angeles (termed “domestic” under California statute and in that case). See National Audubon Soc’y v. Superior Ct. of Alpine Cty., 658 P.2d 709, 723-24 (Cal. 1983) (cited in Wai‘ahole 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 Wai‘ahole I decision adopted this reasoning without qualification. 94 Haw. at 138. Indeed, Wai‘ahole I specifically acknowledged that “National Audubon involved diversions for a public purpose, the domestic uses of the City of Los Angeles.” Id. at 140. Yet, these “domestic”/municipal uses in National Audubon did not lead the Court to limit its embrace of that case in any

5 The substance of the Clifton court’s holding was that the state held potable drinking water reserves in trust, 539 A.2d at 765; in other words, the court focused on the “scope” of the trust, and not the “uses” it protects. Cf. Wai‘ahole 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 Wai‘ola, 103 Haw. at 441 (“An applicant for a water use permit bears the burden of establishing that the proposed use will not interfere with any public trust purposes; likewise, the Commission is duty bound to hold an applicant to its burden[.]”).
The November 15 letter suggests that, although the Court declined to differentiate among public trust uses, it would differentiate between non-public trust uses, i.e., between private commercial and public uses. Nothing in the Court’s case law supports this notion, and Waiāhole 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. Waiāhole 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.” Waiāhole 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[,]" Wa`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,

D. Kipuna Sproat

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

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

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

Dear Ms. Lovell:

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

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

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

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

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

Sincerely,

YVONNE Y. IZU
Deputy Director
November 18, 2004

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

Dear Mr. Tengan:

Central Maui Ground Water Production – Summary of Recent Findings

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

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

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

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

Sincerely,

YVONNE Y. IZU
Deputy Director

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

Dear Ms. Sproat:

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

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

Hawaiian Water Rights

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

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

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

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

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

However, in reviewing the Court's Waiāhole 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 “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

Cl: 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.

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?
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
November 3, 2004

Roy/Charlie:

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

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

However, in reviewing the Court’s Waiahole I decision, it refers to “the vital domestic uses of the general public (my emphasis)” 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

---

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

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

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

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

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

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

Subsequently, the aforementioned Kuleana Act provision ensured
PUBLIC HEARING

Applications for Water Use Permits
lao 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.

Well Name | Well No. | Applicant | WUPA No. | TMK | Requested amount (mgd)
--- | --- | --- | --- | --- | ---
Wailuku Shaft 33 | 5330-05 | Kealani** | 707 | 3-5-1:1 | 5.771
Mokuaua Well 1 | 5330-09 | MDWS | 700 | 3-3-2:24 | 1.994
Mokuaua Well 3 | 5330-11 | MDWS | 701 | 3-3-2:24 | 2.221
Waiehu Heights Well 1 | 5430-01 | MDWS | 697 | 3-3-2:28 | 0.166
Waiehu Heights Well 2 | 5430-02 | MDWS | 698 | 3-3-2:28 | 1.415
Waihee Well 1 | 5431-02 | MDWS | 695 | 3-3-17:31 | 1.480
Waihee Well 2 | 5431-03 | MDWS | 696 | 3-3-17:31 | 2.439
Waihee Well 3 | 5431-04 | MDWS | 703 | 3-3-17:31 | 1.513
lao Tunnel | 5332-02 | DWS | 680 | 3-3-3:3 | 1.359
Kepaniwai Well | 5332-05 | MDWS | 699 | 3-3-3:3 | 1.042
lao Tunnel | 5330-02 | HC&S | 691 | 3-4-34:34 | 0.100

Total from all sources

19.499

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

Well Name | Well No. | Applicant | WUPA No. | TMK | Requested amount (mgd)
--- | --- | --- | --- | --- | ---
Wailuku Shaft 33 | 5330-05 | MDWS** | 702 | 3-5-1:1 | 5.771
War Memorial Stadium | 5329-04 | MP&R | 709 | 3-8-7:55 | 0.038
Baldwin High School | 5329-05 | MP&R | 710 | 3-8-7:55 | 0.010
Mau Stadium | 5329-14 | MP&R | 713 | 3-8-7:55 | 0.039
Papohaku Park | 5429-02 | MP&R | 712 | 3-2-13:29 | 0.324
Waiehu Golf | 5529-02 | MP&R | 711 | 3-2-13:6 | 0.039
Waiehu Golf 1 | 5530-03 | MP&R | 708 | 3-2-13:29 | 0.324
Waiehu Golf 2 | 5530-04 | MP&R | 714 | 3-2-13:29 | 0.324
Black George Tunnel | 5332-01 | HC&S | 685 | 3-3-3:3 | not identified
lao Needle Tunnel 1 | 5333-01 | HC&S | 684 | 3-5-3:1 | not identified
lao Needle Tunnel 2 | 5333-02 | HC&S | 686 | 3-3-3:3 | not identified
*Living Waters #1 | 5631-01 | LWLF | 704 | 3-2-13:15 | >6.890

Total from all sources

**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 lao Water Management Area with a property interest, who reside on the land, or can otherwise demonstrate that they will be so directly and immediately affected by the proposed water uses that their interest is clearly distinguishable from that of the general public; others who can show a substantial interest in the matter and can substantially assist the Commission in its decision making; agencies whose jurisdiction includes the land or water in question.

COMMISSION ON WATER RESOURCE MANAGEMENT

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

Dated: October 7, 2004
Publish in: Maui News issue of October 12, 2004
Mr. Randy Gentry  
County of Maui  
Department of Parks and Recreation  
700 Hali'a Nakoa Street, Unit 2  
Wailuku, HI 96793  

Dear Mr. Gentry:

Supreme Court Directions for Water Use Permit Applications

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

As we have received objections to the applications submitted to-date for continuing the existing use of ground water from the lao 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
Charley, fyi - and I think you have the hard copies already printed for you. Randy, Charley's email above.

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

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

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

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

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

Randy,

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

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

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

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


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Randy, in reviewing for completeness:

1) are the new applications backup wells? Specifically, is Waiehu
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maui parks & rec wupas.doc

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

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

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

Randy,

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

"Randy Gentry" <Randy.Gentry@co.maui.hi.us>
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>>> <Roy.Hardy@hawaii.gov> 7/22/2004 11:41:35 AM >>>

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

5530-04 Waiehu golf course 2
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08/05/2004 03:19 PM
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pumping these amounts?
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-----
Roy Hardy/DLNR/StateHiUS
08/05/2004 03:19 PM
To
Randy.Gentry@co.mauि.hi.us
cc
Lenore Y Nakama/DLNR/StateHiUS@StateHiUS, Charley F
Ice/DLNR/StateHiUS@StateHiUS
Subject
Fw: Maui Parks and Recreation Water Use Permits

Randy, got them in yesterday but in my intray today! Thanks
----- Forwarded by Roy Hardy/DLNR/StateHiUS on 08/05/2004 03:18 PM
-----
Roy Hardy/DLNR/StateHiUS
08/03/2004 02:47 PM
To
"Randy Gentry" <Randy.Gentry@co.mauि.hi.us>
cc
Lenore Y Nakama/DLNR/StateHiUS@StateHiUS
Subject
Re: Maui Parks and Recreation Water Use Permits

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soon.

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

07/28/2004 01:14 PM

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

typos?

Roy Hardy
Commission on Water Resource Management
808-587-0274
Roy Hardy/DLNRI/StateHiUS
07/29/2004 08:00 AM

To: "Randy Gentry" <Randy.Gentry@co.maui.hi.us>
cc: Charley F Ice/DLNRI/StateHiUS, Lenore Y Nakama/DLNRI/StateHiUS

Subject: Re: Maui Parks and Recreation Water Use Permits

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

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

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

To: <Roy.Hardy@hawaii.gov>
cc: "Randy Gentry"

Subject: Re: Maui Parks and Recreation Water Use Permits

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typos?

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

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

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

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

typos?

Roy Hardy
Commission on Water Resource Management
808-587-0274
<table>
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<th>FROM:</th>
<th>ROY</th>
<th>DATE:</th>
<th>JUL 21 2004</th>
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</table>

1/22 left msg for Larry. Going to call.

Mitch - could you verify TMK of this casting well? Database shows it at 3-4-024:00 and not 3-4-030:015 (current).

Leone please log and cut correspondence once TMK error is made.

General Rep. & Development
Area
Roy Hardy/DLNR/StateHiUS 07/28/2004 06:40 AM

To Charley F Ice/DLNR/StateHiUS@StateHiUS, Lenore Y Nakama/DLNR/StateHiUS@StateHiUS

cc

bcc

Subject Fw: Maui Parks and Recreation Water Use Permits

fyi

----- Forwarded by Roy Hardy/DLNR/StateHiUS on 07/28/2004 06:39 AM -----

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

07/28/2004 06:15 AM

To <Roy.Hardy@hawaii.gov>

cc

Subject Re: Maui Parks and Recreation Water Use Permits


Roy:

I am very sorry for the mixup, I was going by the well numbers that were supplied to me, The application that is listed for 5529-04 should be 5329-14. Also at the Waiehu Golf Course some how the numbers that were given to me were the wrong ones. The figures that I have transmitted to you for the Waiehu Golf Course are correct but apparently the water source numbers are wrong. There is one well at the golf course that was capped and registered as out of use several years ago. I will call you or Lenore today to try and figure it out, sorry for the problems...Randy Gentry

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

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

5530-04 Waiehu golf course 2
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Also, for 5530-03 Waiehu Golf Course 1, your app states that two other wells are involved:

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

typos?

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

PERMITTEE INFORMATION
1. (a) APPLICANT
Firm/Name: County of Maui Department of Parks and Recreation
Contact Person: Randy Gentry
Address: 700 Hali‘a Nakoa Street Unit 2, Wailuku, Hawaii 96793
Phone: (808) 270-5553 Fax: (808) 270-7192
E-mail: Randy.Gentry@co.maui.hi.us
(b) LANDOWNER OF SOURCE
Firm/Name: County of Maui
Contact Person: Glenn T. Correa /Director Parks and Recreation
Address: 700 Hali‘a Nakoa Street Unit 2, Wailuku, Hawaii 96793
Phone: (808) 270-7526 Fax: (808) 270-7934
E-mail: Glenn.Corrrea@co.maui.hi.us

SOURCE INFORMATION
2. WATER MANAGEMENT AREA: Lao Aquifer ISLAND: MAUI
3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: Papohaku Park # 5429-02
(b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME: 
(c) LOCATION: Address: 395 Waena Street, Wailuku, Hawaii 96793
Tax Map Key: 3-4-30:Por., #20000, and a property tax map
(Attach and show source on a USGS map, scale 1"=2000", and a property tax map)
4. SOURCE TYPE (check one): Stream
5. METHOD OF TAKING WATER (check one): Artesian Well & Pump

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
(c) WATER: (check one) Fresh
(d) QUALITY OF WATER REQUESTED: Fresh
8. METHOD OF MEASUREMENT: Fresh
9. QUANTITY OF WATER REQUESTED: 5,250 gallons per day (averaged over 1 year)

10. PROPOSED USE: Municipal (including hotels, stores, etc.) Individual Domestic Irrigation
Industrial
Military
11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 9:00 P.M.- 3:00 A.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: This is an irrigation well that is owned and operated by the County of Maui Department of Parks and Recreation, TMK: 3-4-30:Por., #20000, New TMK Numbering System: 2340300150000. Other information is included in application.

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

Applicant (print) Parks and Recreation
Signature
Date

Landowner (print) County of Maui
Signature
Date

WUPAFORM (4/29/03)
WUP No. 712
## TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>1. Papohaku Neighborhood Park</th>
<th>2.</th>
<th>3.</th>
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<tr>
<td>395 Waena Street, Wailuku, Hawaii 96793</td>
<td>EXISTING or NEW USE (if existing, fill in date of first use)</td>
<td>POTABLE or NONPOTABLE</td>
<td>TMK</td>
<td>STATE LUD</td>
<td>CURRENT COUNTY ZONING CODE</td>
<td>UNITS or NET ACRES</td>
<td>GPD UNIT or GPD/ACRE</td>
<td>4-YEAR CUMULATIVE PROJECTED DEMAND</td>
<td>ULTIMATE DEMAND GPD (TO BUILD OUT)</td>
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</table>

TOTAL GPD 5,250

(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 650 South King Street, 7th Floor, Honolulu, HI 96813.
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</table>

1. They had permit WC4 P2 work in 4/91
2. PIP report can't be 1/1/91 as in m wellphys dbf

Pretty difficult - well does not seem to fully recover after each test.
INSTRUCTIONS: Please print or type and submit completed report within 30 days of well completion to the Division of Water & Land Development, P.O. Box 373, Honolulu, HI 96801. An as-built drawing of the well and chemical analysis, if available, should also be submitted. If necessary, phone 548-1543, Hydrology, Geology Section for assistance.

A. STATE WELL NO. 5429-02 WELL NAME Popohaku ISLAND Maui
B. LOCATION Popohaku Ball Park, Kahului TAX MAP KEY
C. WELL OWNER Dept. of Parks
D. DRILLING OR PUMP INSTALLATION CONTRACTOR BOSCO MOSS HAWAII, INC.
E. TYPE OF RO 28L cable tool DRILLER Jerry Bourn
F. DATE OF WELL COMPLETION 6/7/91 DATE OF PUMP INSTALLATION 6/7/91
G. GROUND ELEVATION (sea) 84.71 ft.
   Top of Drilling Platform (sea) 110 ft. above ground
   Height of drilling platform above ground surface 0 ft.
Bench mark and method used to determine ground elevation
H. TOTAL DEPTH OF WELL BELOW GROUND 130
I. HOLE SIZE: 12 inch dia. from 0 ft. to 110 ft. below ground
   8 inch dia. from 110 ft. to 140 ft. below ground
   8 inch dia. from 140 ft. to 130 ft. below ground
J. CASING INSTALLED: 8 in. I.D. x .312 in. wall solid section to 80 ft. below ground
   8 in. I.D. x .312 in. well perforated section to 110 ft. below ground
   Type of perforation Inter
K. ANNULUS: Grouted from 0 ft. to 75 ft. below ground
   Gravel packed from 75 ft. to 110 ft. below ground
L. PERMANENT PUMP INSTALLATION:
   Pump type, make, serial No. Line shaft oil lube
   Motor type, H.P., voltage, r.p.m. 20 HP 440 Volts 3450 RPM
   Depth of pump intake setting 103 ft. below Pump Base
   Which elevation is 85.71 ft.
   Depth of bottom of airline 100 ft. below Pump Base
   Which elevation is 85.71 ft.
M. PROPOSED USE Irrigation
N. INITIAL WATER LEVEL 60 ft. below ground.
   Date and time of measurement 5/23/91
   Date and time of sampling 5/23/91
O. INITIAL CHLORIDE 60 ppm.
   Location point (R.P.) used: which elevation is
   Date May 23, 1991
   Start water level 66 ft. below R. P.
   End water level 67 ft. below R. P.
   Depth of well 130 ft. below R. P.
   Depth below (ft) Draw- Rate Draw-
       Time (hours) Date down (ft.) Cl- Rate Cl- Temp. Temp.
       to ........................................ ..........................
       to 9:00am to 4:00pm 109 49 .............................
       to ............................
       to .............................
       to .............................
       to .............................

   DRILLER'S LOG:
   Depth, ft. Rock Description & Remarks Water Level
   0. to 22 Boulder .............................
   22. to 46 Rock & Clay .........................
   46. to 48 Decomposed Rock ...................
   48. to 51 Hard Rock ..........................
   51 to 59 Congl. Brown ........................
   59. to 67 Decomposed Rock ...................
   67. to 72 Hard Rock ..........................
   72. to 101 Brown Sandstone .................
   101. to 109 Decomposed Rock ...............
   109. to 122 Sandstone ......................
   122. to 140 Decomposed Rock ...............

   REMARKS:
   submitted by (print) Tracy Cunneels
   signature Tracy Cunneels
   Date 3/4/96
   Title Manager
Remarks, Explanations (cont'd):

As Built Well Section
S. PROPOSED WELL SECTION S429-02

Elevation at top of casing
____ ft., msl.

Ground Elevation: 84.71 ft., msl

Cement Grout: 75 ft.

Solid Casing:
Material: Steel
Length: 80.47 ft.
Diameter: 7 1/2 in. I.D.
Wall thickness: .370 in. L.D.

Rock Packing: 35 ft.

Casing: □ Perforated □ Screen
Material: Steel
Length: 30.67 ft.
Diameter: 7 1/2 in. I.D.
Wall thickness: .372 in. L.D.
Openings: .49 in. sq. in./L.F.

Hole Diameter: 12 in.

Total Depth: 140 ft.

Open Hole:
Length: 30.67 ft.
Diameter: 8 inch

*Approximate elevation at time of filing application. Ground elevation above mean sea level (msl) by a surveyor licensed by the State must be submitted at start of construction. Final elevations of well components shall be submitted in the well completion/well abandonment reports.
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</table>
STATE WELL NO. 5629-02

WELL NAME: Popohaku

LOCATION: Popohaku Ball Park, Kahului

ISLAND: Maui

WELL OWNER: Dept. of Parks

WELL OWNER: Dept. of Parks

DRILLING OR PUMP INSTALLATION CONTRACTOR: ROSCOE MOSS HAWAII, INC.

TYPE OF RIG: 28 ft. cable tool

DRILLER: Jerry Bouma

DATE OF WELL COMPLETION: 6/7/91

DATE OF PUMP INSTALLATION: Est. 7/7/91

GROUND ELEVATION (mal): 84.71 ft.

Height of drilling platform above ground surface: 0 ft.

Depth of well below ground: 130 ft.

Bench mark and method used to determine ground elevation: ft.

TAX MAP KEY: 

TOTAL DEPTH OF WELL BELOW GROUND: 130 ft.

HOLE SIZE: 12 inch dia. from 0 ft. to 110 ft. below ground

8 inch dia. from 110 ft. to 140 ft. below ground

8 inch dia. from 140 ft. to 110 ft. below ground

CASING INSTALLED: 8 in. I.D. x .312 in. wall solid section to 80 ft. below ground

8 in. I.D. x .312 in. wall perforated section to 110 ft. below ground

Type of perforation: Transw

ANNUAL:

Grounded from 0 ft. to 75 ft. below ground

Gravel packed from 75 ft. to 110 ft. below ground

PERMANENT PUMP INSTALLATION:

Line shaft oil lube

Capacity: 150 gpm

Motor type, make, serial No.

Motor type, H.P., voltage, r.p.m.

Depth of pump intake setting: 103 ft. below Pump Base

Depth of bottom of airline: 100 ft. below Pump Base

which elevation is 85.71 ft.

PROPOSED USE:

Irrigation

INITIAL WATER LEVEL: 60 ft. below ground.

Date and time of measurement: 5/23/91

INITIAL CHLORIDE: 60 ppm.

Date and time of sampling: 5/23/91

PUMPING TESTS: Reference point (R.P.) used: which elevation is ft.

Date: May 23, 1991

Start water level: 65 ft. below R. P.

End water level: 67 ft. below R. P.

Depth of well: 130 ft. below R. P.

Elapsed Time (hours) Rate Drawn down (ft.) Temp. 

(ppm) (ppm) °F

8:00 am to 4:00 pm: 100 40

7:00 am to 11:00 am: 150 .5

11:00 am to 7:10 pm: 150 .0 60

WELLER’S LOG:

Depth, ft. Rock Description & Remarks Water Level ft. 

10. to 22 Boulder

12. to 46 Rock & Clay

16. to 48 Decomposed Rock

18. to 51 Hard Rock

59 Congl. Brown

67 Decomposed Rock

72 Hard Rock

73 Decomposed Rock

109 Decomposed Rock

122 Sandstone

140 Decomposed Rock

EMARKS:

Bayed by (print): Tracy Runnels

Title: Manager

Date: 3/4/96
2. Provide any information regarding the four (4) unnumbered sources.

Please respond to this request by February 28, 1996. Failure to do so may result in enforcement of CWRM rules. If you have any questions, please call Neal Fujii at 587-0264.

Sincerely,

[Signature]

RAE M. LOUI
Deputy Director

GB:fc

Attach.
Mr. Ken Sivula, Maintenance Supervisor  
County of Maui  
Department of Parks and Recreation  
1580 C Kaahumanu Avenue  
Wailuku, Hawaii 96793

Dear Mr. Sivula:

As you may know, Maui's Iao aquifer system is being pumped near its capacity. In order for the Commission on Water Resource Management to properly monitor and assess the condition of the aquifer, accurate groundwater withdrawal information is essential. Maui County Department of Parks and Recreation owns and operates five wells within the Iao aquifer system. Your current method of estimating water use amounts by pump run-time is not appropriate. Your department, as a well operator, is subject to the requirements under Hawaii Administrative Rules §13-168-7. One of these requirements is that the well operator must maintain an approved meter or other appropriate device or means for measuring and reporting water usage on a monthly basis. At this point in time, any calibrated meter is acceptable to the Commission while pump run-time is not.

We hereby request that Maui County Department of Parks and Recreation install approved flow meters on all of the wells that it operates. The meters should be operational six months after your receipt of this letter. In the interim, estimated monthly pumpage from all the wells should be submitted to our office each month. In addition, monthly chloride measurements must be made from water sampled from each of your wells. If possible, monthly water levels should also be recorded.

Regarding the matter of the Popahaku Park Well permit violation, please provide any as-built drawings and complete the attached well completion report for our records to avoid any possible fines.

Please inform us when you have completed the installation of the flow meters. If you have questions, contact Roy Hardy of our Regulation Branch at (808) 587-0274. Thank you for your cooperation.

Sincerely,

RAE M. LOUI  
Deputy Director

NF:fc  
Attachments  
c. Mayor Linda Crockett Lingle  
David Craddick, Director, Maui DWS  
Commissioner David Nobriga
WELL CONSTRUCTION/PUMP INSTALLATION PERMIT

for

Papohaku Park Well
Well No. 5429-02
Wailuku, Maui

TO: County of Maui
   Parks & Recreation
   1580 Kaahumanu Avenue
   Wailuku, HI 96793

In accordance with the Department of Land and Natural Resources Administrative Rules, Section 13-168, entitled "Water Use, Wells, and Stream Diversion Works", your application to construct, test, and install a pump in Papohaku Park Well (Well No. 5429-02) for irrigation use, is approved subject to the following conditions:

1. The Division of Water Resource Management (DWRM), P.O. Box 373, Honolulu, HI 96809, shall be notified, in writing, before any work covered by this permit commences.

2. The proposed well construction and pump installation shall not adversely affect existing or future legal uses of water in the area, including any surface water or established instream flow standards. This permit shall not constitute a determination of correlative water rights. The permittee is notified and by this provision understands that the quantity of water taken from the well could be reduced by the Commission in the future. This permit is not a commitment that the capacity to withdraw water authorized here or even some lesser amount is guaranteed in the future.

3. The permit shall be for construction, testing, and installation of a 150 gpm capacity, or less, pump in the well, as determined by the pumping test results. The applicant shall submit to DWRM the test results and proposed permanent pump information, based on the test, for approval by the Chairperson. No permanent pump may be installed and no water used from the well without the Chairperson's approval.
4. The total depth of the well shall not exceed 100 ft. without authorization from the Chairperson. If basaltic bedrock is encountered during drilling of the well, the drilling shall cease and the Commission staff shall be notified. The well shall be backfilled with cement to a depth, to be approved by the Commission staff, that will assure that only alluvial water is developed by the well.

5. The grouted annulus of the well shall be from 0 to 80 ft. instead of from 0 to 20 ft. as proposed.

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

7. The following shall be submitted to DWRM within 30 days after completion of the work:
   a. Well Completion Report.
   b. As-built sectional drawing of the well.

8. The applicant shall comply with all applicable laws, rules, and ordinances.

9. This permit may be revoked if work is not started within six months of the date of issuance or if work is suspended or abandoned for six months. The work proposed in the permit application shall be completed within 24 months from the date of permit issuance.

WILLIAM W. PATY, Chairperson
Commission on Water Resource Management

APR 24 1991

Date of Issuance

cc: USGS
    Department of Health
    Safe Drinking Water Branch
    Ground Water Protection Program
    Maui Department of Water Supply
April 10, 1991

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

Dear Mr. Paty:

SUBJECT: WELL AND PUMP INSTALLATION PERMIT APPLICATION
PAPOHAKU PARK WELL
STATE WELL NO. 5429-02
WAILUKU, MAUl

Thank you for the opportunity to review and comment on the subject application.

Since the proposed well will be used for park irrigation, the Department's Administrative Rules, Title 11, Chapter 20, "Potable Water Systems," will not be applicable. However, in the event that the proposed use were to change, please inform the Safe Drinking Water Branch.

If you should have any questions, please contact the Safe Drinking Water Branch at 543-8258.

Sincerely,

THOMAS E. ARIZUMI, P.E., Chief
Environmental Management Division

SY:la
cc: Director of Parks
Parks and Recreation
County of Maui
1580 Kaahumanu Avenue
Wailuku, Maui, HI 96793
Honoroble Hoaliku L. Drake
Director
Department of Hawaiian Home Lands
State of Hawaii
P.O. Box 1879
Honolulu, Hawaii 96805

Dear Mrs. Drake:

Well Construction and Pump Installation Permit Application

Transmitted for your review and comment is a copy of the following permit application:

<table>
<thead>
<tr>
<th>Island</th>
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<td>Well and Pump</td>
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</table>

Please review the application pursuant to your area of concern and submit your comments to us, orally or in writing, by April 5, 1991.

Should you have any questions, please contact Manabu Tagomori, Deputy Director at 548-7533.

Very truly yours,

[Signature]

WILLIAM W. PATY

Enc.
Mr. Moses K. Keale, Sr.
Chairman
Office of Hawaiian Affairs
1600 Kapiolani Blvd., Suite 1500
Honolulu, Hawaii 96814

Attn: Ms. Linda Delaney, Land & Natural Resources Division

Dear Mr. Keale:

Well Construction and Pump Installation Permit Application

Transmitted for your review and comment is a copy of the following permit application:

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Please review the application pursuant to your area of concern and submit your comments to us, orally or in writing, by April 5, 1991.

Should you have any questions, please contact Manabu Tagomori, Deputy Director at 548-7533.

Very truly yours,

[Signature]

WILLIAM W. PATY

Enc.
MEMORANDUM

TO: Manabu Tagomori, Deputy Director
Commission on Water Resource Management

FROM: Don Hibbard, Administrator
State Historic Preservation Division

SUBJECT: Well Construction and Pump Installation Permit
Application for Papohaku Park Well, Well No. 5429-02
Wailuku, Maui

TMK 3-4-23: 36, 3-4-24: portion of 6 & 9

HISTORIC PRESERVATION PROGRAM CONCERNS:

There are no known historic sites on these properties. Also, these areas have been previously developed and it is highly unlikely that significant historic sites still exist. Therefore, we believe that the proposed well drilling and pump installation will have "no effect" on significant historic sites.

Please contact Ms. Annie Griffin (587-0013) if you have any questions.
### WELL COMPLETION REPORT

**WELL NAME:** Popohaku  
**TAX MAP KEY:**  
**DIV. OF WATER & LAND DEVELOPMENT:**

---

### WELL COMPLETION REPORT

**STATE WELL NO:** 5429-02  
**DATE:** 6/7/91  
**DATE OF PUMP INSTALLATION:** 7-9-91  

---

### INITIAL CHLORIDE

- to
- ft.

### PERMANENT PUMP INSTALLATION:

- **ANNULUS:**
  - **CASINO INSTALLED:** 19.1
  - **PROPOSED USE:** Irrigation
  - **INITIAL WATER LEVEL:** 60 ft. below ground
  - **INITIAL CHLORIDE:** 60 ppm

### FLEXIBLE PUMP INSTALLATION:

- **Type of perforation:**
  - **Possible:**
    - **ANNULUS:**
      - **Depth:**
        - **Ground Level:** 0 ft.
        - **Distance:**
          - **Gravel packed:** 75 ft. below ground
          - **Wall perforated:**
            - **Above:** 75 ft. below ground
            - **Below:** 110 ft. below ground
          - **Wall solid section:**
            - **Height:** 8 in. L.D. x 0.312 in.
            - **Ground level:** 0 ft.
            - **Distance:**
              - **Below ground:** 110 ft. below ground
              - **Distance:**
                - **Below ground:**
                  - **8 in. L.D. x 0.312 in.**

- **Type of perforation:**
  - **ANNULUS:**
  - **Depth:**
    - **Ground Level:**
      - **Distance:**
        - **Wall perforated:**
          - **Above:** 75 ft. below ground
          - **Below:** 110 ft. below ground
          - **Wall solid section:**
            - **Height:** 8 in. L.D. x 0.312 in.

### DRILLER'S LOG:

- **Depth:**
  - **0** to **22:** Boulders
  - **22** to **46:** Rock & Clay
  - **46** to **51:** Decomposed Rock
  - **51** to **59:** Congl. Brown
  - **59** to **67:** Decomposed Rock
  - **67** to **72:** Hard Rock
  - **72** to **101:** Brown Sandstone
  - **101** to **109:** Decomposed Rock
  - **109** to **122:** Sandstone
  - **122** to **140:** Decomposed Rock

### REMARKS:

- **Remarks:**
  - **Nature:**
  - **Date:**
  - **Title:**

---

### ROCK DESCRIPTION & REMARKS

<table>
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<tr>
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<tbody>
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### WATER LEVEL

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Honorable John C. Lewin, M.D.
Director
Department of Health
State of Hawaii
1250 Punchbowl Street
Honolulu, Hawaii 96813

Attn: Mr. William Wong, Drinking Water Branch

Dear Dr. Lewin:

Well Construction and Pump Installation Permit Application

Transmitted for your review and comment is a copy of the following permit application:

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</table>

Please review the application pursuant to your area of concern and submit your comments to us, orally or in writing, by April 5, 1991.

Should you have any questions, please contact Manabu Tagomori, Deputy Director at 548-7533.

Very truly yours,

WILLIAM W. PATY

Enc.
Ms. Rae Shikuma, Director
Department of Water Supply
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Ms. Shikuma:

Well Construction and Pump Installation Permit Application

Transmitted for your review and comment is a copy of the following permit application:

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Please review the application pursuant to your area of concern and submit your comments to us, orally or in writing, by April 5, 1991.

Should you have any questions, please contact our Regulation Branch at 548-7541.

Sincerely,

[Signature]

MANABU TAGOMORI
Deputy Director

NF:bm
Enc.
MEMORANDUM

TO: Mr. Don Hibbard, Director
    Historic Preservation Program

FROM: Manabu Tagomori, Deputy Director
      Commission on Water Resource Management

SUBJECT: Well Construction and Pump Installation Permit Application

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Please review the application pursuant to your area of concern and submit your comments to us, orally or in writing, by April 5, 1991.

Should you have any questions, please contact our Regulation Branch at 548-7541.

NF:bm
Enc.
Ms. Charmaine M. Tavares, Director  
County of Maui  
Department of Parks And Recreation  
1580 Kaahumanu Avenue  
Wailuku, Hawaii 96793  

Dear Ms. Tavares:  

We have received your application and filing fee for a permit to construct and install a pump in a well (Well No. 5429-02) at Papohaku Park in Wailuku, Maui, (TMK: 3-4-24:06,09). We are reviewing the application for completeness.  

Should you have questions, please call the Regulation Branch of the Division of Water Resource Management at 548-7541.

Sincerely,  

MANABU TAGOMORI  
Deputy Director

NF:bm
APPLICATION FOR

WELL CONSTRUCTION PERMIT

PUMP INSTALLATION PERMIT

INSTRUCTIONS: Please print or type and send completed application with attachments to the Division of Water and Land Development, P.O. Box 273, Honolulu, Hawaii 96808. Application must be accompanied by a non-refundable filing fee of $25.00 payble to the Department of Land and Natural Resources. (Filing fee waived for government agencies.) If necessary, phone 548-1543, Hydrology/Geology Section for assistance.

1. WELL LOCATION

Island Maui

Tax Map Key 3-4-23136 Portion of 5-3-4-24:6,9

Address Wailuku near Lower Main and Waiheu Beach Road

(Attach a USGS map (scale 1"=2000') and property tax map showing well location referenced to established property boundaries.)

2. WELL OWNER

Firm Name County of Maui, Park & Rec.

Contact Person Director of Parks

Address 1580 Kaahumanu Ave Wailuku, HI 96793

Phone 243-7230

3. PROPOSED CONTRACTOR FOR: □ Well Drilling □ Pump Installation

Name Roscoe Moss Hawaii, Inc.

Address 830 Ahua Street Honolulu, Hawaii 96819

4. PROPOSED WORK

□ Drill New Well □ Deepen □ Redrill
□ Alter □ Seal □ Abandon
□ Install New Pump □ Replace Pump □ Modify Pump

(Briefly describe the proposed work and fill in the diagram on the back of this form.)

5. PROPOSED USE

□ Municipal (including hotels, stores, etc.) □ Military
□ Domestic (individual, noncommercial water systems) □ Industrial
□ Irrigation (specify) □ Other (specify) □

6. PROPOSED AMOUNT OF WITHDRAWAL 23,000 gallons per day

7. PROPOSED PUMP INFORMATION

Pump Type: □ Vertical Turbine □ Submersible □ Centrifugal

□ Gas □ Electric: □

Rated Pump Capacity 150 gallons per minute (gpm)

Well Owner (print) County of Maui DEPT. Land Owner (print) County of Maui

Signature Date 2/13/97 Signature Date 2/13/97

For Official Use Only:

Field Checked By __________________________ Latitude ________________ Hydrologic Unit __________________________

Date __________________________ Longitude ________________ State Well No. 5A29-02

Quad Map No. M-5
Briefly describe the proposed work:

Well to be drilled to a depth of 100 ft. install casing and grout annular space. Test pump the well at 200 GPM. Install permanent pump.

PROPOSED SECTION OF WELL

Elevation at top of casing __________ ft., msl.

Ground Elev. 68 ft., msl*

Cement Grout 20 ft.

Hole Dia. 12 in.

Total Depth 100 ft.

Rock Packing 0 ft.

Solid Casing:

Material Steel
Length 80 ft.
Diameter 8 in.
Wall thickness sch. 40 in.

Casing: / /Perforated / /Screen

Material steel
Length 20 ft.
Diameter 8 in.
Wall thickness sch. 40 in.
Openings 24.4 sq. in./L.F.

Open Hole:

Length none
Diameter ____________ in.

*Approximate elevation at time of filing application. Final elevation (msl) by a surveyor licensed by the State must be submitted at start of construction.
March 6, 1991

Mr. Neil Fujii  
Division of Water & Land Development  
State of Hawaii  
P. O. Box 373  
Honolulu, Hawaii 96809

Dear Mr. Fujii:

RE: PAPOHAKU PARK WELL INSTALLATION

As per your request, we are enclosing the location map for the above named project.

Should you have any questions, please feel free to call Mr. Masaru Abe at 243-7626.

Sincerely,

CHARMAINE TAVARES  
Director of Parks and Recreation

Enclosure
CHECKLIST

WELL CONSTRUCTION PERMIT  PUMP INSTALLATION PERMIT

WELL NAME or LOCATION: PAPOHAKU PARK    ISLAND: MAUI

WELL NUMBER: 5429-02    Tax Map Key: 3-4-24-00-08

OWNER/OPERATOR:
Firm Name: COUNTY OF MAUI, PARKS & REC
Contact Person: ARMAND N. PABA
Address: 1580 KAAMALO AVE.
Phone: 243-7230

LANDOWNER:
Firm Name: SAME
Contact Person: 
Address: 
Phone: 

Date application received: 15 FEB. 1991
Date acknowledged receipt/request more info: 25 MARCH 1991
Date application accepted: 
Suspense date (90 days): 
Date filing fee deposited: (NO CHANGE)

Application sent to following:
Dept. of Health
Dept. of Hawn Home Lands
Dept/Bd of Water Supply
Historic Preserv. Prog.
Kaua'i Co. Bd of Ed. (School)
Dept.Pub. Wrks (Hawaii)
Office of Hawaiian Affairs

Date sent
25 MAR 91
25 MAR 91

Date agenda due:
Date submittal due:
Date submittal sent to applicant:

Date application approved or disapproved: 4-17-91
Date applicant notified of decision: 4-24-91

REMARKS: Initials called Pedua re: GWRM MRG.

3-6-91
ASKED MAKO APE
TO SEND TRK
W/INCL LOCATION
Papohaku Park Well
(Well No. 5429-02)