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

Dear Mr. Taylor:

DEC-ADM97-A1 Modification of Water Use Permit
(WUP No. 818 to WUP No. 923) for Well No. 5430-02
Iao Ground-Water Management Area, Maui

This is in response to your April 13, 2011 letter, requesting modification of water use permits for various municipal sources in the Iao Ground Water Management Area. This letter transmits your water use permit for Waiehu Heights Well 2 (Well No. 5430-02) for use of 0.800 million gallons per day (mgd) of water on a 12-month moving average basis that was administratively modified per Declaratory Ruling DEC-ADM97-A1 and supercedes the previous Water Use Permit Number listed above. As part of the Commission's approval, the following special conditions were added and are part of your permit under Standard Permit Condition 19:

Special Conditions

1. The Commission delegates to the Maui Department of Water Supply the authority to allocate the use of water for municipal purposes, in accordance with §174C-48(b) HRS.

2. The Maui Department of Water Supply shall be exempt from the requirements of permit modifications as provided in §174C-57., HRS.

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. This water use permit has been administratively approved by the Chairperson under the provisions of the Commission's declaratory ruling DEC-ADM97-A1. Should any of the modified uses change in such a way that the uses do not meet the following criteria, this permit shall be rendered invalid:

   a. The net change in permitted use within an aquifer is zero.
b. The modification would result in more efficient and optimal operation of multiple sources under a single operator.

c. No adverse impacts to water resources or other existing legal uses are anticipated.

d. End use location and type remain unchanged.

5. Standard Condition 7 is amended as follows: Previous special conditions made by official Commission action on former water use permit approvals from the source(s) identified in this permit are incorporated unless specifically waived.

Enclosed with this letter of approval are the following:

1. Your water use permit.
2. Please continue to use your standard water use reporting 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 monthly basis using the enclosed water use report form. You should make copies of the enclosed report form as needed.

The previously accepted lao Water Management Rule as your water shortage plan is still operative. Your water shortage plan simply identifies what you are willing to do should the Commission declare a water shortage situation in the lao 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 587-0218.

Sincerely,

[Signature]

WILLIAM J. AILA, JR.
Chairperson

Attachment
GROUND WATER USE PERMIT
WUP NO. 923

PERMITTEE

<table>
<thead>
<tr>
<th>Permittee/Water User</th>
<th>Landowner of Source</th>
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<tbody>
<tr>
<td>Address</td>
<td>Address</td>
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<tr>
<td>Maui Department of Water Supply</td>
<td>same</td>
</tr>
<tr>
<td>200 South High Street</td>
<td>200 South High Street</td>
</tr>
<tr>
<td>Wailuku, Hawaii 96793</td>
<td>Wailuku, Hawaii 96793</td>
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PERMITTED SOURCE INFORMATION

<table>
<thead>
<tr>
<th>Island</th>
<th>Maui</th>
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<tr>
<td>Water Management Area</td>
<td>Wailuku</td>
</tr>
<tr>
<td>Aquifer Sector</td>
<td>Iao</td>
</tr>
<tr>
<td>Aquifer System</td>
<td>System Sustainable Yield</td>
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<tr>
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<tr>
<td>State Well No.</td>
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PERMITTED USE INFORMATION

<table>
<thead>
<tr>
<th>Reasonable beneficial use</th>
<th>Municipal</th>
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<tbody>
<tr>
<td>Withdrawal (12 month moving ave.)</td>
<td>0.800 mgd</td>
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Location of water use

<table>
<thead>
<tr>
<th>TMK #</th>
<th>Central Maui Service Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>State land use classification</td>
<td>NA</td>
</tr>
<tr>
<td>County zoning classification</td>
<td>NA</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

7. The water use permit application and submittal, as amended, approved by the Commission in its June 10, 2010 Decision and Order are incorporated into this permit by reference.

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

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

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

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

12. A permit may be transferred, in whole or in part, from the permittee to another, if:

   a. The conditions of use of the permit, including, but not limited to, place, quantity, and purpose of the use, remain the same; and
   b. The Commission is informed of the transfer within ninety days.

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

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

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

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

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

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

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

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

[Signature]

WILLIAM J. AILA, JR., Chairperson
Commission on Water Resource Management
COMMISSION ON WATER RESOURCE MANAGEMENT
ROUTE SLIP FOR NEW APPLICATIONS

FROM: CHARLEY
DATE: 9-May-11
SUSPENSE DATE: 16-May-11

TO: INIT. TO: INIT. FOR: PLEASE:
FUJII, N. 1 Approval 1 See Me
KUNIMURA, I. 3 Signature 1 Review & Comment
TAM, W. 3 Information 1 Take Action
NAKAMA, L. 2 Type Draft acknowledge letter
UYENO, D. 2 Type Final, label file folder, update People.db
YODA, K. 1 File & Input Issue Date
YOSHINAGA, M.

WELL NUMBER 5430-02
WELL NAME Waiehu Hts 2
WUP Number Old= 818/ New= 928

☐ WELL CONSTRUCTION ☐ PUMP INSTALLATION ☐ WUPA ☒ WUP Transfer

ATTACHMENTS FOR APPLICATION PROCESSING - Both applicant & staff generated
1 TRANS. LETTER ☑
2 PERMIT PROCESS TABLE
3 CWRM MAPS making 1-mile radius and penciling in on hanging maps
4 APPL. FORM (11 COPIES)
5 USGS MAPS (11 COPIES)
6 TAX MAPS (11 COPIES)
7 PARCEL OWNER VERIF. MLS PRINTOUT
8 CONTRACTOR VERIF. DCCA LICENSE SCREEN PRINTOUT
9 ALL INFO FILLED IN
10 BACKGROUND CHECK
11 $25 FEE DEPOSIT SLIP
12 DHP/CDUP/SMA pre-screen (SMA map printout http://gis.hicentral.com/website/parcelzoning/viewer.htm, or INGRID’S SMA/CD MAP)
(LUC map printout http://luc.state.hi.us/luc_maps.htm, or INGRID’S SMA/CD MAP)
13 EA 343 5(a) triggers?
   ☐ NO
   ☑ YES - trigger identified is: ____________________________
      (if triggered, exemption analysis memo must be attached before accepting)

FOLDER:
☐ MADE NEW FILE FOLDER, ATTACHED
☒ FILE FOLDER ALREADY MADE, IN FILE CABINET

INCOMPLETE ACTION DATES:
DATE ACTION

should be O.K. as original & was 1.415 mgd → 0.500 → current require 0.800 mgd
April 13, 2011

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

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

Dear Mr. Tam:

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

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

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

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

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

Sincerely,

David Taylor, Director

Copy: 1. Engineering Division
2. Plant Operations Division
3. Jane Lovell, Deputy Corporation Counsel
4. Edward Kushi, Jr., Deputy Corporation Counsel
**Iao WUPs**

**Basal Sources:**

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

<table>
<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
<th>Appl</th>
<th>TMK</th>
<th>WUP#</th>
<th>reg No.</th>
<th>2/15/06</th>
<th>CWRM</th>
<th>redistribution</th>
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<th>5/7/11 (DecRul)</th>
<th>WUP amount</th>
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<td>1.359 (as 680)</td>
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<td>WWVC</td>
<td>3-2-7:16</td>
<td>738</td>
<td>0.222</td>
<td>av remainder</td>
<td>2.623 separated, wupa incompl</td>
<td>wupa superceded @ D&amp;O</td>
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<td>John Varel</td>
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<td>(2/18/06)</td>
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<td>Bryan Sarasin</td>
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*Based on corrections from original readings; listed as report date 7/31 rather than designation date 7/21 (CWRM)*

**High-Level Sources:**

(6/16/04) *transfer from Iao Aquifer*  4/3/08

<table>
<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
<th>Appl</th>
<th>TMK</th>
<th>WUP#</th>
<th>reg No.</th>
<th>2/15/06</th>
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<th>WUP amount</th>
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<tr>
<td>Bryan Sarasin</td>
<td>5631-02</td>
<td></td>
<td>3-2-7:16</td>
<td>853</td>
<td>(2/18/09)</td>
<td>0.006</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Waihee Aquifer System (no WMA))
January 30, 2008

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

Dear Mr. Eng:

Water Shortage Plan for the Iao Ground Water Management Area

Thank you for your transmittal of the Iao Water Management Rule as your water shortage plan for Iao wells, dated January 14, 2008. It is accepted and meets condition #16 of your water use permits.

Please be aware that as the Commission on Water Resource Management moves closer to creating its own water shortage plan for the Iao Ground Water Management Area, as required in the Code, it will be considering actual pumpage volume reductions for each ground water source and appropriate enforceability provisions, which may be in conjunction with similar surface water diversion reductions pending the Na Wai Eha contested case hearing and surface water management area designation proceedings. Be assured that we would be consulting with you prior to adopting a plan to meet the needs of that shortage.

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

Sincerely,

KEN C. KAWAHARA, P.E.
Deputy Director

CI: ss
November 26, 2007

818.wup

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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

Dear Mr. Eng:

Approval of Water Use Permit (WUP No. 818) for Well No. 5430-02
Iao Ground-Water Management Area, Maui

This is in response to your September 7, 2007 letter, requesting modification of water use permits for various municipal sources in the Iao Ground-Water Management Area. This letter transmits your water use permit for Waiehu Heights 2 (Well No. 5430-02) for use of 0.500 million gallons per day (mgd) of water on a 12-month moving average basis that was administratively modified per Declaratory Ruling DEC-ADM97-A1. As part of the Commission's approval, the following special conditions were added and are part of your permit under Standard Permit Condition 19:

Special Conditions

1. The Commission delegates to the Maui Department of Water Supply the authority to allocate the use of water for municipal purposes, in accordance with §174C-48(b) HRS.

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

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

4. Should alternative permanent sources of water be found for these uses, then the Commission reserves the right to revoke this permit, after a hearing.
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 monthly 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,

LAURA H. THIELEN  
Chairperson

Attachments: WUR Form
GROUND-WATER USE PERMIT
WUP NO. 818

PERMITTEE

<table>
<thead>
<tr>
<th>Permittee/Water User</th>
<th>Landowner of Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>Address</td>
</tr>
<tr>
<td>200 South High Street</td>
<td></td>
</tr>
<tr>
<td>Wailuku, HI 96793</td>
<td></td>
</tr>
</tbody>
</table>

PERMITTED SOURCE INFORMATION

<table>
<thead>
<tr>
<th>Island</th>
<th>Maui</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Management Area</td>
<td>Maui</td>
</tr>
<tr>
<td>Aquifer Sector</td>
<td>Wailuku</td>
</tr>
<tr>
<td>Aquifer System</td>
<td>Iao</td>
</tr>
<tr>
<td>System Sustainable Yield</td>
<td>20</td>
</tr>
<tr>
<td>Well Name</td>
<td>Waiehu Heights 2</td>
</tr>
<tr>
<td>State Well No.</td>
<td>5430-02</td>
</tr>
</tbody>
</table>

PERMITTED USE INFORMATION

<table>
<thead>
<tr>
<th>Reasonable beneficial use</th>
<th>Municipal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withdrawal (12 month moving ave.)</td>
<td>0.500 mgd</td>
</tr>
<tr>
<td>Location of water use</td>
<td>various within Central Maui Service Area</td>
</tr>
<tr>
<td>TMK #</td>
<td></td>
</tr>
<tr>
<td>State land use classification</td>
<td>various</td>
</tr>
<tr>
<td>County zoning classification</td>
<td>various</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

7. The water use permit application and submittal, as amended, approved by the Commission at its February 15, 2006 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 monthly 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.

Attachment
January 14, 2008

Mr. Ken C. Kawahara, P.E., Deputy Director  
Commission on Water Resource Management  
State of Hawaii Department of Land and Natural Resources  
P.O. Box 621  
Honolulu, Hawaii 96809

Dear Mr. Kawahara:

Subject: Water Shortage Plan for Existing Water Use Permits in the Iao Ground-Water Management Area

Pursuant to Section 13-171-42(c) of your administrative rules, please find attached the water shortage plan for our permitted wells in the Iao Ground-Water Management Area.

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

Sincerely,

Jeffrey K. Eng  
Director

emb

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

enclosure

By Water All Things Find Life
16-9-1 Purpose.
16-9-2 Definitions.
16-9-3 Caution low groundwater condition.
16-9-4 Alert low groundwater condition.
16-9-5 Critical low groundwater condition.
16-9-6 Mandatory restrictions related to Alert low groundwater condition.
16-9-7 Mandatory restrictions related to Critical low groundwater condition.
16-9-8 Surcharge Penalties for Alert and Critical low groundwater condition
16-9-9 Penalties.
16-9-10 Procedures for control of water use during Alert or Critical low groundwater level conditions.
16-9-11 Termination of Caution, Alert or Critical low groundwater level conditions
16-9-12 Exemption of private wells within designated groundwater control areas.
16-9-13 Effective date.

16-9-1 Purpose. The purpose of the rule is to prevent overdraft of Iao aquifer.

[Eff. 03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

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

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

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

16-9-3 Caution low groundwater condition.
(a) A caution low groundwater condition exists:
   (1) At any time the 12 month moving average pumpage of gallons of water from the Iao Aquifer exceeds 95% of the sustainable yield of the Iao Aquifer; or
   (2) Whenever chloride content reaches the absolute limit in ppm chloride in Schedule 1 in more than one area based on a 3 month moving average.
(b) The board shall at any time during the period in which a caution low groundwater condition exists. Thereafter the board shall:
   (1) Conduct an intensive public appeal for water conservation through the mass media;
   (2) Institute voluntary irrigation and other water use schedules to reduce water consumption;
   (3) Send letters to large consumers and other private well operators asking them to cut back their usage; and
   (4) Notify the Mayor, Maui County Council, and the State Commission on Water Resources Management
(c) The goal for draft reduction is 5% of Iao Aquifer sustainable yield as determined by the Commission on Water Resources Management.
(d) Consumers shall be given a target of a 10% reduction of their base period water use as the goal for
September 7, 2007

Mr. Ken C. Kawahara, P.E., Deputy Director
Commission on Water Resource Management
State Department of Land & Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Kawahara:

Subject: Water Use Permit Application for
Iao Tank Site Well (State Well No. 5230-02) and
Waikapu Tank Site Well (State Well No. 5131-01)

Pursuant to CWRM letter dated June 1, 2006, we are submitting for your approval proposed new
distribution of pumpage totaling 16.998 mgd (shown in table below) to be allocated to the 8 existing
permitted wells, Iao Tank Site Well, and Waikapu Tank Site Well. This pumpage differs from the
11.227 mgd referred to in CWRM letter to reflect the current allocation of 16.998 mgd, which
includes 5.771 mgd from Shaft 33 (State Well No. 5330-05).

<table>
<thead>
<tr>
<th>Well Name (State Well No.)</th>
<th>Current Allocation (MGD)</th>
<th>Requested Revised Allocation (MGD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mokuahau 1 (5330-09)</td>
<td>1.994</td>
<td>1.500</td>
</tr>
<tr>
<td>Mokuahau 3 (5330-11)</td>
<td>2.221</td>
<td>2.000</td>
</tr>
<tr>
<td>Waiehu Hts 1 (5430-01)</td>
<td>0.165</td>
<td>0.500</td>
</tr>
<tr>
<td>Waiehu Hts 2 (5430-02)</td>
<td>1.415</td>
<td>0.500</td>
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<tr>
<td>Waiehu 1 (5431-02)</td>
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<td>1.900</td>
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<tr>
<td>Waiehu 2 (5431-03)</td>
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<td>Waiehu 3 (5431-04)</td>
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<tr>
<td>Shaft 33(5330-05)</td>
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<td>4.800</td>
</tr>
<tr>
<td>Iao Tank Site (5230-03)</td>
<td>—</td>
<td>0.498</td>
</tr>
<tr>
<td>Waikapu Tank Site (5131-01)</td>
<td>—</td>
<td>0.400</td>
</tr>
<tr>
<td><strong>TOTAL (MGD)</strong></td>
<td><strong>16.998</strong></td>
<td><strong>16.998</strong></td>
</tr>
</tbody>
</table>

"By Water All Things Find Life"

The Department of Water Supply is an Equal Opportunity provider and employer. To file a complaint of discrimination, write: USDA, Director, Office of Civil
Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington DC 20250-9410. Or call (202) 720-5964 (voice and TDD)
September 7, 2007
Mr. Ken C. Kawahara, P.E., Deputy Director
Commission on Water Resource Management
Page Two

The proposed request also complies with the four conditions set forth in Declaratory Ruling DEC-ADM97-A1 as follows:

1. The net change in permitted use within an aquifer is zero.
   DWS Response: Based on allocations requested shown in table above, the proposed wells will result in a net zero increase in withdrawal from the Iao Aquifer.

2. The modification would result in more efficient and optimal operation of multiple sources under a single operator.
   DWS Response: The addition of the proposed wells will increase the number of sources available providing better distribution of withdrawals from the Iao Aquifer, which will allow for more efficient and optimal operation of the system (i.e., chloride levels, emergency repairs, pump replacements, etc.).

3. No adverse impacts to water resources or other existing legal uses are anticipated.
   DWS Response: There are no adverse impacts to water resources or other existing legal uses anticipated.

4. End use location and type remain unchanged.
   DWS Response: The end use location and type will remain unchanged being there will be no changes in customer service area or type being served.

If you have any questions, please feel free to call me at (808) 270-7816.

Sincerely,

Jeffrey K. Eng
Director

WKT
Copy: 1) Engineering Division
2) Water Resources Division
3) Jane Lovell, Deputy Corporation Counsel
4) Edward Kushi, Jr., Deputy Corporation Counsel
Mr. George Y. Tengan, Director  
County of Maui  
Department of Water Supply  
200 South High Street  
Wailuku, HI 96793  

Dear Mr. Tengan:

Ground Water Source Monitoring for Water Use Permits  
Iao Ground Water Management Area

We received your letter dated June 5, 2006, identifying efforts to comply with reporting requirements of the water use permits for Iao basal sources and transmittal of your water shortage plan. In regard to water use reporting, we understand that some wells are not currently outfitted to measure all the required parameters, and that the priorities for replacement and overhaul do not necessarily correspond to those wells needing monitoring equipment installation or replacement.

Our requirements are not intended to be burdensome, and we understand the need to perform these installation and replacement functions economically and efficiently. We are happy to develop a schedule with you to assure that each well receives timely attention according to your overall maintenance priorities. Please transmit your current maintenance schedule, identifying your proposed installation or replacement plans at your earliest convenience. At some point, we would like to consult with you to compare this schedule with the well operations plan that will guide pumpage from the respective wells to meet your production targets consistent with your applications for water use arising since July 21, 2003 (the date of designating the Iao Ground Water Management Area). It may be that certain wells will emerge as priorities for monitoring, which could affect the schedule in question.

We concur that Mokuhau Well #2 could be used for monitoring, simplifying the need to monitor the two other wells, although if it is not properly outfitted, Well 3 can perform this function for the time being. Our information for Waiehu Heights Wells is that Well #1 had an airline installed at −24.0 ft, msl during pump testing, but we have no information since; Well #2 pump was replaced in 1999, with the airline set at −17.0 ft.

Your transmitted water shortage plan referring to the Iao Water Management Rule is acceptable. We are currently developing Commission-adopted water shortage plans for other ground water management areas, and this rule will help toward developing the Commission's water shortage plan for Iao.

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

Sincerely,

DEAN A. NAKANO  
Acting Deputy Director

Ci:ss
June 5, 2006

Mr. Dean Nakano, Acting Deputy Director
State of Hawaii Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Re: Existing Water Use Permit Applications: Requirements for Monitoring, Reporting, and Shortage Plan
Mokuhau 1, Well No. 5330-09; Mokuhau 3, Well No. 5330-11; Waihee 1, Well No. 5431-02; Waihee 2, Well No. 5431-03; Waihee 3 Well No. 5431-04; Waiehu Hts 1, Well No 5430-01; Waiehu Hts 2, Well No. 5430-02;

Dear Mr. Nakano:

Thank you for forwarding the Existing Use Permit approvals for the subject wells. The Department intends to fully comply with all conditions. Unfortunately, some of our wells are not presently outfitted for all the requested measurements. The specific condition of each of the wells in question is delineated below.

Will the current status as delineated below suffice, or if not - would it be possible to work out a schedule by which the pumps can be pulled and retrofitted on a regular maintenance budget? At this time there are other pumps in the system which have more urgent need of overhaul, and these pump replacements can cost upwards of $200,000 each. Therefore, additional time to meet this condition gradually based on some agreed-upon schedule would be most appreciated.

MOKUHAU
Mokuhau #1 has no airline or gauge tube with which to monitor water levels.
Mokuhau #2 is not in use. Although the well could be used for monitoring, it isn't pumping
Mokuhau #3 has the necessary tube & probe

WAIEHU HEIGHTS
Waiehu Heights #1 has an old airline, but staff is evaluating the condition to see if it can be used.
Waiehu Heights #2 has an old airline, but staff is evaluating the condition to see if it can be used.
In addition, the wells are old and at this point we have not located information as to the elevation/depth at end of airline. Any assistance that CWRM could offer in this regard would be appreciated.

WAIHEE
Waiehu #1 has an airline, but staff is evaluating the condition to see if it can be used.
Waiehu #2 has the same status as Waiehu #1, but will be replaced soon. At that time the appropriate tube and probe can be installed.
Waiehu #3 (579) has the necessary monitoring tube & probe

By Water All Things Find Life
The stated requirements also include a water shortage plan. The text of our existing water shortage plan is included for your review as “Attachment A”. The plan does need some update, and staff will proceed to work on that. Will this suffice for purposes of meeting the deadline? If not, we respectfully request an extension to the June 10th deadline.

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

Sincerely,

[Signature]

George Y. Tengan, Director

cc: Engineering Division
    Jane Lovell
    Ed Kushi
Water Shortage Plan

lao Water Management Rule (Maui County Administrative Rule Title 16, Ch 9) offered as the County's water shortage plan for wells in lao. See copy in folder for Mokuhau 1-3 (Well Nos. 5330-09 through -11)

25 May 06
SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, on the front if space permits.

1. Article Addressed to:
   Mr. George Tengan
   Department of Water Supply
   County of Maui
   200 South High Street
   Wailuku, HI 96793

2. Article Number
   (Transfer from service label)
   7002 2030 0006 6826 3061

3. Service Type
   - Certified Mail
   - Express Mail
   - Registered
   - Return Receipt for Merchandise
   - Insured Mail
   - C.O.D.

Restricted Delivery? (Extra Fee)
   - Yes

PS Form 3811, March 2001
Domestic Return Receipt
May 8, 2006

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

Dear Mr. Tengan:

Notice of Commission Action

Maui DWS Iao Basal Source Existing Use WUPAs

Mokuhau Well 1 (5330-09, WUP 700) TMK: 3-3-2:24
Mokuhau Well 3 (5330-11, WUP 701) TMK: 3-3-2:24
Waiehu Heights Well 1 (5430-01, WUP 697) TMK: 3-3-2:28
Waiehu Heights Well 2 (5430-02, WUP 698) TMK: 3-3-2:28
Waihee Well 1 (5431-02, WUP 695) TMK: 3-2-17:31
Waihee Well 2 (5431-03, WUP 696) TMK: 3-2-17:31
Waihee Well 3 (5431-04, WUP 703) TMK: 3-2-17:18

This letter serves as your official notice of action taken by the Commission on Water Resource Management (Commission) on the subject application. By a unanimous vote of the Commission at their meeting on February 15, 2006, the Commission:

A. Approved the water use permits for the reasonable-beneficial municipal use of the following Maui Department of Water Supply (MDWS) basal wells, amounts as requested by MDWS in the original applications, computed as the 12-MAV as of June 30, 2003, not adjusted for metering errors:

| Well Name                  | WUP | TMK          | Allowed Use (mgd) |
|----------------------------|-----|--------------|
| Mokuhau Well 1             | 700 | 3-3-2:24     | 1.994             |
| Mokuhau Well 3             | 701 | 3-3-2:24     | 2.221             |
| Waiehu Heights Well 1      | 697 | 3-3-2:28     | 0.165             |
| Waiehu Heights Well 2      | 698 | 3-3-2:28     | 1.415             |
| Waihee Well 1              | 695 | 3-2-17:31    | 1.480             |
| Waihee Well 2              | 696 | 3-2-17:31    | 2.439             |
| Waihee Well 3              | 703 | 3-2-17:18    | 11.227            |

subject to the standard water use permit conditions and the following special condition:

1. Should alternative permanent sources of water be found for these uses, then the Commission reserves the right to revoke this permit, after a hearing.

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

Sincerely,

DEAN A. NAKANO
Acting Deputy Director
May 8, 2006

This letter transmits your water use permit for Waiehu Heights Well 2 (Well No. 5430-02) for use of 1.415 million gallons per day (mgd) of water on a 12-month moving average basis, as of June 30, 2003, that was approved by the Commission on Water Resource Management (Commission) on February 15, 2006. As part of the Commission's approval, the following special condition was added and is part of your permit under Standard Permit Condition 19:

Special Condition

1. Should alternative permanent sources of water be found for these uses, then the Commission reserves the right to revoke this permit, after a hearing.

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 monthly 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,

[Signature]

Peter T. Young
Chairperson

Attachments

[Addressee: Jane Lovell, County of Maui, Department of the Corporation Counsel]
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
HONOLULU, HAWAII 96809

GROUND-WATER USE PERMIT
WUP NO. 698

PERMITTEE

Permittee/Water User | Landowner of Source
---|---
Address | Address
Maui Department of Water Supply | Same
200 South High Street | 
Wailuku, HI 96793 | 

PERMITTED SOURCE INFORMATION

<table>
<thead>
<tr>
<th>Island</th>
<th>Maui</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water Management Area</td>
<td>Maui</td>
</tr>
<tr>
<td>Aquifer Sector</td>
<td>Wailuku</td>
</tr>
<tr>
<td>Aquifer System</td>
<td>Iao</td>
</tr>
<tr>
<td>System Sustainable Yield</td>
<td>20</td>
</tr>
<tr>
<td>Well Name</td>
<td>Waiehu Heights Well 2</td>
</tr>
<tr>
<td>State Well No.</td>
<td>5430-02</td>
</tr>
</tbody>
</table>

PERMITTED USE INFORMATION

<table>
<thead>
<tr>
<th>Reasonable beneficial use</th>
<th>Municipal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Withdrawal (12 month moving ave.)</td>
<td>1.415 mgd</td>
</tr>
<tr>
<td>Location of water use</td>
<td>Various within Central Maui Service Area</td>
</tr>
<tr>
<td>TMK #</td>
<td>Various</td>
</tr>
<tr>
<td>State land use classification</td>
<td>Various</td>
</tr>
<tr>
<td>County zoning classification</td>
<td>Various</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

7. The water use permit application and submittal, as amended, approved by the Commission at its February 15, 2006 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 monthly 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.

[Signature]
PETER T. YOUNG, Chairperson
Commission on Water Resource Management

Attachment

c: Jane Lovell, County of Maui, Department of the Corporation Counsel
PETITION REQUESTING A CONTESTED CASE HEARING BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

NOTE: THIS PETITION IS TO BE FILED IN PERSON OR MAILED AND POSTMARKED WITHIN 10 DAYS OF THE PUBLIC HEARING OR COMMISSION MEETING AT WHICH THE REQUEST FOR A CONTESTED CASE HEARING WAS MADE.

(Please submit an original and 3 copies, pursuant to HAR 13-167-25(c)).

IF MAILED, SEND TO: Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawai‘i 96809
Phone: (808) 587-0225 Fax: (808) 587-0219

IF DELIVERED: Commission on Water Resource Management
1151 Punchbowl St., Rm. 227, Kalanimoku Bldg.
Honolulu, Hawai‘i 96813

Please provide the following information:
(If there is not sufficient space to fully answer any of the items noted below, please use additional sheets of paper)

1. NAME:

Hui o Nā Wai `Ehā (“Hui”) and Maui Meadows Homeowners Association (“Maui Meadows”). Please see the attached documents regarding Earthjustice’s authority to represent the Hui and Maui Meadows in this matter.

(If you are representing an organization, please attach the resolution, meeting minutes, or other evidence that provides your authority.)

2. ADDRESS:

Please direct all correspondence and other communications to Earthjustice via the contact information provided in items 3 & 4.

Hui o Nā Wai `Ehā
c/o John V. Duey, Vice President
575A `Īao Valley
Wailuku, Hawai‘i 96793-3007

Maui Meadows Homeowners Association
c/o Jim Williamson, Vice President
672 Kumulani Drive
Kihei, Hawai‘i 96753
PHONE:
  John V. Duey: (808) 242-8565
  Jim Williamson: (808) 874-6151

FAX:
  Not applicable

3.  ATTORNEY OR CONTACT PERSON:
    D. Kapua Sproat Esq., Earthjustice

4.  ADDRESS:
    Earthjustice
    223 South King St.
    Suite 400
    Honolulu, Hawai‘i 96813-4501

PHONE:
  599-2436, extension 16

FAX:
  521-6841

5.  SUBJECT MATTER:

The subject matter for this contested case hearing includes the following Maui County/Maui Department of Water Supply’s (“MDWS’s”) Water Use Permit Applications (“WUPA”) for the ‘Iao Ground Water Management Area:

<table>
<thead>
<tr>
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<td>3-3-17:31</td>
<td>1.513</td>
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<tr>
<td>Wailuku Shaft 33</td>
<td>5330-05</td>
<td>702</td>
<td>3-5-1:1</td>
<td>5.771</td>
</tr>
</tbody>
</table>

The Hui and Maui Meadows have continued to meet and work with MDWS and the State Office of Hawaiian Affairs in an effort to resolve the parties concerns and objections and avoid a contested case hearing altogether. If such efforts are successful, the Hui and Maui Meadows expect to withdraw their request for a contested case regarding MDWS’s WUPA.

Kehalani Mauka orally requested a contested case at the October 7, 2005 public hearing for WUPA number 707 (Well No. 5330-05, TMK 3-5-1:1) for 5.55 million gallons per day.
The Hui and Maui Meadows now expect to intervene (instead of petitioning to be a party) in that contested case, and request written notice of the deadline to file such an application.

6. DATE OF PUBLIC HEARING/COMMISSION MEETING:

The Commission on Water Resource Management, at its September 22, 2004 meeting, approved a public hearing that commenced on October 28, 2004, was continued on April 22, 2005, and closed on September 7, 2005. Several parties, including the Hui and Maui Meadows, made oral requests for a contested case prior to the close of the September 7, 2005 hearing.

7. WHAT IS THE LEGAL AUTHORITY UNDER WHICH THE PROCEEDING, HEARING OR ACTION IS TO BE HELD OR MADE (CITE APPLICABLE SECTION OF CONSTITUTION, STATUTES, OR ADMINISTRATIVE RULES):

This contested case will be held pursuant to the legal authority of the Hawai‘i State Constitution, Water Code (and administrative rules), and Administrative Procedure Act, including:

- Hawai‘i Const. art. XI §§ 1, 7
- Hawai‘i Const. art. XII § 7
- Haw. Rev. Stat. ch. 174C (including § 174C-60)
- Haw. Rev. Stat. ch. 91
- Haw. Admin. R. § 13-167 (including subchapter 4, e.g., §§ 13-167-52, 54)

8. ARE YOU HAWAIIAN?

Members of the Hui are Native Hawaiian.

9. WHAT IS THE TAX MAP KEY OF THE PROPERTY ON WHICH YOU RESIDE?

Hui members reside on property in the `Iao aquifer with multiple tax map key numbers, including:

- TMK #3-2-05-(011), (013), (015), (017), (019), (039)
- TMK #3-2-02-(002), (007), (011)
- TMK #3-2-01-005
- TMK #3-2-02-(003), (004), (005), (007), (008), (009), (010)
- TMK #3-3-01-(054), (041)
- TMK #3-3-01-007
- TMK #3-5-03-(011), (018)

Members of Maui Meadows reside on property in the `Iao aquifer with multiple tax map key numbers, including:

- TMK #2-1-018-011
- TMK #2-1-013-083
10. **WHAT IS THE TAX MAP KEY OF THE PROPERTY CONSIDERED IN THIS ISSUE?**

The tax map keys of the affected properties include those listed in items 5, 9, and 11.

11. **WHAT IS THE TAX MAP KEY OF THE PROPERTY OR PROPERTIES WHICH YOU OWN IN THE VICINITY OF THE PROPERTY CONSIDERED IN THIS ISSUE?**

Hui members own property in the ʻIao aquifer with multiple tax map key numbers, including:
- TMK #3-2-05-(011), (013), (015), (017), (019), (039)
- TMK #3-2-02-(002), (007), (011)
- TMK #3-2-01-005
- TMK #3-2-02-(003), (004), (005), (007), (008), (009), (010)
- TMK #3-3-01-(054), (041)
- TMK #3-3-01-007
- TMK # 3-5-03-(011), (018)

Members of Maui Meadows own property in the ʻIao aquifer with multiple tax map key numbers, including:
- TMK #2-1-018-011
- TMK #2-1-013-083

12. **WHAT, IF ANY, ACTIVITIES HAVE YOU ENGAGED IN ON THE PROPERTY CONSIDERED IN THIS ISSUE?**

The activities that the Hui and Maui Meadows have engaged in on the property impacted by this contested case are detailed in item 13, below. The Hui and Maui Meadows can provide additional information to this Commission upon request.

13. **WHAT IS NATURE AND EXTENT OF YOUR INTEREST THAT MAY BE AFFECTED?**

Hui o Nā Wai ʻEhā is a community-based organization that was formed to promote the conservation and appropriate management of Hawaiʻi’s natural and cultural resources and the practices that depend on them. The Hui strives to protect and restore streams, springs, 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 ʻIao ground water management area, and rely on and routinely use ground water from this hydrologic unit as well as surface water from ʻIao, Waiheʻe, Waiehu, and Waikapū streams and their near shore marine waters for fishing, swimming, agriculture, aquaculture, research, photography, educational programs, aesthetic enjoyment, traditional and customary Native Hawaiian rights practices, and other recreational, scientific, cultural, educational and religious activities.
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 'lao 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 'lao 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 'lao and Waihe'e aquifers.

Members of both the Hui and Maui Meadows have property interests (own and reside on property) in the hydrologic unit at issue, which are directly and immediately affected by MDWS’s WUPA. The Hui’s and Maui Meadow’s members also rely on MDWS to supply them with municipal water from the Central Maui Service Area, which will be provided by the subject WUPA. The Hui’s and Maui Meadows’ interests are substantial and distinct from that of the general public for myriad reasons, including: (1) their organizations are specifically dedicated to protecting and appropriately managing the ground and surface water resources at issue; (2) the organizations as well as individual members have been actively involved in the designation process, petitioning for and testifying in favor of designation of this ground water management area since at least 2001; (3) Maui Meadows and the Hui are committed to ensuring that all WUPA and resulting permits for this aquifer comply with the letter and spirit of Hawai'i’s State Constitution and Water Code (especially Haw. Rev. Stat. §§ 174C-49, 50); (4) members of the Hui include Native Hawaiians with traditional and customary rights who continue to exercise cultural practices in, among, and around the hydrologic unit at issue, including the use of springs, seeps, and other ground water resources for traditional gathering, religious, and other cultural purposes including kalo cultivation; and (5) both organizations have competing rights and uses of water from the 'lao aquifer, which have been and continue to be affected by ground water withdrawals from the aquifer, including the WUPA at issue here. As just one example, a spring named Waiola which is located on what is now the Sevilla family property (TMK #3-3-01-(054), (041)), was renowned for its healing and other powers. Native Hawaiians traditionally used this spring to purify themselves before entering heiau. Waiola is now dry as a result of ground water withdrawals in the hydrologic unit, and runs only after unusually heavy rains. Cultural practitioners from the area, including Hui members, previously used and would like to once again use this spring on a regular basis for traditional, cultural, and spiritual purposes.

If this Commission determines that the information provided is insufficient to confer standing upon either Maui Meadows or the Hui, more information can be provided further detailing the nature and extent of the organizations’ interests in these proceedings.

14. WHAT IS THE DISAGREEMENT, DENIAL, OR GRIEVANCE WHICH YOU ARE CONTESTING?

The Hui and Maui Meadows have detailed their concerns, objections, and other disagreement with the WUPA referenced in item 5, via numerous objections and oral and written testimony provided to this Commission over the past year. We will not rehash them
again here, except to state that the WUPA fail to satisfy the requirements of the law (including Haw. Rev. Stat. §§ 174C-49, 50), and this Commission has failed to hold the applicant to its burden. One of the Hui’s and Maui Meadows’ primary concerns is the applicant’s failure to establish that its uses are reasonable-beneficial and consistent with the public interest by demonstrating: (1) actual water need; (2) the absence of practicable alternatives; and (3) the impacts on public trust purposes, including Native Hawaiian rights and practices such as the use of Waiola Spring. The Hui and Maui Meadows hereby incorporate prior objections, as well as oral and written testimony by reference, which further details the grievance at issue, including:

July 14, 2004 objections re: Waihe’e Wells 1 & 2 (Well Nos. 5431-02 & 03), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02), and Mokuha Wells 1 & 3 (Well Nos. 5330-09 & 11)
September 2, 2004 objections re: Waihe’e Well No. 3 (Well No. 5431-04)
September 22, 2004 oral testimony
October 28, 2004 oral and written testimony
April 22, 2005 oral testimony
May 3, 2005 objections re: Shaft 33 (Well No. 5330-05)
September 7, 2005 oral testimony

The Hui and Maui Meadows can provide further information detailing their disagreement and other issues upon request.

15. WHAT ARE THE BASIC FACTS AND ISSUES?

The Hui and Maui Meadows have detailed the basic facts and issues regarding their objections and other issues with the WUPA referenced in item 5, via objections and oral and written testimony provided to this Commission. We will not restate them again here. The Hui and Maui Meadows instead incorporate these communications by reference, including:

July 14, 2004 objections re: Waihe’e Wells 1 & 2 (Well Nos. 5431-02 & 03), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02), Mokuha Wells 1 & 3 (Well Nos. 5330-09 & 11)
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September 22, 2004 oral testimony
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June 20, 2005 objections re: Shaft 33 (Well 5330-05)
September 7, 2005 oral testimony

The Hui and Maui Meadows can provide further information regarding the basic facts or issues upon request.
16. WHAT IS THE RELIEF THAT YOU SEEK OR THAT YOU DEEM YOURSELF ENTITLED?

The Hui and Maui Meadows have detailed their requested relief regarding the water use permit applications referenced in item 5, via numerous written and oral correspondence already on file with this Commission. We will not reiterate our requested relief again here, except to state that the Hui and Maui Meadows, as beneficiaries of the public trust, are entitled to have their rights and interests protected by this Commission's holding all applicants to their burden of establishing that their applications satisfy the requirements of the State Constitution and Water Code and ratified by the Hawai‘i Supreme Court. The Hui and Maui Meadows hereby incorporate earlier communications by reference, including:

- July 14, 2004 objections re: Waihe‘e Wells 1 & 2 (Well Nos. 5431-02 & 03), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11)
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- October 28, 2004 oral and written testimony
- April 22, 2005 oral testimony
- June 20, 2005 objections re: Shaft 33 (Well 5330-05)
- September 7, 2005 oral testimony

The Hui and Maui Meadows can provide further information regarding the relief that they seek upon request.

17. IDENTIFY ANY AND ALL OTHER PERSONS WHO MAY OR WILL BE AFFECTED BY THE RELIEF WHICH YOU SEEK:

The relief sought herein will impact all beneficiaries of the water resources trust, especially the people of Maui, individuals who live within the hydrologic unit or rely on water from the ʻIao aquifer, as well as those who rely on MDWS to supply them with water from the Central Maui Service Area.

The above-named person hereby requests and petitions the Commission on Water Resource Management for a Contested Case Hearing in the matter described above.

[Signature]

D. Kapua Sproat
Name (Print)

September 19, 2005
Date
PETITION REQUESTING A CONTESTED CASE HEARING BEFORE THE COMMISSION ON WATER RESOURCE MANAGEMENT

NOTE: THIS PETITION IS TO BE FILED IN PERSON OR MAILED AND POSTMARKED WITHIN 10 DAYS OF THE PUBLIC HEARING OR COMMISSION MEETING AT WHICH THE REQUEST FOR A CONTESTED CASE HEARING WAS MADE.

(Please submit an original and 3 copies, pursuant to HAR 13-167-25(c)).

IF MAILED, SEND TO: Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809
Phone: (808) 587-0225 Fax: (808) 587-0219

IF DELIVERED: Commission on Water Resource Management
1151 Punchbowl St., Rm. 227, Kalanimoku Bldg.
Honolulu, HI 96813

Please provide the following information:
(If there is not sufficient space to fully answer any of the items noted below, please use additional sheets of paper)

1. NAME: Clyde W. Namu'o, Office of Hawaiian Affairs (OHA)
   (If you are representing an organization, please attach the resolution, meeting minutes, or other evidence that provides your authority.)

2. ADDRESS: 711 Kapi'olani Blvd. Suite 500 Honolulu, HI 96813
   PHONE: (808) 594-1835 FAX: (808) 594-1865

3. ATTORNEY OR CONTACT PERSON: Attorney To Be Determined
   Contact Person: Dr. Jonathan Likeke Scheuer

4. ADDRESS: 711 Kapi'olani Blvd. Suite 500 Honolulu, HI 96813
   PHONE: (808) 594-1946 FAX: (808) 594-1765

5. SUBJECT MATTER:
The following Water Use Permit Applications (WUPA) for existing groundwater use in the 'Iao Ground Water Management Area, Submitted by Maui County / Maui Department of Water Supply (MDWS) to the Commission on Water Resource Management (CWRM):

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<thead>
<tr>
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<td>1.513</td>
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And the following WUPA for existing groundwater use in the ʻIao Ground Water Management Area, submitted by MDWS to CWRM that CWRM has classified as a new use:

<table>
<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
<th>WUPA No.</th>
<th>Source TMK</th>
<th>Amount (mgd)</th>
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<td>5330-05</td>
<td>702</td>
<td>3-5-1:1</td>
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</tbody>
</table>

6. DATE OF PUBLIC HEARING/COMMISSION MEETING:
CWRM at its regular meeting on September 22, 2004, approved a public hearing that commenced on October 28, 2004, was continued on April 22, 2005, and closed on September 7, 2005. OHA’s representative made an oral request for a contested case prior to the close of the September 7, 2005 hearing.

7. WHAT IS THE LEGAL AUTHORITY UNDER WHICH THE PROCEEDING, HEARING OR ACTION IS TO BE HELD OR MADE (CITE APPLICABLE SECTION OF CONSTITUTION, STATUTES, OR ADMINISTRATIVE RULES):
HRS § 91-9 (Contested cases; notice; hearings; records.), HRS Chapter 174C (Water Code), HAR Title 13 (Department Of Land And Natural Resources) Subtitle 7 (Water Resources), Chapter 167 (Rules Of Practice And Procedure for the Commission on Water Resource Management) Subchapter 4 (Contested Case Proceedings), Hawai‘i Const. Art. XI, §§ 1 & 7, Art. XII, §7, and other statutory provisions.

8. ARE YOU HAWAIIAN?
The beneficiaries of the Office of Hawaiian Affairs are Hawaiian. We are the state agency formed to protect the interests of Hawaiians.

9. WHAT IS THE TAX MAP KEY OF THE PROPERTY ON WHICH YOU RESIDE?
The Office of Hawaiian Affairs does not reside in any particular area, though we do have an place of business that is in the ʻIao Ground Water Management Area. OHA serves beneficiaries who reside in this area, and OHA and our beneficiaries have interests in any ceded lands in this area.

10. WHAT IS THE TAX MAP KEY OF THE PROPERTY CONSIDERED IN THIS ISSUE?
The source of water TMKs are listed in response to question 5, above. MDWS areas of use TMKs have been unspecified and multiple.

11. WHAT IS THE TAX MAP KEY OF THE PROPERTY OR PROPERTIES WHICH YOU OWN IN THE VICINITY OF THE PROPERTY CONSIDERED IN THIS ISSUE?
The Office of Hawaiian Affairs does not directly hold title to property in this area, though we do have an place of business that is in the ʻIao Ground Water Management Area. OHA serves beneficiaries who reside in this area and hold title to property in this area, and OHA and our beneficiaries have interests in any ceded lands in this area.
12. WHAT, IF ANY, ACTIVITIES HAVE YOU ENGAGED IN ON THE PROPERTY CONSIDERED IN THIS ISSUE?

OHA's beneficiaries exercise traditional and customary native Hawaiian practices in, among, and around the 'Iao Groundwater Management Area. They include, but are not limited to, use of springs and seeps; gathering in, among, and around streams and estuaries in the affected areas; taro cultivation; and the exercise of other rights for religious, cultural, and subsistence purposes.

13. WHAT IS NATURE AND EXTENT OF YOUR INTEREST THAT MAY BE AFFECTED?

OHA and OHA's beneficiaries have legal interests in this matter as follows:

A. OHA and OHA's beneficiaries have a specific interest regarding rights under various constitutional provisions and laws including those at HRS § 1-1, HRS § 7-1, Hawai'i Const. Art. XI, §§ 1 & 7, Art. XII, sec. 7, HRS §§ 174C-63 & 71, Hawaiian Homes Commission Act §§ 213(i) and 221, HRS § 10-13.5, Section 5(f) of the Hawai'i Admission Act, 42USC § 1983.

B. Some of Petitioner's beneficiaries are native Hawaiian residents with rights to exercise traditional and customary native Hawaiian practices in, among, and around the 'Iao Groundwater Management Area. These rights are guaranteed by Hawai'i Const. Art. XI, §§ 1 & 7, and HRS §§ 1-1 and 7-1. They include, but are not limited to, use of springs and seeps; gathering in, among, and around streams and estuaries in the affected areas; taro cultivation; and the exercise of other rights for religious, cultural, and subsistence purposes. Haw. Const. Article XI, §§ 1 and 7 recognize the application of the public trust doctrine to all water resources without exception or distinction and require that the State protect all water resources for the benefit of its people.

C. Article XII, section 7 of the Hawai'i Constitution recognizes the importance of such rights by placing an affirmative duty on the State and its agencies to preserve and protect traditional and customary native Hawaiian rights including appurtenant rights (HRS §§ 174C-63 and 101) protect appurtenant rights and the State and its agencies have the power to protect these rights and prevent any interference with the exercise of these rights. The exercise of such rights is a public trust purpose. The exercise of these rights by Petitioners beneficiaries is threatened by the proposed issuance of permits. OHA has a legal authority and duty under HRS Chapter 10 to protect these interests.

D. Certain beneficiaries of Petitioner are also beneficiaries of the trust created by the Hawaiian Homes Commission Act ("Act"). As beneficiaries of that trust, they have a right to expect, pursuant to Section 221 of the Act, sufficient water to support homesteading.

E. OHA has a presumptive specific interest in this matter presumed to government agencies.

F. OHA has fiduciary and other interests in there being water available for use on ceded lands on Maui, especially ceded lands which are currently served by the Maui Department of Water Supply's Central Maui Service Area.
PETITION REQUESTING A CONTESTED CASE HEARING BEFORE
THE COMMISSION ON WATER RESOURCE MANAGEMENT

Additional information will be provided on request further detailing the nature of these interests.

If CWRM is inclined to deny OHA’s petition on the basis of standing, we request a hearing on standing as a part of this process.

14. WHAT IS THE DISAGREEMENT, DENIAL, OR GRIEVANCE WHICH YOU ARE CONTESTING?

OHA’s specific grievances have been extensively detailed in written and oral testimony delivered over the course of the public hearing, and in our original objections to these WUPA. OHA includes these by reference.

The proposed awarding of Water Use Permits in response to these applications abridges and denies of constitutionally protected rights outlined at paragraph 8 and held by OHA’s beneficiaries. These rights must be identified and protected before CWRM issues any permit or other authority.

15. WHAT ARE THE BASIC FACTS AND ISSUES?

Certain of Petitioner’s beneficiaries are Hawaiian residents of Maui. These members reside and/or exercise, have exercised, or desire to exercise their traditional and customary Native Hawaiian rights within the affected area. These members are also entitled to exercise constitutionally protected traditional and customary Native Hawaiian rights in the affected area. These rights have been, are, and will continue to be violated by the proposed action.

In addition, OHA has fiduciary and other duties to ensure water is available for current and future use on ceded lands.

16. WHAT IS THE RELIEF THAT YOU SEEK OR THAT YOU DEEM YOURSELF ENTITLED?

Identification and protection of superior rights to the water sought to be allocated.

Systematic study and monitoring of the impacts of any allowed diversion on groundwater, streams, and estuarine habitats.

OHA has detailed its requested relief in numerous written and oral correspondence already on file with CWRM, and incorporates earlier communications by reference.

Other relief that may be determined.

17. IDENTIFY ANY AND ALL OTHER PERSONS WHO MAY OR WILL BE AFFECTED BY THE RELIEF WHICH YOU SEEK:

The relief sought herein will impact all beneficiaries of the water resources trust, especially the people of Maui, individuals who live in or rely on water from the ‘Iao aquifer, as well as those who rely on the Maui Department of Water Supply to supply them with water from the Central Maui Service Area.

We reserve the right to amend this petition.
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.
June 1, 2005

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

Dear Mr. Tengan:

Meeting Confirmation
Information on Reasonable and Beneficial Use

Our public meeting to discuss information requested regarding water use permits in the Iao Ground Water Management Area is confirmed for the J. Walter Cameron Center, Room 1, in Kahului on June 8, 2005, from 2:30 to 6:30 p.m.

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

Sincerely,

[Signature]

DEAN A. NAKANO
Acting Deputy Director

CI:ss
May 25, 2005

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

Dear Mr. Tengan:

Information on Reasonable and Beneficial Use

The hearing officers sent questions to all applicants and additional questions to individual objecting parties, dated August 25, November 15, and November 18, 2004. Without evaluating the adequacy of the responses, we have tabulated the response results (enclosed). Some of the questions have not been addressed at all by various applicants.

The interested public at the public hearing has expressed confidence that we are making progress in receiving better information to address their objections, and we are tentatively scheduling an informal meeting on June 8, 2005 at the Cameron Center in Kahului to offer the public the opportunity to review the latest responses before moving to a final session of the public hearing (public notice to be sent when confirmed).

The accompanying table for the applicants show three columns on the right-hand side that indicate (Yes or No) whether issues have been directly addressed, without evaluating the quality or adequacy of the response. These three issues were raised by the Supreme Court June 21, 2004 remand of the Waikehaole case: whether alternatives have been explored, whether amounts per unit of use ("duties") are prescribed, and whether there are valued cultural, historical, or natural resources that are related to the water source for which you have a water use permit application.

If there are such resources, there are public trust presumptions in favor of maintenance of the water source in its natural state and for the practice of traditional and customary native Hawaiian rights related to those resources. Applicants must identify the extent to which those resources will be affected or impaired by their water uses, and the feasible actions, if any, to be taken to reasonably protect native Hawaiian rights if they are found to exist. The hearing officers have opined that it is the responsibility of individuals who claim such rights to provide evidence of their claims.

There is a higher level of scrutiny for private commercial uses in the balancing between public and private purposes. As for municipal uses, at least part of those uses—domestic use—is also a public trust purpose.

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

Sincerely,

DEAN A. NAKANO
Acting Deputy Director

CI:ss
Enclosure

c: Ellen Kraftsow, County of Maui, Department of Water Supply
Garret Hew, Hawaiian Commercial & Sugar Co.
Linnel T. Nishioka, Ishikawa Morihara Lau & Fong LLP
Clayton Suzuki, Wailuku Agribusiness Company, Inc.
Randy Gentry, County of Maui, Department of Parks and Recreation
Megan Wells, Living Waters Land Foundation, LLC
April 12, 2005

Honorable Dean Nakano, Acting Deputy Director
State of Hawaii
Department of Land and Natural Resources
Commission on Water Resource Management
P.O. Box 621
Honolulu, Hawaii 96809

Re: Water Use Application Information: Waihee Wells (5431-02 to 04); Waiehu Heights Wells (5430-01 & 02); Mokuhau Wells (5330-09 & 11); Kepaniwai Well (5332-05) and Iao Tunnel (5332-02)

Dear Mr. Nakano,

Thank you for your inquiry dated November 18, 2004, pertaining to the subject Water Use Application Information. We answer your questions in the order in which they were posed. To facilitate understanding, we have repeated your questions in bold.

**Accommodating Need with Available Resource**
One objection to your water use permit applications is the lack of an estimate of the effectiveness of conservation or alternative source development would have on reducing demand from the aquifer.

As part of the evaluation of the reasonable and beneficial criteria, we request the following:

1) Has your department evaluated the impact of its conservation program on individual and overall demand?
The Department implements various conservation measures. Our preliminary estimate of savings is about ½ MGD. Conservation measures include the following:

**Supply Side**
- Flow & pressure monitoring
- Leak Detection
- Automated Meters
- Preventive and Predictive Maintenance
- Backup Sources
- Reclaimed Water Use

**Demand Side**
- Fixture Distribution
- Conservation Pricing / Rate Structure
- Regulations Prohibiting Water Waste,
- Retrofit Pilots
- Education and Marketing
  - Media and Handouts
  - Permit Review
  - Activities and Events
  - Demonstration Gardens
  - Participatory Learning
The graph below shows our current estimate of the effect of conservation programs of the Department. Additional empirical data will be gathered and estimates will be re-visited during the WUDP process.

As part of the preparatory work for the Water Use & Development Plan process, our consultant has been gathering data and compiling a model for evaluation of costs and benefits of potential conservation programs. Enhanced conservation funding was requested in the FY06 budget proposal in anticipation of some of this work.

Other measures undertaken to help prepare for escalated conservation efforts include development of improved consumption history and forecasts by use class, efforts to better tie consumption to locations, and pressure and flow measurements within the system to enable establishment of diurnal curves and peaking factor information. These measures are not quantified in terms of effectiveness, but they lay the necessary groundwork for development of a more effective conservation program.

2) Does your department have a budget schedule of identified alternative (non-lao groundwater) source development that shows a probable meeting of projected demand - (which currently exceeds projected supply) by a given date?

Yes. Our Central Maui Source schedule is attached as Attachment A. A graph indicating how this source schedule compares to anticipated demand is attached as Attachment B.

The Commission is aware that the designation process has unfolded in large part due to the concentration of pumpage in a limited area rather than to exceedence of the sustainable yield, and that a current study being conducted by the USGS is intended to improve understanding of the aquifer to the benefit of optimal pumping operations management.

Public Trust for Domestic Use
On a related subject, the definition of "domestic use" as used by the Supreme Court is subject to clarification. It could conceivably mean general public use of potable water for drinking and sanitation, which could extend beyond household use to municipal activities at parks and schools, as well as sanitation throughout the panoply of municipal uses. Have your analyses achieved any insight on what proportion might represent basic potable requirements versus...
irrigation or industrial requirements?

Aside from the breakdown of estimated and projected use by customer class provided in Attachment C, probable domestic use portions can be estimated by looking at demand curves. While not 100% attributable to outdoor use, stil the lion’s share of seasonal peaks tend to represent the difference between indoor domestic and outdoor use. Another way to get at this can be to compare Water Supply demands versus wastewater system demands where these can be evaluated in comparable periods. Historical reviews of this type indicate that the answer varies with location. Kahului tends to use 70% of its water indoors, whereas South Maui uses 40%-60% of its water outdoors.

Public Trust Purposes and Hawaiian Rights
Commissioner Miike asked for opinions from various parties concerning who may bear the burden of proof concerning public trust purposes, such as the traditional and customary and other Native Hawaiian water rights. These fall within what may be generally called the public interest, defined by the Water Code to include additional purposes. Your initial application addressed the public interest by identifying the public utility service area, a municipal system that includes probably most, if not all of the public interests in the water code. It does not address Native Hawaiian rights per se, but you have commented to OHA that OHA was in a better position to assess this issue. Does the County feel it bears no responsibility for addressing potential Native Hawaiian water rights that may be affected by the County’s use of ground water supplying its service system?

As stated, DWS serves most if not all of the public interest uses identified in the State Water Code, including those of Hawaiian Homelands and other Hawaiians.

With regard to Native Hawaiian Water Rights, the Department is prepared to make a fair and good faith effort to identify and address Native Hawaiian rights. Toward that effect, staff made an effort to identify all LCAW (land commission awards) and Kuleana parcels using existing GIS data. This was followed by research at the Bailey House Museum & Bureau of Conveyances to gather information and acquire copies of the Hawaiian language documents pertaining to these historical awards. The Department has negotiated a proposal with a Hawaiian language expert to translate these. The proposal to translate and provide additional evaluation of some of this data is provided as Attachment D. However, the fact remains that a means or mechanism to address these rights has never been spelled out in the Code. OHA has better access to the relevant information, and better understanding of how to properly research Hawaiian rights and traditional uses than the Department does. That is why we proposed in our response to OHA to work with them in this regard.

DHHL Reservations
We understand that your Department not only serves existing Department of Hawaiian Home Lands residential projects but has also issued water meter reservations for projects not yet served by the County system. The DHHL request for a groundwater reservation from the lao aquifer does not distinguish between project already served, projects with meter reservations and other projects yet to receive discretionary approvals. Your reply to the notice of the reservation request notes the meter reservations and indicates that future needs will be given priority. While the Commission has not yet acted on the request for groundwater reservations from lao, we would be inclined to recommend that such reservations would apply only to projects not yet served. Our question is whether the County’s commitment to issue meters is revocable or otherwise subject to further decision making.

The Department places a high priority on Hawaiian Homes. We are also making a good faith effort to limit withdrawals from the lao & Waihee aquifers. We were not expressing a lack of willingness to serve the existing DHHL projects, but rather a reluctance to specify the source from which future projects would draw water, given other water development efforts.
Water commitments are valid for a period of two years. They are revocable in the limited sense that Any event, occurrence or condition not caused by the Department which prevents the Department from performing its obligations excuses the Department from those obligations except to refund the fee.

The Water System Development Fee rule §16-8-9 (b) Applicant not ready for water service
Upon payment of the fee by an applicant who, to the Director’s satisfaction is unable to accept water service immediately, the Department may reserve an allocation of service capacity available at that time. The duration of any such reservation shall not exceed one year plus two six-month extensions, each for good cause shown and approved by the Department if water service is available. The Department and the applicant shall agree in writing on the amount of any allocation.
If within one year, or longer with extensions, the applicant is not able to accept installation of water service, unless for good cause shown and approved by the Department, the application and the reservation of the allocation shall expire and the fee paid shall be deemed a penalty and forfeited, to be applied to the Department’s operating fund with no credit of any kind toward any future application. Any event, occurrence or condition not caused by the Department which prevents the Department from performing its obligations excuses the Department from those obligations except to refund the fee. (emphasis added)

Please feel free to contact our Water Resources & Planning Division at (808) 270-7199, should you have any questions.

Sincerely,

George Y. Tengan, Director

Attachments:
A Central Maui Source Schedule (tentative pending WUDP process)
B Central Maui Demand vs. Source Schedule Graph
C Demand Projections by Customer Class
D Proposal for translation of Hawaiian Documents

c: Ed Kushi, Corporation Counsel
    Jane Lovell, Corporation Counsel
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| **Kupa’u Well**                 |                             |         |           |          |
| study & land design              | done                        |         |           |          |
| permits & approvals             | done                        |         |           |          |
| development design               | done                        |         |           |          |
| development                      | done                        |         |           |          |
| COMPLETION                      | 2006                        | 2006    | 0.2       | capacity will be more but additional yield based on this well only .2 - mainly for distribution of withdrawals |

| **Iao Tp Fourth Filter**        |                             |         |           |          |
| design & approvals              |                             |         |           |          |
| construct                       |                             |         |           |          |
| COMPLETION                      | 2006                        | 2006    | 0.2       |          |

| **Iao Tank Site Well**          |                             |         |           |          |
| preliminary design              | done                        |         |           |          |
| exploratory drilling            |                             |         |           |          |
| development design               | 2006                        | 2006    |           |          |
| transmission design             |                             |         |           |          |
| development                      | 2007                        | 2007    |           |          |
| transmission construction       |                             |         |           |          |
| COMPLETION                      | 2007                        | 2007    | 1.1       | THIS ASSUMES FAST TRACK SCHEDULE assuming DOH approvals & CT adjustments can be made, installation of filter can be designed & constructed together, if tank enlargement required - could take longer. |

| **Waihau Well**                |                             |         |           |          |
| preliminary design              | done                        |         |           |          |
| exploratory drilling            |                             |         |           |          |
| development design               | 2006                        | 2006    |           |          |
| transmission design             |                             |         |           |          |
| development                      | 2007                        | 2007    | 0         | distribution of withdrawals |

| **Maihia Well**                |                             |         |           |          |
| study & land                    | 2003                        | 2006    | 6         |          |
| preliminary design              |                             |         |           |          |
| land                            | 2006                        | 2006    |           | include transmission land with well land project |
| exploratory drilling            | 2006                        | 2006    |           |          |
| development design               | 2007                        | 2007    |           | land acquisition may require condemnation. |
| transmission design             |                             |         |           |          |
| construction                     | 2008                        | 2009    |           |          |

<p>| <strong>Waiola Well</strong>                |                             |         |           |          |
| study &amp; land                    | 2006                        | 2006    | 1.1       |          |
| preliminary design              | 2007                        | 2007    |           |          |
| exploratory drilling            | 2008                        | 2008    |           |          |
| development design               | 2009                        | 2009    |           |          |
| transmission design             |                             |         |           |          |
| development                      | 2010                        | 2010    | 2011      |          |
| COMPLETION                      | 2011                        | 2011    | 1.1       |          |</p>
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## Metered Consumption: Historical and Econometric Projection with Class Share by Class Share Trend Projection

### Millions of Gallons per Day

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### Districts

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<tr>
<th>District</th>
<th>North Central</th>
<th>South Central</th>
<th>Central Total</th>
</tr>
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<tr>
<td>North</td>
<td>0.036</td>
<td>0.037</td>
<td>0.038</td>
</tr>
<tr>
<td>South</td>
<td>0.036</td>
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</tr>
<tr>
<td>Central</td>
<td>0.036</td>
<td>0.037</td>
<td>0.038</td>
</tr>
</tbody>
</table>

### Class Share Trend Projection

| Class | 0.125 | 0.130 | 0.135 | 0.140 | 0.145 | 0.150 | 0.155 | 0.160 | 0.165 | 0.170 | 0.175 | 0.180 | 0.185 | 0.190 | 0.195 | 0.200 | 0.205 | 0.210 | 0.215 | 0.220 |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| North | 0.036 | 0.037 | 0.038 | 0.039 | 0.040 | 0.041 | 0.042 | 0.043 | 0.044 | 0.045 | 0.046 | 0.047 | 0.048 | 0.049 | 0.050 | 0.051 | 0.052 | 0.053 | 0.054 | 0.055 |
| South | 0.036 | 0.037 | 0.038 | 0.039 | 0.040 | 0.041 | 0.042 | 0.043 | 0.044 | 0.045 | 0.046 | 0.047 | 0.048 | 0.049 | 0.050 | 0.051 | 0.052 | 0.053 | 0.054 | 0.055 |
| Central | 0.036 | 0.037 | 0.038 | 0.039 | 0.040 | 0.041 | 0.042 | 0.043 | 0.044 | 0.045 | 0.046 | 0.047 | 0.048 | 0.049 | 0.050 | 0.051 | 0.052 | 0.053 | 0.054 | 0.055 | 0.056 |
Luana L. Kawa’a
Hālau Hula Ka Makani Kili‘o‘opu
The Hawaiian Learning Center
2087 Hewahewa Drive * Wailuku, HI 96793
(808) 357-9503
Email: luanakawaa@earthlink.net

Contract:

Project: Translation of Hawaiian Language Documents
- Project Assessment
Company: County of Maui - Water Department

Below are my recommendations. Mahalo.

Immediate Project Needs:
Below is a list of my assessment of immediate project needs, to begin as soon as possible.

- Translation of documents (300 total) to clearly identify kuleana water rights; original location of streams; traditional place names
- Site Visits to determine exact boundaries and location of streams
  - Include photos and maps
- Establishment of an Advisory Board/Team, thus promoting community involvement, input and support.

Cultural Assessment of Ahupua‘a:
Purpose: to assess the current status of the Nā Wai ‘Ehā Ahupua‘a and further research the traditional functions within this Ahupua‘a; to establish water resources that will support the traditional functions of the Ahupua‘a; provide water resources that will support and maintain a healthy, functioning, traditional Ahupua‘a.

Goals:
- Determine cultural sites & significance
- Record original Place Names
- Research traditional agriculture
- Identify location and remnants of lo‘i and other Native Hawaiian agricultural crops
- Determine original stream flows leading back to the ocean

Work Timeline:
Phase I: Document Translation
300 documents @ $10 per page
Total: $3,000.00

Proposed start date: immediate
Completion date: May 31st, 2005

Payment Schedule:  (please make checks payable to Luana Kawa’a)
- Retainer fee of $500
  - Due and payable now
- $1000 due April 30th, 2005
- $1500 due May 31st, 2005

**Phase I Total: $3,000.00**

**Phase II: Site Visits & Establishment of Board/Team**
- upon completion of translations, schedule site visits
- (2) site visits 3-4 hrs each
- 2 board/team meetings (2 hrs. each)
- take photos of area and record

Proposed Start Date: June 1, 2005
Completion Date: August 1, 2005

Payment Schedule:
- $200 per site visit (2 minimum)
- $100 facilitation fee per board/team meeting (2 minimum)
- $100 data compilation fee

**Phase II Total: $700.00**

**Phase III: Cultural Assessment**
- Identification of cultural sites
- Identification of traditional agricultural sites
- Periodic site visits
- Research

Proposed Start Date: on going during duration of project
Completion Date: to be determined

Payment Schedule:
- to be determined

Contact me @ 357-9503
email: luanakawaa@earthlink.net
Please make checks payable to Luana L. Kawa’a.
PUBLIC HEARING NOTICE

Applications for Water Use Permits
Maui 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, Halo, 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>
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<tbody>
<tr>
<td><strong>Existing Uses</strong> as of July 21, 2003 and completed applications submitted by the July 21, 2004 deadline</td>
<td></td>
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<td>Mokuhaun Well 1</td>
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<td>MDWS</td>
<td>701</td>
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<td>Waiehu Heights Well 1</td>
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<td>697</td>
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<td>MDWS</td>
<td>698</td>
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<td>MDWS</td>
<td>695</td>
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<th>TMK</th>
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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>
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<td>(5.771)</td>
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<td>Living Waters #1</td>
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<td>LWLF</td>
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<td>War Memorial Stadium</td>
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<td>MP&amp;R</td>
<td>709</td>
<td>3-8-7:55</td>
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<td>5329-05</td>
<td>MP&amp;R</td>
<td>710</td>
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<td>MP&amp;R</td>
<td>713</td>
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<td>MP&amp;R</td>
<td>712</td>
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<th>TMK</th>
<th>Amount (mgd)</th>
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<tr>
<td><strong>New Uses</strong> arising after July 21, 2003 or completed applications submitted after the July 21, 2004 deadline</td>
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<td></td>
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<tr>
<td>None</td>
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**High-level Dike Sources** (impacting stream flows, to be later combined with the IIFS petition proceedings)

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<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
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<th>TMK</th>
<th>Amount (mgd)</th>
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<td>699</td>
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<td>680</td>
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<td>WACI</td>
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<td>HC&amp;S</td>
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**Existing Uses** as of July 21, 2003 and accepted as complete applications submitted by the July 21, 2004 deadline

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

None

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

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

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

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

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

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

COMMISSION ON WATER RESOURCE MANAGEMENT

Dated: March 28, 2005

Publish in: Maui News issue of April 1, 2005
Transmitting the letter accepting WUPAs for eight sources. A similar letter went out August 9, 2004 accepting Waihee 3 WUPA as complete, making nine in all.

The only one I believe is not officially accepted is Wailuku Shaft, although it is essentially complete. Because we are at the public hearing stage already, because the application may be competing with Kehalani Mauka's, and because the present state of affairs is such that the hearing officer is treating both of them as "new uses", we have not officially accepted it as existing or new - not that it has significant bearing on the continued use, as that is statutorily accepted until a decision on the application is reached. We understand that Kehalani and MOWS are in negotiation to resolve the issues involved with having separate applications, and we await any resolution that may be forthcoming, as the presumption is that any resolution will include amendment of the applications. Meanwhile, barring resolution, the hearing officers will recommend action in due time - hopefully at the next opportunity following closing of the hearing April 22 (announcement to follow) - unless it ends up being contested.

**Maui Lani Wells Reliance**

You'll be interested to know that the communications to the effect that the owners should not place reliance on these wells because of limitations on the source are not documented. They have been phone conversations with Tom Nance.

The document review I was speaking of was for a Maui Lani development project, which had identified the County system for its source, and we issued the standard comment about the lao situation. Subsequently, we are told that the source will be either Maui Lani Wells or surface water treatment, and we have had conversations with Office of Planning on this, as the result of being asked for assistance in their review. However, a revised comment was developed but not sent, as it determined that the request for assistance was to provide backup at some point in the process at the Land Use Commission. We have that information available for comment at that time.

In general, our view is that the water to be tapped by the Maui Lani Wells is coming primarily from irrigation return flows, which are completely dependent on continued sugar cultivation, and from the unlined Waiale Reservoirs, which are subject to available flows from stream sources under petition to have flows restored/diversions restricted and a separate petition alleging waste of stream diversion, in some part due to system losses such as the unknown amount of reservoir loss through leakage/recharge.

Tom Nance has stated he believes that underflow from Makawao Aquifer through Paia Aquifer, or alternatively from lao, would sustain the flows from Maui Lani Wells (pump data at 1&2 show low chlorides). We are unofficially doubtful without better information, such as silica monitoring.

The potential for surface water treatment is subject to the same petition to amend interim instream flow standards (to restore stream flows). We cannot predict the outcome of these processes, but long-term reliance is not a sure thing at all.
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 1920.1 See, e.g., Haw. Const. Art. XI § 7; Haw. Rev. Stat. §§ 1-1, 7-1, 174C-63, 174C-101.

1 Native Hawaiians may also possess appurtenant, riparian, or correlative rights, which may be used for traditional and customary purposes, such as the appurtenant, riparian, or correlative right to water for kalo cultivation on one’s own kuleana. See generally Lawrence H. Miike, M.D., J.D. Water and the Law in Hawai‘i 118 (University of Hawai‘i Press 2004).
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 ‘lao permit applications. Id. § 174C-31(i).

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

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

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. (emphasizes 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.”  Waiaheole I, 94 Haw. at 143. Again, the Code devised the Hawai`i Water Plan (especially the Water Resources Protection Plan) as the framework for managing one of Hawai`i’s most precious resources.  See Miike, supra, at 234-35.   The challenges and burdens that continue to arise from the failure to adequately fund and implement this framework should not and indeed cannot be laid at the feet of practitioners of Native Hawaiian customs and traditions.

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

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

The Hawai`i Supreme Court further ruled that state agencies, such as this Commission, “may not act without independently considering the effect of their actions on Hawaiian traditions and practices.”  Ka Pa`akai, 94 Haw. at 46 (emphasis added). The Court went on to specifically detail an “analytic framework in an effort to effectuate the state’s obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests[,]”  Id. at 46-47. “Indeed,
the promise of preserving and protecting customary and traditional rights would be illusory absent findings on the extent of their exercise, their impairment, and the feasibility of their protection.” 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 IIFS 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 (Akakū) 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
the like for information and recommendations; (9) contact state agencies, including the
historic preservation division and Island Burial Councils for lists of local practitioners
or contacts; and (10) contact schools and organizations of higher learning, including the
University of Hawai‘i and Maui Community College for lists of Hawaiian
organizations, clubs, local practitioners, and other contacts from the area. These are just
a sampling of potential sources of information; many more are available to this
Commission and the permit applicants.

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

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

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

II. Municipal Uses.

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

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

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

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

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 "distinguish between these major categories of use." State Commission on Water Resource Management, ʻIao and Waiheʻe Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact (Nov. 14, 2002) at 66.
away from the water source. Moreover, although municipal use is not "commercial" per se, it does involve the sale of water or water services by a utility (in some places, a private entity), as opposed to a domestic user who takes water for his or her own personal use.

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

Lumping domestic and municipal together contradicts this well-settled distinction. Courts have consistently declined to make such a leap. Thus, as the eminent treatise on water law (cited repeatedly in Waiahole 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). Similarly, the seminal treatise on eminent domain explains that "'[t]he doctrine that a riparian town

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

4 We note that, although this case involves ground water, similar principles apply, and the Commission should avoid any artificial distinctions between ground and surface water. See Waiahole I, 94 Haw. at 177 n.90 (analogizing correlative rights to ground water to riparian rights in surface water); id, at 172-73 (rejecting artificial ground-surface distinction). See also id, at 180 n.95 (citing ground water statues from other states preserving the right of landowners to withdraw water for "domestic" uses, which would not extend to municipal uses).
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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 Wai‘āhole I decision as potential support for the idea of municipal uses being a public trust purpose. The letter emphasizes Wai‘āhole I’s recognition of the “vital domestic uses of the general public.” Id. at 2 (citing 94 Haw. at 137) (emphasis in letter). This excerpt, however, cannot be removed from its context. The Court used this phrase in the context of extending the trust’s purpose from its “original intent” of preserving Native Hawaiian traditional and customary uses to its “broader sense” of protecting analogous uses of the public at large, i.e., non-Hawaiians and non-traditional users. 94 Haw. at 137. This does not establish that the Court meant to expand domestic uses to include municipal uses. On the contrary, the Court’s actual holding simply states, in unmodified terms: “we recognize domestic water use as a purpose of the state water resources trust.” Id. (emphasis added). We again note that Wai‘āola 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,
Analysis of Waiahole 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 ‘lao, may include aggregate domestic uses, but are otherwise qualitatively and quantitatively different because of their large-scale, consumptive, and diversionary nature. Inclusion of such uses (which include many other uses besides domestic, including commercial uses, and in most cases would drain a water source dry) as a public trust purpose would constitute an unprecedented, fundamental deviation from long-standing public trust principles.

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

5 The substance of the Clifton court’s holding was that the state held potable drinking water reserves in trust, 539 A.2d at 765; in other words, the court focused on the “scope” of the trust, and not the “uses” it protects. Cf. Waiahole I, 94 Haw. 133-35 (analogous section holding that the public trust doctrine applies to “all water resources,” including ground water). Clifton in no way suggested that a state could drain a stream, lake, or aquifer dry to serve municipal purposes.
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 Hawaii 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 Waiahole I effectively disposes of it. 94 Haw. at 142 (maintaining that “the Commission inevitably must weigh competing public and private water uses on a case-by-case basis”).

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

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

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

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

These requirements essentially parallel those of the public trust and would likewise apply however “municipal” uses were categorized under the public trust.

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

Me ke aloha,

D. Kepua 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)
RE: Questions raised regarding objections to Water Use Permit Applications in the 'Iao Ground Water Management Area, Maui.¹

Dear Ms. Izu,

The Office of Hawaiian Affairs appreciates the opportunity to reply to your letter regarding issues raised at the hearing for the above referenced permits. We are also grateful to you for allowing us additional time beyond your requested response date to contemplate and react to your provocative questions. The issues raised are of significance to all the people of Hawai‘i, and to our beneficiaries and the people of Maui in particular. We are encouraged that the Commission wishes to engage in a thoughtful discussion of how each of us should shoulder our particular kuleana to protect the resources on which we all depend.

¹ Applications by:

Hawaiian Commercial and Sugar Company for:
‘Iao Tunnel (Well No. 5330-02, WUP No. 691, source TMKs 3-4-033:029 and 3-4-34, location of use TMKs 3-8-5,6,7, various);

Maui County for:
Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-17:31, location of use TMKs unspecified and multiple);
Waiehu Heights Wells 1 & 2 (Well Nos. 5430-011 & 002, WUP Nos. 697 & 698, source TMK 3-3-2:28, location of use TMKs unspecified and multiple);
Kepaniwai Well (Well No. 5332-05, WUP No. 699, source TMK 3-3-3:5, location of use TMKs unspecified and multiple);
Mokuau Wells 1 & 3 (Wells Nos. 5330-09 & 11, WUP Nos. 700 & 701 source TMK 3-3-2:24, location of use TMKs unspecified and multiple);
‘Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-3:3, location of use TMKs unspecified and multiple);
Waihee Well 3 (Well No. 5431-04, WUP 703, source TMK No. 3-2-3:17:018, location of use TMKs unspecified and multiple); and

Kehalani Mauka LLC for:
Wailuku Shaft 33 (Well No. 5330-05, WUP 707, source TMK No. 3-5-1-1, location of use TMK Nos. 2-3-04-07, Parcel 2; 2-3-5-01, Parcels 1, 17, 60, 61, 63, and 66.
We have styled our analysis as responses to the assertions made and questions posed. For each issue, we first give the quote we are responding to, and then offer our analyses and answers as applicable.

1. Hawaiian Water Rights

A. “At the public hearing, Commissioner Miike opined that, while such rights are public trust purposes, they accrue to individuals.”

We begin our responses by noting that a key underlying assumption of Commissioner Miike’s line is correct, but only partially so. We are referring to the idea that traditional and customary rights solely “accrue to individuals.” This opinion of Commissioner Miike is key because it supports an implied line of reasoning that an individual holder of these rights must come forward, bear the burden of showing that they have these rights, and only then would a private commercial user and the Commission have the need to (or even be empowered to) consider these rights. The assumption is only partially correct, and therefore the line of reasoning is false in assuming that an individual must demonstrate their rights for the Commission to consider the issue. This is the case for the following reasons.

i. In Hawaiian tradition and custom, individual rights are integral with the rights of larger groups of Hawaiians; individuals do not hold rights solely or separately from the larger group. We first note that, self-evidently, traditional and customary rights exist in these islands because kanaka maoli developed these traditions and practices prior to the coming of any other group of people in the islands. Thus to meaningfully understand the basis for which later guarantees of traditional and customary rights were made, one must have an understanding of how these rights originated, were held, and were exercised prior to outside influence in the islands.

We do not here have the space or time to offer a full explanation of the background that supports such an understanding. What we will note is the fundamental point that individual and group traditional and customary rights are integral to each other. While it is unarguable that individual Hawaiians in ancient times exercised traditional and customary rights, most if not all practices, including practices around water such as building and maintaining ‘auwai, depended upon exercising the practices as part of a group. Indeed those practices could not be undertaken or the resource effectively managed without group effort. It would be meaningless to consider one individual’s right to a practice without examining the rights of that person’s extended family and community.

ii. The Hawai‘i State Constitution does not guarantee or assign traditional and customary rights solely to individuals. The state constitutional provision that provides a guarantee of these rights implies in its wording that these rights are possessed by a whole group as well as individuals. Namely, the rights are possessed by at least the groups of ahupua’a tenants who are the descendants of native Hawaiians:

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Section 7. The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

We first note that the wording of this section does not explicitly mention individuals and emphasizes the groups' status. Compare it, for instance, to the specific heading of Article I, Section ii: "Rights of individuals." Secondly and more importantly, we point out that these rights could not logically be held solely by individuals for the purposes said rights are exercised. The language acknowledges that the exercise of such rights are not only for subsistence purposes, but for cultural purposes. By definition, cultural purposes are related to the entire group of native Hawaiians.

iii. The Kuleana Act does not guarantee these rights solely to individuals. It is our observation that the most relevant law to our understanding of the guarantee of traditional and customary rights does not state that these rights only accrue solely to individuals. The language from the Kuleana Act of 1850, as it is incorporated into the Hawai'i Revised Statues (HRS 7-1), is key:

Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.

We note that the translation of the Kuleana Act chosen by the legislature for incorporation into the HRS does not say, for instance, "...each individual person on their own land shall not be deprived of the right...,” but rather says "the people on each of their lands." Later in the section the word “individuals” is used in reference to wells and watercourses, where they could have again used the word “the landlords” or “the people” if they meant to discuss wells or watercourses developed by a group. If traditional and customary rights were solely held by individuals, the language in this law would not make sense.

If these rights, however, are best understood as belonging both to individuals and the people, the language in the Kuleana Act makes sense. Individuals may exercise such rights, but the guarantee is in the Act so that the practices and the group of people who perpetuate those practices could continue into the future. Flowing from that intent is the need to guarantee these rights to individuals as part of the larger group.

This view is, of course, consistent with the overall purpose behind the passages of the acts collectively known as the Māhele, which was to benefit the commoner class as a group and the Nation as a whole, as well as give all citizens, including the King, clear title to land.3

Because traditional and customary rights are not solely held by individuals, the Commission or any other administrative agency can not and should not require a showing that any such rights

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accrue to individuals. Referring to our discussion above when necessary, we now continue with our response.

B. "He believes it is clear that, when such rights exist, private commercial uses must overcome the presumption in favor of trust purposes. But who has the burden of showing that such rights exist in the first place? And does only an assertion that such rights exist, without a showing that specified individuals have such rights, require private commercial uses to overcome a presumption in favor of such asserted rights?"

i. Traditional and customary rights to water must be assumed to exist throughout ‘Iao and everywhere in the islands as a matter of fact and law. To begin our examination of this section of your letter, we need to highlight the phrase “when such rights exist.” Not only do such rights accrue to more than individuals, but such rights as a matter of law and fact, clearly exist throughout the ‘Iao Ground Water Management Area. In the recent petition by Earthjustice on behalf of Hui o Nā Wai ‘Eha seeking amendment of the interim instream flow standards for streams including those that fall in this area, information has already been provided to the Commission that details the cultural and historical significance of water in this area, including information on population, heiau, and springs. Beyond that evidence, the fact that thousands of Hawaiians lived in this area for hundreds of years developing and practicing custom and tradition is generally known and does not need citation.

Beyond the specific area considered with these WUPA, we must note that the proper question when the Commission considers a WUPA is not to ask whether these rights exist. These rights exist across the islands as a matter of tradition and custom. They were later guaranteed by the state constitution (Article XII, Section 7) and law (HRS 1-1, HRS 7-1, and in specific relation to water, in HRS 174C-101). Indeed, because of the obligation placed on state agencies by this constitutional provision and statutes cited, there is a burden on agencies to demonstrate in any area that these rights do not exist if that is the position they desire to pursue.

ii. Not even assertion is necessary. Because traditional and customary rights must be assumed to exist in all areas of the island as a matter of fact and law, the idea that specific rights need to be “asserted” in order to be considered in the water use permitting process is, to us, nonsensical. While we at OHA are compelled by our kuleana to remind the Commission and applicants of their duties, we or any individual or group need not “assert” rights which clearly exist as a matter of law.

iii. An individual showing of rights is not necessary. As noted above, traditional and customary rights do not accrue solely to individuals or exist only in places where proven. Therefore, while showing that “specified individuals have such rights” can be useful understand some interests involved, it is not a required trigger for having the Commission and applicant(s) assume their burden. However, if an individual who also possesses such rights appeared before the Commission on a WUPA, they would have standing to do so.

iv. The Commission and the Applicant have an affirmative duty to determine the extent of these rights. Given the above points, we feel there are other questions which would better guide all of us to understanding our own particular kuleana in protecting rights and the resource during the WUPA process. Some of these questions are: Who has the burden of inventorying the traditional and customary Hawaiian rights in an area? How would having an updated Hawai’i Water Plan
aid applicants in undertaking the work they have to meet their burden? What kind of efforts and evidence should the Commission consider as adequate when an applicant submits required information?

In response to these questions, two recent Hawai‘i Supreme Court cases rule.

In Wai‘ola (re Wai‘ola o Moloka‘i, Inc. 103 Haw. 401 (2004)), which addressed an issue quite similar to that in ‘lao, the court bound the Commission and the applicant to actively search for information regarding the impact of the proposed use on traditional and customary rights. The court ruled (442) that "the absence of evidence that its [the applicant’s] proposed use would affect native Hawaiians' rights was insufficient to meet the burden imposed by the public trust doctrine, the Hawai‘i Constitution, and the Code."

As to what specific findings would prove sufficient, the Hawai‘i Supreme Court offers binding guidance in Ka Pa‘akai. There they addressed the need of the Land Use Commission (LUC) to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible. The court noted (Ka Pa‘akai o ka ‘Āina et al. v. Land Use Commission et al., 94 Haw, 47-49 (2000) (footnotes omitted)):

Article XII, section 7 of the Hawai‘i Constitution obligates the LUC to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible when granting a petition for reclassification of district boundaries. See PASH, 79 Haw. at 450 n.43, 903 P.2d at 1271 n.43 (emphasis added). In order for the rights of native Hawaiians to be meaningfully preserved and protected, they must be enforceable. In order for native Hawaiian rights to be enforceable, an appropriate analytical framework for enforcement is needed. Such an analytical framework must endeavor to accommodate the competing interests of protecting native Hawaiian culture and rights, on the one hand, and economic development and security, on the other...

We therefore provide this analytical framework in an effort to effectuate the State’s obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing private interests: In order to fulfill its duty to preserve and protect customary and traditional native Hawaiian rights to the extent feasible, the LUC, in its review of a petition for reclassification of district boundaries, must -- at a minimum -- make specific findings and conclusions as to the following: (1) the identity and scope of "valued cultural, historical, or natural resources" in the petition area, including the extent to which traditional and customary native Hawaiian rights are exercised in the petition area; (2) the extent to which those resources -- including traditional and customary native Hawaiian rights -- will be affected or impaired by the proposed action; and (3) the feasible action, if any, to be taken by the LUC to reasonably protect native Hawaiian rights if they are found to exist.

We have no reason to conclude that the constitutional burden on CWRM to consider these rights is any less than that held by the LUC, or that the analytical framework offered is inapplicable.

So what might be adequate in this case as a response to the requirements set forth in Ka Pa‘akai and Wai‘ola? Here we note that in Earthjustice’s response to these same questions we address here in this letter, they point out that the work of the applicant would be greatly reduced if the Commission had by this point fully completed the duties assigned to them by the Code. They also suggest a number of ways the applicant and the Commission could undertake such a study. We agree with the points they raise and will not restate them here.
C. “Does the Commission have the authority to recognize traditional and customary and Native Hawaiian rights in a water use permit application or in a contested case hearing, or do those asserting such rights have to obtain a ruling from the state courts before the Commission can consider them in the water permitting process?”

Because of all of the reasons we mention above, drawing special attention to the language cited in Ka Pa‘akai and Wai‘ola, we feel it is clear that the Commission has the authority and duty to examine the extent to which these rights exist and are practiced in the Iao Ground Water Management Area. We hope that the Commission begins to affirmatively do so; it will be of great assistance not only to us but to all WUP Applicants who desire a greater level of certainty in the process.

2. “Domestic Use”, “Public Trust”

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

While we appreciate that our objections to these permits has raised the general issue of municipal v. domestic use, we believe in general the issue has already been asked and answered in Hawai‘i law. We here again join in the discussions of this issue raised by Earthjustice in their response to these same questions. We also offer the following observations.

i. Maui County’s Department of Water Supply does not and apparently cannot separate out domestic and non-domestic uses, but they should be required by the Commission to do so. We are unaware of any means the MDWS currently has to distinguish in detail and amount the kinds of uses encompassed by their municipal applications. Because this is the case, it would be illogical to let their industrial and commercial uses “piggyback” on their provision of domestic supplies when considering their WUPA. Carried to its logical extent, such an argument would allow any private commercial user avoid their evidentiary burdens simply by providing a little domestic water as part of their development.

What would be more appropriate in this case would be to require MDWS to provide some estimate of the different uses in their system. They also would then need to show how, in the case of shortage, they would protect domestic, public trust uses before serving their non-public trust uses. Indeed, in their letters to us and in their WUPA, they seem to indicate they desire to understand better their different system uses. We however must note that over 120 years ago, absent of an ability to separately meter domestic and non-domestic use, the city of Honolulu was able to create a legally acceptable management and regulatory scheme to protect domestic uses in its system while curtailing non-domestic uses and respecting other water claimants in their source area. We consider this example below.

ii. A municipal purveyor has the authority and duty to restrict its non-public trust uses when its supplies are restricted due the competing and superior demands of other uses. We believe Hawai‘i’s courts have already distinguished between the different kinds of uses in municipal systems, discussed how they weigh against competing demands of others outside the municipal
system, and the affirmed duty and authority of municipal purveyors to manage in this kind of environment. We draw your attention to Riemenschneider v. Wilson 6 Haw. 375 (1882).

In this case the plaintiff, Riemenschneider, was a Honolulu municipal water user. A scarcity of water in Honolulu had led the government to restrict the times when individual households could irrigate landscaping. The plaintiff continued to irrigate in a manner afoul of the restrictions, and his service was suspended. Riemenschneider subsequently filed a writ of mandamus to the Hawai'i Supreme Court to order the city to turn his water on again.

The plaintiff lost, and the court's ruling and reasoning is particularly applicable to the situation in ʻIao. The court found the city had a legitimate need and a right to restrict water usage and could restrict the non-domestic uses of the plaintiff (379):

I have indicated that the Government has a right to make reasonable rules and regulations in respect to the water works and the supply of water to the inhabitants. The exercise of this authority is necessary for the public benefit, and in order to enable the Government properly to fulfill [sic] its obligations in distributing the water as fairly as may be possible. In times of water famine all [municipal users] must suffer reduction alike, and the Government then has the right to restrict the use of water by ratepayers, commencing the reduction with the least necessary use of water, i.e. irrigation [of residential landscaping].

Part of the court's reasoning that justified this decision was that other protected uses outside of the City's control restricted the City's municipal water supply. Referring to the lower and upper Nu'uanu reservoirs that supplied the system and the superintendent (Wilson) who controlled the City's system, the court noted (378):

Moreover, he [Wilson] could not fill the lower reservoir nights because it interfered with the gas machines run by the water from the upper reservoir, and he had further difficulty in drawing off the water from the upper reservoir, as certain persons having kalo patches and lands between the two reservoirs, which had the privilege of riparian proprietors from the stream which supplies both reservoirs, would become short of water, unless the overflow from the upper reservoir was allowed to pass back into the stream for their benefit.

In other words, the municipal system in this case did not respond to the competing demands for use within its own system and the outside, superior claims to water itself competed with, by claiming it had a protected right and ignoring those with superior claims. Rather (and uncontested by the court), the purveyor properly restricted its own diversion and subsequently restricted the non-domestic, non public trust uses of its ratepayers. Furthermore, the court upheld the enforcement of these restrictions, even when that enforcement resulted in the cutting off of domestic water use by the plaintiff, because the system was not set up to cut off only irrigation.

Today, of course, we understand that kalo would be entitled to water as a traditional and customary use protected by the public trust, in addition to having riparian and appurtenant rights. We see this case as illustrative of what the County needs to do in this instance: understand the protected uses it is affecting and restrict its deliveries if necessary, prioritizing the public trust uses over non-public trust uses. The Commission should order it to do so.
Once again, we appreciate the creation of an open discussion on these issues and thank you for the opportunity to offer these comments. If you have further questions, please contact Dr. Jonathan Scheuer at 594-1946 or email him at jonathans@oha.org.

Sincerely,

[Signature]

Clyde W. Namu'o
Administrator

Cc: Kapua Sproat Esq.
Earthjustice
223 South King Street, Suite 400
Honolulu, Hawai'i 96813
Ms. Jane E. Lovell, Esq.
County of Maui
Department of the Corporation Counsel
200 South High Street
Wailuku, HI 96793

Dear Ms. Lovell:

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

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

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

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

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

Sincerely,

YVONNE Y. IZU
Deputy Director
November 18, 2004

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

Dear Mr. Tengan:

Water Use Application Information
Waihee Wells (5431-02 to 04), Waiehu Heights Wells (5430-01 & 02),
Mokuhau Wells (5330-09 & 11), Kepaniwai Well (5332-05), Iao Tunnel (5332-02)

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

Accommodating Need with Available Resource

One objection to your water use permit applications is the lack of an estimate of the effectiveness of conservation or alternative source development would have on reducing demand from the aquifer.

As part of the evaluation of the reasonable and beneficial criteria, we request the following:

1) Has your department evaluated the impact of its conservation program on individual and overall demand?
2) Does your department have a budget schedule of identified alternative (non-iao ground water) source development that shows a probable meeting of projected demand (which currently exceeds projected supply) by a given date?

The Commission is aware that the designation process has unfolded in large part due to the concentration of pumpage in a limited area rather than to exceedence of the sustainable yield, and that a current study being conducted by the U.S. Geological Survey (USGS) is intended to improve understanding of the aquifer to the benefit of optimal pumping operations management.
Public Trust for Domestic Use

On a related subject, the definition of "domestic use", as used by the Supreme Court, is subject to clarification. It could conceivably mean general public use of potable water for drinking and sanitation, which could extend beyond household use to municipal activities at parks and schools, as well as sanitation throughout the panoply of municipal uses. Have your analyses achieved any insight on what proportion might represent basic potable requirements versus irrigation or industrial requirements?

Public Trust Purposes and Hawaiian Rights

Commissioner Miike asked for opinions from various parties concerning who may bear the burden of proof concerning public trust purposes, such as the traditional and customary and other Native Hawaiian water rights. These fall within what may be generally called the public interest, defined by the Water Code to include additional purposes. Your initial application addressed the public interest by identifying the public utility service area, a municipal system that includes probably most, if not all the public interests mentioned by the Water Code. It does not address Native Hawaiian water rights per se, but you have commented to OHA that OHA was in a better position to assess this issue. Does the County feel it bears no responsibility for addressing potential Native Hawaiian water rights that may be affected by the County's use of ground water supplying its service system?

DHHL Reservations

We understand that your Department not only serves existing Department of Hawaiian Home Lands (DHHL) residential projects but has also issued water meter reservations for projects not yet served by the County system. The DHHL request for a ground-water reservation from Iao Aquifer does not distinguish between projects already served, projects with meter reservations, and other projects yet to receive discretionary approvals. Your reply to the notice of the reservation request notes the meter reservations and indicates that future needs will be given priority. While the Commission has not yet acted on the request for ground-water reservations from Iao, we would be inclined to recommend that such reservations would apply only to projects not yet served. Our question is whether the County's commitment to issue meters is revocable or otherwise subject to further decision-making.

Sincerely,

YVONNE Y. IZU
Deputy Director

Cl:ss
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,

[VONNE Y. IZU
Deputy Director]
Ms. Kapua Sproat  
Earthjustice  
223 South King St., Ste. 400  
Honolulu, HI 96813

Dear Ms. Sproat:

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

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

Hawaiian Water Rights

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

At the public hearing, Commissioner Miike asked the various parties for their opinion on who has the burden of proof as to whether or not traditional and customary and Native Hawaiian rights exist. Commissioner Miike opined that, while such rights are public trust purposes, they accrue to individuals. He believes it is clear that, when such rights exist, private commercial uses must overcome the presumption in favor of trust purposes. But who has the burden of showing that such rights exist in the first place? And does only an assertion that such rights exist, without a showing that specified individuals have such rights, require private commercial uses to overcome a presumption in favor of such asserted rights? Does the Commission have the authority to recognize traditional and customary and Native Hawaiian rights in a water use permit application or in a contested case hearing, or do those asserting such rights have to obtain such a ruling from the state courts before the Commission can consider them in the water permitting process?
Ms. Kapua Sproat  
Page 2  
November 15, 2004

“Domestic Use”, “Public Trust”

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

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

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

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

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

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

Sincerely,

[Signature]

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?
“Domestic Use”, “Public Trust”

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

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

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

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

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

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

Sincerely,

YVONNE Y. IZU
Deputy Director

CC: Kapua Sproat, Earthjustice
November 4, 2004

To: Attendees of October 28, 2004 Public Hearing on Water Use Permits in the La‘au 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.
[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.
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.
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
Subsequently, the aforementioned Kuleana Act provision ensured
The following applications for water use permits to continue uses existing as of July 21, 2003 have received objections and are subject to public hearing. The Commission on Water Resource Management, at its regular meeting on September 22, 2004, approved a hearing now scheduled to begin:

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

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

<table>
<thead>
<tr>
<th>Well Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Requested amount (mgd)</th>
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**Total from all sources** 19.499

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

<table>
<thead>
<tr>
<th>Well Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Requested amount (mgd)</th>
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**Total from all sources** >6.890

*Competing applications – do not double count.

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

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

COMMISSION ON WATER RESOURCE MANAGEMENT

[Signature]
VONNE Y. IZU, Deputy Director for
PETER T. YOUNG, Chairperson

Dated: October 7, 2004

Publish in: Maui News issue of October 12, 2004
STAFF SUBMITTAL

for the meeting of the
COMMISION ON WATER RESOURCE MANAGEMENT

September 22, 2004
Honolulu, Hawaii

Maui Departments of Water Supply and Parks & Recreation
Hawaiian Commercial & Sugar Company
Kehalani Mauka, LLC
APPLICATIONS FOR WATER USE PERMITS
Iao Tunnel, Waihee Wells 1-3, Waiehu Heights Wells 1 & 2, Kepaniwai Well,
Mokuau Wells 1 & 3, Wailuku Shaft 33
Existing Uses Only
Iao Ground Water Management Area, Maui

APPLICANT 1:
Maui Department of Water Supply
200 South High Street
Wailuku, HI 96793

APPLICANT 2:
Hawaiian Commercial & Sugar Company
P.O. Box 791628
Paia, HI 96779

APPLICANT 3:
Maui Department of Parks & Recreation
700 Hali‘a Nakoa Street, Unit 2
Wailuku, HI 96793

APPLICANT 4:
Kehalani Mauka, LLC
1100 Alakea Street, 27th Floor
Honolulu, HI 96813

SUMMARY OF REQUEST:

Authorize a subcommittee of Commissioners to convene and take testimony at a public hearing on
Maui concerning water use permits for existing use only for reasonable-beneficial use of ground water
from the Iao Aquifer.

LOCATION MAP: See Exhibit 1

BACKGROUND:

July 16, 2003  The Commission designated the Iao Aquifer as a ground-water management area,
effective July 21, 2003, coincident with a public notice announcing it.

July 21, 2003  Public notice was issued, requiring all existing uses to be continued only upon
application for a water use permit. A one-year deadline was given, until July 21,
2004, to file applications.
### Complete WUPAs, lao WMA

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<th>Yr</th>
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<th>Initial W.L.</th>
<th>Initial CI-</th>
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|               |               |       |       |               |               |               |       |               |               |       |               |               |
| Totals       |               |       |       |               |               |               |       |               |               |       |               |       |
|              |               |       |       |               |               |               |       |               |               |       |               |       |
| DHHL Reservation Request | exstg | 0.305 |       |               |               |               |       |               |               |       |               |       |
|              | new           | 1.812 |       |               |               |               |       |               |               |       |               |       |</p>
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</table>
Mr. George Tengan, Director  
County of Maui  
Department of Water Supply  
200 South High Street  
Wailuku, HI 96793

Dear Mr. Tengan:

Supreme Court Directions for Water Use Permit Applications

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

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

The Supreme Court’s opinion is summarized as follows:

1. Practicable Alternatives

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

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

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

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

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

Sincerely,

YVONNE Y. IZU
Deputy Director

Cl:ss
August 13, 2004

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

Re: Objection to application for Water Use Permit Applications for the Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-27:31), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-02:28), Kepaniwai Well 2 (Well No. 5332-05, WUP No. 699, source TMK 3-3-03:05), Mokuhau Wells 1 & 3 2 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701, source TMK 3-3-02:24), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-03:03).

Dear Chairperson Young and Commissioners:

This is in response to Earthjustice's objection of July 14, 2004 to the above-mentioned Water Use Permit Applications.

Earthjustice Objection 1. The applications fail to establish that the proposed uses are consistent with the public interest and will not interfere with existing legal uses of water, pursuant to HRS §§ 174C-49(a)(3) and 174C-49(a)(4).

Water served to the public for domestic uses has long been recognized as being not only consistent with, but the highest and best use of public resources. See In re Water Use Permit Applications ("Waiahole I"), 94 Hawa. 97, 137, citing, inter alia, Restatement (Second) of Torts § 850A cmt. c (1970); McBryde Sugar Co. v. Robinson, 54 Haw. 174, 191-198 (1973); Carter v. Territory, 24 Haw. 47, 66 (1917). There is not much danger that the Department of Water Supply's (DWS's) proposed uses will interfere with existing legal uses of the water, as DWS is by far the major user. Moreover, other proposed legal users include public parks and schools. Existing legal users of groundwater, public and private wells and tunnels developed within Iao aquifer, according to CWRM data, are listed below.

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<th>WELL NO.</th>
<th>WELL_NAME</th>
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<td>A&amp;B</td>
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"By Water All Things Find Life"
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a. Maui County Department of Water Supply (MDWS) failed to address any impacts of its proposed uses on resource protection.

The Department of Water Supply (DWS) recognizes that the maintenance of water in their natural state constitutes a distinct use. We also recognize that public and private uses of surface water within the Iao aquifer area include all the purposes and activities listed in the objection on behalf of Hui o Na Wai Eha (the Hui) and Maui Meadows Homeowners Association (MMHA). To identify uses dependent on surface water, including the maintenance of surface water in their natural state, the impact (if any) from groundwater withdrawals on surface water in the area would first have to be scientifically established. Studies of dike impounded water discharge to streams conducted in 1942 and 1970 suggested that development tunnel flow would have discharged naturally into stream channels below the diversions had it not been intercepted by the tunnels. (Stearns, H.T., and Macdonald, G.A., 1942, Geology and ground-water resources of the island of Maui, Hawaii: Hawaii Division of Hydrography Bulletin 7; and Yamanaga, George, and Huxel, C.J., 1970, Preliminary report on the water resources of the Wailuku area, Maui: State of Hawaii, Department of Land and Natural Resources, Division of Water and Land Development, Circular C61). DWS addressed this assumption in the water use application for Iao Tunnel, Well No. 5332-02. There, we noted that the high-level tunnel is not considered pumpage from the Iao aquifer, according to the Commission on Water Resource Management’s (“CWRM’s”) “Iao and Waihee Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact”, dated November 14, 2002, at p. 20. Accordingly, any potential for the high level tunnel to impact streams should not be an issue in this groundwater management area proceeding.

Moreover, the potential for discharge from the Iao basal aquifer to streams has not been extensively studied using modern technology and methodology. Studies by United States Geological Service under contract with DWS are ongoing to quantify any discharge from the Iao basal and dike-impounded aquifer to streams. Seepage runs have been performed for Waihee stream this year and data from that activity should be available shortly.

DWS has documented resource protection measures in the application, including distribution of withdrawals within the Iao aquifer, relocation of withdrawals outside of the aquifer, development of alternative sources, conservation and resource protection programs. DWS manages and contributes to a number of resource protection programs: DWS funds and participates in four watershed partnership programs throughout Maui County. The programs provide shared expertise and resources, leverage outside funds and provide for early awareness and action. DWS initiated and manages a Wellhead Protection Program for Maui County designed to protect the wells and groundwater from contamination.

DWS would be happy to assist MMHA in implementing a water conservation program to reduce demand in the Maui Meadows area and thereby alleviate peak demand stress on the Iao aquifer. Average water use for single-family services in Maui Meadows is about 31% higher than Kihei single-family services, and about 70% higher than single-family services in Waikapu. The Department provides free material on appropriate climate-adapted native plant landscaping, water conserving irrigation techniques and other in- and out-door conservation measures.
b. MDWS failed to address traditional and customary Native Hawaiian rights & practices.

As discussed under objection 1(a), determining impact on uses dependent on surface water requires scientific study of whether pumpage from particular wells impacts flow in particular streams, and if so, to what extent. While Earthjustice's letter alleges that Waiola spring is now dry as a result of ground and surface water conditions in the aquifer, it does not cite to any scientific studies supporting this claim. DWS concurs that an inventory and assessment of traditional and customary Native Hawaiian rights dependent on surface water, including kalo cultivation and traditional use of springs, would be useful. However, DWS notes that CWRM has not designated the lao as a surface water management area. Many of these surface water issues, including the issues specifically relating to the spring named Waiola, have been raised in the Petition to Amend Interim Instream Flow Standards for Waihe'e, North & South Waiehu, lao, and Waikapu Streams and Their Tributaries recently filed by Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc., and will no doubt be addressed in that proceeding.

Earthjustice Objection 2. MDWS' applications fail to establish that its proposed uses of water are "reasonable-beneficial", pursuant to HRS § 174C-49(a)(2).

"Reasonable-beneficial use" is defined in § 174C3 of the Water Code as "the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is both reasonable and consistent with the state and county land use plans and the public interest." As stated above, Hawaii law, as well as the law in other jurisdictions, has consistently placed the highest priority on domestic use, which DWS serves in the Central Maui area from the lao aquifer. DWS's use of this water will not interfere with public trust uses because it is a public trust use. Indeed, members of the MMHA receive their domestic water supply from this source.

As for DWS's proposed uses, DWS clarified projected demand in a revised Table 1 of the application for each source in a supplemental letter to CWRM dated June 16, 2004 (attached). Estimated cumulative demand for each source is based on the requested amount of water as a fraction of the 12-month moving average (MAV) for the Central system at the time of designation. The demand exceeding the requested amount of water for each source is expected to be met by sources outside the lao aquifer, including Waihee aquifer and surface water sources. Thus, there is no conflict with state and county land use plans and the public interest.

The requested amount for each well differs from June 30, 2004 MAV pumpage since requested amounts reflect MAV at the time of designation. The subject water use permit applications were filed in February and May of 2004. June 2004 pumpage may have been significantly lower than June 2003 for several reasons, including demand effects from rainfall and redistribution of pumpage. Precipitation for the year 2003 was well below the mean with the exception of two wet months (January and February).
As stated in DWS's application, current acreage breakdown to compare use calculations for all use classes are not available. An analysis of water usage by customer classification and district, including irrigation use, will be addressed in the update to the Central Maui Water Use and Development Plan. Preliminary use class breakdown of consumption data indicate that single-family use consumption is about 43% of total use in Central Maui, not 16% as DWS incorrectly stated in the application. Preliminary use class breakdown by percentage for 2003 consumption for the Central Maui system is provided below:

<table>
<thead>
<tr>
<th>Use</th>
<th>Consumption (1,000 gal)</th>
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<tbody>
<tr>
<td>Single Family</td>
<td>3,382,741</td>
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<tr>
<td>Multi-Family</td>
<td>1,530,930</td>
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<tr>
<td>Commercial</td>
<td>849,847</td>
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<td>Hotel</td>
<td>842,122</td>
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<td>Industrial</td>
<td>347,580</td>
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<td>Government</td>
<td>627,089</td>
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<tr>
<td>Agriculture</td>
<td>186,823</td>
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<tr>
<td>Religious</td>
<td>51,026</td>
</tr>
<tr>
<td>Central Maui Total</td>
<td>7,818,158</td>
</tr>
</tbody>
</table>

To provide further information regarding DWS's alternate source development, below is an update and (where available), expected production estimates for the Central system:

**Development of new sources to distribute withdrawals within lao aquifer.**

- Iao well, development anticipated end 2005. Production estimated at 896,000 GPD.
- Waikapu Mauka well: Development anticipated end 2004.

**Development of new sources outside lao aquifer**

- Camp Maluhia well: Acquisition of well site. No production estimate available at this time.
- Kupaa 1: Anticipated on-line end 2005. No production estimate available at this time.

**Earthjustice Objection 3.** MDWS failed to establish that the water source will accommodate its proposed uses, pursuant to HRS § 174C-49(a)(1).

In response to the Commission staff finding that in 2002 "...authorized planned uses exceed the sustainable yields", DWS has clarified to the CWRM in a letter dated November 4, 2002, that actual authorized planned use should be adjusted to reflect water commitments only. No commitment of water is granted or implied as a result of any DWS approval other than a water meter or water meter reservation. DWS has not been utilizing the lao aquifer to provide for additional demands. Instead, it has been serving new demands from the Waihee wells, and has been advising new developments of the need to develop additional source. DWS stopped

DWS has also set specific criteria to prevent overdraft and exceeding critical chloride levels in the Iao Groundwater Management Rule. (Board of Water Supply Rules and Regulations Title 16 Chapter 9). The rule specifies caution, alert and critical stages when chlorides at two well fields exceed given set points, or pumpage exceeds 95%, 98% and 100% of sustainable yields, respectively. The rule further specifies that if and when MAV pumpage equals or exceeds 95% and pumpage plus outstanding commitments equal or exceed 98%, no new meter applications will be accepted, and a waiting list will be maintained.

With respect to chlorides, DWS clarified in the November 4, 2002 letter to CWRM that chloride levels in Iao sources have not exceeded the caution, alert or critical stages for a three-month moving average since inception of the Iao Groundwater Management Rule. Moreover, in the "Iao and Waihee Aquifer Systems State Aquifer Code 60102 and 60103 Ground-Water Management Area Designation Findings of Fact", dated November 14, 2002, at p. 78, the CWRM noted that "recent declines in chloride concentration in sensitive wells show some improvement since early 2001. Ultimately chlorides are still acceptably below EPA guidelines that help define the utility of existing sources." CWRM concluded that criterion 5 for designation, pursuant to HRS § 174C-44(5) (whether the chloride contents of existing wells are increasing to levels which materially reduce the value of their existing uses), was not met.

In addition to development of new sources, distribution of withdrawals within the aquifer, conservation measures, watershed and groundwater protection programs and monitoring and modeling of aquifer status, DWS proposed eight additional suggestions for protecting the long-term viability and sustainability of the aquifer:

1. Approval of well permits at County level: Benefits could include setting an allocation based on proposed use and reporting requirements and would better enable the county to track and monitor resource use, as to pace the growth of demand.

2. Community agreements regarding resource availability and development of an availability policy: The Water Use and Development Plan process could be utilized to establish availability policies that could help assure aquifer stability over the long term.

3. County permit conditions: Requiring private water uses to submit regular reports to DWS would improve tracking resource use.

4. Improved enforcement of reporting and monitoring requirements: Improved enforcement by CWRM would help address outstanding questions.

5. Expedite inspection of existing wells of unknown status: Identifying status would ensure proper reporting and unused wells that need to be properly sealed.

7. Inclusion of operational guidelines and policies in the Water Use and Development Plan: in depth investigation could result in a program or rule.

8. CWRM support for DWS published plans: Reserving water or setting conditions on proposals conflicting with municipal needs.

Earthjustice Objection 4. Although MDWS’ applications indicate that the proposed uses are in accordance with State and Maui County general plans, land use designations, and policies, this is insufficient for the Commission to determine whether the proposed uses are reasonable-beneficial, pursuant to HRS §§ 174C-49(a)(5) & 174C-49(a)(6).

HRS § 174C-49(5) requires a permit applicant to establish that the proposed use of water "is consistent with state and county general plans and land use designation." DWS has done so in its application. DWS further notes that entities other than the applicant, such as the Maui Planning Commission, the Maui County Council, and the State Land Use Commission, have ultimate authority over land use decisions and priorities on the island of Maui. As clarified above in DWS’s response to Objection 3, no commitment of water is granted or implied as a result of any DWS approval other than a water meter or water meter reservation. DWS intends to meet additional demand from sources outside of the lao aquifer.

Earthjustice Objection 5. MDWS failed to establish that its proposed uses will not interfere with the rights and needs of the Department of Hawaiian Home Lands, pursuant to HRS § 174C-49(a)(7).

DWS agrees that applications should consider whether the proposed use of water might interfere with the rights of the Department of Hawaiian Home Lands ("DHHL"). Unlike the situation in In re Wai’ola o Mo’o kai, Inc., 103 Haw. 401 (2004), however, there are no wells owned or used by DHHL that potentially could be affected by the applicant’s wells. Water service to DHHL properties is provided by DWS. Demand for proposed DHHL project Waiehu Kou Phase IV from the Central system is 57,600 gallons per day, according to DHHL. DWS approved meter reservations for the Waiehu Kou Phase III development totaling 97,000 gallons per day in estimated demand. According to DHHL, no other outstanding demand is anticipated. We therefore conclude that the proposed withdrawals would not interfere with the rights of DHHL.

Earthjustice Objection 6. MDWS integrated water management plan should be completed prior to issuance of any water use permits.

DWS recognizes that the Water Use and Development Plan process is crucial in planning effectively for future water use. DWS pledges its willingness to work cooperatively with the Hui and MMHA to resolve issues of mutual concern in this process. However, the public interest will
not be served by holding up the permit process while awaiting a final Water Use and Development Plan.

DWS thanks Earthjustice for its comment on behalf of the Hui and MMHA. However, the concluding request that DWS’s applications be denied is neither practical nor helpful. Disrupting the ability of the County of Maui to deliver domestic water to its customers to such a degree would not serve any public trust purpose, and would lead to a public health calamity. DWS notes that members of the Hui and MMHA, along with thousands of other Central and South Maui residents and businesses, would be left without a supply of domestic water if this request were granted. DWS respectfully requests that the Hui and MMHA withdraw this demand.

Should you have further questions or comments regarding any of these matters, please do not hesitate to contact me at (808) 270-7816 or Ellen Kraftsow of my staff at (808) 270-7199.

Sincerely,

George V. Tengan
Director

enclosure:
DWS letter of November 4, 2002

cc.
Kapua Sproet, Esq.
Mayor Alan M. Arakawa, County of Maui
Jane Lovell, Esq., County of Maui
Edward Kushi, Esq., County of Maui
Dain Kane, Council Chair, County of Maui
Danny Mateo, WRC Chair, County of Maui
August 11, 2004

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

Re: Objection to application for Water Use Permits for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-27:31), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-02:28), Kepaniwai Well 2 (Well No. 5332-05, WUP No. 699, source TMK 3-3-03:05), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701, source TMK 3-3-02:24), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-03:03).

Dear Chairperson Young and Commissioners:

This is in response to the Office of Hawaiian Affairs' (OHA) objection of July 13, 2004 to the above-mentioned Water Use Permit Applications.

OHA Objection 1. The applicant has failed to consider the impacts of continuing these withdrawals on Native Hawaiian Water Rights, as is required by law.

The Department of Water Supply ("DWS") agrees that it should consider whether the proposed use of water might interfere with the rights of the Department of Hawaiian Home Lands ("DHHL"). Unlike the situation in In re Wai'ola o Moloka'i, Inc., 103 Haw. 401 (2004), however, there are no wells owned or used by DHHL that potentially could be affected by the applicant's wells. Water service to DHHL properties is provided by DWS. Demand for proposed DHHL project Waiehu Kou Phase IV from the Central system is 57,600 gallons per day, according to DHHL. DWS approved meter reservations for the Waiehu Kou Phase III development totaling 97,000 gallons per day in estimated demand. According to DHHL, no other outstanding demand is anticipated. We therefore conclude that the proposed withdrawals would not interfere with the rights of DHHL.

To identify uses dependent on surface water, including Native Hawaiian water rights, the impact (if any) from groundwater withdrawals on surface water in the area must be established. Studies of dike impounded water discharge to streams conducted in 1942 and 1970 suggested that development tunnel flow would have discharged naturally into stream channels below the diversions had it not been

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intercepted by the tunnels. (Steams, H.T., and Macdonald, G.A., 1942, Geology and ground-water resources of the island of Maui, Hawaii: Hawaii Division of Hydrography Bulletin 7; and Yamanaga, George, and Huxel, C.J., 1970, Preliminary report on the water resources of the Wailuku area, Maui: State of Hawaii, Department of Land and Natural Resources, Division of Water and Land Development, Circular C61). The Department addressed this assumption in the water use application for Iao Tunnel, Well No. 5332-02. There, we noted that the high-level tunnel is not considered pumpage from the Iao aquifer, according to the Commission on Water Resource Management's ("CWRM's") "Iao and Waihe'e Aquifer Systems State Aquifer Codes,60102 and 60103 Ground-Water Management Area Designation Findings of Fact", dated November 14, 2002, at p. 20. Accordingly, any potential for the high level tunnel to impact streams should not be an issue in this groundwater management area proceeding.

Moreover, the potential for discharge from the Iao basal aquifer to streams has not been extensively studied using modern technology and methodology. Studies by United States Geological Service under contract with the Department are ongoing to quantify any discharge from the Iao basal and dike-impounded aquifer to streams. Seepage runs have been performed for Waihe'e stream this year and data from that activity should be available shortly.

While DWS concurs that an inventory and assessment of traditional and customary Native Hawaiian rights dependent on surface water, including kalo cultivation, would be useful, DWS notes that CWRM has not designated the Iao as a surface water management area. DWS believes that many of these issues will be addressed in connection with the Petition to Amend Interim Instream Flow Standards for Waihe'e, North & South Waiehu, Iao, and Waikapu Streams and Their Tributaries recently filed by Hui O Na Wai Eha and Maui Tomorrow Foundation, Inc. Moreover, DWS believes that OHA is in a better position to identify any traditional and customary Native Hawaiian rights than DWS is. DWS seeks OHA's assistance and cooperation in this regard.

OHA Objection 2. The applicant has not meaningfully addressed the question of how the proposed continuing withdrawals may threaten the sustainability of the aquifer.

In response to the Commission staff finding that in 2002 "authorized planned uses exceed the sustainable yields", the Department has clarified to the CWRM in a letter dated November 4, 2002, that actual authorized planned use should be adjusted to reflect water commitments only. No commitment of water is granted or implied as a result of any DWS approval other than a water meter or water meter reservation. DWS has not been utilizing the Iao aquifer to provide for additional demands. Instead, it has been serving new demands from the Waihe'e wells, and has been advising new developments of the need to develop additional source.

To further quantify the impact of development of alternate sources and conservation measures, we provide updated and additional information below. The effectiveness of conservation programs is often difficult to evaluate since the interaction between such programs and use patterns of consumers often cannot be determined with any precision. For instance, automated meter replacement and low flow fixture installation occur simultaneously, and may have the effect of increasing registered water use per service, at the same time that the fixtures may have actually caused a decrease. Drier weather, changes to irrigation or landscaping, or the installation of the new meters can completely mask savings even when they have been achieved.


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3. Reclaimed water use at commercial properties within 100 ft of R-1 distribution systems and for dust control saves approximately 2 MGD in the summer months.

4. Low flow fixtures required in new developments has resulted in approximate savings of 0.5 MGD for Central Maui. Savings for distribution of free fixtures during 2005 is estimated at 129,000 gpd.

5. Other non-quantified conservation measures currently implemented include leak detection, in-house repairs; automated radio-read meters to replace old, under-registering meters; outdoor conservation, public education, conservation rules, conservation pricing and rate structures, monitoring and modeling of aquifer status and resource protection. Additional conservation programs and their potential savings are being considered during the Water Use and Development Plan process.

OHA Objection 3. The permit application should be considered simultaneously with other permit applications for existing uses with this ground water management area.

This objection refers to the CWRM's procedures; accordingly, any response to this objection should come from CWRM.

DWS thanks OHA for its comments, and pledges its willingness to work cooperatively with OHA to resolve any issues of mutual concern.

Should you have further questions, please contact me at (808) 270-7816 or Ellen Kraftsow of my staff at (808) 270-7199.

Sincerely,

George Y. Tengan
Director

cc.
Clyde W. Namu'o, State of Hawaii Office of Hawaiian Affairs
Mayor Alan M. Arakawa, County of Maui
Jane Lovell, Esq., County of Maui
Edward Kushi, Esq., County of Maui
Dain Kane, Council Chair, County of Maui
Danny Mateo, WRC Chair, County of Maui

By Water All Things Find Life
November 4, 2002

Re: Response to Iao and Waihee Aquifer Systems Ground Water Management Area Designation Findings of Fact

Dear Ms. Nishioka,

Thank you for the opportunity to respond to the DRAFT findings of fact regarding Iao and Waihee Aquifer Systems Groundwater Management Area Designation, issued 9/17/2002.

Analysis of Demand

No commitment of water is granted or implied as a result of any approval other than a water meter or water meter reservation. This statement is made clear with all permit approvals other than meter issuance. Therefore, actual authorized planned use should be adjusted to reflect water commitments only. Outstanding water meter reservations on the Central Maui system total about 415,000 GPD. No other permit or approval represents a commitment of water.

Discretionary approvals do not represent a commitment to provide water. The document’s estimate uses a June report on discretionary approvals, some of which can take 20 to 30 years to build out, and which are not likely to pan out over the short term. It should also be noted that the Department has informed developers of the larger projects reviewed, about 3.8 MGD worth, that they may be required to develop source to accommodate these projects. Water is only granted to developments if it is available without adverse effects to other customers on the system. This would include adverse effects to the resources on which the system relies. This caveat applies to CMJV developments as well. DWS would not be forced to provide more water from the Iao or Waihee aquifer to serve the CMJV projects, if such withdrawals would bring aquifer use over the sustainable yield. Again, the FOF should be adjusted to acknowledge that these demands will not be met by the Iao aquifer.

However, building permit approvals can provide an idea of requests likely to come in within the next 2 years. A total of 1,235 building permits approved and pending on the Central Maui system represent about 900,000 gallons per day of likely additional demand, some of which will be accounted for by existing reservations. While 900,000 GPD is a rough estimate only, it is consistent with recent trends, and errs above average annual increase of the past 7 years. Linear regression on metered consumption, using billing data corrected and cleaned in preparation for the WUDP also indicates an increase of roughly 1.6 MGD to the year 2005. This table is attached. While these are not our final forecast numbers, they are also relatively consistent with recent trends.

The Department has not been utilizing the Iao aquifer to provide for additional demands, but has been serving new demands from the Waihee wells. We intend to continue utilizing sources other than the Iao to meet new demands to the extent possible. As mentioned below, when demand or demand plus commitments reach 98% of sustainable yield, no new meters will be granted. In addition, we will endeavor to maintain pumpage below 90% of sustainable yield to the extent possible and will honor the water quality guidelines in our Iao Groundwater Management Rule. Additional planned sources to meet new demand are delineated below.

Iao Water Management Rule

By Water All Things Find Life
The FOF errs in stating that the Department has not enforced the Iao Groundwater Management Rule. Attached is a graph of Iao chlorides from the period 1990 to present. The rule specifies caution, alert and critical stages when chlorides at two well fields exceed given set points, or pumpage exceeds 95%, 98% and 100% of sustainable yields, respectively. The rule further specifies that if and when MAV pumpage ≥ 95% (19 mgd) AND pumpage plus outstanding commitments ≥98%, no new meter applications will be accepted, and a waiting list maintained.

As the attached graph indicates, no two well fields have exceeded their caution, alert or critical stages for a three month moving average since the inception of the rule. Nor has pumpage exceeded 95% nor pumpage plus outstanding commitments exceeded 98% of sustainable yield.

**Fundamental Issue is How Best to Protect the Aquifers**

Article XI, Section 1 of the State constitution indicates that the State and its political subdivisions have the responsibility to conserve and protect resources, including water. Section 7 establishes the CWRM.

The State Water Code, HRS 174C-44, sets forth criteria which the Commission shall consider in designating the aquifer, and enables the CWRM, when withdrawals reach 80% of sustainable yield, to assess the water situation and devise mitigative measures.

We believe that a reading of the State Constitution combined with the language in the State Water Code indicates that the fundamental issue in this designation proceeding should be how best to protect the long term viability and sustainability of the aquifers in question, and that consideration of eight criteria should be with a view to the best way to address these for aquifer health.

We agree with concerned parties that attention needs to be given to mitigating impacts to the aquifer, but we respectfully submit that the ongoing steps delineated below would be more effective toward protection of the aquifer than designation, and that these steps could best be implemented by the Department of Water Supply.

We also have some concern, given staffing and budget limitations, that the time-consuming and complex permitting process mandated by designation could even have the net effect of distracting the limited staff of both agencies away from the very jobs of source development, planning and resource protection on which we all agree we need to focus.

**Steps Being Taken to Protect the Aquifers**

1. **Development of New Sources**
   - Iao-Waikapu Ditch & Iao Treatment Plant - agreement received. Anticipated back on line by end Nov 02. 0.3 MGD avg, with provision to take up to 1.2 MGD depending upon flows.
   - Kuapaa 1 - completion anticipated 2003 (sept) 1 MGD avg
   - Maluhia 1 - completion anticipated 2004 (june) 1 MGD avg
   - Waiolai 1 - design fy04 completion anticipated dec 05 1 MGD avg

   Purchase of Iao / Waiehe watershed, collection and distribution infrastructure. After environmental studies and resolution of “Waikule” issues, this purchase may be followed by construction of additional treatment. GPD available to DWS will depend upon a number of factors. However, it would seem reasonable to hope for at least a few MGD by about 2007 or 2008. The attached graph assumes 2 MGD.

   The East Maui Source Development schedule unclear due to possible legal challenges. However, we would hope and expect that these could be resolved within the next 5 years, enabling us to commence with that project by around 2007. The attached graph assumes water delivery by 2009. Also assumes average well capacity of 1 MGD, though we expect 1.5 MGD based on hydrologists reports.

2. **Distribution of Withdrawals within existing sources to minimize impacts**
   - Waikapu Well - anticipated completion by Dec 03 1400 gpm capacity for distribution of withdrawals only

3. **Conservation Measures**
   - DWS and Maui County conservation program includes both demand and supply side measures. Demand side measures include fixture distribution, conservation pricing and tiered rate structure, an ordinance drafted with a
DWS committee and passed in 1992 mandating use of low flow fixtures in new developments, educational efforts including radio, news, movie ads, events, tours and other items, support of a demonstration garden and funding of a nursery for same, and population of the IWR-Main model to enable better planning of future conservation measures, including benefit-cost analysis. Supply side measures include leak detection, flow and pressure monitoring, replacement of old, under-registering meters, preventive maintenance scheduling, back-up source development to improve reliability, and the reclaimed water use program run by the Dept of Public Works.

4. Watershed protection
The DWS is a co-founding member of the West Maui Watershed Partnership, dedicated to protection and management of 50,000 acres of watershed land in the West Maui mountains. DWS has also been in the process of attempting to purchase watershed areas to insure continued protection of valuable watershed forest. DWS is also a member and also contributes funds to the Maui Invasive Species Committee (MISC) project, dedicated to management of the county’s most invasive and problematic weeds.

5. Groundwater protection
Several years ago, DWS initiated a source water protection project and within the past two years, has been working with a source water advisory committee to develop a preliminary draft of a wellhead protection program and ordinance. These will be included in the WUDP. Preliminary draft of the program from the Maui committee will be mailed to committee in time for November 26th meeting. The process will be repeated for the Molokai committee. Tasks from earlier years of the project involved: preliminary delineation of wellhead protection areas with help from EPA and DOH, to be replaced by the new WHPAs resulting from HISWAP; inventory of potential contaminant sources within those areas, review and annotated bibliography of management programs throughout the country; development of a data base covering land uses and activities within the county that could generate pollutants, best management practices for those activities, and health effects and environmental characteristics of the pollutants involved, work with an advisory committee to review management options and potential management programs, and posting of best management practice educational materials on the DWS website. We have also inquired with EPA and DOH regarding possible funding to help expedite inspection of wells of unknown status. CWRM could also assist with such research.

6. Monitoring and modeling of aquifer status
Proposal for joint funding agreement with USGS to study groundwater availability in Central Maui presented to Board in October, currently under consideration. The proposed study involves 1) a review and analysis of existing data to obtain a better understanding of groundwater flow in the study area, which includes all of west Maui, the central isthmus, and the western third of East Maui; 2) collection of climate, stream flow and groundwater data; 3) a water budget computation to estimate groundwater recharge rates in the study area; 4) development of a regional model of groundwater flow for the entire study area, and 5) development of a second model that provides a detailed simulation of flow in Central Maui, including the Iao aquifer. The second model would be used to estimate the effects of selected withdrawal scenarios on water levels, the transition zone between fresh water and salt water, and groundwater discharge in Central Maui. The overall goal of the modeling effort would be to simulate existing conditions of groundwater flow and pumping, and also to investigate alternate or additional sources of groundwater in Central Maui.

Additional Suggestions for Resolution of Concerns
1. Approval of Well Permits at County Level
Projects involving well permits should be required to obtain county permits as well as State permits. County permits could insure, not only compliance with state well construction standards, but also compliance with standards for adequate back-up and for storage & etc.; as well as setting an allocation based on proposed use and reporting requirements. continued, verifiable reporting could become a condition of this permit...with project approvals subject to being rescinded for failure to comply. this would result in an easier time managing and keeping track for both county and state...and it might also decrease the number of inappropriately sited and poorly designed private wells. Such steps would both enable the county to better track and monitor resource use, as well as to pace the growth of demand.

2. Community Agreements Regarding Resource Availability and Development of an Availability Policy
The WUDP process could be used to identify the community’s wishes regarding resource availability and commitment. DWS proposed an availability rule in 1995 which attempted to pace water commitment to
infrastructure capacity. The WUDP process could be utilized to establish implementable availability policies in coordination with the public and other agencies. This could help to assure aquifer stability over the long term, and CWRM support and input on this matter would be appreciated.

3. County Permit Conditions:
The Department needs to be able to receive reporting on pumpage and water quality monitoring. Currently the best Department can do is to request that such reporting be made a requirement of discretionary permit approvals. Such requests should carry the weight of a requirement. A county policy could be established whereby any private water use or regular chemical application should submit regular reports to DWS, so that we can better track resource use around the island.

4. Improved Enforcement of Reporting and Monitoring Requirements
CWRM often states that the pumpage data provided is incomplete, due to under-reporting. Improved enforcement of such reporting could also help to address outstanding questions.

5. Expedite Inspection of Existing Wells of Unknown Status
For those wells which have not been reporting, it is important to identify which wells are and are not in use, to inventory those that need to report vs. those that need to be properly sealed for groundwater protection. This effort has been discussed between DWS and CWRM as well as DWS & DOH. It is a possible measure of the Department’s source water protection program, if adequate funds are made available.

6. Operational Guidance:
CWRM could assist with more guidance relative to aquifer management. CWRM has historically refrained from setting recommended pumpage limits, short of designation. However, where questions arise, some clear guidance would be appreciated, and should be able to be provided in the form of a recommendation even without designation. If such guidance were offered for the Waihee aquifer for example, it could be incorporated into a Waihee Groundwater Management Rule.

7. Inclusion of Operational Guidelines and Policies in the WUDP:
The issue of operational guidelines could be investigated in more depth during the WUDP process, with a program and proposed rule resulting as products of this work, just as we have done with our wellhead protection program.

8. CWRM Support for DWS Published Plans:
As a government agency, DWS capital projects are subjected to a higher degree of environmental review and public scrutiny than those of other entities. This is as it should be. However, it does have the effect of making our source projects slower to reach completion. For that reason, in the future once a plan or direction has been set forth, gone through public process, and been approved, it would be helpful if CWRM would honor DWS requests to reserve water, or at least to set conditions requiring coordination or deny proposals that would conflict with municipal needs. If not before, such support for projects identified in the next WUDP update would be appreciated.

Should you have any questions, please feel free to contact me at 270-7816 or Ellen Kraftsow of our Water Resources & Planning Division at 270-8045.

Sincerely,

David Craddick
Director
July 27, 2004

Ms. D. Kapua Sproat, Esq.
Earthjustice
223 S. King Street, Suite 400
Honolulu, Hawaii 96813-4501

Dr. Jonathan Likeke Scheuer
State of Hawaii Office of Hawaiian Affairs
711 Kapiolani Boulevard, Suite 500
Honolulu, Hawaii 96813

Re: Objection to application for Water Use Permits for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-27:31), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-02:28), Kepaniwai Well 2 (Well No. 5332-05, WUP No. 699, source TMK 3-3-03:05), Mokuau Wells 1 & 2 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701, source TMK 3-3-02:24), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-03:03), filed by Earthjustice

Dear Ms. Sproat and Dr. Scheuer:

I understand that you have spoken to Jane Lovell in our Corporation Counsel's office, and that neither of you has an objection to a two-week extension of time for the County to respond to objections filed by your respective organizations. We will make our best efforts to respond by August 13, 2004.

We appreciate your courtesy and cooperation in this regard.

Sincerely,

George Y. Tengan
Director

cc:
Yvonne Izu, Esq.
Jane Lovell, Esq.
Edward Kushi, Esq.
Peter Young, Chairperson, Commission on Water Resource Management
Alan M. Arakawa, Mayor, County of Maui
Dain Kane, Council Chair, County of Maui
Danny Mateo, WRC Chair, County of Maui
Micah Kane, Director, Department of Hawaiian Homelands

By Water All Things Find Life
July 27, 2004

Ms. D. Kapua Sproat, Esq.
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223 S. King Street, Suite 400
Honolulu, Hawaii 96813-4501

Dr. Jonathan Likeke Scheuer
State of Hawaii Office of Hawaiian Affairs
711 Kapiolani Boulevard, Suite 500
Honolulu, Hawaii 96813

Re: Objection to application for Water Use Permits for Maui Department of Water Supply for the Waihe'e Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-27:31), Waiehu Heights Wells 1 & 2 (2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-02:28), Kepaniwai Well 2 (Well No. 5332-05, WUP No. 699, source TMK 3-3-03:05), Mokuau Wells 1 & 3 2 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701, source TMK 3-3-02:24), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-03:03), filed by Earthjustice

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Dain Kane, Council Chair, County of Maui
Danny Mateo, WRC Chair, County of Maui
Micah Kane, Director, Department of Hawaiian Homelands

By Water All Things Find Life
George,

Just got your letter requesting an extension to respond to the objection from OHA (there is also some from Earth Justice that was cc'd to you), and via this email you can have an extension past the 10 day deadline (which was June 28). For your information, we are trying to coordinate and schedule all the applications with objections for one public hearing on Maui, so there will be a notice for that date and your response should be ready at least a week or two before that date.

Two other matters we'd like some update on as well:

1) We had sent a letter on June 29 responding to the June 14 letter from your mayor requesting immediate designation for Waihee. Attached is the unsigned final draft of that letter in word, but without the petition attachments. Please provide us with an estimated time for your response.

   WaiheeWMA.clar.ltr.doc

2) What is the status of Maui DWS's position on the latest MOA (5/19 draft) we sent to you (see attached)? Please provide us with an estimated time for your response.

   Waihee.MoA.doc

Thanks.
MEMORANDUM

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

FROM: P. Holly McEldowney, Administrator
Historic Preservation Division

Various Ahupua‘a, Wailuku District, Island of Maui
TMK: (2) 3-2-017:031; 3-3-002:028; 3-3-003:005; 3-3-002:024, & 3-3-003:003

July 19, 2004

Thank you for the opportunity to review and comment on the Water Use Permit Applications for the Proposed Installation/Construction of Waihee Wells 1 & 2 (Wells Nos. 5431-02 &03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (5430-1 & 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 Wells Nos. 5330-09 & 11, WUP Nos. 700 & 701), Iao Tunnel (Well No. 5332-02, WUP No. 680), received by our staff June 24, 2004. Our review is based on reports, maps, and aerial photographs maintained at the State Historic Preservation Division. In 1995 a field inspection was conducted of the Mokuhau Water Tank Site by Theresa Donham, formerly SHPD staff archaeologist. Field inspections were not conducted of the other proposed well sites.

We note the following discrepancies with the submitted permit applications. We did not receive a copy of the Iao Tunnel Well permit application (Well No. 5332-02, WUP No 680) to be located in TMK: (2) 3-3-003:003. Thus, we will reserve our comments until we have received the permit application for this well site. The TMKs for the Waihee Wells Nos. 1 & 2 were listed on the application as TMK: (2) 3-3-017:31.

However, the submitted TMK map depicting the proposed well sites indicates the proposed project area is located in TMK: (2) 3-2-017:031.
Waihee Wells 1 & 2 (Wells Nos. 5431-02 & 03, WUP Nos. 695 & 696), TMK: (2) 3-2-017:031
Our records indicate the proposed tank lot was formerly under intensive agriculture by Wailuku Agribusiness Co. and that there do not appear to be any Land Commission Award claims in the proposed tank lot. Thus, we believe it is unlikely historic sites remain on the subject property. Given this information, we believe there will be "no historic properties affected" by the proposed undertaking.

Waiehu Heights Wells 1 & 2 (5430-1&02, WUP Nos. 697 & 698), TMK: (2) 3-3-002:028
Our records indicate the previous use of the subject property for a water tank site, as well as modern intensive agriculture have severely altered the land making it unlikely historic sites remain. Given this information, we believe there will be "no historic properties affected" by the proposed undertaking.

Kepaniwai Well (Well No. 5332-05, WUP No. 699), TMK: (2) 3-3-003:005
Our records indicate the proposed well site is located within the boundaries of Kepaniwai Park. Thus, we believe it is unlikely historic sites will be present. Given this information, we believe there will be "no historic properties affected" by the proposed undertaking.

In the event that historic sites (human skeletal remains, etc.) are identified during the construction/installation activities for the above mentioned well sites, all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the State Historic Preservation Office needs to be contacted immediately at 243-5169, on Maui, or at (808) 692-8023, on O'ahu.

Mokuhau Wells 1 & 3 Wells Nos. 5330-09 & 11, WUP Nos. 700 & 701
We have previously provided comments for the Proposed County of Maui Mokuhau Water Tank (SHPD Doc No.: 9504KD14/Log No.: 14378). At that time we stated we could not determine whether the project will impact significant historic sites. We recommended that a subsurface inventory survey with background research and historic/archival research be conducted. To date we have not received a report documenting the findings of the survey. Thus, we are unable to provide comments at this time.

Therefore, in order to determine the effect of the proposed undertaking on historic sites, we recommend that no action be taken on the subject permit applications until an archaeological inventory survey, to be conducted in the form of subsurface testing, has been conducted of the subject property to determine whether significant historic sites are present. An acceptable report documenting the findings of the survey will need to be submitted to this office for review. If significant historic sites are identified, a mitigation plan may need to be developed, in consultation with this office, and executed.

As stated above, we are holding our comments pertaining to the proposed Iao Tunnel Well permit application (Well No. 5332-02, WUP No.680) to be located in TMK: (2) 3-3-003:003 until we receive the appropriate permit application.

If you have any questions, please call Cathleen A. Dagher at 692-8023.

CD: sky
c: Maui Cultural Resources Commission, Dept of Planning, 250 S. High Street, Wailuku, HI 96793
    Michael Foley, Director, Dept of Planning, 250 S. High Street, Wailuku, HI 96793
July 26, 2004

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

Re: Objection to application for Water Use Permits for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-27:31), Waihehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698, source TMK 3-3-02:28), Kepaniwai Well 2 (Well No. 5332-05, WUP No. 699, source TMK 3-3-03:05), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701, source TMK 3-3-02:24), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-03:03),

Dear Chairperson Young and Commissioners:

The Department of Water Supply understands that our response to the Office of Hawaiian Affairs' (OHA) objection of July 13, 2004 to the above-mentioned Water Use Permit Applications must be submitted to the Commission 10 working days after receipt of said objection, or July 28, 2004. The Department would like to attempt to thoroughly answer all aspects of the pertinent objections, including doing a preliminary inventory of traditional and customary Native Hawaiian rights in the area that may be dependent on surface water.

We respectfully request an adequate time extension to respond in order to collect the necessary data for such an inventory.

Should you have any questions, please contact me at (808) 270-7816 or Ellen Kraftsow of my staff at (808) 270-7199.

Sincerely,

[Signature]

George Y. Tengan
Director

cc.
Clyde W. Namu'o, Administrator, State of Hawaii Office of Hawaiian Affairs
Alan M. Arakawa, Mayor, County of Maui
Dain Kane, Council Chair, County of Maui
Danny Mateo, WRC Chair, County of Maui
Micah Kane, Director, Department of Hawaiian Homelands

By Water All Things Find Life
July 13, 2004

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

Dear Mr. Young:

RE: Applications for Water Use Permits by the County of Maui
Department of Water Supply for the Iao Ground Water Management
Area

The Maui Planning Department (Department) has reviewed the above referenced
applications and has the following comments to offer:

1. The Department supports the Water Use Permit applications as these
sources currently provide potable water to the Maui Department of
Water Supply (DWS) Central Maui System.

2. The DWS applications are consistent with the following Maui County
General Plan objective:

   To provide an adequate supply of potable and
   irrigation water to meet the needs of Maui
   County's residents.

3. Waihee Wells #1 and #2, Waiehu Wells #1 and #2, and Mokuhau
Wells #1 and #3 are located on lands designated Agricultural by the
State Land Use Commission; identified as Agricultural in the Wailuku-
Kahului Community Plan Map; and Zoned Agricultural. The uses are
allowable uses within these land use designations and are consistent
with the intent of the Wailuku-Kahului Community Plan.

4. Kepaniwai Well is located on lands designated Conservation by the
State Land Use Commission and not zoned by the County of Maui.
Uses within the State Land Use Conservation District are under the
jurisdiction of the Department of Land and Natural Resources.
5. Iao Tunnel is located on lands designated as Urban by the State Land Use Commission, identified as Single-Family by the Wailuku-Kahului Community Plan Map, and zoned R2 Residential. The use is an allowable use within these land use designations and is consistent with the intent of the Wailuku-Kahului Community Plan.

6. All wells are located outside of the Special Management Area, thus are not subject to the Special Management Area Rules of the Maui Planning Commission.

Thank you for the opportunity to comments. Should further clarification be required, please contact Ms. Robyn Loudermilk, Staff Planner, of this office at 270-7735.

Sincerely,

MICHAEL W. FOLEY
Planning Director

MWF:RLL:lar
c: Clayton I. Yoshida, AICP, Planning Program Administrator
Aaron H. Shinmoto, PE, Planning Program Administrator (2)
Robyn L. Loudermilk, Staff Planner
George Tengan, Director Department of Water Supply
General File
K:\WP_DOCS\PLANNING\LETTERS\ltr2004\2218_DWSAppsIAO.wpd
Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Response:

We have no comments
We have no objections

Comments enclosed in the mail

Contact person: Retyn Loudermilk
Phone: 270-7736
Signed: Peter T. Young
Date: 7/12/04
By U.S. Mail & Facsimile Transmittal
Fax: (808) 587-0219

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

Re: Objection to Maui County Department of Water Supply's Water Use Permit Applications for: Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02), Kepaniwai Well (Well No. 5332-05) Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11), ʻĪao Tunnel (Well No. 5332-02); ʻĪao Ground Water Management Area, Maui, Hawai‘i

Dear Chair Young and Deputy Director Izu:

On behalf of Hui ʻo Nā Wai ʻEhā and Maui Meadows Homeowners Association, Earthjustice submits the following comments regarding Maui County Department of Water Supply’s (“MDWS”) water use permit applications. The applications seek to pump various wells in the ʻĪao Ground Water Management Area to provide municipal water to the Central Maui Service Area for both potable and nonpotable uses. For all of the reasons detailed herein, MDWS’ applications fail to establish that its proposed uses comply with all of the requirements of the law. We urge this Commission to require MDWS to supplement its applications before holding a public hearing on this issue. We also request that you hold that public hearing on Maui so that our clients and other affected stakeholders can provide more detailed testimony on this important issue.

Maui Meadows Homeowners Association is an association of homeowners from the Maui Meadows subdivision in Kihei. The association’s filing of a July 2001 petition resulted in the designation of the ʻĪao aquifer in July of 2003. Maui Meadows has been active in water and land use issues on Maui for many years and its members rely on the ʻĪao aquifer to satisfy their water needs. Additionally, the association’s members have been working to ensure appropriate management of the ground water resources in the ʻĪao and Waihee aquifers.

Hui ʻo Nā Wai ʻEhā is a community-based organization that was formed to promote the conservation and appropriate management of Hawai‘i’s natural and cultural resources.

1 MDWS’ monthly pumpage reports confuse Waihee 1 & 2 and Waiehu 1 & 2. For purposes of this objection, we assume that Waihei 1 & 2 refers to well numbers 5431-02 & 03.
and the practices that depend on them. The Hui strives to protect and restore streams, oceans, estuaries, native flora and fauna, and the activities that rely on these resources, especially the perpetuation of traditional and customary Native Hawaiian practices. Hui members live, work, and play in the ʻIao ground water management area. They rely on and routinely use ground water from the aquifer as well as surface water from ʻIao, Waieʻe, Waiehu, and Waikapu streams and their nearshore marine waters for fishing, swimming, agriculture, aquaculture, research, photography, educational programs, aesthetic enjoyment, traditional and customary Native Hawaiian practices, and other recreational, scientific, cultural, educational and religious activities.

This Commission bears an affirmative burden to analyze and account for the impacts of its decisions on public trust resources. See In re Waiʻola o Molokaʻi, Inc. ("Waiʻola"), 103 Haw. 401, 430 (2004); In re Water Use Permit Applications ("Waiahole I"), 94 Haw. 97, 141 (2000). When allocating water, the Commission must consider the impact of all proposed uses on: (1) the maintenance of waters in their natural state, (2) resource protection, (3) water for domestic purposes, and (4) the protection of traditional and customary Native Hawaiian rights and practices. Waiʻola, 103 Haw. at 429 (citing Waiahole I, 94 Haw. at 136-138, 142). The law mandates that this Commission “take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decisionmaking process.” Waiahole I, 94 Haw. at 143.

The Hawaiʻi Supreme Court recently affirmed that this Commission is “duty-bound to place the burden on the applicant to justify the proposed water use in light of the trust purposes and weigh competing public and private water uses on a case-by-case basis.” In re Waiahole Ditch Combined Contested Case Hearing ("Waiahole II"), No. 24873, slip. op. at 26 (Haw. June 21, 2004). The Court delineated a water use permit applicant’s burden:

Under the public trust [doctrine] and the Code, permit applicants have the burden of justifying their proposed uses in light of protected public rights in the resource. The Water Code requires, inter alia, that the applicant prove that the proposed use of water is a reasonable-beneficial use and is consistent with public interest. . . . In addition, applicants must still demonstrate their actual needs and, within the constraints of available knowledge, the propriety of draining water from public [resources] to satisfy those needs.

Id. (citations and quotations omitted). If the Commission issues a water use permit without findings that “reasonably explain and justify its conclusions and rulings,” that permit is especially vulnerable to being vacated. Id. at 26, 37-38, 45, 52-53 (remand with instructions for the Commission to make findings that demonstrate whether permit applicant met its burden; to articulate factors relied on in deciding whether a permit applicant has practicable alternative water sources; to establish factual basis for applicant’s actual need for water). See also Waiʻola, 103 Haw. at 432, 439. The Supreme Court has made clear that it will not rubber stamp water use permitting decisions where the Commission has not conducted adequate fact-finding and analysis. See id.
MDWS’ permit applications fail to provide the factual basis necessary for this Commission to complete the analysis and make the findings required by the State Constitution and Water Code, and ratified by the Hawai‘i Supreme Court. Each of MDWS’ applications is insufficient for the following reasons:

1. The applications fail to establish that the proposed uses are consistent with the public interest and will not interfere with existing legal uses of water, pursuant to HRS §§174C-49(a)(3) and 174C-49(a)(4).

The consistent with the public interest and reasonable-beneficial use requirements for water use permit applications “demand examination of the proposed use not only standing alone, but also in relation to other public and private uses and the particular water source in question.” Waiakea I, 94 Haw. at 161. MDWS attempts to justify its proposed municipal uses as consistent with the public interest because it services customers of the Central Maui System. Haw. Rev. Stat. § 174C-49(a)(4). These claims neglect to address the relative importance of MDWS’ proposed uses in light of other public trust purposes, or establish that they will not interfere with existing legal uses of water, including public trust uses. Id. at § 174C-49(a)(3).

a. MDWS failed to address any impacts of its proposed uses on resource protection.

“[T]he maintenance of waters in their natural state constitutes a distinct ‘use’ under the water resources trust.” Waiakea I, 94 Haw. at 136. MDWS must therefore address the potential impact of its proposed municipal uses on the maintenance of water in its natural state, especially resource protection. This is especially important in Iao, where the condition of the aquifer has long been in question and the true sustainable yield hotly debated. In fact, this Commission designated Iao as a ground water management area after MDWS’ pumpage exceeded 18 million gallons per day (“mgd”), a level that this Commission determined should not be exceeded.

Additionally, tunnels in this water management area withdraw water that would otherwise flow into streams, eliminating a contribution of approximately 7.5 mgd to stream flow. See William Meyer and Todd K. Presley, The Response of the Iao Aquifer to Groundwater Development, Rainfall, and Land-use Practices between 1940 and 1998, Island of Maui, Hawai‘i; USGS Water Investigations Report 00-4223 (2001). See also State Commission on Water Resource Management, Iao and Waie‘e Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact 2002 (Nov. 14, 2002) at 10 (“COWRM Iao-Waie‘e Final FOF & COL”) (“Some ground water also discharges into streams as baseflow”). Importantly, “discharge from the dike-impounded water body maintains perennial flow in Waie‘e River and Iao, Waikapu, and North and South Waiehu Streams.” Id. Iao Stream’s ecological importance cannot be overemphasized, as it contributes to ground water recharge and, thus, the overall health of the Iao aquifer. MDWS has failed to examine its proposed municipal uses in relation to existing public trust uses such as resource protection in this aquifer. This information must be provided before the Commission can make any determination on MDWS’ applications.
b. MDWS failed to address traditional and customary Native Hawaiian rights & practices.

MDWS must affirmatively demonstrate that its proposed uses will not harm existing and potential traditional and customary Native Hawaiian rights and practices. See Wai'ola, 103 Haw. at 442 (“the absence of evidence that its proposed use would affect native Hawaiians' rights was insufficient to meet the burden imposed ... by the public trust doctrine, the Hawai`i Constitution, and the Code.”). When considering whether MDWS has met its burden, the Commission must protect traditional and customary rights in accordance with the constitutional minimum delineated by the Hawai`i Supreme Court. Specifically, the Commission has an affirmative duty to determine and must make specific findings regarding: (1) the identity and scope of cultural resources, including the extent to which traditional and customary practices are exercised, in the affected area, (2) the extent to which cultural resources, including traditional and customary practices, will be affected, and (3) where traditional and customary practices are found to exist, feasible action that the Commission can take to protect affected practices. See Ka Pa`akai o Ka `Āina v. Land Use Comm'n, 94 Haw. 31, 47 (2000). MDWS has neglected to provide any information regarding these issues.

At a minimum, the law requires and we request that MDWS provide the information necessary for this Commission to make the above-described determinations. As just one example, oral history from what is now the `Īao ground water management area identifies a spring named Waiola (on what is now the Sevilla family property), which was renowned for its healing and purifying powers. Native Hawaiians from this area traditionally used this spring to purify themselves before entering heiau. Waiola is now dry as a result of ground and surface water conditions in the aquifer. MDWS' applications lacks any information regarding Waiola or other cultural resources in the `Īao aquifer (such as springs or spring-fed lo`i) that will be affected by MDWS' and other uses of ground water.

In addition, the 1990 Hawai`i Stream Assessment (“HSA”) determined that streams associated with MDWS' proposed municipal uses host a substantial population of native species, including varieties of `o`ōpū. In particular, `Īao Stream, which is in close proximity to the subject water sources, was one of only nine streams on Maui worthy of designation as a candidate stream for protection. `Īao was designated a Blue Ribbon Resource, meaning that it was selected as one of Hawai`i's very best recreational resources due to its outstanding hiking, fishing, swimming, parks, nature study, and scenic views. `Īao also has tremendous cultural importance and it once supported 10 to 50 acres of kalo cultivation. Without due consideration of the impacts of MDWS' proposed uses on these resources, the applications cannot be approved.

MDWS' failure to provide information demonstrating that its proposed uses are consistent with these important public interests and existing legal uses of water is a serious flaw in its applications and, therefore, Maui Meadows and Hui o Nā Wai `Ehā respectfully urge this Commission to deny the permit applications in their present form. In the alternative, we ask that this Commission order MDWS to provide necessary information within four weeks of the date of this objection, so that the community and the Commission can review and analyze this information before any public hearing and the Commission may, if necessary, request supplemental information.
2. MDWS’ applications fail to establish that its proposed uses of water are “reasonable-beneficial,” pursuant to HRS §174C-49(a)(2).

MDWS’ applications also fail to demonstrate that its proposed uses are reasonable and beneficial by detailing actual water needs. The law requires that permit applicants demonstrate, at a minimum, that the requested amount of water reflects actual need. See Waiahole I, 94 Haw. at 162 (“Notwithstanding the present and uncertain nature of the permitting process, therefore, permit applicants must still demonstrate their actual needs”); Haw. Rev. Stat. §174C-50(f) (“A permit to continue an existing use shall be for a quantity of water not exceeding that quantity being consumed under the existing use.”) (emphasis added).

MDWS’ applications quantify total water needs over the next four years as: 25.703 mgd in 2004, 26.204 mgd in 2005, 26.705 mgd in 2006, and 27.207 mgd in 2007. MDWS’ applications, however, request a total of only 12.115 mgd, less than half of their total water needs. It is our understanding that additional applications for Wailuku Shaft 33 and Waihe’e 3 are forthcoming. Even if those sources are included, MDWS will fall far short of satisfying its total water needs as described in the subject applications. MDWS must address this discrepancy between the amount requested and their claimed water needs. We also note that the amount that MDWS has requested from each well differs significantly from MDWS’ June 30, 2004 moving average of pumpage. This discrepancy must also be addressed by MDWS before this Commission can consider its application.

MDWS’ applications also fail to account for a large portion of their actual use. In fact, the applications note only that single-family use comprises about 16% of the proposed uses. Moreover, as MDWS has admitted in the past, potable water delivered to the Central Maui Service Area serves both potable and non-potable needs.2 MDWS, however, is unable to provide calculations or even estimates of other uses. This lack of information is particularly disconcerting because MDWS is the biggest water user in the ‘Īao aquifer and has requested a large quantity of potable water that will ultimately serve non-potable needs. See COWRM ‘Īao-Waihe’e Final FOF & COL at 66. Such information does not pass legal muster and MDWS must provide additional information before these applications can be considered.

Assuming, arguendo, that MDWS’ applications can satisfy the actual needs requirement, the applications fail to adequately analyze alternative sources and more information is needed.

This alternatives analysis is necessary to evaluate whether the applicant has adequately established that its requested allocation would support a reasonable-beneficial use. The Supreme Court carefully defined the burden of proof for all water use applicants:

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2 This Commission determined that while potable water is delivered through the Central Maui system to provide for both potable and nonpotable needs, the County was unable to “differentiate between these major categories of use.” COWRM ‘Īao-Waihe’e Final FOF & COL at 66.
[B]esides advocating the social and economic utility of their proposed uses, permit applicants must also demonstrate the absence of practicable mitigating measures, including the use of alternative water sources. Such a requirement is intrinsic to the public interest, the statutory instream use protection scheme, and the definition of 'reasonable-beneficial' use and is an essential part of any balancing between competing interests.

Waiāhole I, 94 Haw. at 161.

MDWS' attempt to identify alternatives is commendable but requires additional information, including, among other things, details regarding concept, size, and timing. For example, the Commission must take a hard look at the use of potable water for non-potable needs in light of the demand for potable water and MDWS' alternatives. Since alternatives are available, MDWS cannot simply assert that the proposed use of potable water for non-potable needs is reasonable and beneficial, especially when existing public trust uses such as resource protection and Native Hawaiian practices are at issue. More information is also needed regarding the extent to which the Waihe'e aquifer is a practicable alternative given this Commission's 4.0 mgd limit on pumping from that aquifer. We urge the Commission to require a more detailed alternatives analysis that will address specifically the extent to which non-potable needs may be met via alternative sources.

This Commission cannot issue permits to MDWS absent additional information demonstrating that the requested amounts constitute reasonable beneficial uses of potable water. We urge this Commission to require such information before such applications are even deemed complete.

3. MDWS failed to establish that the water source will accommodate its proposed uses, pursuant to HRS §174C-49(a)(1).

The Code requires each applicant to establish that a water source can accommodate a proposed use. HRS §174C-49(a)(1). More information is needed, especially given the "[s]erious dispute between the interested public and the MDWS . . . related to the integrity of the aquifer and land use decisions that affect demand on the aquifer." COWRM 'Iao-Waihe'e Final FOF & COL at ix. In fact, this Commission recommended designating both the 'Iao and Waihe'e aquifers as ground water management areas because authorized planned use back in 2002 was 29.2 mgd, which "exceed[ed] the sustainable yields (Iao 20 mgd and Waihee 8 mgd = 28) available to the [Central Maui Service Area]." Id. This issue is even more critical now since this Commission has limited pumpage in Waihe'e to 4.0 mgd, yet it continues to receive requests for new ground water wells (such as the Betsill application). As you well know, authorized planned use has increased since 2002. Even if 29.2 mgd is used as a conservative figure, authorized planned use far exceeds the 24 mgd ('Iao 20 mgd and Waihe'e 4 mgd = 24) available to supply the Central Maui Service Area. We also highlight the fact that better information on the sustainable yields of the 'Iao and Waihe'e aquifers will not be available for several more years, when USGS completes its Central Maui model.
Additionally, MDWS' applications lack analysis of how the 'Iao aquifer can accommodate the requested allocation in light of recent indicators that the long-term viability of the aquifer is threatened. For instance, at least three of the wells that are the subject of these permit applications have chloride concentrations approaching limits set by the United States Environmental Protection Agency. Yet, the applicant makes no mention of these or other indicators that existing pumpage threatens the water source. Given current conditions in the 'Iao aquifer, the applicant must provide a detailed discussion of how its applications satisfy this important permit condition, including a discussion of: (1) current water levels in the well fields, especially as they relate to the top and mid-point of the rising transition zone, (2) current chloride concentrations of each of the wells for which MDWS has applied for a permit, and (3) changes in chloride concentrations since pumping was started in each well.

4. Although MDWS' applications indicate that the proposed uses are in accordance with State and Maui County general plans, land use designations, and policies, this is insufficient for the Commission to determine whether the proposed uses are reasonable-beneficial, pursuant to HRS §§ 174C-49(a)(5) & 174C-49(a)(6).

MDWS claims that its proposed uses will meet the demands outlined in state and county general plans, land use designations, and general policies. Where, as here, authorized land use outstrips the available water supply, this Commission ruled and the Hawai‘i Supreme Court affirmed that consistency with county plans and land use designations does not end the inquiry into whether a proposed water use may be permitted. In a situation similar to this one, this Commission concluded:

As competition for water resources increases, the analysis of both the public interest and of reasonableness must become both more rigorous and affirmative. The counties will be required to articulate their land use priorities with greater specificity. For example, even at the present time, there is more land zoned for various uses than available water to supply those proposed uses. Thus, it is not sufficient to merely conclude that a particular parcel of land is properly zoned and that the use is “beneficial.” That minimal conclusion may be inadequate to resolve situations in which competitive demand exceeds supply.

See also State Commission on Water Resource Management, Waiahole Conclusions of Law (Dec. 24, 1997) at 25, cited with approval in Waiahole I, 94 Haw. at 187. The Court rejected the proposition that a denial of a water use permit consistent with county land use approvals usurps a county’s power over land use management. “[W]e reject the City’s suggestion that the Commission will illegally restrict its land use planning authority unless it accedes to any and all of the City’s water demands.” Waiahole I, 94 Haw. at 188. The Court instead emphasized the Commission’s role as “the final authority over matters of water use planning and integration.” Id.

The situation on Maui is analogous, if not worse, than the situation in Honolulu addressed by this Commission in Waiahole I & II. Again, authorized planned use in the Central Maui Service Area exceeds both the 28 mgd sustainable yield of the aquifers supplying the Central
Maui Service Area, as well as the 24 mgd that this Commission has established as the maximum available now. COWRM 'Īao-Waihe'e Final FOF & COL at ix. Be that as it may, the fact that MDWS’ proposed uses are consistent with county land use designations “only provides a minimal standard by which to judge applications.” Waiahole I, 94 Haw. at 188. Additional information is needed.

5. MDWS failed to establish that its proposed uses will not interfere with the rights and needs of the Department of Hawaiian Home Lands, pursuant to HRS § 174C-49(a)(7).

   MDWS’ blanket statement that its proposed uses will not interfere with the rights of the Department of Hawaiian Home Lands (“DHHL”) because there are no DHHL wells withdrawing water from the ‘Īao aquifer is wholly insufficient. By its own admission, MDWS services DHHL projects in the Central Maui Service Area and, therefore, MDWS must examine the impact of its proposed uses on DHHL’s present and future needs. MDWS must provide additional information regarding both existing and future DHHL projects within the Central Maui Service Area and how MDWS’ uses will impact those rights and needs. See Wai‘ola, 103 Haw. 401.

6. MDWS’ integrated water management plan should be completed prior to the issuance of any water use permits.

   The aforementioned deficiencies in MDWS’ water use permit applications underscore the need for an integrated water management plan for Central Maui. The County plays a unique role in assisting the Commission in protecting water resources and planning effectively for future water use by developing water use and development plans. This Commission and the Hawai‘i Supreme Court have recognized that counties need to create integrated water resource plans “as a matter of sound planning policy,” Waiahole I, 94 Haw. at 188. Such a plan would “prioritize competing demands” and “help decision makers incorporate uncertainties, environmental externalities, and community needs into decision-making.” State Commission on Water Resource Management, Waiahole Decision and Order (Dec. 24, 1997) at 2, cited with approval in Waiahole I, 94 Haw. at 188 n.105.

   To approve MDWS’ applications without an updated and integrated plan to assist the Commission in its decisionmaking puts the cart before the horse. In February 2004, the Commission approved a scope of work and offered to provide technical assistance to update Maui County’s water use and development plan. Because the County is in the process of updating this plan, we request that the Commission defer action on the subject applications until that plan is completed.

Conclusion

The legal and factual sufficiency of MDWS’ applications are of grave importance, especially given that MDWS is the largest water user in the ‘Īao aquifer. MDWS must affirmatively demonstrate compliance with the state constitution, Water Code, and public trust principles. Absent all of the required components, MDWS’ applications cannot be approved.
Maui Meadows and Hui o Nā Wai `Ehā respectfully urge this Commission to deny the applications or defer action on them until MDWS provides all of the information detailed in this objection. Such information is no more and no less than is required by law to adequately review and analyze all proposed water uses and to protect the public interest in our public trust resources.

Mahalo for this opportunity to comment. If you have any questions or require additional information, please don't hesitate to contact me.

Me ke aloha,

D. Kapua Sproat

cc: George Tengan, Maui County Department of Water
Via First-Class U.S. Mail
To: Peter T. Young, Chairperson
Commission on Water Resource Management

From: Micah A. Kane, Chairman
Hawaiian Homes Commission

Subject: County of Maui, Water Use Permit Application, Iao Ground Water Management Area, Maui

Thank you for the opportunity to review the subject application. The Department of Hawaiian Home Lands (DHHL) has significant property interests in the Central Maui Water Service Area (CMWSA) that includes the following parcels:

<table>
<thead>
<tr>
<th>Location</th>
<th>TMK</th>
<th>Acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waiehu</td>
<td>3-2-12-:03, 3-2-13:01 &amp; 09, 3-2-21:01-41,</td>
<td>91.1</td>
</tr>
<tr>
<td>Paukukalo</td>
<td>3-3-5:01-91, 3-3-6:01-53 &amp; 55-101</td>
<td>61</td>
</tr>
<tr>
<td>Wailuku</td>
<td>3-4-11:32</td>
<td>0.2</td>
</tr>
<tr>
<td>Puunene</td>
<td>3-8-8:02 &amp; 08</td>
<td>726</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>878.3</td>
</tr>
</tbody>
</table>

DHHL is concerned that the subject application, as submitted by the County of Maui, may not reflect the foreseeable water needs of the Hawaiian home lands program within the CMWSA.

In April, 2004 the Hawaiian Homes Commission adopted the Maui Island Plan which is the formal document that identifies land use designations for existing and proposed uses of Hawaiian home lands on Maui for the next 20 years. The Maui Island Plan designates a range of uses within the CMWSA that includes homestead residential, community uses, general agriculture, commercial and industrial uses. Since the plan was only recently adopted, it is likely that the subject application may not recognize and allocate water for all existing and foreseeable Hawaiian home land uses.
In addition to designating land uses, the Maui Island Plan surveyed approximately 3,000 applicants of the Maui island wait list to better understand their area preference in regards to the location of future residential homesteads. Five (5) regions were provided to choose from, one of which was Central Maui. Findings revealed that Central Maui ranked number one (1) for area preference amongst native Hawaiian beneficiaries on Maui with 39.7% or 1,122 applicants choosing to reside there.

Given this high demand for residential uses in Central Maui, DHHL has begun a process to identify and acquire additional lands within Central Maui to further expand the Hawaiian homesteading program in Central Maui.

Therefore, in addition to current and foreseeable water uses for existing Hawaiian home lands within the CMWSA, the DHHL is acquiring new lands for homestead development that will require water in the future.

DHHL is in the process of finalizing the Maui Island Plan to prepare it for printing and distribution for agency and public use. The final plan will include projected water demands for proposed land uses within Central Maui.

In the interim, my staff will contact the Commission on Water Resource Management and the County of Maui to develop a better understanding between our agencies as to the water needs of the Hawaiian home lands program and to ensure that water is available for our uses as mandated by law pursuant to the State Water Code, HRS 174C-101, and further clarified by the Hawaii State Supreme court via the Waiola decision, See In re Waiola o Molokai, Inc., 103 Haw. 401, 430 (2004) (Waiola).

I appreciate your assistance. If you have any questions, please call Darrell Yagodich of our Planning Office at 586-3836.
PAUKUKALO (61.0 acres)
- TMK 3-3-05:01-91 (23.4 acres)
- TMK 3-3-06:01-53, 55-101 (37.6 acres)

WAILUKU (0.2 acre)
- TMK 3-4-11:32 (0.2 acre)

WAILUKU (0.2 acre)
- TMK 3-4-11:32 (0.2 acre)
June 21, 2004

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

   Honorable Chiyome L. Fukino, M.D., Director
   Department of Health
   Attn: Mr. Harold Yee
   Attn: Mr. William Wong

   Honorable Haunani Apoliona, Chairperson
   Office of Hawaiian Affairs

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

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

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

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

Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Response:

( ) We have no comments
( ) We have no objections
( ) Comments attached

Contact person: ____________________________ Phone: ____________________________
Signed: ____________________________ Date: ____________________________
July 13, 2004

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

RE: Objection to applications for Water Use Permits for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696, source TMK 3-3-27:31, location of use TMKs unspecified and multiple), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698, source TMK 3-3-2:28, location of use TMKs unspecified and multiple), Kepaniwai Well (Well No. 5332-05, WUP No. 699, source TMK 3-3-3:5, location of use TMKs unspecified and multiple), Mokuhau Wells 1 & 3 (Wells Nos. 5330-09 & 11, WUP Nos. 700 & 701 source TMK 3-3-2:24, location of use TMKs unspecified and multiple), and Iao Tunnel (Well No. 5332-02, WUP No. 680, source TMK 3-3-3:3, location of use TMKs unspecified and multiple), all in the Iao Ground Water Management Area, Maui.

Mr. Young and Commissioners,

The Office of Hawaiian Affairs (OHA) appreciates the opportunity to comment on these related Water Use Permit Applications (WUPA). OHA objects to the acceptance of these permits by the Commission as they are incomplete as specified herein. OHA requests that:

a) The applications be found by the Commission to be incomplete and returned to the applicant so they may add further information and resubmit; or
b) If the Commission is unwilling to deem the applications incomplete, orders a public hearing on the applications on Maui; and
c) Defers holding that public hearing until further information legally required is submitted to the Commission and interested parties with sufficient time for review; and
d) Combines the hearing with the anticipated hearing for the WUPA by Hawaii Commercial & Sugar Company for water from this aquifer; and

1 OHA notes that the well number referenced on the actual WUPA 697 (Waiehu Well 1) is 5431-01 but is referenced on the cover memo form and public notice for these WUPA as 5430-01. The comments herein refer to the actual Waiehu Well 1, regardless of the numbering error on the WUPA and/or the cover memo form and public notice.
2 OHA did not receive the final WUPA on the Iao tunnel in the packet of WUPA transmitted, though it is our understanding it was substantively similar to the others.
e) Also combines in a hearing with any other WUPA for existing uses in this Management Area that are filed before the one year deadline following designation.

We have the three major comments and objections.

1. **The applicant has failed to consider the impacts of continuing these withdrawal Water Rights, as is required by law.**

   Applicants who seek to continue existing or establish new uses of water from a designated bear the burden to prove that, among other things, their continuing withdrawals will not affect Hawaiian Water Rights, including the rights of Hawaiian Home Lands, traditional and customary appurtenant rights of taro lands. The applicant has a cursory examination of the effect of these withdrawals on Hawaiian Home Lands, which we find inadequate but leave to that agency to comment on. We note and object to the fact, however, that the other two classes of rights noted above receive no treatment in these WUPA.

   The Commission has already found as fact that there is a relationship between ground wa which these Native Hawaiian Water Rights depend (Iao and Waihee Aquifer Systems State and 60103 Ground-Water Management Area Designation Findings of Fact, November 14, 2002). Therefore, there is no reason for the applicant to completely ignore the effects of their pro withdrawals on these rights.

   A meaningful consideration of these issues should include at least:

   a) An inventory and assessment of the traditional and customary Native Hawaiian rights that exist in this area which are dependent on surface water.

   b) An inventory and assessment of kalo cultivation in this area, including existing but unused appurtenant rights to grow kalo.

   c) An examination of the degree to which continued ground water withdrawals deplete surface water, thereby affecting these rights.

2. **The applicant has not meaningfully addressed the question of how the proposed continuance of withdrawals may threaten the sustainability of the aquifer.**

   These applications seek to continue withdrawals from the recently designated Iao Ground-Water Management Area. According to the water code, designation follows after “It can be reasonably determined...that the water resources in an area may be threatened by existing or proposed withdrawals of water...” (HRS §174C-1/1). Indeed, in this case commission staff found in 2002 that at that point, “…authorized planned withdrawals are not sustainable yields” (Iao and Waihee Aquifer Systems State Aquifer Codes 60102 and 60103 Ground-Water Management Area Designation Findings of Fact, November 14, 2002, page ix).

   Protection of Native Hawaiian Water Rights is related to the overall quality of this aquifer which will necessarily affect OHA’s beneficiaries and their rights. However, the applicant has not adequately address how the proposed continuance of withdrawals will not harm the aquifer.

   While the Applicant mentions in their WUPA various measures they are taking or consider to conserve water and develop alternate sources, the lack of any quantified estimate of how that might reduce demand makes any assessment of the import of these actions impossible. The applicant needs to provide at least such estimates so the Commission and interested parties such as OHA can assess their potential to reduce demand on the aquifer.
OHA also notes that the sustainable yield that has been set has not considered the effect of a maximum withdrawal of ground water in this area on surface water in this area, and hence on the above mentioned Native Hawaiian Water Rights. It is possible and perhaps likely that these sustainable yield figures will need to be further reduced to protect said rights.

3. The permit application should be considered simultaneously with other permit applications for existing uses within this ground water management area.

As we previously have mentioned in our objections to Hawaii Commercial & Sugar Company's recent WUPA for water from this area, OHA believes the Commission can not consider applications in a newly designated case by case basis without either a) prejudicing users who apply later in the one year deal and/or b) failing to protect the resource, the public trust, or Native Hawaiian Water Rights. All timely filed applications for continued use in this area be considered simultaneously.

Thank you for the opportunity to comment. If you have further questions, please contact me Scheuer at 594-1946 or email him at jonathans@oha.org.

Sincerely,

[Signature]

Clyde W. Nāmu'o
Administrator

CC: County of Maui
    Department of Water Supply
    200 South High Street
    Wailuku, HI 96793
Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwai Wells (Well No. 5332-05, WUP No. 699), Mokuau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Response:

☐ We have no comments
☐ We have no objections
☐ Comments attached
☐ OBJECTIONS

Contact person: Jonatha Liweke Schauer, Ph.D.
Signed: 
Phone: (808) 594-1946
Date: 7/13/04
June 21, 2004

TO:
Honorable Micah Kane, Director
Department of Hawaiian Home Lands
Honorable Chiyoue L. Fukino, M.D., Director
Department of Health
Attn: Mr. Harold Yee
Attn: Mr. William Wong
Honorable Haunani Aholiona, Chairperson
Office of Hawaiian Affairs
Honorable Dain P. Kane, Chairperson
County Council
County of Maui
Mr. Michael W. Foley, Director
Planning Department
County of Maui

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

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

Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwa: Well (Well No. 5332-05, WUP No. 699), Molokau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

CI:ss
Attachment(s)

Response:

We have no comments
We have no objections
Comments must be in the mail

Contact person: Robyn Loudermilk
Phone: 270-7185
Signed: Robyn L. Loudermilk
Date: 7/12/04
July 7, 2004

TO: Peter T. Young, Chairperson
Commission on Water Resource Management
Department of Land and Natural Resources

FROM: Anthony J. H. Ching, Executive Officer

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

We have reviewed the subject application forwarded by your transmittal dated June 21, 2004, and find that Waihee 1 Well (No. 5431-02), Waihee 2 Well (No. 5431-03), Waiehu Heights 1 Well (No. 5430-01), Waiehu Heights 2 Well (No. 5430-02), Mokohau 1 Well (No. 5330-09), and Mokohau 3 Well (No. 5330-11), as generally represented on the USGS maps, are designated within the boundary of the State Land Use Agricultural District. Kepaniwai Well (No. 5332-05), as generally represented on the USGS map, is designated within the boundary of the State Land Use Conservation District.

With respect to your request as to whether the current designation is appropriate for the proposed project, please be advised that although sections 205-2(d) and 205-4.5(a), Hawaii Revised Statutes, do not explicitly list wells as permissible activities or uses within the Agricultural District, we have in the past noted that when the requested water was directly accessory to the uses specified in the aforementioned sections, the activities appeared to be appropriate uses within the Agricultural District. To the extent that the water requested in the subject application would be used for municipal use in Central Maui, we would defer to the County zoning designation of the respective parcels, which we understand permits water wells as minor utility facilities.

With respect to Kepaniwai Well, which is within the Conservation District, inasmuch as the establishment of permitted activities or uses within said district is under the jurisdiction of the Department of Land and Natural Resources pursuant to chapter 183C, Hawaii Revised Statutes, we have no comments to offer on this matter.
Thank you for the opportunity to comment on the subject application. As requested, we are returning the cover memo for the subject application.

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

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

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

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

June 21, 2004

Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhana Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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

We have attached a TMK map(s) that covers the proposed use area(s). Where water is proposed for use on only a portion of a TMK parcel, or on parcels with multiple zoning, the proposed use area(s) has been clearly delineated on the attached map. Please respond by returning this cover memo along with your review comments by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Response:

( ) We have no comments
( ) We have no objections
(u) Comments attached

Contact person: Bert Sauratari
Signed: 

Response:

Phone: 587-3822
Date: July 6, 2004
TO: Dede Mamiya, Administrator
   Land Division
FROM: Yvonne Y. Izu, Deputy Director
   Commission on Water Resource Management
SUBJECT: Request for Comments
   Water Use Permit Application
   Iao Ground Water Management Area, Maui

Transmitted for your review and comment is a copy of a water use permit application for Maui
Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 693 & 696),
Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No.
5332-05, WUP No. 699), Mokuau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao
Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News

We would appreciate your review of the attached application for any conflicts or inconsistencies with the
programs, plans, and objectives specific to your division only. Please respond by returning this cover memo
form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no
comments.

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

Class: Attachment(s)

Response:

( ) A water lease/permit is required of this applicant and an application for such will be requested by
our division.

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

( ) 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: County of Maui-owned land.

Contact person: Gary Martin Phone: 587-0421
Signed: Date: JUL 7 2004
June 21, 2004

TO: Honorable Micah Kane, Director
   Department of Hawaiian Home Lands
   Honorable Chiyoame L. Fukino, M.D., Director
   Department of Health
   Attn: Mr. Harold Yee
   Attn: Mr. William Wong
   Honorable Haunani Apoliona, Chairperson
   Office of Hawaiian Affairs
   Honorable Dain P. Kane, Chairperson
   County Council
   County of Maui
   Mr. Michael W. Foley, Director
   Planning Department
   County of Maui

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

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

Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Class: Attachment(s)

Response:

☐ We have no comments
☐ Comments attached

Contact person: Bill Worf
Phone: 586-4258
Date: JUL - 2 2004

Signed: Bill Worf
June 21, 2004

TO: Honorable Micah Kane, Director
    Department of Hawaiian Home Lands
Honorable Chiyome L. Fukino, M.D., Director
    Department of Health
Attn: Mr. Harold Yee
Attn: Mr. William Wong
Honorable Haunani Apoliona, Chairperson
    Office of Hawaiian Affairs
Honorable Dain P. Kane, Chairperson
    County Council
    County of Maui
Mr. Michael W. Foley, Director
    Planning Department
    County of Maui

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

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

Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Response:

☐ We have no comments
☐ We have no objections
☐ Comments attached

Contact person:              Phone: 5874297
Signed:                     Date: 6-25-2004
TO: Honorable Micah Kane, Director  
Department of Hawaiian Home Lands  
Honorable Chiyome L. Fukino, M.D., Director  
Department of Health  
Attn: Mr. Harold Yee  
Attn: Mr. William Wong  
Honorable Haunani Apoliona, Chairperson  
Office of Hawaiian Affairs  
Honorable Dain P. Kane, Chairperson  
County Council  
County of Maui  
Mr. Michael W. Foley, Director  
Planning Department  
County of Maui

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

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

Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Cl: ss  
Attachment(s)

Response:  
☐ We have no comments  
☐ We have no objections  
☐ Comments attached

Contact person: LONI N. KOJWARA  
Phone: 808-429-6400

Signed: LONI N. KOJWARA  
Date: 6-25-2004
PUBLIC NOTICE

Application for Water Use Permit
lao Ground Water Management Area, Maui

The following application for water use permit has been received and is hereby made public in accordance with Department of Land and Natural Resources Administrative Rules 13-171, "Designation and Regulation of Water Management Areas."

Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), TMK:3-3-17:31; 1.480 mgd & 2.439 mgd.
Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), TMK:3-3-2:28; 0.165 mgd & 1.415 mgd.
Kepaniwai Well (Well No. 5332-05, WUP No. 699), TMK:3-3-3:5; 1.042 mgd.
Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), TMK:3-3-2:24; 1.994 mgd & 2.221 mgd.
lao Tunnel (Well No. 5332-02, WUP No. 680), TMK:3-3-3:3; 1.359 mgd.

Applicant: County of Maui
Department of Water Supply
200 South High Street
Wailuku, HI 96793

Date Completed Application Accepted: May 20, 2004
Aquifer: lao System, Wailuku Sector, Maui
Water Source: Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and the lao Tunnel (Well No. 5332-02, WUP No. 680).
Quantity Requested: see respective individual use amounts from each source, above, totaling 12.115 million gallons per day.
Existing/New Water Use: Existing
Place of Water Use: Central Maui Service Area at Tax Map Key: 2-1 (por) and 3-2 through 3-9, inclusive

Written objections or comments on the above application may be filed by any person who has property interest in any land within the hydrologic unit of the source of water supply, any person who will be directly and immediately affected by the proposed water use, or any other interested person. Written objections shall: (1) state property or other interest in the matter (provide TMK information); (2) set forth questions of procedure, fact, law, or policy, to which objections are taken; and (3) state all grounds for objections to the proposed permit. Written objections must be received by July 14, 2004. Objections must be sent to 1) the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809 and 2) the applicant at the above address.

COMMISSION ON WATER RESOURCE MANAGEMENT

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

Dated: JUN 15 2004

Publish in: Maui News issues of June 23, 2004 and June 30, 2004
June 21, 2004

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

Dear Mr. Tengan:

We acknowledge receipt, on May 20, 2004, of your completed water use permit applications for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680).

You can expect your application to be processed within ninety (90) days from the date of receipt unless there are objections to your application.

Enclosed is a copy of the public notice for your water use permit applications which will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

Please be aware that there may be objections to your application. If objections are made, the objector is required to file such objections with the Commission and is also required to send you a copy of the objections.

You, or any other party, may respond to objections by filing a brief in support of your application with the Commission within ten (10) days of the filing of an objection. You, or the other party, must also send a copy of the response to the objector.

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

Sincerely,

W. Roy Handy

YVONNE Y. IZU  
Deputy Director

CI:ss  
Enclosure
June 21, 2004

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

FROM: Yvonne Y. Izu, Deputy Director
Commission on Water Resource Management

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

Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, Wup Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the attached application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your division only. Please respond by returning this cover memo form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Response:

( ) We have no comments
( ) We have no objections
( ) Comments attached

Contact person: ___________________________ Phone: ___________________
Signed: ___________________________ Date: ___________________
June 21, 2004

TO: Dede Mamiya, Administrator
Land Division

FROM: Yvonne Y. Izu, Deputy Director
Commission on Water Resource Management

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

Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the attached application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your division only. Please respond by returning this cover memo form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Response:

( ) 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: ____________________________
Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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

We have attached a TMK map(s) that covers the proposed use area(s). Where water is proposed for use on only a portion of a TMK parcel, or on parcels with multiple zoning, the proposed use area(s) has been clearly delineated on the attached map. Please respond by returning this cover memo along with your review comments by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Cl: ss
Attachment(s)

Response:

( ) We have no comments
( ) We have no objections
( ) Comments attached

Contact person: ___________________________ Phone: ___________________________
Signed: ___________________________ Date: ___________________________
June 21, 2004

TO:  
Honorable Micah Kane, Director  
Department of Hawaiian Home Lands  
Honorable Chiyome L. Fukino, M.D., Director  
Department of Health  
Attn: Mr. Harold Yee  
Attn: Mr. William Wong  
Honorable Haunani Apoliona, Chairperson  
Office of Hawaiian Affairs  
Honorable Dain P. Kane, Chairperson  
County Council  
County of Maui  
Mr. Michael W. Foley, Director  
Planning Department  
County of Maui

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

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

Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the proposed use that is described in the attached application (i.e. line item 6 or Table 1) for any conflicts or inconsistencies with the land use designations, programs, plans, or objectives specific to your organization or department only. Please respond by returning this cover memo form by July 14, 2004. If we do not receive your comments by this date, we will assume you have no comments.

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

Response:

We have no comments  
We have no objections  
Comments attached

Contact person: ________________________  
Phone: ________________________

Signed: ________________________  
Date: ________________________
June 21, 2004

Honorable Alan M. Arakawa, Mayor
County of Maui
200 South High Street
Wailuku, HI 96793

Dear Mayor Arakawa:

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

In accordance with the Department of Land and Natural Resources Administrative Rules, Section 13-171-17(a), we are sending you a copy of the public notice for the water use permit application for the Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waiehu Heights Wells 1 & 2 (Well Nos. 5430-01 & 02, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

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

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

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

Sincerely,

Peter T. Young
Chairperson

Cl:ss
Enclosures
Transmitted for your review and comment is a copy of a water use permit application for Maui Department of Water Supply for the Waihee Wells 1 & 2 (Well Nos. 5431-02 & 03, WUP Nos. 695 & 696), Waialua Heights Wells 1 & 2 (Well Nos. 5430-01 & 002, WUP Nos. 697 & 698), Kepaniwai Well (Well No. 5332-05, WUP No. 699), Mokuhau Wells 1 & 3 (Well Nos. 5330-09 & 11, WUP Nos. 700 & 701), and Iao Tunnel (Well No. 5332-02, WUP No. 680). Public notice of this application will be published in the Maui News issues of June 23, 2004 and June 30, 2004.

We would appreciate your review of the attached application for any conflicts or interferences with the programs, plans, and objectives of the organization or agency that you represent. Written objections should be made in accordance with Section 13-171-18 of our Administrative Rules and must be filed by the July 14, 2004 deadline. If we do not receive your comments by this date, we will assume you have no comments.

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

Response:

( ) We have no comments
( ) We have no objections
( ) Comments attached

Contact person: ________________________________ Phone: ____________________________

Signed: ____________________________ Date: ____________________________
Memo to File
21 June 04
Telephone conversation with Ellen Kraftsow regarding revised WUPAs for lao sources:

<table>
<thead>
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<th>Well No.</th>
<th>Well Name</th>
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<td>5332-02</td>
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<tr>
<td>5431-02</td>
<td>Waihee 1</td>
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<td>5431-03</td>
<td>Waihee 2</td>
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<td>5430-01</td>
<td>Waiehu Hts 1</td>
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<td>5430-02</td>
<td>Waiehu Hts 2</td>
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<td>5332-05</td>
<td>Kepaniwai</td>
<td>1.042</td>
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<td>5330-09</td>
<td>Mokuhau 1</td>
<td>1.994</td>
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<td>5330-11</td>
<td>Mokuhau 3</td>
<td>2.221</td>
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<td>(total)</td>
<td></td>
<td>12.115 mgd</td>
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</table>

Table 1 reflects the 12-MAV for these sources, and shows a final row distributing a proportional increase in demand that must be supplied by alternative sources in the future. The middle row of numbers showing incremental increases are deleted from Table 1 as an artifact of arithmetic not related to these sources. The double-asterisks in the first row are likewise incorrectly located, and belong on the last row. The last row numbers are being disregarded for the purposes of these "existing use" applications.

The total for the 12-MAV existing as of July 16, 2003, for these 8 sources, is 12.115.

The existing uses are the sole amounts to be considered in these applications; the proportional growth will be considered as new use, to be considered upon application for new sources.
June 16, 2004

Ms. Yvonne Y. Izu, Deputy Director
Commission on Water Resource Management
State of Hawaii Department of Land and Natural Resources
PO BOX 621
Honolulu, Hawaii 96809

Re: Revised Water Use Applications

Dear Ms. Izu:

This is in response to your letter of June 10, 2004 regarding clarification of Table 1 for the Water Use Permit application for Iao Tunnel (Well No. 5332-02). Please find attached revised Table 1 for all Iao source water use permits submitted by the Department. The revised Table reflects projected demand and number of services based on the fraction of moving average (MAV) pumpage of the source over MAV total pumpage for the Central system. As we clarified in our supplemental water use permit application for Iao Tunnel, the Central system sources are co-mingled so that the exact number of services or demand served by an individual source cannot be identified.

Where 4-year projected demand for all Iao sources combined exceed the MAV as of designation, excess demand will be met from either Waihee aquifer surface sources or other sources.

Should you have any questions, please contact me or Ellen Kraftsow of my staff at: (808) 270-7199.

Sincerely,

George Y. Tengan
Director

By Water All Things Find Life
### TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASES (Include address if applicable)</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE COUNTY ZONING CODE</th>
<th>UNITS or NET ACRES</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>ULTIMATE DEMAND GDP (TO BUILD OUT)</th>
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<td>YEAR 1 (POTABLE)</td>
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</table>

**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 where the existing use was initiated. Also, the Department of Planning and Permitting (DPP) must sign before application is acceptably complete. Please consult with DPP at 660 South King Street, 7th Floor, Honolulu, HI 96813. Attn: Arthur O. Challescombe.
TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASES</th>
<th>POTABLE</th>
<th>NONPOTABLE</th>
<th>TMK</th>
<th>STATE LUG</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS (Acre)</th>
<th>GPDB/UNIT</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>ULTIMATE DEMAND GPDT (TO BUILD OUT)</th>
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Only for verification that: 1) TMKs listed are consistent with zoning; and 2) projects listed are allowed with respect to zoning.

DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE

DATE

TOTAL: GPDT
### Table 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASES</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE LAND</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS or NET ACRES</th>
<th>START OF NEW USE</th>
<th>END OF NEW USE</th>
<th>5-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>4-YEAR DEMAND</th>
<th>GDP (TO BUILD OUT)</th>
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**TOTAL: GPD**

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**TABLE 1. TMKs TO USE REQUESTED WATER**

<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASES (include address if applicable)</th>
<th>EXISTING OR NEW USE (if existing; fill in date of first use)</th>
<th>POTABLE OR NONPOTABLE</th>
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<th>STATE LUG</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS OR NET ACRES</th>
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</table>

*TOTA GPD*

**DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE**

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

Instructions for completing Table 1: Individual projects and phases must be listed separately and numbered sequentially on Table 1. Copy Table 1 and attach additional sheets if necessary. Please indicate individual projects and phases on TMK maps by clearly delineating project areas and indicating sequential number within delineated areas to coincide with Table 1. Please attach a separate sheet giving the address and a brief description of each project and phase listed above. In addition, if the proposed use is existing, please provide the WUP No. or indicate when the existing use was initiated. Also, the Department of Planning and Permitting (DPP) must sign before application is acceptably complete. Please consult with DPP at 850 South King Street, 7th Floor, Honolulu, HI 96813 Attn: Arthur D. Challacombe
### Table 1: TMKs to Use Requested Water

<table>
<thead>
<tr>
<th>Project Name &amp; Phase</th>
<th>Potable or Nonpotable</th>
<th>TMK</th>
<th>State</th>
<th>Current County Zoning Code</th>
<th>Units of Net Acres</th>
<th>GPD/Net Acre</th>
<th>6-Year Cumulative Projected Demand</th>
<th>Ultimate Demand GPD (to Build Out)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central System</td>
<td>Potable</td>
<td>Multiple</td>
<td>VARIOUS</td>
<td>17,391</td>
<td>25.703</td>
<td>26.204</td>
<td>26.705</td>
<td>27.207</td>
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<td>Waihee, surface or other sources</td>
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Total: GPD

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 WLP No. or indicate when the existing use was initiated. Also, the Department of Planning and Permitting (DPP) must sign before application is acceptably complete. Please consult with DPP at 650 South King Street, 7th Floor, Honolulu, HI 96813 Attn: Arthur D. Challecombe.
## TABLE 1. TMKs TO USE REQUESTED WATER

<table>
<thead>
<tr>
<th>1. CENTRAL SYSTEM</th>
<th>POTABLE</th>
<th>MULTIPLE</th>
<th>VARIOUS</th>
<th>17,391</th>
<th>25.703</th>
<th>26.204</th>
<th>26.705</th>
<th>27.207</th>
<th>27.207</th>
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</table>

**TOTAL GPD**

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<th>PROJECT NAME &amp; PHASES</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE / COUNTY ZONING CODE</th>
<th>UNITS</th>
<th>GPD</th>
<th>GPD/ACRE</th>
<th>YEAR 1 (y)</th>
<th>YEAR 2 (y)</th>
<th>YEAR 3 (y)</th>
<th>YEAR 4 (y)</th>
<th>GPD (TO BUILD OUT)</th>
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<tbody>
<tr>
<td>1. Central system</td>
<td>potable multiple</td>
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<td>17,391</td>
<td>25.703</td>
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</tbody>
</table>

**additional demand to be met by Waihee, surface or other sources**

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<th>EXISTING OR NEW USE</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE LAND CODE</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS</th>
<th>PERIOD</th>
<th>OPPUNITIES FOR OPPACRE</th>
<th>YEAR 1</th>
<th>YEAR 2</th>
<th>YEAR 3</th>
<th>YEAR 4</th>
<th>ULTIMATE DEMAND UNITS (TO BUILD OUT)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. CENTRAL SYSTEM</td>
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<td>VARIOUS</td>
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<td>23.703</td>
<td>26.204</td>
<td>26.705</td>
<td>27.207</td>
<td>27.207</td>
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<td></td>
</tr>
<tr>
<td>2. MOKUHAU 3</td>
<td>SERVICES</td>
<td>1612*</td>
<td>MGD</td>
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<tr>
<td>3. MOKUHAU 3</td>
<td>FRACTION OF MAV FOR THIS</td>
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<td>4. MOKUHAU 3</td>
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<td>5. CENTRAL SYSTEM</td>
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</tbody>
</table>

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PERMITTEE INFORMATION
1. (a) APPLICANT
   MAUI COUNTY DEPT OF WATER
   (b) LANDOWNER OF SOURCE
   GEORGE TENGAN, DIRECTOR
   ALAN ARAKAWA, MAYOR
   200 S HIGH ST, WAILUKU HI
   200 S HIGH ST, WAILUKU HI 96793
   Phone (808) 270-7816 (808) 270-7833
   george.tengan@co.maui.hi.us
   Phone (808) 270-7855 (808) 270-7870
   E-mail george.tengan@co.maui.hi.us
   Address 200 S HIGH ST, WAILUKU HI

SOURCE INFORMATION
2. WATER MANAGEMENT AREA: IAO AQUIFER
3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER:
    WAIHEU HTS 2 5430-02
    (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME:
    (c) LOCATION: Address - See attached map
       (Attach and show source location on a USGS map, scale 1"=2000', and a property tax map)

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

6. LOCATION OF PROPOSED WATER USE: (If possible, show on same maps as source location. Otherwise, attach similar maps)
   □ PUC-Regulated Private System 
   □ Intended Dedication to Dept./Board of Water Supply 
   □ Non-PUC-Regulated Private System 
   □ Tax Map Key: Please complete Table 1 on back of application and shade applicable portion of property tax map.
7. QUANTITY OF WATER REQUESTED: 1,415 million gallons per day (averaged over 1 year)
8. METHOD OF MEASUREMENT: □ Flowmeter
   □ Open-pipe
   □ weir
   □ Orifice
   □ Other (explain)
9. QUALITY OF WATER REQUESTED: □ Fresh
   □ Brackish
   □ Salt
   □ Potable
   □ Non-Potable
10. PROPOSED USE: □ Municipal (including hotels, stores, etc.)
    □ Individual Domestic
    □ Irrigation
    □ Industrial
    □ Military
    □ Other (explain)
11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 24 hours
    (daytime hours of operation; example, 7 a.m. to 2 p.m.)
12. APPLICANT MUST ESTABLISH THAT THE PROPOSED USE OF WATER:
   (a) Can be accommodated with the available water source.
   (b) Is a reasonable-beneficial use.*
   (c) Will not interfere with any existing legal use.
   (d) Is consistent with the public interest.
   (e) Is consistent with state and county general plans and land use designations.
   (f) Is consistent with county land use plans and general policies.
   (g) Will not interfere with the rights of the Department of Hawaiian Home Lands.
   *Section 13-171-2, Hawaii Revised Statutes
   "Reasonable-beneficial use" means the use of water in such a quantity as is necessary for economic and efficient utilization, for a purpose, and in a manner which is not wasteful and is both reasonable and consistent with the state and county land use plans and the public interest.
13. REMARKS, EXPLANATIONS:

NOTE: Signing below indicates that the signatories understand and agree that: 1) the information provided on this application is accurate and true to the best of their knowledge; 2) Item 14 is the responsibility of the applicant prior to Commission approval; 3) If necessary, further information may be required before the application is considered complete; 4) If a water use permit is granted by the Commission, this permit is subject to prior existing permitted uses, changes 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) GEORGE TENGAN
Signature 5/17/04
Date
Landowner (print) COUNTY OF MAUI
Signature ALAN ARAKAWA, MAYOR
Date 5/14/04

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

<table>
<thead>
<tr>
<th></th>
<th>EXISTING USE</th>
<th>NEW USE</th>
<th>POTABLE/ NONPOTABLE</th>
<th>TMK</th>
<th>STATE</th>
<th>CURRENT COUNTY ZONING</th>
<th>UNITS OF NET ACRES</th>
<th>GPD/ACRE</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
<th>ULTIMATE DEMAND (GPD TO BUILD OUT)</th>
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<tbody>
<tr>
<td>1.</td>
<td>N/A</td>
<td>1977</td>
<td>potable multiple various</td>
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<td>25.70</td>
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<td>MGD</td>
<td>27.20</td>
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<td>Central Maui Service Area</td>
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**TOTAL GPD**

**DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE**

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

Instructions for completing Table 1: Individual projects and phases must be listed separately and numbered sequentially on Table 1. Copy Table 1 and attach additional sheets if necessary. Please indicate individual projects and phases on TMK maps by clearly delineating project areas and indicating sequential number within delineated areas to coincide with Table 1. Please attach a separate sheet giving the address and a brief description of each project and phase listed above. In addition, if the proposed use is existing, please provide the WUP No. or indicate when the existing use was initiated. Also, the Department of Planning and Permitting (DPP) must sign before application is acceptably complete. Please consult with DPP at 650 South King Street, 7th Floor, Honolulu, HI 96813 Attn: Arthur D. Chalkecome

\[
\frac{25.703}{17.39} = \approx 1.48
\]
APPLICATION FOR WATER USE PERMIT – Use Information

12(a) The proposed use of water can be accommodated with the available water source:
Proposed water use of 1.415 million gallons per day (MGD) is the moving average withdrawals (MAV) from Waiehu Heights 2 well as of June 2003. Installed pump capacity is 1.79 MGD, according to the CWRM database.

Waiehu Heights 2 well along with lao and Waihee aquifer sources and surface water treated by the lao Treatment Plant serve the Central Maui System. These sources are mixed so that Waiehu Heights 2 well is not the single source serving any specific area. MAV from these sources combined were from July 1, 2002 to June 30, 2003 was 24.447 MGD, broken down as follows:
- lao aquifer: 18.063 MGD
- Waihee aquifer: 4.536 MGD
- lao Tunnel: 1.359 MGD
- lao Treatment Plant: 0.489 MGD

Water meter reservations as of July 2003 was 565,150 gallons per day (GPD), with an additional 97,000 GPD for Department of Hawaiian Homelands. Withdrawals and reserved meters total 25.109 MGD. Average yearly consumption for Central Maui during the period July 1, 2002 to June 30, 2003 was 20.955 MGD. System losses and unaccounted-for water makes up the difference.

12(b) The proposed use of water is a reasonable-beneficial use
Consumption for single-family use, which represents 16% of total use in Central Maui, average 543 GPD, compared to the system standard of 600 GPD. Acreage breakdown for the entire Central system is not available to compare use calculations for other classes.

Planning steps to protect the aquifer and utilize the source in a reasonable and beneficial manner:
- a. Distribute the withdrawals within lao aquifer; development of new sources:
  - lao well. Currently in design. Development anticipated by end 2005
  - Waikapu Mauka – developed and pump installed. On hold until foreclosure of additional land required resolved
- b. Relocate withdrawals outside of the aquifer; development of new sources within Waihee aquifer:
  - Well planned by private developer to be dedicated to the County.
  - Kupaa 1: On-line by end 2004
- c. Provide additional surface water sources:
  - lao Treatment Plant – increase capacity to 2.4 MGD. Anticipated on-line by end 2004
- d. Alternative sources: East Maui source development, temporary use of existing well
- e. Conservation:
  - Leak detection, in-house repairs
  - Automated radio-read meters replace old, under-registering meters
  - Reclaimed water use at commercial properties within 100 ft of R-1 distribution systems.
  - Reclaimed water use encouraged for dust control

Conservation pricing and rate structures
Low flow fixtures required in new developments. Code sets flow limits. Free fixture
distribution
Outdoor conservation
Public education: targeted conservation checklists, media, activities and events,
demonstration gardens, participatory learning.
Additional conservation programs to be reviewed during the Water Use and Development
Plan process.
f. Conservation rules: forestall water shortage, negligent or wasteful use
g. Resource protection: watershed, surface water and wellhead protection programs
h. Monitoring and modeling of aquifer status. Agreement with USGS to study groundwater
availability in Central Maui

12(c) The proposed use of water will not interfere with any existing legal use
The well and land parcel is owned by Maui County Department of Water Supply. The parcel is
zoned Agriculture. The zoning allows for water wells defined as minor utility facilities.

12(d) The proposed use of water is consistent with the public interest
The Waiehu Heights 2 source is mixed with lao and Waihee aquifer sources to serve the Central
Maui System. This public system serves 17,070 customers in the communities extending from
Waiehu, through Wailuku, Kahului, Puunene, Sprecklesville, Paia and Kuau on the North, and
from Maalaea through Kihei to Makena on the South.

12(e) The proposed use of water is consistent with state and county general plans and
land use designations
Proposed water use and withdrawals from the Central Maui sources will meet current demand as
built-out in accordance with the Wailuku, Paia-Haiku and Kihei-Makena Community Plan
designations and consistent with land use designations. The Water Use and Development Plan
(WUDP) is being updated in consistence with the 1990 Maui County General Plan, the County
Community Plans, the State Water Resources Protection Plan, the State Water Quality Plan, the
State Water Projects Plan, and the State Agricultural WUDP.

12(f) The proposed use of water is consistent with county general plans and general
policies
During the WUDP update process, the Department's ongoing source development and capital
improvement programs support the General Plan objectives "to provide an adequate supply of
potable and irrigation water to meet the needs of Maui County's residents" and "to make more
efficient use of our ground, surface and recycled water sources".

12(g) The proposed use of water will not interfere with the rights of the Department of
Hawaiian Home Lands
There are no DHHL wells withdrawing from the lao aquifer. However, the Central Maui System
services DHHL projects.
Central Maui Sources
Service Area "A"
Central Maui Sources
Service Area "B"

- Central Maui Sources service area
- Tax Map Key parcel
June 17, 2011

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

Dear Chairperson Aila:

Subject: Water Shortage Plan for DEC-ADM97-A1 Modification of Water Use Permits (WUP No. 680 to WUP No. 920, WUP No. 699 to WUP No. 921, WUP No. 817 to WUP No. 922, and WUP No. 864 to WUP No. 923) Iao Ground-Water Management Area

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

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

Sincerely,

David Taylor
Director

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

enclosure

"By Water All Things Find Life"
16-9-1 Purpose.
16-9-2 Definitions.
16-9-3 Caution low groundwater condition.
16-9-4 Alert low groundwater condition.
16-9-5 Critical low groundwater condition.
16-9-6 Mandatory restrictions related to Alert low groundwater condition.
16-9-7 Mandatory restrictions related to Critical low groundwater condition.
16-9-8 Surcharge Penalties for Alert and Critical low groundwater condition
16-9-9 Penalties.
16-9-10 Procedures for control of water use during Alert or Critical low groundwater level conditions.
16-9-11 Termination of Caution, Alert or Critical low groundwater level conditions
16-9-12 Exemption of private wells within designated groundwater control areas.
16-9-13 Effective date.

16-9-1 Purpose. The purpose of the rule is to prevent overdraft of Iao aquifer. [Eff. 03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

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

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

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

16-9-3 Caution low groundwater condition.
(a) A caution low groundwater condition exists:
   (1) At any time the 12 month moving average pumpage of gallons of water withdrawn from the Iao Aquifer exceeds 95% of the sustainable yield of the Iao Aquifer; or
   (2) Whenever chloride content reaches the absolute limit in ppm chloride shown in Column A in Schedule 1 in more than one area based on a 3 month moving average.
(b) The board shall at any time during the period in which a caution low groundwater condition exists inform the public that a caution low groundwater condition exists. Thereafter the director shall:
   (1) Conduct an intensive public appeal for water conservation through the mass media;
   (2) Institute voluntary irrigation and other water use schedules to reduce water consumption;
   (3) Send letters to large consumers and other private well operators asking them to cut back their usage; and
   (4) Notify the Mayor, Maui County Council, and the State Commission on Water Resources Management.
(c) The goal for draft reduction is 5% of Iao Aquifer sustainable yield as determined by the Commission on Water Resources Management.
(d) Consumers shall be given a target of a 10% reduction of their base period water use as the goal for reduction of water use in the caution low groundwater condition.
No new applications for water meters or payment of the water system development fee shall be accepted by the Department at any time when the combination of actual pumpage from the Iao Aquifer plus the amount of water estimated to be used, based on paid for meter reservations for meters which have not been physically installed, equals or exceeds 98%.

The following procedure shall be followed to issue meters after the caution low ground water condition is lifted:

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

The director shall, at each board meeting while a caution low groundwater condition exists, report to the board:

1. The status of the chloride levels of the department's facilities listed in Schedule 1;
2. The weekly average of daily pumpage; the effectiveness of the voluntary conservation measures being advocated; increase or decrease in public appeals to conserve water; and
3. Such other information which the board may require from time to time to evaluate the status of the low condition and make modification to the voluntary conservation measures being advocated.

16-9-4 Alert Low Groundwater Condition.

(a) An alert low groundwater condition exists:

1. At any time the 12 month moving average pumpage of gallons of water withdrawn from the Iao Aquifer reaches 98% of the sustainable yield of the Iao Aquifer; or
2. Whenever chloride content reaches the absolute limit in ppm chloride shown in Column B in Schedule 1 in more than one area based on a 3 month moving average.

(b) The board shall at any time during the period in which an alert low groundwater condition exists declare that an alert low groundwater condition exists. Thereafter the director shall:

1. Implement mandatory restrictions pursuant to Section 16-9-6 of these rules;
2. Take appropriate action against those person(s) failing to comply with these provisions as permitted within these and the other Board Rules and Regulations;
3. Take any action authorized to be taken pursuant to Section 16-9-3 of these rules; and
4. Notify the Mayor, Maui County Council, and the state Commission on Water Resources Management.

(c) Private wells.

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

Example:

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* Highest Average Daily Pumpage for Each Month of the Year Over the Last 5 years for John Doe Well.
Jan - 2.4 mgd
Feb - 2.0 mgd
Mar - 1.9 mgd
Apr - 2.6 mgd
etc - etc

(2) In no case shall the allotment be less than 90% of the highest average daily draft for each month of the year over the last five years;
(3) Any Owner of two or more separate wells may regulate the draft of their wells so that aggregate monthly draft will not exceed the combined monthly allotment for all of their wells;

(d) The goal for draft reduction is 10% of Iao Aquifer sustainable yield as determined by the Commission on Water Resources Management.
(e) Consumers shall be given a target of a 15% reduction of their base period water use as the goal for reduction of water use in the alert low ground water condition.
(f) The director shall, at each board meeting while an alert low groundwater condition exists, report to the board:
(1) The status of the chloride levels of the department's facilities listed in Schedule 1;
(2) The weekly average of daily pumpage; the restrictions and allotments in force; plans to increase or decrease public appeals to conserve water; and
(3) Such other information which the board may desire or require from time to time to evaluate the status of the low groundwater condition and make modification to the mandatory conservation measures being advocated.[Eff. 03/15/99] (Auth: HRS 54-33) (Imp: HRS 54-33)

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

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

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

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

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

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

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

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

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

A. Failure to do so would cause an unnecessary and undue hardship to the applicant, including but not limited to adverse economic impacts such as loss of production or jobs;
B. Failure to do so would cause an emergency condition affecting the health, sanitation, fire protection, or safety of the applicant or the public;
C. For single family residences with more than four persons permanently residing in the home, if a written application for exception is granted as provided herein, the applicable allotment shall be increased by 40 gallons per person per day for each person permanently residing in the home in excess of four persons;
D. For multiple residential units with more than two dwelling units where the allotment is less than 280 gallons per day per dwelling unit, if a written application for an exception is granted as provided herein, the applicable allotment shall be 280 gallons for each unit; and
E. Denial of an application for exception may be appealed in writing to the board, which shall consider the appeal as a contested case pursuant to Board of Water Supply Rules of Practice and Procedure, Title 16, chapter 2.

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

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

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

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

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

Adopted on the 14th day of January, 1999, by the Board of Water Supply of the County of Maui.
## LOW GROUNDWATER SCHEDULE 1

**COLUMN A**
("Caution Low Ground-Water Condition")

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**COLUMN B**
("Alert" Low Ground-Water Condition)

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**COLUMN C**
("Critical" Low Ground-Water Condition)

<table>
<thead>
<tr>
<th>Area</th>
<th>Absolute Chloride Level ppm</th>
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<tr>
<td>Wailuku</td>
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<tr>
<td>Shaft</td>
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<tr>
<td>Mokuhau</td>
<td>200</td>
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<tr>
<td>Waiehu Heights</td>
<td>200</td>
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<tr>
<td>Waiehu</td>
<td>120</td>
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<tr>
<td>Heights</td>
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<tr>
<td>Kepaniwai</td>
<td>80</td>
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</table>
Chloride concentrations at Waiehu Hts 1 are still high.

----- Forwarded by Kevin L Gooding/DLNR/StateHiUS on 02/21/2006 10:36 AM -----

"Cari Sumabat"
<Cari.Sumabat@co.maui.hi.us>
02/21/2006 09:53 AM

To <Kevin.L.Gooding@hawaii.gov>
cc

Subject Re: Chlorides at Waiehu Hts 1 and 2

Hi Kevin!
Sorry but I've been off island for awhile. Samples were taken 2/9/06:
Waiehu Hts 514-310 mg/L
Waiehu Hts 515-120 mg/L
Waiehu Hts Tank-110 mg/L

Cari Sumabat
Water Microbiologist IV
Water Quality Laboratory
Department of Water Supply
County of Maui
614 Palapala Drive
Kahului, Maui, Hawaii 96732

Cari.Sumabat@co.maui.hi.us

NOTICE: The information in this transmittal, including any attachments, is privileged and confidential and is intended only for the recipient(s) listed above. Any unauthorized review, use, disclosure, distribution or copying is prohibited. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.
Revised Measuring-Point Elevations for Selected Wells in the Waihee and lao Aquifer Areas on the Island of Maui

The USGS has been working with the National Geodetic Survey (NGS) to update benchmark and well measuring-point elevations in central Maui as part of a ground-water availability study with the Maui Department of Water Supply. The purpose of this effort is to ensure that water-level monitoring wells used in this study are tied to a common and accurate vertical datum. Benchmark and reference-mark elevations were determined by the NGS using differential GPS (Global Positioning System) methods during September 2-4, and November 18-20, 2003. Well measuring-point elevations were determined by the USGS using vertical leveling surveys from NGS benchmarks and USGS reference marks during September 22-26, and December 15-19, 2003.

Measuring-point elevations for selected wells in the Waihee and lao aquifer areas are provided below. The difference between the previously reported and the revised measuring-point elevation for each well is also provided. Leveling notes and photographs of the measuring points are available in well folders maintained by the USGS Water Resources office in Honolulu.

It is important to recognize that the revised well measuring-point elevations will result in a modification of the absolute water levels (referenced to mean sea level), but not the relative change in water levels measured over time (trend).

Historical water levels measured in these wells may be revised pending further research into possible causes for the differences between the previously reported and the revised well measuring-point elevations. Future water-level measurements will be based on the revised well measuring-point elevations.

Related links:
Ground-Water Availability in Central Maui - Project description
Recent Hydrologic Conditions, lao Aquifer area, Maui - Updated every three months

<table>
<thead>
<tr>
<th>Well name</th>
<th>Well no.</th>
<th>Revised1</th>
<th>Previous</th>
<th>Difference2</th>
<th>Notes regarding previous well measuring-point elevations³</th>
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<tr>
<td>Kupaa 1</td>
<td>5731-03</td>
<td>638.77</td>
<td>639.37</td>
<td>-0.60</td>
<td>C. Takumi Engineering report (1/31/00) provides MP elevation of 639.37 ft for top of casing, based on leveling from a benchmark elevation of 631.87 ft located about 200 ft from well (Exhibit A-1, Mink &amp; Yuen, 6/21/99). Driller's well-completion report provides MP elevation of 638.10 ft for top of casing (5/20/99). No record of MP survey notes and initial benchmark. Wailani Drilling and Ed Valera (surveyor) combined trigonometric leveling (using a total station and vertical angles) from Tanaka's work and a carpenter's level to get the initial height of casing.</td>
</tr>
</tbody>
</table>

[RM, reference mark; MP, measuring point; ft, feet; --, no data]

Released January 6, 2004; Updated May 21, 2004 using final NGS benchmark elevations.
<table>
<thead>
<tr>
<th>Location</th>
<th>Well Log</th>
<th>Depth</th>
<th>MP Elevation</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kanoa TH</td>
<td>5731-05</td>
<td>303.56</td>
<td>305.22</td>
<td>USGS reports MP elevation of 305.22 ft for top of casing, based on leveling from nearby RM - 1-inch pipe (1/22/03). RM elevation of 304.50 ft provided by C. Takumi Engineering. No record of RM survey notes and initial benchmark. K. Tanaka set the 1/2-in. pipe using trigonometric leveling (using a total station and vertical angles).</td>
</tr>
<tr>
<td>Kanoa 1</td>
<td>5731-02</td>
<td>308.14</td>
<td>--</td>
<td>Driller's well-completion report has elevation of 309.15 ft for top of pump base plate (5/29/99). No record of MP survey or initial benchmark.</td>
</tr>
<tr>
<td>Kanoa 2</td>
<td>5731-04</td>
<td>280.48</td>
<td>--</td>
<td>Driller's well-completion report has MP elevation 281.83 ft for top of sounding tube (6/7/00). C. Takumi Engineering report (Aug. 2000) has 281.38 ft for top of sounding tube (Exhibit A, Mink &amp; Yuen, 7/12/00).</td>
</tr>
<tr>
<td>North Waihee 1</td>
<td>5631-02</td>
<td>283.76</td>
<td>285.23</td>
<td>USGS reports MP elevation of 285.23 ft for top of measuring tube, based on leveling from nearby RM - 3/4 inch pipe (8/12/97). RM elevation of 266.63 ft given by W.S. Unemori Engineering. No record of RM survey notes and initial benchmark in well folder, however. Unemori confirms this elevation from their notes. From information provided by Reed Ariyoshi of W.S. Unemori, and Wendy Taomoto, MDWS, the best estimate of the difference between the top of the casing prior to pump installation and the measuring tube after installation is 1.01 ft (old casing higher in elevation). As a result, the old mp for data prior to August 1997, 284.78 ft, is very close to the new measuring tube elevation plus 1.01 ft (284.77 ft).</td>
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<tr>
<td>North Waihee 2</td>
<td>5631-03</td>
<td>283.62</td>
<td>--</td>
<td>Height of measuring point modified after pump installation. Measuring tube modified twice since pump installation in 1997 and leveling on 8/12/97. USGS reports MP elevation of 284.39 ft for top of measuring tube on 8/12/97. USGS reports MP elevation of 284.33 ft for top of measuring tube on 3/30/99 after first modification, based on measuring up from base plate elevation of 284.11 ft. Previous leveling on 9/12/97 and 3/30/99 are based on RM (3/4-inch pipe) elevation of 266.63 ft provided by W.S. Unemori Engineering. No record of RM survey notes and initial benchmark in well folder, however, Unemori confirms this elevation.</td>
</tr>
<tr>
<td>Location</td>
<td>MP Number</td>
<td>Top Casing Elevation</td>
<td>Top Box Elevation</td>
<td>Notes</td>
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<td></td>
<td>5430-04</td>
<td>380.95</td>
<td>380.66</td>
<td>USGS reports MP elevation of 380.66 ft for top of 1.75-inch PVC casing, based on leveling from nearby RM - &quot;X&quot; chiseled in concrete at entrance to TH D shelter (8/23/85). RM elevation of 380.01 ft provided by Dan Lum, DOWALD (8/29/83). No record of RM survey notes and initial benchmark.</td>
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<tr>
<td></td>
<td>5430-05</td>
<td>381.16</td>
<td>380.84</td>
<td>USGS reports MP elevation of 380.84 ft for top of 10-inch casing, based on leveling from RM - &quot;X&quot; chiseled in concrete at entrance to TH D shelter (8/23/85). RM elevation of 380.01 ft provided by Dan Lum, DOWALD (8/29/83). No record of RM survey notes and initial benchmark.</td>
</tr>
<tr>
<td>Waiehu TH D</td>
<td>5431-01</td>
<td>492.15</td>
<td>492.51</td>
<td>USGS reports MP elevation of 492.51 ft for top of 1.5-inch PVC casing (9/24/75). However, later field notes show top of casing as 491.79, and top of surrounding wooden box as 492.51. No record of MP survey notes and initial benchmark. Probably surveyed from State of Hawaii benchmark U-6: 250.37 ft (1974). Driller's report provides elevation of 493.97 ft for top of drilling platform. Well has been measured from top of wooden box since USGS started measuring well in July, 1982. Well modified 3/31/04 by USGS, adding 0.74 ft to top of PVC casing. Revised MP (top of PVC casing) combines changes due to recent surveying and modification. Elevation of top of box was lowered by 0.42 ft from results of 2003/2004 surveying.</td>
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<tr>
<td>Waiehu TH B</td>
<td>5430-02</td>
<td>338.05</td>
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<td>Notes in well folder show pump refurbishment in 1998. Measurement tube likely installed at that time. No prior leveling notes or references in USGS well folder.</td>
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<tr>
<td></td>
<td>5330-09</td>
<td>353.37</td>
<td>353.79</td>
<td>-0.42</td>
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<td>Mokuhau 1 (Pump 2)</td>
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<td>32.33</td>
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<td>519.33</td>
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<td>5131-01</td>
<td>764.87</td>
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USGS reports MP elevation of 32.17 ft for top of casing, based on leveling from Wailuku Courthouse NGS benchmark elevation of 331.066 ft (4/17/97).

USGS reports MP elevation of 519.33 ft for top of casing, based on leveling from Waikapu 1 MP elevation of 551.33 ft (6/21/83). DOWALD as-built drawing provides elevation of 519.47 ft for top of 20-inch casing.

USGS surveying on 12/29/03 to top of 6-inch threaded coupling welded to plate that is welded to the top of the 18-inch casing (highest point after removing plug). CWRM well completion report and Water Resources International as-built drawing provides elevation of 764.7 ft for top plate welded to 18-inch casing.

<table>
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<tr>
<th></th>
<th>5330-09</th>
<th>353.37</th>
<th>353.79</th>
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<tr>
<td>Mokuhau 1 (Pump 2)</td>
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1 Revised well measuring-point elevations were determined by the USGS using vertical leveling from National Geodetic Survey benchmarks and reference marks in December 2003. NGS benchmark and reference mark elevations provided by NGS on 1/20/04. Leveling notes and photographs of the measuring points are available in well folders maintained by the USGS Hawaii District Office.

2 Difference calculated by subtracting the previous from the revised well measuring-point elevation.

3 All information contained in USGS well folder.

4 Maui Department of Water Supply refers to this well as Mokuhau Pump 2 (Well 502) whereas Commission on Water Resource Management well index refers to this well as Mokuhau 1.
**WCR 2 Check for Well No. 5430-02** (survey to regulation memo)

1. **Pump Tests Check** *(special condition of PIP? Yes/No)*
   - Glenn Bauer (initial if yes)
   - If no, describe deficiency

   **Step-Drawdown Test:**
   - acceptable
   - followed WCPI Stds
   - analysis attached
   - proposed pump cap o.k.

   **Aquifer Pump Test:**
   - acceptable
   - followed WCPI Stds
   - T & S analysis attached

   **Well Interference:**
   - estimated Steady-State drawdown at 1-mile radius is __________ ft.
   - analysis attached

   **Stream Surface Water Impacted:**
   - If yes, identify most probable stream

2. **Pump Installation Check**
   - Mitch Ohye (initial)
   - If no, describe deficiency

   - data complete
   - followed WCPI Stds
   - wellphys.dbf updated
   - welaplic.dbf updated

---

*Note in handwriting:*
- A minor issue: the new test assembly is the same as the old one.
January 26, 1999

Honorable Timothy E. Johns, Chairperson
State of Hawaii
Department of Land & Natural Resources
COMMISSION ON WATER RESOURCE MANAGEMENT
P. O. Box 621
Honolulu, Hawaii 96809

Dear Mr. Johns:

Subject: Waiehu Heights 2 Well - State Well No. 5430-02
TMK 3-3-002:028, Waiehu, Maui, Hawaii

Due to diminishing pump rates, the Waiehu Heights 2 Well was replaced during December 1998. Pump capacity remains the same.

Well completion report is enclosed.

If you have any questions, please contact Andy Pascua, Acting Water Systems Superintendent, Plant Maintenance Branch, 808/243-7551.

Sincerely,

David Craddick, Director
AP/jaw
Enclosure
PART II. (PERMANENT) PUMP INSTALLATION REPORT

20. Pump Installation Company: Roscoe Moss Hawaii, Inc.
21. Name of person performing work: John Mole
22. Date Pump Installation Completed: 12-23-98
23. PUMP INSTALLATION:
   Pump Type, Make, Serial No.: VT Peerless Capacity: 1250 gpm
   Motor type, H.P., Voltage, rpm: VHS
   Depth of Pump Intake Setting 360 ft. below Head, which elevation is 337 ft.
   Depth to bottom of airline 354 ft. below Head, which elevation is 337 ft.
   Pumping Head is 370 ft. Type of flow meter: Ventur which measures in GPM
24. As-built drawings attached? X Yes No
25. Other remarks/comments: (See below)

Pump Installation Contractor (print) Roscoe Moss Hawaii, Inc. C-57 Lic. No. AC-16437
Signature __________________________ Date __________________________

Applicant (print) David Cradick, Director
Signature __________________________ Date __________________________

8. (cont'd) DRILLER'S LOG (cont'd):

<table>
<thead>
<tr>
<th>Water Level Dates</th>
<th>Depth (ft.)</th>
<th>Rock Description, Remarks</th>
<th>Water Level Dates</th>
<th>Depth (ft.)</th>
<th>Rock Description, Remarks</th>
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Form (Check Appropriate Box)  
☐ Well Construction  ☐ (Permanent) Pump Installation

Instructions: Please print or type and submit completed report within 30 days after well completion to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. An as-built drawing of the well and chemical analysis should also be submitted. For assistance call the Commission Regulation Branch at 587-0225, or 1-800-468-4644 Extension 70225.

1. State Well No.: 5430-02  
2. Well Name: Waiehu Hts 2  
   Island: Maui

### PART I. WELL CONSTRUCTION REPORT

3. Drilling Company: ____________________________
4. Name of driller who performed work: ____________________________
5. Type of rig/construction: ____________________________
6. Date(s) Well Construction and pump tests (if any) completed: ____________________________
7. GROUND ELEVATION (referenced to mean sea level, msl): ____________________________ ft.
   Well Bench Mark (description/location): ____________________________
   Elevation(msl): ____________________________ ft.

8. DRILLER'S LOG: Please attach geologic log (if available or if required by permit)
   Depths (ft.)  Rock Description, Water Level, Dates, etc.  Depths (ft.)  Rock Description, Water Level, Dates, etc.
   _____ to _____  ____________________________  to  ____________________________
   (If more space is needed, continue on back.)

9. Total depth of well below ground: ____________________________ ft.
10. Hole size: ____________________________ inch dia. from  _______ ft. to  _______ ft. below ground
    ____________________________ inch dia. from  _______ ft. to  _______ ft. below ground
    ____________________________ inch dia. from  _______ ft. to  _______ ft. below ground

11. Casing installed: ____________________________ in. I.D. x ____________________________ in. wall solid section to  _______ ft. below ground
    ____________________________ in. I.D. x ____________________________ in. wall perforated section to  _______ ft. below ground
    Casing Material/Slot Size: ____________________________

12. Annulus:  Grouted from ____________________________ ft. below ground to  _______ ft. below ground
    Gravel packed from ____________________________ ft. below ground to  _______ ft. below ground

13. Initial water level: ____________________________ ft. below ground.  Date and time of measurement: ____________________________
14. Initial chloride: ____________________________ ppm  Date and time of sampling: ____________________________
15. Initial temperature: ____________________________ °F  Date and time of measurement: ____________________________

16. PUMPING TESTS: Reference Point (R.P.) used: ____________________________, which elevation is ____________________________ ft.
   (1) Step-Drawdown Test Date ____________________________
       Start water level ____________________________ ft. below R.P.
       End water level ____________________________ ft. below R.P.
   (2) Long-term Aquifer Test Date ____________________________
       Start water level ____________________________ ft. below R.P.
       End water level ____________________________ ft. below R.P.

17. Aquifer Pump Test Procedures data & graphs (1/9/96 LTAT Form) attached?  Yes  No
18. As-built drawings attached?  Yes  No
19. Other remarks/comments: (On back of this form)

Well Drilling Contractor (print) ____________________________  C-57 Lic. No. ____________
Signature ____________________________  Date ____________________________

Surveyor (print) ____________________________  Lic. No. ____________
Signature ____________________________  Date ____________________________

Applicant (print) ____________________________
Signature ____________________________  Date ____________________________
PART II. (PERMANENT) PUMP INSTALLATION REPORT

20. Pump Installation Company: Roscoe Moss Hawaii, Inc.
21. Name of person performing work: John Mole
22. Date Pump Installation Completed: 12-23-98
23. PUMP INSTALLATION:
   Pump Type, Make, Serial No.: VT Peerless Capacity: 1250 gpm
   Motor type, H.P., Voltage, rpm: VHS
   Depth of Pump Intake Setting 360 ft. below Head, which elevation is 337 ft.
   Depth to bottom of airline 354 ft. below Head, which elevation is 337 ft.
   Pumping Head is 370 ft. Type of flow meter: Ventur which measures in GPM
24. As-built drawings attached attached? Yes No
25. Other remarks/comments: (See below)

Pump Installation Contractor (print) Roscoe Moss Hawaii, Inc.C-57 Lic. No. AC-16437
Signature William C. Moore, President
Date January 20, 1999
Applicant (print) David Craddick, Director
Signature Date January 26, 1999

8.(cont'd) DRILLER'S LOG (cont'd):

<table>
<thead>
<tr>
<th>Dates</th>
<th>Water Level (ft.)</th>
<th>Depth (ft.)</th>
<th>Rock Description, Remarks,</th>
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Well No. 5430-02 KAIEHU Hts. 2
Mr. David Craddock
Maui Board of Water Supply
P.O. Box 110
Wailuku, HI 96793

Dear Mr. Craddock:

Well Construction / Pump Installation Permit Application for Well No. 5430-02

We have received your pump installation permit application for the Waiehu Heights #2 Well (Well No. 5430-02). The Hawaii Well Construction and Pump Installation Standards, approved January 23, 1997, do not require an application for installation of a replacement pump of the same capacity. You are required to notify the Commission upon commencement of work (at most one working day after) and file a Well Completion Report Part 2.

However, we draw your attention to two wells for which we have issued permits and have not yet received Well Completion Reports:

Hāmoa Well (Well No. 4300-02)
Honokāhua Well (Well No. 5938-01)

We are again enclosing the current forms for Well Construction or Pump Installation Permit Applications and Well Completion Reports for your future use.

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

Sincerely,

EDWIN T. SAKODA
Acting Deputy Director

Cl:ss
Enclosures
<table>
<thead>
<tr>
<th>Well No.</th>
<th>Well Name</th>
<th>Applicant</th>
<th>Type</th>
<th>Rcvd</th>
<th>Accept</th>
<th>Approved</th>
<th>WCP</th>
<th>WCR Part 1</th>
<th>WCR Part 2</th>
<th>PIP</th>
<th>gpm/mgd</th>
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<td>WELL</td>
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**Total for MAUI:** 27

**Total for MOLOKAI:** 3

**Statewide:** 30

---

The applicant, Keanae, noted the need to check on these outstanding issues before the application is accepted.
APPLICATION FOR:  □ Well Construction or □ Pump Installation/Permit

Instructions: Please print or type and send completed application with attachments to the Div. of Water Resource Management, P.O. Box 373, Honolulu, HI 96809. Application must be accompanied by a non-refundable filing fee of $75.00 payable to the State of Land and Natural Resources. (Filing fee waived for government agencies.) If necessary, phone 548-7643, Hydrology/Geology Section for assistance.

1. WELL LOCATION/NAME: 5430-02 waiahu HTZ #2 Island Maui
   Address ____________________________ Tax Map Key 3-3-02-12
   (Attach a USGS map, scale 1:2000', and a property tax map showing well location reference in established property boundaries.)

2. (a) WELL OWNER:
   Firm Name: Board of Water Supply
   Contact Person: BRIAN CROWE
   Address: P.O. Box 1109
   Waiahu, Maui Ph: 808-785-16

3. PROPOSED CONTRACTOR:
   Name: Kosee Maka
   Contractor's License No: E-4-537
   Address: 91-2540 ELAI ST. EWA BEACH, HI 96707 Ph: 683-5334

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 sys.) □ Industrial
   □ Irrigation (specify) □ Other (specify) __________________________

6. PROPOSED AMOUNT OF WITHDRAWAL: 1.8 m. gallons per day

7. PROPOSED PUMP INFORMATION:

   Pump Type: □ Vertical Turbine □ Submersible □ Centrifugal
   Motor: □ Diesel □ Gas □ Electric, at a rated horsepower of ________
   Rated Pump Capacity: Gallons per minute 1250

Well Owner (print) Board of Water Supply Landowner (print) Board of Water Supply
Signature __________________________ Signature __________________________
Date 11/3/96 Date 11/3/96

For Official Use Only:
Field Checked By __________________________ Latitude __________________________
Date __________________________ Hydrologic Unit __________________________
State Well No. __________________________

5430-02 Waiahu HTZ #2 11/02-02-12
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
Division of Water Resource Management
Briefly describe the proposed work:

Remove existing pump and replace with same

PROPOSED SECTION OF WELL

Elevation at top of casing: 337 ft., msl.

Cement Grout: ___ ft.

Hole Diameter: ___ in.

Total Depth: 543 ft.

Rock Packing: ___ ft.

Ground Elevation: ___ ft., msl*

Solid Casing:
- Material: STEEL
- Length: 337 ft.
- Diameter: 14 in.
- Wall thickness: ___ in.

Casing: ☐ Perforated ☐ Screen
- Material: ___
- Length: ___ ft.
- Diameter: ___ in.
- Wall thickness: ___ in.
- Openings: ___ sq. in./L.F.

Open Hole:
- Length: ___ ft.
- 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.
**Floway Vertical Turbine Pump**

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<tr>
<th>Specification</th>
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<td>Frame No.</td>
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**Pump**

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<td>Zincless, EPDM</td>
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<td>Bowl Shaft</td>
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**Material**

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<tr>
<td>Faucet 2</td>
<td>Stainless Steel</td>
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**Performance Test Data**

- Certified by Floway Industries, Inc.
- Test data and performance details are listed in the technical manual.

**Notes**

- Not to be used for construction unless certified.
- Order No.: AG64, 144
- Supplier: Water Resources Int'l, Inc., Honolulu, Hawaii

**Construction Information**

- Serial No.: 75-6281-1-2
- Date: 7/7/97
- Job No.: P-164
- Rep.: T.F. P-164

**Floway Pumps, Inc.**

- Box 164
- Fresno, California
- Phone: 1-800-555-1234

**Contact Information**

- Fax No.: 808-531-1781
- Email: info@flowaypumps.com
- Website: www.flowaypumps.com
# Registration of Well and Declaration of Water Use

**Instructions:** Please type or print. If information is not available or not applicable, indicate as N/A. Fill out as completely as possible, sign, and file form with the Division of Water Resource Management, P.O. Box 373, Honolulu, Hawaii 96809. Phone 548-3948 or 548-7543 for assistance.

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

## State Well No.

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<tr>
<th>State Well No.</th>
<th>Maui</th>
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<td>5430-02</td>
<td>Waiehu Heights 2</td>
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### A. Well Operator

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<th>Firm name:</th>
<th>Dept. of Water Supply</th>
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<tr>
<td>Contact person:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td>P. O. Box 1109</td>
</tr>
<tr>
<td>Zip:</td>
<td>96793</td>
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<td>Phone:</td>
<td>243-7730</td>
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### B. Owner of Well Site

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<th>County of Maui</th>
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<td>Contact person:</td>
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<tr>
<td>Address:</td>
<td>200 S. High Street</td>
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<tr>
<td>Zip:</td>
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<tr>
<td>Phone:</td>
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### C. Well Location

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<td>Town, Place, District:</td>
<td>Wailuku</td>
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Attach USGS "Quad" map (scale 1:24,000), tax map, or other map showing the well location.

### D. Well Data

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

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

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<th>Ground Elevation (Mean Sea Level):</th>
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<td>Description:</td>
<td>Ground Surface</td>
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<tr>
<td>Depth to Water (Below Reference Point):</td>
<td>319 ft.</td>
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<tr>
<td>Maximum Recorded Chloride:</td>
<td>84 ppm</td>
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<td>Minimum Recorded Chloride:</td>
<td>14 ppm</td>
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<tr>
<td>Maximum Chloride in 1987:</td>
<td>84 ppm</td>
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Year Drilled or Constructed: 1975
Well Contractor: Water Resources International

| Casing Diameter: | 1 1/4 in. |
| Solid Casing Depth (Below Ground): | 337 ft. |
| Perforated Casing Depth (Below Ground): | 367 ft. |
| Total Depth of Well: | 543 ft. |
| Minimum Chloride in 1987: | 50 ppm |

### E. Installed Pump Data

| Pump Type: | Vertical Shaft |
| Power: | Diesel 150 HP |
| Pump Capacity: | 1,250 gallons per minute |
| Pump Installation Contractor: | Water Resources International |

(...continued over)

For Official Use Only:

<table>
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<th>Date received:</th>
<th>Date accepted:</th>
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<td>Date:</td>
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<td>Hydrologic Unit:</td>
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References: Hawaii Revised Statutes, Chapter 174C.
Hawaii Administrative Rules, Chapters 13-167 to 13-171.
October 4, 1990

Mr. William W. Paty, Chairman
Commission on Water Resource Management
State of Hawaii
P. O. Box 621
Honolulu, Hi 96809

Dear Mr. Paty:

Subject: Waiehu Heights 2 Well, Waiehu, Maui
Well No. 5430-02

We have received your letter with regard to the permit for pump installation for the Waiehu Heights 2 Well. We concur and will comply with all the provisions set forth in your letter.

Thank you for your swift response to our request.

Sincerely,

[Signature]
Rae M. Shikuma, Director
NGP/ao
cc: Engr.

"By Water All Things Find Life"
PUMP INSTALLATION PERMIT

for

Waiehu Heights 2 Well
Well No. 5430-02
Waiehu, Maui

TO: Department of Water Supply
County of Maui
P.O. Box 1109
Wailuku, Maui, HI 96793-7109

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 replace a pump in Waiehu Heights 2 Well (Well No. 5430-02), for municipal use, is approved subject to the following conditions:

1. The Division of Water Resource Management (DWRM), Geology-Hydrology Section, shall be notified at 548-7543, before any work covered by this permit commences.

2. The proposed use shall not adversely affect existing legal uses in the area.

3. The following shall be submitted to DWRM, P.O. Box 373, Honolulu, Hawaii 96809, within 30 days after completion of the work:
   a. Well Completion Report.
   b. Complete pumping test record, including time, pumping rate, drawdown, chloride content, and water quality data.

4. The applicant shall comply with all applicable laws, rules, and ordinances.
5. 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 shall be completed within two years of the date of issuance.

WILLIAM W. PATY, Chairperson
Commission on Water Resource Management

OCT 2, 1990
Date of Issuance

cc: USGS
    Department of Health
    Drinking Water Branch
    Ground Water Protection Program
Chairperson and Members
Commission on Water Resource Management
State of Hawaii
Honolulu, Hawaii

Gentlemen:

Maui Department of Water Supply
Application for Pump Installation Permits
Kualapuu Well, Hamoa Well, Waiehu Heights 2, and Honokahua B,
County of Maui

Applicant: Department of Water Supply
County of Maui
P.O. Box 1109
Wailuku, Maui, HI 96793-7109

Landowners: Various

The Maui Department of Water Supply requests permission to install pumps into the following wells for municipal use:

1. Kualapuu Well (Well No. 0801-03)

   Landowner: Molokai Ranch, Ltd.

   Proposed Action: Install new 900 gallons per minute pump.

   Proposed Amount of Withdrawal: 450,000 gallons per day.

   Analysis: The well was drilled in 1987 under the exploratory drilling program of the Department of Land and Natural Resources and turned over to the County Department of Water Supply for development. The well will develop fresh basal water and will become the primary source for Kaunakakai. No immediate adverse impacts are expected.

   Water Availability: The well is located in the Central Sector, Kualapuu System of Molokai, according to the latest work in conjunction with the Hawaii Water Plan. Sustainable yield is estimated at 7 mgd. Present use in the system is about 1 mgd.

   Agency Review: The Department of Hawaiian Home Lands (DHHL) "is extremely concerned about this application and recommends that it be denied at this time. Until the current difficulties surrounding water use from the Kualapuu aquifer are resolved, there should be no additional permits granted." The DHHL further recommends that the Commission "defer action on all well construction permit applications and on applications for new pumps or pumps of greater size than currently exist for those areas which impact on Hawaiian Home Lands until such time as the Native Hawaiian rights portion of the State Water Plan is completed."
RECOMMENDATION:

That the Commission approve the issuance of a pump installation permit for Kualapuu Mauka Well, subject to the following conditions:

1. The applicant shall notify the Division of Water Resource Management (DWRM) before work begins.

2. The applicant shall submit a well completion report to DWRM within 30 days after completion of the work.

3. The proposed use shall not adversely affect existing legal uses in the area.

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

5. The permit may be revoked if work is not started within six months of the date of issuance or if work is suspended or abandoned for six months. The work shall be completed within two years of the date of issuance.

2. Hamoa Well (Well No. 4300-02)

Landowner: Hana Ranch, Inc.

Proposed Action: Install new 200 gallons per minute pump.

Proposed Amount of Withdrawal: 82,000 gallons per day.

Analysis: The well was drilled in 1985 under the exploratory drilling program of the Department of Land and Natural Resources and turned over to the County Department of Water Supply for development. The well will develop fresh basal water and will supply the community of Hana. No adverse impacts are expected.

Water Availability: The well is located in the Hana Sector, Kawaipapa System of Maui, according to the latest work in conjunction with the Hawaii Water Plan. Sustainable yield is estimated at 48 mgd. Present use in the system is less than 0.5 mgd.

RECOMMENDATION:

That the Commission approve the issuance of a pump installation permit for Hamoa Well, subject to the same conditions as the previous permit.

3. Waiehu Heights 2 (Well No. 5430-02)

Landowner: County of Maui

Proposed Action: Replace existing 1,250 gpm pump with a new 1,250 gpm pump.

Proposed Amount of Withdrawal: 860,000 gallons per day.
Chairperson and Members
Commission on Water Resource Management

September 19, 1990

Water Availability: The well is located in the Wailuku Sector, Iao System of Maui, according to the latest work in conjunction with the Hawaii Water Plan. Sustainable yield is estimated at 20 mgd. Present use in the system is about 18 mgd.

RECOMMENDATION:

That the Commission approve the issuance of a pump installation permit for Waiehu Heights 2 Well, subject to the same conditions as the previous permit.

4. Honokahua B (Well No. 5938-01)

Landowner: Maui Land and Pine

Proposed Action: Install new 700 gallons per minute pump.

Proposed Amount of Withdrawal: 1,000,000 gallons per day.

Analysis: The well will develop fresh basal water and will supply the Lahaina-Alaeloa public water system. No immediate adverse impacts are expected.

Water Availability: The well is located in the Lahaina Sector, Honolua System of Maui, according to the latest work in conjunction with the Hawaii Water Plan. Sustainable yield is estimated at 8 mgd.

RECOMMENDATION:

That the Commission approve the issuance of a pump installation permit for Honokahua B Well, subject to the same conditions as the previous permit.

Respectfully submitted,

MANABU TAGOMORI
Deputy Director

APPROVAL FOR SUBMITTAL:

WILLIAM W. PATT, Chairperson
September 17, 1990

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: PUMP INSTALLATION PERMIT APPLICATION
WAIEHU HEIGHTS PUMP #2
STATE WELL NO. 5430-02
WAIEHU, MAUI

Thank you for the opportunity to review and comment on the subject application. The Department of Health has no objections as the application is for the replacement of a pump on an existing source of potable water.

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

Very truly yours,

JOHN C. LEWIN, M.D.
Director of Health

cc: Rae Shikuma
Director
Department of Water Supply
P.O. Box 1109
Wailuku, Maui, HI 96793
August 31, 1990

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

Dear Mr. Paty,

Pump Installation Permit Applications

Thank you for the opportunity to comment on these permit applications:

\Waiehu Heights 2 (Well No. 5430-02)
Hamoa Well (Well No. 4300-02)
Kualapuu Mauka Well (Well No. 0801-03)
Honokahua B (Well No. 5938-01)

Only the Kualapuu Mauka Well has potential impact on Hawaiian Homes Lands and upon native Hawaiian water rights. This well is located in the immediate vicinity of DHHL's main source for Hawaiian Home Lands on Moloka'i, and thereby draws from the same source. Information provided does not indicate what impact, if any, has been considered. We request an analysis of drawdown and sustainable yield for Well 0801-03 be provided for our consideration.

You may direct questions to Charley Ice in our Planning Office, 548-8785.

Warmest aloha,

Hoaliku L. Drake, Chairman
Hawaiian Homes Commission
Honorable Hoaliku L. Drake
Director
Department of Hawaiian Home Lands
State of Hawaii
P.O. Box 1879
Honolulu, Hawaii 96805

Dear Mrs. Drake:

Pump Installation Permit Applications

We are sending you copies of the following permit applications and ask that your staff review them to determine if Hawaiian Home Lands may be affected:

- Waiehu Heights 2 (Well No. 5430-02)
- Hamoa Well (Well No. 4300-02)
- Kualapuu Mauka Well (Well No. 0801-03)
- Honokahua B (Well No. 5938-01)

Please submit your comments to us, orally or in writing, within three weeks from the date of this letter.

Please call Manabu Tagomori at 548-7533 if you have any questions.

Very truly yours,

WILLIAM W. PATY

Encl.
June 13, 1990

Department of Land & Natural Resources
Commission on Water Resource Management
State of Hawaii
P. O. Box 621
Honolulu, Hawaii 96809

Gentlemen:

Re: PUMP INSTALLATION PERMITS

Pursuant to your letter of May 30, 1990, we are submitting applications for pump installation permits for the following projects:

1. Honokahua Well A, Repair of Controls. Permit not necessary
2. Honokahua Well B, Pump Installation. 5938-01
3. Waiehu Heights Pump #2, Pump Replacement. 5930-02
4. Hamoa Well, Pump Installation. 9300-02
5. Kapalua Well, Pump Installation. 0801-03

Kula Pani successful

Additional information requested are as follows:

1. Wakiu Wells "A" and "B" both have 40 horsepower motors and have capacities of 350 gpm.

2. Waihee Wells #1, #2, and #3 all flow through the same meter.

If any additional information is required, please contact us.

Sincerely,

Vince G. Bagoyo, Jr.
Director

ab
Enclosures
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 373, Honolulu, Hawaii 96809. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Department of Land and Natural Resources. (Filing fee waived for government agencies.) If necessary, phone 148-7443, Hydrology/Geology Section for assistance.

1. WELL LOCATION

Island

Tax Map Key

Address

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

2. WELL OWNER

Firm Name

Contact Person

Address

Phone

3. PROPOSED CONTRACTOR FOR:

Name

Address

Phone

4. PROPOSED WORK

Drill New Well

 Alter

Install New Pump

Deepen

Seal

Replace Pump

Redrill

Abandon

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

860,000 gallons per day

7. PROPOSED PUMP INFORMATION

Pump Type:

Vertical Turbine

Submersible

Centrifugal

Motor:

Diesel

Gas

Electric:

150 Rated Horsepower

Rated Pump Capacity 1250 gallons per minute (gpm)

Well Owner (print)

Signature

Date

Landowner (print)

Signature

Date

For Official Use Only:

Field Checked By

Latitude

Hydrologic Unit

Date

Longitude

State Well No. 5430-02

Note: Use of this form is restricted to the Commission's Hydrology/Geology Section. For further information, contact the Division of Water and Land Development, P.O. Box 373, Honolulu, Hawaii 96809.
Briefly describe the proposed work:

Install new 10" 5-stage pump, of same capacity as old pump

PROPOSED SECTION OF WELL

Elevation at top of casing ______ ft., msl.

Cement Grout ______ ft.

Hole Dia. ______ in.

Total Depth ______ ft.

Rock Packing ______ ft.

Ground Elev. ______ ft., msl*

Solid Casing:
Material __________________
Length __________________ ft.
Diameter __________________ in.
Wall thickness ____________ in.

Casing:  / Perforated  / Screen
Material __________________
Length __________________ ft.
Diameter __________________ in.
Wall thickness ____________ in.
Openings __________ sq. in./L.F.

Open Hole:
Length __________________
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.
Waiehu Heights Pump #2
(Well No. 5430-02)
PROJECT AREA

ISLAND OF MAUI
REGISTRATION OF WELL
AND
DECLARATION OF WATER USE

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

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

STATE OF HAWAII
COMMISSION ON WATER RESOURCE MANAGEMENT
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF WATER RESOURCE MANAGEMENT

REGISTRATION OF WELL
AND
DECLARATION OF WATER USE

STATE WELL NO.: 5430-02
WELL NAME OR DESIGNATION: Waiehu Heights 2
ISLAND: Maui

SOURCE OR STATION NAME (for a battery of wells):

A. WELL OPERATOR

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

B. OWNER OF WELL SITE

Firm name: County of Maui
Contact person: ______________________
Address: 200 S. High Street
Wailuku, Maui, Hawaii
Zip: 96793 Phone: ______________________

C. WELL LOCATION

Tax Map Key: 3-3-02:28 Town, Place, District: Wailuku

Attach USGS "Quad" map (scale 1:24,000), tax map, or other map showing the well location.

D. WELL DATA

For Drilled Wells, submit "as-built" drawing, driller's log, and pump test results, and complete item below.
For Tunnels and Shafts, submit construction drawings, plot plan, or sketch map.

Ground elevation (mean sea level): 337 ft.
Reference point (used to measure depth to water): 337 ft.
Description: Ground Surface
Depth to water (below reference point): 319 ft.
Maximum recorded chloride: 84 ppm
Minimum recorded chloride: 14 ppm
Maximum chloride in 1987: 84 ppm

E. INSTALLED PUMP DATA

Pump type: ☑ Vertical shaft ☐ Submersible ☐ Centrifugal ☐ Other (specify):
Power: ☐ Diesel, ___ HP ☐ Gas, ___ HP ☐ Electric, ___ HP ☐ Other (specify):
Pump capacity: 1,250 gallons per minute
Pump installation contractor: Water Resources International

... (continued over)

References: Hawaii Revised Statutes, Chapter 174C.
Hawaii Administrative Rules, Chapters 13-167 to 13-171.
F. DECLARATION OF WATER USE

NOTE: The purpose of the Declaration of Water Use is to obtain information necessary for the management of the State's water resources. The Declaration does not confer a legal right to water or its use.

Water use data are recorded: ☑ Daily ☐ Weekly ☐ Monthly

Method of measurement: ☑ Flow Meter ☐ Orifice

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

WATER USE, IN GALLONS x 1000

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<td>November</td>
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<td>December</td>
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<tr>
<td>ANNUAL</td>
<td></td>
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</tr>
</tbody>
</table>

Minimum day's use: _____________ gallons  Maximum day's use: _____________ gallons

Typical times of usage:

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

- ☑ Municipal (including resorts, hotels, businesses)
- ☐ Domestic (systems serving 25 people or less)
- ☐ Irrigation
- ☐ Industrial
- ☐ Military
- ☐ Other

Additional Information

Number of service connections: ________________________

Acres Irrigated:

Crop(s): ☑ Sugar ☐ Pineapple

Non-Crop: ☐ Landscape ☐ Golf Course

Method: ☐ Drip ☐ Furrow ☐ Sprinkler

☐ Cooling ☐ Manufacturing ☐ Mill

☐ Other (specify):

Specify (livestock, aquaculture, etc.): ________________________

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

Water User's Signature: ________________________ Date: __/__/__
Printed Name: ________________________
Firm or Title (Well Operator, etc.): Director of Department of Water Supply
County of Maui
# REGISTRATION OF WELL AND DECLARATION OF WATER USE

**INSTRUCTIONS:** Please type or print. If information is not available or not applicable, indicate as N/A. Fill out as completely as possible, sign, and file form with the Division of Water Resource Management, P.O. Box 373, Honolulu, Hawaii 96808. Phone: 548-3648 or 548-7643 for assistance.

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

### A. WELL OPERATOR

<table>
<thead>
<tr>
<th>Firm name:</th>
<th>Dept. of Water Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact person:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td>P.O. Box 1109</td>
</tr>
<tr>
<td>Zip:</td>
<td>96793</td>
</tr>
<tr>
<td>Phone:</td>
<td>243-7730</td>
</tr>
</tbody>
</table>

### B. OWNER OF WELL SITE

<table>
<thead>
<tr>
<th>Firm name:</th>
<th>County of Maui</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact person:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td>200 S. High Street</td>
</tr>
<tr>
<td>Zip:</td>
<td>96793</td>
</tr>
</tbody>
</table>

### C. WELL LOCATION

| Tax Map Key: | 3-3-02:28 |
| Town, Place, District: | Wailuku |

Attach USGS "Quad" map (scale 1:24,000), tax map, or other map showing the well location.

### D. WELL DATA

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

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

- **Ground elevation (mean sea level):** 336 ft.
- **Reference point (used to measure depth to water):** 336 ft.
- **Description:** Ground Surface
- **Depth to water (below reference point):** 318 ft.
- **Maximum recorded chloride:** 110 ppm
- **Minimum recorded chloride:** 14 ppm
- **Maximum chloride in 1987:** 110 ppm

**Well contractor:** Water Resources International

- **Year drilled or constructed:** 1975
- **Casing diameter:** 14 in.
- **Solid casing depth (below ground):** 337 ft.
- **Perforated casing depth (below ground):** 367 ft.
- **Total depth of well:** 675 ft.
- **Minimum chloride in 1987:** 37 ppm

### E. INSTALLED PUMP DATA

- **Pump type:** Vertical shaft
- **Power:** Diesel, 150 HP
- **Pump capacity:** 1250 gallons per minute
- **Pump installation contractor:** Water Resources International

**For Official Use Only:**

| Date received: | 3-26-84 |
| Date accepted: | |
| Field checked by: | Date: |
| Comments: | |

**Latitude:** 20° 54' 30" **Hydrologic Unit:**

**Longitude:** 156° 30' 44" **State Well No.:** 5430-01

**References:**

- Hawaii Revised Statutes, Chapter 174C.
- Hawaii Administrative Rules, Chapters 13-167 to 13-171.
F. DECLARATION OF WATER USE

NOTE: The purpose of the Declaration of Water Use is to obtain information necessary for the management of the State’s water resources. The Declaration does not confer a legal right to water or its use.

Water use data are recorded: ☑ Daily ☐ Weekly ☐ Monthly
☐ Other (Describe): _________________________ 

Method of measurement: ☑ Flow Meter ☐ Orifice
☐ Other (Describe): _________________________ 

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

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<td>125,785</td>
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Minimum day’s use: _________________________ gallons Maximum day’s use: _________________________ gallons

Typical times of usage: _________________________ 

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

<table>
<thead>
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<th>Category</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>☑ Municipal (including resorts, hotels, businesses)</td>
<td>Number of service connections: _________________________</td>
</tr>
<tr>
<td>☐ Domestic (systems serving 25 people or less)</td>
<td>Acres Irrigated: _________________________</td>
</tr>
<tr>
<td>☐ Irrigation</td>
<td>Crop(s): ☑ Sugar ☐ Pineapple</td>
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<td>Other (specify): _________________________</td>
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<td>☐ Irrigation</td>
<td>Non-Crop: ☑ Landscape ☐ Golf Course</td>
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<td>Other (specify): _________________________</td>
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<td>☐ Irrigation</td>
<td>Method: ☑ Drip ☐ Furrow ☐ Sprinkler</td>
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<td>Cooling ☐ Manufacturing ☐ Mill</td>
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<td>☐ Irrigation</td>
<td>Other (specify): _________________________</td>
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<tr>
<td>☐ Industrial</td>
<td>Specify (livestock, aquaculture, etc.): _________________________</td>
</tr>
<tr>
<td>☐ Military</td>
<td></td>
</tr>
<tr>
<td>☐ Other</td>
<td></td>
</tr>
</tbody>
</table>

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

Water User’s Signature: _________________________ Date: 1/24/89
Printed Name: Jack C. Bayly
Firm or Title (Well Operator, etc.): Director of Department of Water Supply
County of Maui
DATE: JUNE 24, 1975

SUBJECT: WATER ELEVATIONS IN TEST HOLES A-1, B, AND IN THE WAIEHU HEIGHTS ASSOCIATION WELLS.

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>TIME</th>
<th>ELEV*</th>
</tr>
</thead>
<tbody>
<tr>
<td>TEST HOLE A-1, WAIEE (NO. 5631-01)</td>
<td>1:40 PM</td>
<td>16.86</td>
</tr>
<tr>
<td>TEST HOLE B, WAIEHU (NO. 5431-01)</td>
<td>2:00 PM</td>
<td>17.47</td>
</tr>
<tr>
<td>WAIEHU HTS. ASSOC. WELL 1 (NO. 5430-01)</td>
<td>3:15 PM</td>
<td>17.43</td>
</tr>
<tr>
<td>WAIEHU HTS. ASSOC. WELL 2 (NO. 5430-02)</td>
<td>3:25 PM</td>
<td>17.47</td>
</tr>
</tbody>
</table>

*WATER ELEVATION GIVEN IN FEET ABOVE MEAN SEA LEVEL.
# Results of Salinity Tests

<table>
<thead>
<tr>
<th>Time</th>
<th>Date</th>
<th>NaCl</th>
<th>Cl⁻</th>
</tr>
</thead>
<tbody>
<tr>
<td>8:00 a.m.</td>
<td>5/29</td>
<td>26.4 ppm</td>
<td>16 ppm</td>
</tr>
<tr>
<td>12:00 noon</td>
<td>5/29</td>
<td>29.7 ppm</td>
<td>18 ppm</td>
</tr>
<tr>
<td>4:00 p.m.</td>
<td>5/29</td>
<td>29.7 ppm</td>
<td>18 ppm</td>
</tr>
<tr>
<td>8:00 p.m.</td>
<td>5/29</td>
<td>33.0 ppm</td>
<td>20 ppm</td>
</tr>
<tr>
<td>12:00 noon</td>
<td>5/29</td>
<td>36.1 ppm</td>
<td>21.9 ppm</td>
</tr>
<tr>
<td>4:00 p.m.</td>
<td>5/30</td>
<td>33.0 ppm</td>
<td>20 ppm</td>
</tr>
<tr>
<td>8:00 p.m.</td>
<td>5/30</td>
<td>33.0 ppm</td>
<td>20 ppm</td>
</tr>
<tr>
<td>12:00 noon</td>
<td>5/30</td>
<td>31.4 ppm</td>
<td>19 ppm</td>
</tr>
<tr>
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<td>5/31</td>
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<td>21.9 ppm</td>
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<td>8:00 p.m.</td>
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<td>31.4 ppm</td>
<td>19 ppm</td>
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<td>33.0 ppm</td>
<td>20 ppm</td>
</tr>
<tr>
<td>4:00 p.m.</td>
<td>5/31</td>
<td>33.0 ppm</td>
<td>20 ppm</td>
</tr>
<tr>
<td>8:00 p.m.</td>
<td>5/31</td>
<td>34.6 ppm</td>
<td>21 ppm</td>
</tr>
</tbody>
</table>

*NOTE: Phosphate tests were done to see whether any fertilizer infiltrated into the groundwater. Tests done by Maui Land and Pine Company showed no phosphate in the water samples tested. All salinity tests were also done by Maui Land and Pine Company.*
**DESCRIPTION**

Date of report: 6/6/75  
Person filing report: A. Laddick

A. **OWNER**: WAIHEU HTS ASSOC.  
**WELL NAME**: WAIHEU WELL #2  
**ISLAND**: MAUI

B. **GENERAL LOCATION**: TMK 3-3-0211

C. **DRILLING COMPANY**: WRW

D. **TYPE OF RIG**: SPENCER 3500  
**DRILLING COMPLETED**: 5/75  
**DRILLER**: A. Vierra

E. **ELEVATION, msl**: Top of drilling platform: ft.  
Bench mark and method used to determine height of drilling platform above ground surface: ft. elevation: ft. msl.

F. **HOLE SIZE**: 20 inch dia. to 31 ft. below drilling platform. Elev.  
13 inch dia. to 200 ft. below drilling platform. Elev.  
6 inch dia. to 10 ft. below drilling platform. Elev.

G. **CASING INSTALLED**: 14 in. I.D. x 5/16 in. wall solid section to 98 ft. below drilling platform. Elev.  
14 in. I.D. x 5/16 in. wall perforated section to 30.9 ft. below drilling platform. Elev.

H. **ANNULUS**: Grouted 1285.7 ft. to 108.97 ft. below drilling platform. Elev.

Gravel packed ft. to ft. below drilling platform.

**HYDROLOGY**

I. **PERMANENT PUMP INSTALLATION**:
   - Pump type, make, serial no.  
   - Motor type, H.P., voltage, r.p.m.  
   - Capacity g.p.m.  
   - Depth of pump intake setting ft. below which elevation is ft.
   - Depth of bottom of airline ft. below which elevation is ft.

J. **INITIAL WATER LEVEL**: 319 ft. below drilling platform. Date of measurement.

K. **INITIAL CHLORIDE**: ppm, total depth of well ft. below drilling platform.

L. **PUMPING TESTS**:
   - **REFERENCE POINT (R.P.)**: Used: which elevation is ft.
   - **Sampling Date**: Date.
   - **Start water level**: ft. below R.P. Elev.
   - **End water level**: ft. below R.P. Elev.
   - **Depth of well**: ft. below R.P.
   - **Elapsed Time (hours)**: to
   - **Rate (gpm)**: to
   - **Draw down (ft.)**:
   - **Temp. °F**: to
   - **Cl- ppm**: to

M. **DRILLER'S LOG**:

<table>
<thead>
<tr>
<th>Depth (ft)</th>
<th>Rock Description &amp; Remarks</th>
<th>Water Level (ft)</th>
<th>Depth (ft)</th>
<th>Rock Description &amp; Remarks</th>
<th>Water Level (ft)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 65</td>
<td>SOFT</td>
<td></td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>65 to 98</td>
<td>MEO</td>
<td></td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>98 to 182</td>
<td>HARD</td>
<td></td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>182 to 375</td>
<td>MEO</td>
<td></td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>375 to 515</td>
<td>SOFT</td>
<td></td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>515 to 545</td>
<td>HARD</td>
<td></td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
</tbody>
</table>

N. **REMARKS**:

**INSTRUCTIONS**: Send three(3) copies to: Manager-Chief Engineer, Division of Water and Land Development, P. O. Box 373, Honolulu, Hawaii 96809.


**FOR OFFICIAL USE**

Latitude: 20 54 32
Longitude: 156 30 44
Well No.: 5430-02

**FOR DRILLER'S USE**

Job Name: WAIHEU #2
Job No.: 144
WAIEHU HEIGHTS ASSOCIATION - WELL 2
(Well No. 5430-02)

Well 2 is located about 100 feet north of Well 1

Elevation: 337 feet;
Water Level: 18 feet above MSL;
Depth: 543 feet;
Date Started: April 25, 1975;
Dated Completed: May 18, 1975;
Diameter: 20 inches; 14" casing;
Driller: Water Resources International, Inc, Honolulu, Hawaii;
Casing: 337 feet solid 14" casing;
30 feet well screen, louvered type;
Method Drilled: Rotary with Aquagel;
Purpose: Domestic Water Supply;
Chloride: 20 ppm;
NaCl: 34 ppm;
Pump Test: Started on May 29, 1975 at 8:00 a.m., and stopped on June 1, 1975 at 8:00 a.m. (total of 72 hours); pump setting at 29 feet below MSL; pumping rate at 1300 g.p.m. Water level before pumping started was 18 feet above MSL. During pumping, water level stabilized at 3 feet below MSL. Water level in Well 1 dropped from 18.25 to 17.81 feet above MSL during the test. Three days after the pumping test, the water level in Well 1 had recovered to only 17.95 feet above MSL.

At Test Hole B, before pumping started at Well 2, the water level was 18.26 feet above MSL. During the pumping test, the water level at Test Hole B fell to 18.07 feet above MSL, but three days after pumping had ended, the water level was at 18.02 feet above MSL.
(The following was logged from cuttings by Dr. H. T. Stearns, Consulting Geologist, 4999 Kahala Avenue, Apt. 445, Honolulu, Hawaii 96816)

<table>
<thead>
<tr>
<th>Sample Labelled in feet</th>
<th>Formation</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 - 30</td>
<td>Brown mud with rock cuttings; do;</td>
</tr>
<tr>
<td>30 - 60</td>
<td>do;</td>
</tr>
<tr>
<td>60 - 90</td>
<td>do;</td>
</tr>
<tr>
<td>90 - 115</td>
<td>do;</td>
</tr>
<tr>
<td>115 - 120</td>
<td>Diverse basalt chips with some partly decomposed; do;</td>
</tr>
<tr>
<td>125 - 130</td>
<td>do;</td>
</tr>
<tr>
<td>140</td>
<td>do;</td>
</tr>
<tr>
<td>150</td>
<td>do;</td>
</tr>
<tr>
<td>160</td>
<td>do;</td>
</tr>
<tr>
<td>170</td>
<td>do;</td>
</tr>
<tr>
<td>180</td>
<td>do;</td>
</tr>
<tr>
<td>190</td>
<td>do, (may have hit undecomposed bedrock at 190); Diverse basalt chips with some partly decomposed; do;</td>
</tr>
<tr>
<td>200</td>
<td>Diverse basalt chips, only a few show weathering; do;</td>
</tr>
<tr>
<td>210</td>
<td>Diverse basalt chips, no weathering; do;</td>
</tr>
<tr>
<td>220</td>
<td>Diverse basalt chips, some chips partly weathered; do;</td>
</tr>
<tr>
<td>230</td>
<td>do;</td>
</tr>
<tr>
<td>240</td>
<td>Diverse basalt chips, very small chips; some containing white secondary minerals and diverse colors; do;</td>
</tr>
<tr>
<td>250</td>
<td>do;</td>
</tr>
<tr>
<td>260</td>
<td>do;</td>
</tr>
<tr>
<td>270</td>
<td>Olivine feldspar basalt, very small chips; do;</td>
</tr>
<tr>
<td>280</td>
<td>do;</td>
</tr>
<tr>
<td>300</td>
<td>Olivine feldspar basalt, chips smaller and more are reddish; do;</td>
</tr>
<tr>
<td>310</td>
<td>Olivine feldspar basalt, fewer olivines and some dense cuttings; do;</td>
</tr>
<tr>
<td>320</td>
<td>Olivine feldspar basalt, some chips slightly weathered; do;</td>
</tr>
<tr>
<td>330</td>
<td>do;</td>
</tr>
<tr>
<td>340</td>
<td>do;</td>
</tr>
<tr>
<td>350</td>
<td>Olivine feldspar basalt, very small chips; do;</td>
</tr>
<tr>
<td>360</td>
<td>Olivine feldspar basalt, very small chips, some containing white secondary minerals and diverse colors; do;</td>
</tr>
</tbody>
</table>
Olivine feldspar basalt, some slightly weathered;
Olivine feldspar basalt, some chips highly vesicular, some slightly weathered;
Olivine feldspar basalt, some chips highly vesicular;
do, numerous \( \frac{1}{4} \)" chips of red vitric tuff; 
do, tuff not present; 
do;
540 - 543 do, vesicular fragments abundant;

Bottom of hole = 543 feet

Note: The striking feature of these samples is their uniformity and monotonous character. The Wailuku Volcano Series penetrated by this hole were nearly all similar lavas.
## DRILLING RECORD - WELL 2 *

<table>
<thead>
<tr>
<th>Date</th>
<th>Depth Drilled (feet)</th>
<th>Time (hours)</th>
<th>Drilling Rate (feet per hour)</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 25</td>
<td>0 - 190</td>
<td>5 hrs. 4 min.</td>
<td>38.0</td>
</tr>
<tr>
<td>April 25</td>
<td>190 - 250</td>
<td>2 hrs.45 min.</td>
<td>21.8</td>
</tr>
<tr>
<td>April 27</td>
<td>250 - 360</td>
<td>4 hrs.30 min.</td>
<td>24.4</td>
</tr>
<tr>
<td>May 15</td>
<td>360 - 430</td>
<td>3 hrs.30 min.</td>
<td>20.0</td>
</tr>
<tr>
<td>May 16</td>
<td>430 - 543</td>
<td>7 hrs.18 min.</td>
<td>15.6</td>
</tr>
</tbody>
</table>

* Detailed record of actual drilling time kept by Norman Saito Engineering Consultants, Inc.*
WAIEHU HEIGHTS ASSOCIATION - WELL 2
(Well No. 5430-02)

* Results of Salinity Tests

<table>
<thead>
<tr>
<th>DATE</th>
<th>TIME</th>
<th>NaCl (ppm)</th>
<th>Chloride (ppm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/29/75</td>
<td>8:00 a.m.</td>
<td>26.4</td>
<td>16</td>
</tr>
<tr>
<td>5/29/75</td>
<td>12:00 noon</td>
<td>29.7</td>
<td>18</td>
</tr>
<tr>
<td>5/29/75</td>
<td>4:00 p.m.</td>
<td>29.7</td>
<td>18</td>
</tr>
<tr>
<td>5/29/75</td>
<td>8:00 p.m.</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>5/29/75</td>
<td>12:00 midnight</td>
<td>36.1</td>
<td>21.9</td>
</tr>
<tr>
<td>5/30/75</td>
<td>4:00 a.m.</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>5/30/75</td>
<td>8:00 a.m.</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>5/30/75</td>
<td>12:00 noon</td>
<td>31.4</td>
<td>19</td>
</tr>
<tr>
<td>5/30/75</td>
<td>4:00 p.m.</td>
<td>36.1</td>
<td>21.9</td>
</tr>
<tr>
<td>5/30/75</td>
<td>8:00 p.m.</td>
<td>31.4</td>
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</tr>
<tr>
<td>5/30/75</td>
<td>12:00 midnight</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
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<td>4:00 a.m.</td>
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<td>8:00 a.m.</td>
<td>33.0</td>
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<td>5/31/75</td>
<td>12:00 noon</td>
<td>33.0</td>
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<td>4:00 p.m.</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>5/31/75</td>
<td>8:00 p.m.</td>
<td>34.6</td>
<td>21</td>
</tr>
<tr>
<td>5/31/75</td>
<td>12:00 midnight</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>6/1/75</td>
<td>4:00 a.m.</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>6/1/75</td>
<td>8:00 a.m.</td>
<td>34.6</td>
<td>21</td>
</tr>
</tbody>
</table>

* Salinity test results from Warren S. Unemori Engineering, Inc.

** Phosphate tests were done to see whether any fertilizer infiltrated into the groundwater. Tests done by Maui Land and Pineapple Co. showed no phosphate in water samples tested. All salinity tests were also done by Maui Land and Pineapple Co.
**DESCRIPTION**

Date of report: 4/16/75  
Person filing report: DR. RADDICK

A. OWNER: WAIEHU HTS ASSOCIATION  
NAME: WAIEHU WELL #2  
ISLAND: MAUI

B. GENERAL LOCATION:  
T.M. 3-3-0211

C. DRILLING COMPANY: WRIIL.

D. TYPE OF RIG: SPANNER 3500  
DRILLING COMPLETED: 5/15/75  
DRILLER: A. VIERRA

E. ELEVATION, msl: Top of drilling platform above ground surface
   ft.  
   Bench mark and method used to determine
   Height of drilling platform above ground surface 1 ft. elevation: 334.4 ft. MSL

F. HOLE SIZE:  
   Diameter: 2.0 inch dia. to 3.1 ft. below drilling platform. ELEV.
   Diameter: 3.1 inch dia. to 2.00 ft. below drilling platform. ELEV.
   Diameter: 2.00 inch dia. to 1 ft. below drilling platform. ELEV.

G. CASING INSTALLED:  
   Diameter: 1.2  
   in. I.D. x 2 ft. in. wall solid section to 3 ft. 9 in. wall perforated section to 1 ft. below drilling platform. ELEV.
   Type of perforation: FULL - FLO

H. ANNULUS: Grouted H.A. ft. 8128.37 ft. below drilling platform. ELEV.
   Gravel packed H.A. ft. to ft. below drilling platform.

I. PERMANENT PUMP INSTALLATION:
   - Pump type, make, serial no.  
   - Capacity g.p.m.
   - Motor type, H.P., voltage, r.p.m.
   Depth of pump intake setting ft. below R.P. which elevation is ft.
   Depth of bottom of airline ft. below R.P. which elevation is ft.

**HYDROLOGY**

J. INITIAL WATER LEVEL 5.19 ft. below drilling platform. Date of measurement.

K. INITIAL CHLORIDE: ppm, total depth of well ft. below drilling platform.

L. PUMPING TESTS:
   Date: MAY 21, 1975  
   Reference point (R.P.) used: which elevation is ft.

<table>
<thead>
<tr>
<th>Elapsed Time (hours)</th>
<th>Rate (gpm)</th>
<th>Draw-down (ft.)</th>
<th>Cl. ppm</th>
<th>Temp. °F</th>
<th>Elapsed Time (hours)</th>
<th>Rate (gpm)</th>
<th>Draw-down (ft.)</th>
<th>Cl. ppm</th>
<th>Temp. °F</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 12</td>
<td>1300</td>
<td></td>
<td></td>
<td>2.0</td>
<td>to</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>to</td>
<td>to</td>
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<td>to</td>
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<td></td>
</tr>
</tbody>
</table>

**SUBSURFACE FORMATION**

<table>
<thead>
<tr>
<th>Depth, ft.</th>
<th>Rock Description &amp; Remarks</th>
<th>Water Level, ft.</th>
<th>Depth, ft.</th>
<th>Rock Description &amp; Remarks</th>
<th>Water Level, ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 65</td>
<td>SOFT MEO</td>
<td>to</td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>68 to 98</td>
<td>MEO</td>
<td>to</td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>101 to 324</td>
<td>HARD</td>
<td>to</td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>327 to 357</td>
<td>MEO</td>
<td>to</td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>360 to 375</td>
<td>SOFT</td>
<td>to</td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>518 to 545</td>
<td>HARD</td>
<td>to</td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
<tr>
<td>to</td>
<td>to</td>
<td>to</td>
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<tr>
<td>to</td>
<td>to</td>
<td>to</td>
<td>to</td>
<td>to</td>
<td>to</td>
</tr>
</tbody>
</table>

**N. REMARKS:**

**INSTRUCTIONS:** Send three (3) copies to: Manager-Chief Engineer, Division of Water and Land Development, P. O. Box 373, Honolulu, Hawaii 96809.

WAIEHU NO. 2 WELL 5430-02

Pumping Test Chloride Data
By DOWALD

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Chlorides (ppm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 29, 1975</td>
<td>8:00 am</td>
<td>--</td>
</tr>
<tr>
<td></td>
<td>12:00 N</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>4:00 pm</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>8:30 pm</td>
<td>17</td>
</tr>
<tr>
<td>May 30, 1975</td>
<td>12:00 M</td>
<td>16</td>
</tr>
<tr>
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Samples taken by Maui DWS
Chloride analysis by DOWALD Co.
J. J. Grunert, Norman Finko, USGS
WAIEHU NO. 2 WELL 5430-02

Pumping Test Chloride Data
By DOWALD

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Note: Samples taken by MaueDow. Chloride analysis by Dowald.
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<td>543</td>
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WAIEHU HEIGHTS ASSOCIATION - WELL 2
(Well No. 5430-02)

Well 2 is located about 100 feet north of Well 1

Elevation: 337 feet;
Water Level: 18 feet above MSL;
Depth: 543 feet;
Date Started: April 25, 1975;
Dated Completed: May 18, 1975;
Diameter: 20 inches;
Driller: Water Resources International, Inc, Honolulu, Hawaii;
Casing: 337 feet solid 14" casing;
30 feet well screen, louvered type;
Method Drilled: Rotary with Aquagel;
Purpose: Domestic Water Supply;
Chloride: 20 ppm;
NaCl: 34 ppm;
Pump Test: Started on May 29, 1975 at 8:00 a.m., and stopped on June 1, 1975 at 8:00 a.m. (total of 72 hours); pump setting at 29 feet below MSL; pumping rate at 1300 g.p.m. Water level before pumping started was 18 feet above MSL. During pumping, water level stabilized at 3 feet below MSL. Water level in Well 1 dropped from 18.25 to 17.81 feet above MSL during the test. Three days after the pumping test, the water level in Well 1 had recovered to only 17.95 feet above MSL.

At Test Hole B, before pumping started at Well 2, the water level was 18.26 feet above MSL. During the pumping test, the water level at Test Hole B fell to 18.07 feet above MSL, but three days after pumping had ended, the water level was at 18.02 feet above MSL.
(The following was logged from cuttings by Dr. H. T. Stearns, Consulting Geologist, 4999 Kahala Avenue, Apt. 445, Honolulu, Hawaii 96816)

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<tr>
<th>Sample Labelled in feet</th>
<th>Formation</th>
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<td>do;</td>
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<tr>
<td>60 - 90</td>
<td>do;</td>
</tr>
<tr>
<td>90 - 115</td>
<td>do;</td>
</tr>
<tr>
<td>115 - 120</td>
<td>Diverse basalt chips with some partly decomposed;</td>
</tr>
<tr>
<td>125 - 130</td>
<td>do;</td>
</tr>
<tr>
<td>140</td>
<td>do;</td>
</tr>
<tr>
<td>150</td>
<td>do;</td>
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<td>160</td>
<td>do;</td>
</tr>
<tr>
<td>170</td>
<td>do;</td>
</tr>
<tr>
<td>180</td>
<td>do;</td>
</tr>
<tr>
<td>190</td>
<td>do, (may have hit undecomposed bedrock at 190);</td>
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<td>Diverse basalt chips with some partly decomposed;</td>
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<td>do;</td>
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<td>Diverse basalt chips, only a few show weathering;</td>
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<tr>
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<tr>
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<tr>
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<td>Diverse basalt chips, some chips partly weathered;</td>
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<tr>
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<td>do;</td>
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<tr>
<td>270</td>
<td>Olivine feldspar basalt, some chips have tiny vesicles;</td>
</tr>
<tr>
<td>280</td>
<td>do;</td>
</tr>
<tr>
<td>300</td>
<td>Olivine feldspar basalt, chips smaller and more are reddish;</td>
</tr>
<tr>
<td>310</td>
<td>Olivine feldspar basalt, fewer olivines and some dense cuttings;</td>
</tr>
<tr>
<td>320</td>
<td>Olivine feldspar basalt, some chips slightly weathered;</td>
</tr>
<tr>
<td>330</td>
<td>do;</td>
</tr>
<tr>
<td>340</td>
<td>do;</td>
</tr>
<tr>
<td>350</td>
<td>Olivine feldspar basalt, very small chips;</td>
</tr>
<tr>
<td>360</td>
<td>Olivine feldspar basalt, very small chips, some containing white secondary minerals and diverse colors;</td>
</tr>
</tbody>
</table>
370  do;  
380  do;  
390  do;  
400  do;  
410  do;  
420  Olivine feldspar basalt, some slightly weathered;  
430  do;  
440  Olivine feldspar basalt, some chips highly vesicular, some slightly weathered; vesicular;  
450  do;  
460  do;  
470  do;  
480  do;  
490  do;  
500  do;  
510  do, numerous ¼" chips of red vitric tuff;  
520  do, tuff not present;  
530  do;  
540 - 543  do, vesicular fragments abundant;  

Bottom of hole = 543 feet  

Note: The striking feature of these samples is their uniformity and monotonous character. The Wailuku Volcanic Series penetrated by this hole were nearly all similar lavas.
**DRILLING RECORD - WELL 2**

<table>
<thead>
<tr>
<th>Depth Drilled (feet)</th>
<th>Time (hours)</th>
<th>Drilling Rate (feet per hour)</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 25 0 - 190</td>
<td>5 hrs. 4 min.</td>
<td>38.0</td>
</tr>
<tr>
<td>April 25 190 - 250</td>
<td>2 hrs. 45 min.</td>
<td>21.8</td>
</tr>
<tr>
<td>April 27 250 - 360</td>
<td>4 hrs. 30 min.</td>
<td>24.4</td>
</tr>
<tr>
<td>May 15 360 - 430</td>
<td>3 hrs. 30 min.</td>
<td>20.0</td>
</tr>
<tr>
<td>May 16 430 - 543</td>
<td>7 hrs. 18 min.</td>
<td>15.6</td>
</tr>
</tbody>
</table>

* Detailed record of actual drilling time kept by Norman Saito Engineering Consultants, Inc.*
**Results of Salinity Tests**

<table>
<thead>
<tr>
<th>DATE</th>
<th>TIME</th>
<th>NaCl (ppm)</th>
<th>Chloride (ppm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5/29/75</td>
<td>8:00 a.m.</td>
<td>26.4</td>
<td>16</td>
</tr>
<tr>
<td>5/29/75</td>
<td><strong>12:00 noon</strong></td>
<td>29.7</td>
<td>18</td>
</tr>
<tr>
<td>5/29/75</td>
<td>4:00 p.m.</td>
<td>29.7</td>
<td>18</td>
</tr>
<tr>
<td>5/29/75</td>
<td>8:00 p.m.</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>5/29/75</td>
<td>12:00 midnight</td>
<td>36.1</td>
<td>21.9</td>
</tr>
<tr>
<td>5/30/75</td>
<td><strong>4:00 a.m.</strong></td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>5/30/75</td>
<td>8:00 a.m.</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>5/30/75</td>
<td>12:00 noon</td>
<td>31.4</td>
<td>19</td>
</tr>
<tr>
<td>5/30/75</td>
<td>4:00 p.m.</td>
<td>36.1</td>
<td>21.9</td>
</tr>
<tr>
<td>5/30/75</td>
<td>8:00 p.m.</td>
<td>31.4</td>
<td>19</td>
</tr>
<tr>
<td>5/30/75</td>
<td>12:00 midnight</td>
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</tr>
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<tr>
<td>5/31/75</td>
<td>8:00 p.m.</td>
<td>34.6</td>
<td>21</td>
</tr>
<tr>
<td>5/31/75</td>
<td>12:00 midnight</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>6/1/75</td>
<td>4:00 a.m.</td>
<td>33.0</td>
<td>20</td>
</tr>
<tr>
<td>6/1/75</td>
<td>8:00 a.m.</td>
<td>34.6</td>
<td>21</td>
</tr>
</tbody>
</table>

* Salinity test results from Warren S. Unemori Engineering, Inc.

**Phosphate tests were done to see whether any fertilizer infiltrated into the groundwater. Tests done by Maui Land and Pineapple Co. showed no phosphate in water samples tested. All salinity tests were also done by Maui Land and Pineapple Co.*
CHECKLIST

WELL CONSTRUCTION PERMIT

WELL NAME or LOCATION: Waiehu Height, Pump #2
ISLAND: Maui

WELL NUMBER: 5430-02

Tax Map Key: 3-3-2.28

OWNER/OPERATOR:
Firm Name: Maui DWS
Contact Person:
Address: 200 S. High St
Wailuku, HI 96793
Phone: __________

LANDOWNER:
Firm Name: County of Maui
Address: 200 S. High St
Wailuku, HI 96793
Phone: __________

Date application received: 6-18-90
Date acknowledged receipt/request more info: 8-30-90
Date application accepted: __________
Suspense date (90 days): __________
Date filing fee deposited: __________

Application sent to following:

Dept. of Health
County water board/dept
Dept. Pub. Waters (Hawaii)
Dept. of Hawn Homes
Kealiaua No #28

Date sent: 9-4-90
Date sent to applicant: __________

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

Date application __ approved or __ disapproved: __________
Date applicant notified of decision: __________

REMARKS: ____________________________________________
_____________________________________________________
_____________________________________________________
_____________________________________________________
Waiehu Heights Pump #2
(Well No. 5430-02)