COMMISSION ON WATER RESOURCE MANAGEMENT

FROM: ROY TO: CHONG, C. CHONG, R. DANBARA, S. ENGLISH, N. FUJII, N. HARDY, R. HOAGBIN, S. ICE, C. IMATA, R.

INIT: KAWAHARA, K. KIMURA, J. KUNIMURA, I. OHYE, L. OSHIRO, K. UYENO, D. YODA, K. YOSHINAGA, M.

DATE: 10/8/10 - After talking w/KIM I think we're clear (?) File this letter

PLEASE:
- See Me
- Review & Comment
- Take Action
- Type Draft
- Type Final
- File
- Xerox ___ copies

Date: 1/28/10

- Unnecessary to send this letter:
  - Long term goal is diversion of N. Waihe'e Str. to replace use of Spreckels Ditch
  - Meanwhile well is backup source
  - Existing use WUPA drain from Waihe'e Str. via Spreckels Ditch; upon successful new use WUPA from N. Waihe'e, Living Waters would give up EWP from Waihe'e

See new letter to capture understanding

12 Nov - Robert: Take §2 - hopefully this draft is less confusing: RC 1/12
23 Nov - See RC 1/12
December 21, 2010

Mr. Jonathan Kurtz
Living Waters LLC
P.O. Box 2337
Wailuku, HI 96793

Dear Mr. Kurtz:

Water Use from Well No. 5531-01, Ground Water Use Permit No. 704
Application for Stream Diversion Permit for North Waiehu Stream

Thank you for meeting with us on October 27, 2010. We are more clear about your plans and priorities regarding use of the well and your applications for surface water. This letter is to note our current understanding and to transmit a water use report form for any immediate use of the well, as the original was sent to another contact person for Living Waters.

Overall strategy:
If we understand correctly, your purpose in securing the Ground Water Use Permit No. 704 from your new Well No. 5531-01 was to avoid the costs and intermittent service from the Spreckels Ditch. Because of lack of permanent power, however, your pump has never been in service. A solar pump is expected to provide service soon, accomplishing costs savings and independence from unreliable ditch service.

However, your long-term priority is to establish more water self-reliance by creating a diversion from North Waiehu Stream on your own property, beginning as soon as possible. Your application SDWP.2741.6 intends to divert 33,000 gpd. At that point, if we understand correctly, your ground water use from Well No. 5531-01 would become a back-up capacity for low-flow periods from North Waiehu Stream.

Meanwhile, you have filed existing surface water use application SWUP.2144.6 for 22,938 gpd from Spreckels Ditch. You indicated that you would give it up, if approved, if and when you obtain permits for SDWP.2741.6

New permits:
So far you have not submitted a new surface water use permit application for North Waiehu Stream to accompany the diversion works application. Because North Waiehu
would be a different surface water source with a unique instream flow standard, you would not be able to transfer the prospective surface water use permit from Waihe Stream via Spreckels Ditch. We will process applications for such new uses after applications for existing surface water use permits have been approved.

To clarify the use of surface water, we note that the existing use application SWUP.2144.6 covers 22 acres of a variety of truck crops, but not macadamia nuts, while the prospective new diversion from North Waiehu Stream may target the larger amount for additional irrigation of an unknown acreage of macadamia nut trees. The acreage and irrigation rates should be reflected in the eventual new surface water use permit application for North Waiehu Stream.

When you complete the installation of the solar pump, you will be filing a well completion report part 2. We also encourage you to consider a modification of the current approved amount of this permit in the light of the backup use capacity actually anticipated. The current amount of 20,000 gpd reflects an annualized average of 365 days of use, and is at variance with surface water use application amounts. We would expect to review this upon approval of your diversion works and surface water use permit for North Waiehu Stream.

To summarize these applications and amounts:
Well No. 5531-01 GWUP No. 704 20,000 gpd (12-MAV) approved  
Spreckels Ditch SWUP.2144.6 22,938 gpd requested  
N. Waiehu Stream(no SWUPA) (SDWP.2741.6) 30,000 gpd requested

Please find enclosed a water use report form and a copy of the original ground water use permit, for your reporting of any water use from this well.

If you have any questions, please contact Charley Ice of our staff at (808) 587-0218 or toll free from Maui at 984-2400, extension 70218.

Sincerely,

LENORE N. OHYE  
Acting Deputy Director

Cl: ss  
Attachment
May 10, 2010

Dear Ken C. Kawahara, P.E. Deputy Director Water Commission,

As the Land Manager for Patricia Bragg Living Waters Land Foundation, on which well # 5531-01 is located, I would like to update you on the pumping and use of the well since our pump installation permit was finalized in April 2008.

There has been no pumping since the well was drilled and test pumped. The reason for not pumping has been because of the lack of power available, we are a mile and a half off the grid and we have not as yet set up a solar system for running the pump. I hope to have an adequate solar system to pump the well during the day. My water delivery system from the well to the reservoir is nearly complete.

In May 2010, I have spoken with Charlie Ice and notified him of the situation. I’m sure that he will also inform you of the status of our well. Due to the topography, long distance for water to be distributed, and the power needed to run the pump we have not pumped the well. After these factors are dealt with within next two months, I am going to use a generator temporarily to pump the well to test the system after this long period of non use. Is there a particular form for the monthly usage report that you would like me to use?

Another matter that I would like to bring to your attention is that when we applied for our monthly usage permit we also applied for a stream diversion permit for the North fork of the Waiehu stream. I would like to know if any progress has been made.

Sincerely,

Jonathan Kurtz
Land Manager Living Waters LLC
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02Jul08

**FOR:**

Please See Me

(Note last paragraph)

Please see file for final.
September 13, 2010

Mr. Jonathan Kurtz
Living Waters Land Foundation
P.O. Box 2327
Wailuku, HI 96793

Dear Mr. Kurtz:

Ground Water Use Permit 704 After Four Years’ Non-use

Thank you for your reply to our April 22, 2010 letter, a copy of which we received by fax on August 24, 2010. You believe you had originally sent it May 10, 2010.

We understand that electrical power to run your pump has been postponed due to the cost of extending power lines onto your property and that you are close to completing installation of a solar system for running the pump. Moreover, you have been engaged in constructing a reservoir to receive the pumped water for daily use on the cropland.

In addition, you have asked about the status of your application for a surface water use permit (SWUPA 2144.6) for a diversion from the Waihele Ditch. All surface water use applications for Na Wai Eha are subject to a public hearing that is to be scheduled. Subsequent steps in this process will be fully noticed.

Please be aware that a prospective new water use permit to use water from North Waiehu Stream would also be subject to a complete diversion works permit application and a petition to amend the interim instream flow standard for North Waiehu Stream. We do not have a copy of your application for a stream diversion works permit (SDWP) for the North Fork of Waiehu Stream. It is our understanding that you were going to wait for a determination on your application for existing surface water use before applying for a SDWP to serve new uses.

At this point, we do not foresee taking further action on your ground water use permit for Living Waters Well #1 (Well No. 5531-01) until action on your SWUP has been finalized. Please understand that if the Commission grants your SDWP, part of that approval may involve revoking your ground water use permit (special condition #1 of your WUP 704). If you have any questions, please contact Charley Ice at 587-0218.

Questions concerning the surface water use permit application, and the stream diversion works permit application, and petition to amend the interim instream flow standard for North Waiehu Stream should be directed to Robert Chong at 587-0266.

Sincerely,

LENORE N. OHYE
Acting Deputy Director
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Dear Ken C. Kawahara, P.E. Deputy Director Water Commission,

May 10, 2010

As the Land Manager for Patricia Bragg Living Waters Land Foundation, on which well # 5531-01, I would like to update you on the pumping and use of the well since our pump installation permit was finalized in April 2008.

There has been no pumping since the well was drilled and test pumped. The reason for not pumping has been because of the lack of power available, we are a mile and a half off the grid and we have not as yet set up a solar system for running the pump. I hope to have an adequate solar system to pump the well during the day. My water delivery system from the well to the reservoir is nearly complete.

In May 2010, I have spoken with Charlie Ice and notified him of the situation. I’m sure that he will also inform you of the status of our well. Due to the topography, long distance for water to be distributed, and the power needed to run the pump we have not pumped the well. After these factors are dealt with within next two months, I am going to use a generator temporarily to pump the well to test the system after this long period of non use. Is there a particular form for the monthly usage report that you would like me to use?

Another matter that I would like to bring to your attention is that when we applied for our monthly usage permit we also applied for a stream diversion permit for the North fork of the Waiehu stream. I would like to know if any progress has been made.

Sincerely,

[Signature]

Jonathan Kurtz
Land Manager Living Waters LLC

[Signature]

Received by: [Signature]

[Date]
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April 22, 2010

Ms. Patricia Bragg  
Mr. Jonathan Kurtz  
P.O. Box 2327  
Wailuku, HI 96793

Dear Ms. Bragg and Mr. Kurtz:

Revocation of Water Use Permit after Four Years’ Nonuse

Our records show no reporting of use from this well in the Iao Aquifer System since approval of your Water Use Permit No. 704 for agricultural use on January 30, 2006. Due to competition for use from this source, we must request further information on your intentions for using this well. The Water Code provides that:

"After a hearing, the commission may suspend or revoke a permit for ... (4) partial or total nonuse, for reasons other than conservation, of the water allowed by the permit for a period of four continuous years or more." (HRS §174C-58)

We also note the Special Condition #1 of your permit: “Should an alternative permanent source of water be found for this use, then the Commission reserves the right to revoke this permit, after a hearing.”

By our records, you have filed surface water use permit applications for existing and new uses, currently awaiting decisions on the instream flow standards in the contested case hearing CCH-MA06-01, Na Wai Eha. We recognize that until these decisions are made, you do not yet have an alternative source.

In addition, however, we had meetings with you concerning a prospective diversion of North Waiehu Stream for this project, although we have not yet seen completed applications for the associated permits.

Please respond in writing within 30 days with an explanation of current plans for the approved agricultural use under Water Use Permit No. 704.

Sincerely,

KEN C. KAWAHARA, P.E.
Deputy Director

CI: ss
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If the IIFS reduces diversion from N.Waiehu for use out-of-watershed, protect instream values and allow diversion for riparian use before return flow to stream.
April 17, 2006
State of Hawaii
Dept. of Land and Natural Resources
Commission on Water Resource Management
PO Box 621, Honolulu, HI, 96809
Att: Roy Hardy

Dear Mr. Hardy,

We closed the PO Box that the approval of our well pumping permit letter from you was sent to. The letter was received on March 24 just as I had to fly to the mainland for a family concern. I am hoping that this delay in responding will be acceptable to you because of the delay in our receiving your request.

Sincerely,

Megan Wells
on behalf of
Living Waters Land Foundation
Living Waters Land Foundation
1358 Kakae Pl. Wailuku, HI, 96793
C/O Megan Wells 808-244-0231

Water Shortage Plan

As an alternate plan to pumping our well for the truck farmers on our land our plan is to have diversion surface water from North Waiheu stream. We are submitting a diversion application to you in the hope that once enough water has been returned to the stream to support the stream’s eco system (Earth Justice’s case), we hope we will be considered a priority for diversion water. We are beginning to bring back three 4 acre plots totaling 12 acres of existing Lo’i on the upper part of North Waiheu stream on our property directly below the area on the stream we propose diverting from. The taro farmers will use the diverted water there and then we will pipe it to a reservoir that we plan to create. From the reservoir we will pipe to the truck farmers below for their farms. We are also planning to construct water tanks for fire prevention and back up for the well but this amount of water will not be sufficient to sustain the farmers for very long.
I hope this alternative will be acceptable to you.

Sincerely,
Megan Wells
For
Living Waters Land Foundation
Waihee Mauka well #5531-01
Ms. Megan Wells  
Living Water Land Foundation, LLC  
P.O. Box 2667  
Wailuku, HI 96793  

Dear Ms. Wells:

Notice of Commission Action  
Water Use Permit Application  
Waihee Mauka Well (Living Waters #1), Well No. 5531-01  

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 January 30, 2002, the Commission:

Approved the water use permit for the reasonable-beneficial agricultural use of 20,000 gallons per day for the Waihee Mauka/Living Waters Well #1 (5531-01), subject to the standard water use permit conditions and the following special conditions:

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

2. 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.

Also, please note that your pump installation permit is also being issued under separate cover.

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

Sincerely,

DEAN A. NAKANO  
Acting Deputy Director

Ref: 5531-01.act

CI:ss
Ms. Megan Wells  
Living Waters Land Foundation, LLC  
P.O. Box 2667  
Wailuku, HI 96793

Dear Ms. Wells:

Approval of Water Use Permit for Well No. 5531-01  
Iao Ground-Water Management Area, Maui

This letter transmits your water use permit for Waihee Mauka (Well No. 5531-01) for use of 0.020 million gallons per day (mgd) of water on a 12-month moving average basis that was approved by the Commission on Water Resource Management (Commission) on February 15, 2006. As part of the Commission’s approval, the following special conditions were added and are part of your permit under Standard Permit Condition 19:

**Special Conditions**

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

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

Enclosed with this letter of approval are the following:

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

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

We draw your attention to two key conditions of your permit that require your response. First, you are required to keep a record of your monthly total pumpage, water level, salinity, and water temperature. This information must be submitted to the Commission on a regular yearly basis using the enclosed water use report form. You should make copies of the enclosed report form as needed.
Second, you are required to submit a water shortage plan to the Commission within thirty (30) days of the issuance date of this permit. Your water shortage plan simply identifies what you are willing to do should the Commission declare a water shortage situation in the Iao Ground-Water Management Area and can be as short as a one page letter. In a water shortage situation, the Commission may require temporary reductions in pumpage from all sources. The Commission is required, by law, to formulate a plan to implement such area-wide reductions, which should accommodate, include, and be consistent with your plans. Therefore, your help, by submitting your water shortage plan, is greatly needed in formulating the Commission's overall Water Shortage Plan.

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

Sincerely,

W. Roy Handy

Peter T. Young
Chairperson

Attachments

c: Wailani Drilling, Inc.
GROUND-WATER USE PERMIT
WUP NO. 704

PERMITTEE

Permittee/Water User: Living Waters Land Foundation, LLC
Address: P.O. Box 2667, Wailuku, HI 96793

Landowner of Source: Same
Address: Same

PERMITTED SOURCE INFORMATION

Island: Maui
Water Management Area: Wailuku
Aquifer Sector: Iao
Aquifer System: Waihee Mauka
System Sustainable Yield: 20
Well Name: Waihee Mauka
State Well No.: 5531-01

PERMITTED USE INFORMATION

Reasonable beneficial use: Agricultural
Withdrawal (12 month moving ave.): 0.020 mgd
Location of water use:
TMK #: 3-2-13:15
State land use classification: AG
County zoning classification: Ag

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 yearly basis (attached).
11. This permit shall be subject to the Commission's periodic review of the lao 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 lao 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 lao Ground-Water Management Area.

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

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

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

______________________________
W. Roy Handy

PETER T. YOUNG, Chairperson
Commission on Water Resource Management

Attachment

c: Wailani Drilling, Inc.
Well #1 (5531-01), subject to the standard conditions in Exhibit 9 and the following special conditions:

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

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

DISCUSSION:

Ms. Megan Wells spoke on behalf of Living Waters Land Foundation. She stated that a tenant was promised a ten-acre farm and needs irrigation water. She wants to live there and needs to obtain water for her parcel, for eventual residential use.

Commissioner Miike stated that if the use changed to single homeowner domestic use, there would be no need to come to the Commission for a water use permit for that use.

MOTION: (Ching/Fujiwara)
Approval of staff recommendation
UNANIMOUSLY APPROVED

3. Motion to Hold a Combined Contested Case Hearing for the Petition to Amend Interim Instream Flow Standards of Waihee, Waiehu, Iao, & Waikapu Streams; Iao Ground Water Management Area High-Level Source Water Use Permit Applications; and Citizen Complaint Regarding Waste of Surface Water, Wailuku, Maui. Commission Delegation of Authority Allowing the Chairperson to Appoint a Contested Case Hearing(s) Officer

Commissioner Meredith Ching recused herself.

Presentation o Submittal: Roy Hardy

RECOMMENDATION:

That the Commission:

1. Determine that a contested case hearing is required for the Iao Ground Water Management Area High-Level Source Water Use Permit Applications as listed in Exhibit 3;
Commission has not identified any streams or springs as being affected by basal well withdrawals.”

Commissioner Miike also added that municipal use is in “the public interest and the applications are for domestic use of the general public.”

Commissioner Miike moved to amend staff recommendation to approve as existing use the individual well allocations from the applicant’s original request that total 11.227 mgd and incorporate the other changes as recommended to the submittal.

**FINAL AMENDED RECOMMENDATIONS:**

A. That the Commission approve the water use permits for the reasonable-beneficial municipal use of the following Maui Department of Water Supply basal wells, computed as the 12-MAV as requested by MDWS.

- Mokuhau Well 1 (5330-09, WUP 700), 1.994 mgd
- Mokuhau Well 3 (5330-11, WUP 701), 2.221 mgd
- Waiehu Heights Well 1 (5430-01, WUP 697), 0.165 mgd
- Waiehu Heights Well 2 (5430-02, WUP 698), 1.415 mgd
- Waihee Well 1 (5431-02, WUP 695), 1.480 mgd
- Waihee Well 2 (5431-03, WUP 696), 2.439 mgd
- Waihee Well 3 (5431-04, WUP 703), 1.513 mgd

subject to the standard conditions in Exhibit 13 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.

**MOTION:** (Miike/Fujiwara)
To approve staff recommendation as amended
UNANIMOUSLY APPROVED

2. **Living Waters Land Foundation, LLC, APPLICATION FOR WATER USE PERMIT, Waihe Mauka Well (Living Waters #1, 5531-01), TMK: 3-2-013:015, WUP No. 704, Future (Agricultural) Use for 0.020 mgd, Iao Ground Water Management Area, Maui**

Presentation of Submittal: Charley Ice

**RECOMMENDATIONS:**

A. That the Commission approve the water use permit for the reasonable-beneficial agricultural use of 20,000 gallons per day for the Waihee Mauka/Living Waters
STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

February 15, 2006
Honolulu, Hawaii

Living Waters Land Foundation, LLC
APPLICATION FOR WATER USE PERMIT
Waihee Mauka Well (Living Waters #1, 5531-01), TMK: 3-2-013:015, WUP No. 704
Future (Agricultural) Use for 0.020 mgd
Iao Ground Water Management Area, Maui

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

LANDOWNER:
Same

SUMMARY OF REQUEST:
To approve a ground water use permit from a new well (5531-01) in the Iao Ground Water Management Area for existing reasonable beneficial agricultural uses that may lose use of surface water from Waihee Ditch owned by Wailku Water Company, LLC (WWC).

LOCATION MAP: See Exhibit 1

BACKGROUND:
July 21, 2003
Iao Ground Water Management Area officially designated through publication of public notice on that date. Actual existing users, other than individual domestic users who are exempted under the Code, have one year from this date to apply for continued existing use.

June 21, 2004
The Supreme Court handed down its opinion ("Waiahole II") in the remanded Waiahole Decision and Order of December 28, 2001, clarifying the Commission’s consideration of water use permit criteria. This opinion specified the importance of practicable alternatives and the careful calculation of appropriate “duties".
The water use permit application (WUPA) for new use from Waihee Mauka Well ("Living Waters Well #1", Well No. 5531-01) was accepted as complete. Public Notice was duly published August 11 and 18, 2004.

The one-year deadline for filing WUPAs for existing use. Objections were received on these applications, requiring the Commission to conduct a public hearing for these applications.

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

Staff received an email objection from Mahealani Ventura-Oliver on behalf of Aha Ku Moku of Na Wai Eha, to the effect that the title to this property had not been validly transferred. The objection was not timely and considered not germane to the issues at hand.

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

Hearing officers conducted the first session of the public hearing on WUPAs (see Exhibit 3), in Wailuku. Testimony was received on objections; the Living Waters Well application primarily caused concerns over legal land tenure of the property and protection of historic sites. It was learned that Living Waters land use objections had been dismissed from Circuit Court. The hearing remained open for subsequent information gathering for all water use permit applications (WUPAs).

In response to objections raised for all lao WUPAs, staff circulated a clarification of the Supreme Court's opinion concerning water use permit application burdens as applied to Hawaiian water rights and "domestic use" as an aspect of the public trust. (Exhibit 4)

A second session of the public hearing was held in Wailuku (see Exhibit 5). There was no further testimony from objectors to the Living Waters Well. The hearing remained open for subsequent information gathering for all WUPAs.

A third and final session of the public hearing was held in Wailuku (see Exhibit 6). Only existing and new uses from basal and caprock sources were considered. High-level sources were deferred to a subsequent session, anticipating discussion of potential interaction between ground and surface water and the possible combining of high-level source and instream flow considerations. There were verbal requests for a contested case hearing on the basal wells, but no further testimony nor request for contested case hearing from objectors to the Living
Waters Well. The public hearing was closed with instructions from the hearing officers to proceed with the uncontested WUPA for Living Waters.

September 28, 2005

The Commission deferred action on this captioned well pending completion of the processing of all water use permit applications for existing uses from the Iao Ground Water Management Area.

November 7, 2005

Staff received a subpoena to appear in an arbitration between the applicant for this well, the Living Waters Foundation, and a party seeking fulfillment of the applicant’s promise to subdivide and award a portion of the property. Staff's interrogatories were directed at the nature of assurances that water would be available so that the County could approve subdivision. The nature of staff’s testimony was that there was no guarantee that a water use permit would be issued and that the Commission had deferred consideration of such a permit pending approval of water use permits for uses existing as of the date of designating the Iao Ground Water Management Area.

January 11, 2006

In a pre-hearing conference between contesting parties, the petitioning parties withdrew their objections to the basal wells, allowing them to be scheduled for action. The hearing officers directed staff to proceed for action on these wells. With existing use applications for basal sources considered, new uses from the basal aquifer may then be considered.

ISSUES/ANALYSIS:

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

(1) Water availability

Through the Hawaii Water Plan, the Commission has adopted 20 million gallons per day (mgd) as the sustainable yield (SY) for the Iao Aquifer System Area. This 20 mgd is specific to the basal portion of the aquifer system area.

Waihee Mauka/Living Waters Well #1 taps the basal aquifer.

The site of this well lies below the Spreckels Ditch at about 350 feet elevation. The well construction permit was approved February 25, 2003, with no reliance on obtaining a pump installation or water use permit. Well construction and pump testing were completed February 4, 2004. The pump installation permit may not be approved until a water use permit (WUP) is approved. The nearest wells are across Waihee Stream in the Waihee Aquifer, over 1.5 miles away; next nearest are the Waihee Wells toward Wailuku over 2 miles away. Three other wells are proposed in the same area, not as closely spaced as any of the County wellfields.

A summary of the current ground water conditions in the aquifer is provided in Table 1:
Table 1. Iao Aquifer System Area – Basal Portion

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<th>Sustainable Yield</th>
<th>Iao Aquifer System (mgd)</th>
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<tbody>
<tr>
<td>Less: This Application (shown in Exhibit 7)</td>
<td>20</td>
</tr>
<tr>
<td>Reservation to DHHL</td>
<td>0.020</td>
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<td>Subtotal (Current Available Allocation)</td>
<td>19.980</td>
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<tr>
<td>Less: Other Completed Applications (shown in Exhibit 7)</td>
<td>16.903*</td>
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<tr>
<td>Subtotal (Remaining Available Allocation/Allocation Deficit)</td>
<td>3.077</td>
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</table>

* basal sources only and using 12-MAV as of 7/21/03 as anticipated Commission allocation

A table of all applications, with captioned sources highlighted, is Exhibit 7. Other detailed information on wells is found in Exhibit 8. Table 1 other completed applications assumes Commission approval of staff’s recommendation to allocate 7/21/04 12-MAV figures for existing uses.

Therefore, there are no new or extraordinary impacts on basal water availability from the captioned application and there appears to be ample supply to accommodate the new use.

(2) Reasonable-beneficial

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

I. Purpose of Use:
The proposed water use is for irrigating agriculture on lands historically used for agriculture and regarded by experts as prime agricultural land. The uses include macadamia nut orchards that are very productive and small farms with diversified crops. The Water Code Policy Declaration mandates maximum beneficial use and the preservation and enhancement of State waters for agriculture.

II. Quantity Justification:
The proposed quantities are intended to augment seasonal natural rainfall. Current acreage in production is 170 acres of macadamia nuts, requiring about 4,000 gallons per day per acre (gpd/ac) and 20 acres of diversified crops including banana, papaya, kalo, tapioca, eggplant and other vegetables, at about 2,000 gpd/ac, both of which less than the county standard of 5000 gpd/ac.

Using the county standard, the total acreage of 190 acres could use 190 ac x 5,000 gpd/ac = 950,000 gpd. Macadamia nuts can withstand some irrigation shortfall, and the applicant is not expecting to rely on the well to augment it, although they might have requested an amount under the county standard, 170 ac x 4,000 gpd/ac = 680,000 gpd. Diversified crops, on the other hand, are less tolerant of interruptions in irrigation, and the well production is based on being able to provide up
to about 50% of the total daily irrigation demand, which under the county standard would be 20 ac x 2,000 gpd = 40,000 gpd. The applicant's estimates are based on several years' rainfall experience. The applicant's total request is 20,000 gpd. Should the applicant require more water in the future, they can request to modify their WUP.

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

IV. Practicable Alternatives:
The sole stated reason for submitting this application is that the long-standing use of the non-potable Waihee Ditch on these non-riparian, non-appurtenant lands was becoming too expensive and problematic. Ditch use is not a reasonable alternative given the wishes of the ditch owner, WWC. No other alternatives are reasonably and immediately available, but the applicant would accept a reasonable alternative if it became available.

In sum, this application meets the updated reasonable and beneficial criterion.

(3) Interference with other existing legal uses

There is one other well currently in use within 1 mile downgradient, tapping the caprock aquifer, and used for golf course irrigation. This well is unlikely to produce significant impacts on any wells, based on monitor well information in the area. Pump tests show that the low level of pumpage will have little impact on other existing infrastructure, especially caprock sources.

Therefore, this application shows no significant impacts to other existing legal uses at this time.

(4) Public interest

The related land use objections to this well raised by the Aha Ku Moku of Na Wai Eha have been dismissed in circuit court. No contested case was requested for this source.

The arbitration of subdivision issues continues and may or may not be affected by the decision on this application. If the water use and pump installation permits are approved, it may facilitate resolution of access-to-water issues for subdivision.

Also, the proposed agricultural use complies with the definition of public interest in HRS 174C-2.

Therefore, this application meets the public interest criterion.
5) **State & county general plans and land use designations**

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

Therefore, this application meets the state and county general plans and land use designation.

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

These proposed uses are consistent with county land use plans and policies. Normal agency review included the County Planning and Water Supply Department and County Council. The Department of Water Supply expressed concern that this well could interfere with potential future wells drilled by the County. However, there are no known plans to drill a County well in this area, the amount proposed from this well is very small.

Therefore, this application meets the county land use plans and policies criterion.

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

All permits are subject to the prior rights of Hawaiian home lands. The DHHL and OHA have reviewed this application. There were general comments but no objections to this well. Moreover, water use permit standard conditions #3(g), 6, and 9(f) requires that this water use permit must not interfere with DHHL rights.

Therefore, this application will not interfere with Hawaiian home land rights.

**Other Issues**

*Approval of New Use Prior to Completion of Processing all Existing Use Applications*

Normally, Commission policy is to complete action on existing use permit applications prior to considering a new use application. The use of Wailuku Shaft (“Shaft 33”, Well No. 5330-05) existing as of the date of designation is the subject of a contested case hearing. While it is the largest among all single sources, at 5.771 mgd, it is well beyond the range of interference with this well. In fact, there are no other basal wells within the range of interference with this well.

High-level ground water sources also have existing uses but are not counted against the sustainable yield as they more directly affect streamflow. As there is potential interaction with surface water, however, they are being proposed for inclusion in a combined proceeding with a petition to amend the interim instream flow standards for Wailuku streams and a waste complaint regarding WWC ditch systems, including the Waihee Ditch, the current source for these agricultural uses.
The applicant has already faced a lengthy delay due to the designation process – one year for filing plus another nineteen months for public hearings and potential contested case hearings. As their readiness to accept reasonable alternatives when available minimizes potential future conflict with the major municipal user of this basal resource, staff believes that proceeding with this application for such a small amount (20,000 gallons per day) from this area poses minimal risk to the public trust resource or to potential new reasonable and beneficial municipal uses. Staff also believes that additional time waiting for resolution of a contested case hearing on the Wailuku Shaft and resolution of high-level source uses is excessive under the circumstances. The applicant is willing to accept a practical alternative to this source if and when it becomes available.

RECOMMENDATIONS:

A. That the Commission approve the water use permit for the reasonable-beneficial agricultural use of 20,000 gallons per day for the Waihee Mauka/Living Waters Well #1 (5531-01), subject to the standard conditions in Exhibit 9 and the following special conditions:

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

2. 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.

Respectfully submitted,

[Signature]

DEAN A. NAKANO
Acting Deputy Director

APPROVED FOR SUBMITTAL:

[Signature]

PETER T. YOUNG
Chairperson

Exhibit(s):

1 (Location Map)
2 (August 25, 2004 letter from hearing officers on 2 Sup. Ct. permitting considerations)
3 (Public Notice for hearing on October 28, 2004)
4 (November 15, 2004 letter from hearing officers clarifying Sup. Ct. position on Hawaiian rights and “domestic use”)
5 (Public Notice for hearing on April 22, 2005)
6 (Public Notice for hearing on September 7, 2005)
7 (List of all proposed existing uses, captioned well highlighted)
8 (Detailed Water Use Information)
9 (Water Use Permit Standard Conditions)
| FROM: Charley | DATE: 16 Feb 06 |
| TO: | INIT. |
| __ BAUER, G. | __ |
| __ GOODING, K | __ |
| __ FUJII, N | __ |
| __ OHYE, M | __ |
| __ YOSHINAGA, M | __ |
| __ SWANSON, S | __ |
| __ KUNIMURA, I | __ |
| __ IMATA, R | __ |
| __ NAKAMA, L | __ |
| __ HIGA, D | __ |
| __ UYENO, D | __ |
| TO: | INIT. |
| 1 HARDY, R. | __ |
| 2 SAKODA, E. | __ |
| 3 NAKANO, D. | __ |
| 4 DANBARRA, S | __ |
| 5 SUBIA, S | __ |
| 6 YODA, K | __ |
| 7 CHING, F | __ |

FOR: Approval Signature Information

PLEASE:
- Review & Comment
- Type Draft
- Type Final
- File
- Xerox copies
- Take Action:
- Please See Me
MEMO and ROUTE SLIP

WCR 1 Check for Well No. 5530-05 (survey to regulation memo)

1. **Pump Tests Check** Glenn Bauer (initial)
   - Step-Drawdown Test:
     - followed WCPI Stds
     - analysis attached
     - proposed pump cap o.k.
   - Aquifer Pump Test:
     - 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:
     - Geology Code for Well Index:

2. **Construction Check** Mitch Ohye (initial)
   - data complete
   - followed Special Cond & elevations
   - well database updated
   - Latitude
   - Longitude

3. Charley/Lenore/Ryan (initial) take action based on above analysis

4. Roy (initial) check

5. Subia (initial) finalize

6. Dean (initial) signature

7. Charley/Lenore/Ryan File

ATTACHMENTS FOR PUMP INSTALLATION PERMIT:
1 COVER LETTER
2 PERMIT (2x)
3 DOH COMMENTS
4 LAND DIV. COMMENTS
5 WCR 2 FORM
6 WUR FORM
7 USGS MAP
8 PARCEL CHECK
9 DATABASE PRINTOUT
10 GLENN’S WORKSHEET
11 WELL As-Built CHECK PRINT

Signed 3/20/03, rec’d by fax 4/28/03

_____ not necessary – only WCP.

To be sent to applicant
### REMARKS

LINE (1)  Subpoena Fees for Charles Ice re: Well No. 5531 (Living Waters Land Foundation)

LINE (2)  
LINE (3)  
LINE (4)  
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LINE (8)  
LINE (9)  
LINE (10)  

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MARY BLAINE JOHNSTON 1755  
P.O. Box 1030  
Kula, Maui Hawaii 96790  
Telephone No: (808)878-8885  
Facsimile: (808) 878-1227  

Attorney for Respondents Patricia Bragg and  
Living Waters Land Foundation, LLC

DISPUTE PREVENTION AND RESOLUTION

HONOLULU, HAWAII

| In the Matter of the Arbitration of | ARB. NO. 04-0547-A |
| VALERIE DEVA and DON HARRIS, | SUBPOENA DUCES TECUM |
| Claimants, | (Charles Ice, Commission on Water |
| vs. | Resource Development) |
| PATRICIA BRAGG and LIVING WATERS | Hearing Date: Thursday, October |
| LAND FOUNDATION, | 27, 2005 |
| Respondents. | Time: 3:00 p.m. |
| | Arbitrator: G. Richard Morry |

SUBPOENA DUCES TECUM

THE STATE OF HAWAII

TO THE SHERIFF OF THE STATE OF HAWAII

or his deputy or any police officer in the  
State of Hawaii:

YOU ARE COMMANDED TO subpoena:

Charles Ice  
Commission on Water Resource Development  
Department of Land and Natural Resources  
1151 Punchbowl Street, Room 227  
Honolulu Hawaii 96813
to appear by telephone in the above-captioned manner to give testimony on behalf of Respondents Patricia Bragg and Living Waters Land Foundation on Thursday, October 27, 2005 at 3:00 p.m. Please bring with you documents related to the well use permit application of Living Waters Land Foundation, LLC for Well No. 5531, located on that certain property located at Waiehu Maui Hawaii, TMK No. (2) 3-2-13-015.


[Signature]

G. RICHARD MORRY
Arbitrator
October 27, 2005

Ref: Waihee Mauka-LW1.WUP.act.notice 2-correction

Ms. Megan Wells
Living Waters Land Foundation, LLC
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

Correction to October 10, 2005 Notice of Commission Action
Waihee Mauka Well (Living Waters Well #1), Well No. 5531-01, WUP No. 704

This letter serves correct an error we discovered in the above official notice of Commission actions sent to you on October 10, 2005. The Commission meeting date was not January 20, 2002 as noted in the notice. The relevant sentence should be corrected to read as follows:

"By a unanimous vote of the Commission at their meeting on September 28, 2005, the Commission:

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

We sincerely apologize for any confusion this may have caused.

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

Sincerely,

DEAN A. NAKANO
Acting Deputy Director
MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: September 28, 2005
TIME: 9:00 a.m.
PLACE: KALANIMOKU BUILDING
CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

CALL TO ORDER

Chairperson Peter Young called the meeting of the Commission on Water Resource Management to order at 9:00 a.m.

ROLL CALL

The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Neal Fujiwara
Ms. Stephanie Whalen

Mr. James Frazier
Dr. Chiyome Fukino

Excused: Ms. Meredith Ching, Lawrence Miike, MD, JD

STAFF

Dean Nakano, Roy Hardy, Ed Sakoda, Glenn Bauer, Lenore Nakama, Neal Fujii, David Higa

COUNSEL

Mr. Colin Lau, Esq.

OTHERS

Jon Nishimura, Lynn Malinger, Lance Fukumoto, Larry Beck, Kapua Sproat, Kathy Sokugawa, George Kuo, Jeff Overton, Cami Kloster, Bruce Tsuchida, Jonathan Scheuer, Randy Hara, Jane Lovell, Rebecca Alakai, Barry Usagawa

All written testimonies submitted at the meetings are filed in the Commission office and are available for review by interested parties.

Approved by Commission on
Water Resource Management
at the meeting held on

OCT 25 2005

Item A1
Minutes

{Note: language for deletion is bracketed, new/added is underlined}

A. APPROVAL OF MINUTES

August 17, 2005

MOTION: (Frazier/Whalen)
UNANIMOUSLY APPROVED

B. ANNOUNCEMENTS

C. GROUND WATER REGULATION

1. Commission Delegation of Authority, Allowing the Chairperson to Appoint a Contested Case Hearing(s) Officer, for the Iao Ground Water Management Area Basal Source Water Use Permit Applications

Presentation of Submittal: Roy Hardy

DISCUSSION:

Jonathan Scheuer from the Office of Hawaiian Affairs (OHA), Kapua Sproat from Earthjustice, representing Hui o Na Wai Eha and Maui Meadows, and Jane Lovell from the Maui County Corporation Counsel representing the Maui Department of Water Supply reported they are continuing to work together to resolve if possible, certain issues related to the contested case hearing and stated they are supportive of staffs’ recommendation.

RECOMMENDATION:

That the Commission authorizes the Chairperson to appoint a hearings officer for the Iao Ground Water Management Area Basal Source Water Use Permit Applications Contested Case Hearing(s).

MOTION: (Whalen/Frazier)
Approve as recommended by staff
UNANIMOUSLY APPROVED

2. Maui Department of Parks & Recreation, Living Waters Land Foundation, LLC, APPLICATIONS FOR WATER USE PERMITS, War Memorial Football Stadium Well (5329-14, WUP 713), Baldwin High School Well (5329-05, WUP 710), Papohaku Park Well (5429-02, WUP 712), Waiehu Golf Well (5529-02, WUP 711), Waihee Mauka (Living Waters #1) (5531-01, WUP 704), Existing and New Uses, Iao Ground Water Management
Presentation of Submittal: Charley Ice

DISCUSSION:

Commissioner Fujiwara asked what kind of entity is Living Waters, are they a group of people? Mr. Ice stated yes, that there was an overall manager for the property and they are in the process of subdividing with other parties who are part of this foundation. The land was acquired from Wailuku Agribusiness Co., Inc. (WACI) and at the time were using ditch water for agriculture. However, they are being asked to look for other sources of water.

Commissioner Frazier recommended that Maui Parks and Recreation meet the criteria of more diligent reporting of water consumption on a regular basis. This would be an amendment to add a special condition number 4. Roy Hardy pointed out that Standard Condition 10 regarding water use reporting requirements should cover this concern and no amendment would be necessary. Commissioner Frazier agreed.

Kapua Sproat from Earthjustice clarified that Living Waters Land Foundation is a nonprofit organization that purchased significant acreage from WACI and have a property manager on site. They grow macadamia nuts and tenant farmers live on the property. Ms. Sproat stated that the buyers have had difficulty negotiating the purchase of surface water from WACI and were informed that they would not be allowed to purchase surface water for the macadamia nuts, although they were able to purchase ditch water for the tenant farmers.

The tenant farmers recently formed an organization called The Manong Farmers Association and attempted to negotiate directly with WACI for a contract for water. There have been disputes over the amount that WACI wants to charge for the water and the farmers are unsure whether or not they will be able to continue to pay that amount. For this reason, the property owner, Patricia Bragg, head of the Living Waters Land Foundation, has looked to ground water as being more reliable and a cheaper source for the farmers.

Ms. Sproat stated that Ms. Bragg is conservation-minded and wanted to do watershed restoration. She would be paying for the well and providing water free of charge to the farmers. Ms. Bragg’s mission is to keep the land in organic agriculture. They also have riparian rights to surface water and using water from the streams is another option.

Ms. Sproat noted there should be a correction to the statement on page seven of the submittal.

“No streams or springs are affected by caprock withdrawals.” Ms. Sproat stated their clients strong position that there are springs that are affected by the wells. Mr. Randy Gentry, Maui Parks and Recreation Planning Department, was provided with locations.
and TMK numbers of some of the springs that they believe were affected by the wells. Ms. Sproat also mentioned that given the significant efforts that Maui Parks and Recreation has made, the applicant would proceed without a contested case. There are also riparian rights that are affected since there is no water in the stream.

Mr. Jonathan Scheuer stated that there could have been more that Maui Parks and Recreation was legally obligated to do to document traditional customary rights, however, they've reduced their demand so much on those sources that in many ways they had solved the problem and objections are withdrawn even though they hadn't fulfilled the burden.

Chairman Young directed Maui Parks and Recreation to submit water use reports on a monthly basis.

RECOMMENDATIONS:

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

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

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

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

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

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

B. That the Commission defer action on the water use permit for the Waihee Mauka Well Living Waters #1) Well No. 5531-01, WUP No. 704, pending completion of the processing of all water use permit applications for existing uses from the lao Ground Water Management Area.
MOTION: (Whalen/Fujiwara)  
To approve as recommended by staff  
UNANIMOUSLY APPROVED

D. SURVEY

1. Request for Chairperson’s Authorization to Enter into a Memorandum of Agreement and Perpetual Right of Entry with RDD, LLC for the Drilling and Monitoring of the Waihee Deep Monitor Well, Waihee, Maui

Presentation of submittal: Glenn Bauer

Commissioner Frazier asked if the Betsill Brothers applied for a well themselves. Staff stated that they did apply for equestrian park wells located north near Kupaa Well.

RECOMMENDATIONS:

That the Commission authorize the Chairperson to enter into a Memorandum of Agreement and a Perpetual Right of Easement with RDD, LLC for the drilling and maintenance of a deep monitor well in the Waihee Aquifer System, Maui.

MOTION: (Fujiwara/Frazier)  
To approve as recommended by staff  
UNANIMOUSLY APPROVED

2. Request for Commission’s Approval to Amend the Fiscal Year (FY) 06 U.S. Geological Survey Cooperative Agreement

Presentation of Submittal: Glenn Bauer

DISCUSSION:

Commissioner Frazier asked how did we determine which two rain gages were not to be funded by the Natural Area Reserve System (NARS). Staff stated that NARS will fund two of the four gages originally planned for, but the U.S. Geological Survey (USGS) did not have matching funds for these gages. Staff hopes that the next NARS budget will be able to include these two gages back into their cooperative agreement with the USGS.

Commissioner Whalen asked if there is long range planning and if funding will continue to be a problem?

Acting Deputy Director Dean Nakano stated that the program gets reassessed on an annual basis and efforts are made to minimize duplication of monitoring. Mr. Nakano also stated that staff will continue to look for alternative sources to augment the program.
and hopefully be able to maintain the current program at its current level rather than face further reductions in funding.

RECOMMENDATION:

That the Commission authorize the amendment to the FY 06 cooperative agreement with the USGS to include the two rain gages at a total cost of $10,100 and increase the CWRM's total (non-federal) cost-share to $292,840.

MOTION: (Frazier/Whalen)
To approve as recommended by staff
UNANIMOUSLY APPROVED

E. STREAM PROTECTION AND MANAGEMENT

1. Application for a Stream Channel Alteration Permit, SCAP-OA-386, Lanikepu and Keanuiomano Streams, Waimea, Hawaii (TMK: 6-6-01:54, 77 and 6-6-04:12)

Presentation of Submittal: Ed Sakoda

DISCUSSION:

Commissioner Frazier asked if this was an after-the-fact-permit. Mr. Sakoda stated that it was not. Commissioner Frazier asked if staff was aware that there was another major development on the south side of Keanuiomano Stream. Staff reported that they were not aware of this. Commissioner Frazier then proposed that a master plan be done for both sides of the stream.

Rebecca Akakai from the Department of Hawaiian Home Lands (DHHL) stated that the Lalamilo Project Plan was submitted and approved by DHHL. Ms. Alakai could not address the issues as she was unfamiliar with the project.

Commissioner Neal Fujiwara asked what was the purpose of the filling. Mr. Sakoda stated that it was for flood control, to raise the bank to prevent flooding. Mr. Sakoda stated that this was designed for a 100-year flood.

Commissioner Whalen asked whose responsibility it was to fill and make sure it didn't erode away. Mr. Sakoda stated that it would be the County’s responsibility.

RECOMMENDATION:

That the Commission approve a stream channel alteration permit for a culvert crossing and to fill portions of the stream banks at Lanikepu and Keanuiomano Streams (TMK: 6-6-01:54, 77 and 6-6-04:12). The permit will be valid for two
years subject to the Commission's standard conditions for stream channel alteration permits in Exhibit 5.

**MOTION:** (Whalen/Fujiwara)
To approve as recommended by staff.
UNANIMOUSLY APPROVED with one opposition (Frazier)

Commissioner Frazier voted in opposition to the staff recommendation. He stated that there should be a master plan for the entire stream bank since it's the same applicant, DHHL.

**F. PLANNING**

1. **Presentation by Hawaii County Department of Water Supply (DWS) on the Project Description for Updating the Hawaii County Water Use and Development Plan**

Mr. Larry Beck from the Hawaii Department of Water Supply and Mr. Jon Nishimura from Fukunaga & Associates Inc. presented the project description for the technical approach for the update of the Hawaii County Water Use and Development Plan. A PowerPoint presentation was made and a handout of the presentation was distributed.

Mr. Nishimura stated the Technical Approach Key Tasks include the following: Inventory of Existing Sources, Inventory of Existing Uses, Identification of Existing Water Systems, Land Use Plans and Policies, Projected Water Demands, Identification of Supply side (Resource) & Demand side (Uses/Control) Options, and Public Participation-Stakeholder Input/Review.

Existing Water Systems to be studied include County DWS Systems, Private and Public Water Systems, Irrigation Systems, Reclaimed Water Systems and Individual Systems that included catchment. The linking of Land Use Plans and Policies with infrastructure and resource availability will be done using the County General Plan (Ultimate Development “County Vision”) and County Zoning (Allowable Development by Ordinance).

To test the sustainability of Land Use Policies that are in place, standard water consumption unit rates were applied to arrive at the full build-out scenario. Water demand projections will start off with the existing use and project the “infill” of un-developed or under-developed lands. Population growth will be based on census reports. Projections will be made for five, ten, fifteen and twenty year intervals.
Three scenarios for water demands will be evaluated: low growth, medium growth and high growth. Public participation will be encouraged through scheduled public information meetings at various stages of the plan development, plan review by key stakeholder groups, milestone briefings to the Commission, and the adoption of this document by the County Council through a formal public hearing process.

Some of the project challenges include limited information resulting in the need to use reasonable judgment and make reasonable assumptions. Future efforts will include identification of data needs, identification of areas requiring critical water resource management, linking of Land Planning Policies with infrastructure and resource availability and utilization of technological tools like GIS for more dynamic planning.

The County is currently developing a long-range water Master Plan and an implementation strategy for infrastructure upgrades that also includes a financial plan and, a five- and twenty-year CIP program. It is anticipated that the Hawaii WUDP update will be completed by the end of 2006.

Commissioner Frazier asked what a “diversion” is in Figure 2? Mr. Nishimura stated that a diversion is a structure that diverts water from the stream.

2. Approval of Project Description for Updating the Hawaii County Water Use and Development Plan

Presentation of Submittal: Dean Nakano

RECOMMENDATIONS:

Staff recommends that the Commission:

1. Approve the Hawaii County, Department of Water Supply’s, Project Description for Updating the Hawaii Water Use and Development Plan; and

2. Authorize staff to participate in meetings and/or workshops, as necessary, with pertinent State and County agencies to facilitate implementation of statutory and framework provisions for updating the Hawaii County Water Use and Development Plan.

Chairman Young commented on a recommendation from OHA representative, Mr. Jonathan Scheuer, that a meeting in Kona and a meeting in Hilo do not necessarily hit the Hawaii County population. Residents in Kau or Waimea have a different perspective on water than a resident of North Hilo. Chairman Young
encouraged a broader discussion around the island instead of the traditional Kona and Hilo focal points.

MOTION: (Frazier/Fujiwara)
To approve as recommended by staff
UNANIMOUSLY APPROVED

3. Milestone Briefing by Honolulu Board of Water Supply on the Status of the Oahu Watershed Management Plan

A PowerPoint presentation was given by Barry Usagawa and a handout of the presentation was distributed. Mr. Usagawa thanked Dean Nakano and Lenore Nakama for attending monthly meetings to provide input to the planning process.

Also present were Mr. George Kuo from the Long Range Planning Section of Honolulu Board of Water Supply (HBWS), Jeff Overton and Cami Kloster from Group 70 International, Bruce Tsuchida from Townscape, Inc., and Randy Hara and Kathy Sokugawa from the City and County Department of Planning and Permitting.

Mr. Usagawa stated that, from a previous attempt to update the plan in 1999, HBWS learned that there is a need to provide equal focus on resource protection, conservation, and recreation, in addition to water use and development. Thus, they are proceeding in a regional approach, with the basic planning unit being the ahupuaa, then broadening to the moku, with a final integration at the island-scale.

Mr. Jeff Overton and Ms. Cami Kloster from Group 70 International did a PowerPoint presentation and distributed a handout of the presentation giving an update on their progress in the development of the Koolauloa Watershed Management Plan. Mr. Overton discussed sustainable yields, permitted wells and pumpage in this area.

Mr. Overton noted the values in the Koolauloa area, including cultural and traditional water uses, management of watershed resources through a holistic approach, preserving agricultural water supply, and the relationship between land use planning and water resource planning.

Mr. Overton stated that the issues and concerns in the region included the development of instream flow standards, flood control projects, polluted runoff control, preservation of aquifers, promotion of sustainable watersheds, and meeting the demands of this community as well as those outside the district that rely on the water imports from Koolauloa.
The next steps in the planning process are to create and evaluate strategies, further develop Watershed Management Projects and Programs, continue to solicit feedback from stakeholders, and finally preparation of a public review draft report by the end of 2005.

Mr. Bruce Tsuchida representing Townscape Inc. gave a PowerPoint presentation and distributed a handout of the presentation giving an update on their progress in the development of the Waianae Watershed Management Plan. Many meetings and interviews similar to those held in the Koolauloa region continue with individuals, focus groups and public workshops. Some key issues brought up by the community and water and land use agencies include stream flow concerns, affordable water concerns, preservation of wetlands, illegal dumping, and the need for funding for these projects.

Three projections to the year 2030 were prepared: Policy Scenario, Trend Scenario and High Growth Scenario. The projections were provided by the City and County Department of and Planning and Permitting. The Watershed Projects and Programs have been divided into four categories; 1) groundwater, 2) surface water, 3) land management, and 4) cultural and educational support. There is community interest in these watershed initiatives. The next steps include developing these resource options into strategies to meet future demand, developing an action plan, and documenting these strategies into a public review draft by December 2005.

Chairman Young announced that the next Commission meeting will be held on Tuesday, October 25, 2005.

The meeting was adjourned at 11:32 a.m.

Respectfully submitted,

PAULYNE K. ANAKALEA
Secretary

Approved as submitted:

DEAN A. NAKANO
Acting Deputy Director
COMMISSION ON WATER RESOURCE MANAGEMENT

FROM: ROY
DATE: OCT - 5 2005
TO: ANAKALEA, P.
INIT: KUNIMURA, I.
TO: BAUER, G.
INIT: NAKAMA, L.
TO: CHING, F.
INIT: NAKANO, D.
TO: DANBARA, S.
INIT: OHYE, M.
TO: FUJII, N.
INIT: SAKODA, E.
TO: GOODING, K.
INIT: SUBIA, S.
TO: HARDY, R.
INIT: SWANSON, S.
TO: HIGA, D.
INIT: UYENO, D.
TO: ICE, C.
INIT: YODA, K.
TO: IMATA, R.
INIT: YOSHINAGA, M.

PLEASE: See Me
Review & Comment
Take Action
Type Draft
Type Final
File
Xerox copies

Please (to Linda Osawa) or (to whom this is to be given)

Date signed yet, so Charlie is calling James to hold off on any signatures (power to mayor be in).

Date signed yet, so Charlie is calling James to hold off on any signatures (power to mayor be in).
October 4, 2005

Mr. Charles Ice
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu Hawaii 96809

re: 04-0547-A: Arbitration of Valerie Deva et al. v. Patricia Bragg and
Living Waters Land Foundation

Dear Mr. Ice:

Thank you for agreeing to testify on October 27, 2005 in the above-stated Arbitration.

A subpoena and witness fee check will be served on you prior to the date of your testimony. I enclose a copy of the Subpoena which has not yet been signed by the Arbitrator.

If you have questions, please don’t hesitate to contact me at 808-878-8885.

Sincerely yours,

Mary Blaine Johnston

Enc.
MARY BLAINE JOHNSTON 1755
P.O. Box 1030
Kula, Maui Hawaii 96790
Telephone No. (808)878-8885
Facsimile: (808) 878-1227

Attorney for Respondents Patricia Bragg and
Living Waters Land Foundation, LLC

DISPUTE PREVENTION AND RESOLUTION
HONOLULU, HAWAII

In the Matter of the Arbitration of

VALERIE DEVA and DON HARRIS,
Claimants,

vs.

PATRICIA BRAGG and LIVING WATERS LAND FOUNDATION,
Respondents.

) ARB. NO. 04-0547-A
) SUBPOENA DUCES TECUM
) (Charles Ice, Commission on Water Resource Development)
) Hearing Date: Thursday, October 27, 2005
) Time: 3:00 p.m.
) Arbitrator: G. Richard Morry

SUBPOENA DUCES TECUM

THE STATE OF HAWAII
TO THE SHERIFF OF THE STATE OF HAWAII
or his deputy or any police officer in the
State of Hawaii:

YOU ARE COMMANDED TO subpoena:

Charles Ice
Commission on Water Resource Development
Department of Land and Natural Resources
1151 Punchbowl Street, Room 227
Honolulu Hawaii 96813
to appear by telephone in the above-captioned manner to give testimony on behalf of Respondents Patricia Bragg and Living Waters Land Foundation on Thursday, October 27, 2005 at 3:00 p.m. Please bring with you documents related to the well use permit application of Living Waters Land Foundation, LLC for Well No. 5531, located on that certain property located at Waiehu Maui Hawaii, TMK No. (2) 3-2-13-015.


_____________________________________
G. RICHARD . MORRY
Arbitrator
October 10, 2005

Megan Wells
Living Waters Land Foundation, LLC
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

Notice of Commission Action
Waihee Mauka Well (Living Waters Well #1), Well No. 5531-01, WUP 704

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 January 30, 2002, the Commission:

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

Please be informed that the public hearing process has been completed, and staff is prepared to recommend approval upon the completion of processing applications for existing uses from the basal Iao Aquifer.

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

Sincerely,

[Signature]

Dean A. Nakano
 Acting Deputy Director

Cl:ky
FROM: ROY
TO: ANAKALEA, P.  KUNIMURA, I.  NAKIMURA, L.  NAKANO, D.  OHYE, M.  SAKODA, E.  SUBIA, S.  SWANSON, S.  UYENO, D.  YODA, K.  YOSHINAGA, M.

DATE:       INIT.  INIT:  FOR:  PLEASE:


Approval  Signature  Information

See Me  Review & Comment  Take Action

Type Draft  Type Final  File

Xerox copies

The can meet with them on 7/28 should provide a copy of submitted lesson plan at least 24 hours notice ready.

(04/05)
Date: September 29, 2005          Time: 9:30 a.m.

To: Charles F. Ice                  Fax No. 808-587-0219
Commission on Water Resource
Management

Re: Living Waters Land Foundation Application for Well #5531-01

TRANSMITTED PLEASE FIND:

DESCRIPTION OF DOCUMENT          NO. PAGES

Letter dated September 29, 2005          1
  re: testimony

Transmitted for:

( ) your information               ( ) per your request
( ) signature & return              ( ) your approval
( ) review & comment                ( ) per your message
(xx) your files                     (xx) hard copy to follow
( ) filing & return                 ( ) see remarks
(xx) per phone conversation

REMARKS:

[Signature]

MARY BLAINE JOHNSTON
September 29, 2005

Mr. Charles Ice
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu Hawaii 96809

By fax: 808-587-0219

re: Application of Living Waters Land Foundation, LLC: Waihee Mauka Well, Living Waters #1 (Well No. 5531-01) or for new uses

Dear Mr. Ice:

Thank you for speaking with me on Tuesday about the status of the well pumping permit application of Living Waters Land Foundation, LLC.

By way of this letter I want to put into writing my request that you provide testimony about the history and present status of the use permit application for Well No. 5531-01, as well as the necessity for the use permit to be issued before the well can be used, in the Arbitration proceeding that has been initiated by Valerie Deva and Don Harris against Living Waters Land Foundation to force Living Waters to proceed with subdividing the 550 acres owned by Living Waters so that Deva/Harris can purchase 10 acres of the property which they have an option to purchase once the subdivision is completed.

Deva/Harris have been advised that one of the requirements for subdivision is access to water. At this point in time, Living Waters’s property does not have such access and will not until the use permit is issued. Any attempt to file a subdivision application with the County of Maui without available water would be futile. Your testimony will be helpful in explaining at least one of the reasons how Living Waters has been delayed in its efforts to bring water to the property and unable to begin the subdivision process.

I have asked whether you could be available, at least by phone, sometime on October 27, 2005 to provide testimony. It is possible that we may come to Honolulu on that date, and if so I’d ask you to appear in person to testify. Hopefully we will have a more definite schedule worked out in the next few days.

Sincerely yours,

Mary Blaine Johnston
September 29, 2005

Mr. Charles Ice
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu Hawaii 96809

re: Application of Living Waters Land Foundation, LLC:
Waihee Mauka Well, Living Waters #1 (Well No. 5531-01) or for new uses

Dear Mr. Ice:

Thank you for speaking with me on Tuesday about the status of the well pumping permit application of Living Waters Land Foundation, LLC.

By way of this letter I want to put into writing my request that you provide testimony about the history and present status of the use permit application for Well No. 5531-01, as well as the necessity for the use permit to be issued before the well can be used, in the Arbitration proceeding that has been initiated by Valerie Deva and Don Harris against Living Waters Land Foundation to force Living Waters to proceed with subdividing the 550 acres owned by Living Waters so that Deva/Harris can purchase 10 acres of the property which they have an option to purchase once the subdivision is completed.

Deva/Harris have been advised that one of the requirements for subdivision is access to water. At this point in time, Living Waters’s property does not have such access and will not until the use permit is issued. Any attempt to file a subdivision application with the County of Maui without available water would be futile. Your testimony will be helpful in explaining at least one of the reasons how Living Waters has been delayed in its efforts to bring water to the property and unable to begin the subdivision process.

I have asked whether you could be available, at least by phone, sometime on October 27, 2005 to provide testimony. It is possible that we may come to Honolulu on that date, and if so I’d ask you to appear in person to testify. Hopefully we will have a more definite schedule worked out in the next few days.

Sincerely yours,

Mary Blaine Johnston
Ref: IaoWUPA.28Sep05.sub

STAFF SUBMITTAL

For the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

September 28, 2005
Honolulu, Hawaii

Maui Department of Parks & Recreation
Living Waters Land Foundation, LLC
APPLICATIONS FOR WATER USE PERMITS
War Memorial Football Stadium Well (5329-14, WUP 713)
Baldwin High School Well (5329-05, WUP 710)
Papohaku Park Well (5429-02, WUP 712)
Waiehu Golf Well (5529-02, WUP 711)
Waihee Mauka (Living Waters #1) (5531-01, WUP 704)
Existing and New Uses
Iao Ground Water Management Area, Maui

APPLICANT 1:

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

APPLICANT 2:

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

SUMMARY OF REQUEST:

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

LOCATION MAP: See Exhibit 1

BACKGROUND:

July 21, 2003

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

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

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

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

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

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

Hearing officers conducted the first session of the public hearing on water use permits for existing use, in Wailuku (see Exhibit 3). MP&R submitted amendments to its applications to correct and clarify location and pumpage information. Testimony was received on objections, and a contested case hearing was requested for wells listed in the public notice. Specifically, the caprock sources of MP&R had objections concerning hydrologic and legal requirements, while the Living Waters Well primarily had concerns over legal land tenure of the property. It was learned that Living Waters land use objections had been dismissed from Circuit Court. The hearing remained open for subsequent information gathering for all water use permit applications (WUPAs).
Staff Submittal

November 15, 2004
In response to objections raised for the WUPAs, staff circulated a clarification of the Supreme Court’s opinion concerning water use permit application burdens as applied to Hawaiian water rights and “domestic use” as an aspect of the public trust. (Exhibit 4)

April 22, 2005
A second session of the public hearing was held in Wailuku (see Exhibit 5). MP&R submitted additional amendments to its applications to correct and update information, showing system efficiency improvements and consequent pumpage reductions. There was no further testimony from objectors to the Living Waters Well. The hearing remained open for subsequent information gathering for all WUPAs.

May 13 & 20, 2005
Public Notice was given for previously incomplete applications for MP&R caprock wells, including those captioned in this submittal, and for high-level sources (stream augmentation tunnels) of Wailuku Agribusiness, Inc.

June 20 & 22, 2005
Objections from the Office of Hawaiian Affairs (OHA) and Earthjustice (EJ), respectively, were received on the MP&R WUPAs. While no responses to these objections have been officially filed, additional information was received at the April 22, 2005 session of the public hearing and at the July 11, 2005 information meeting between applicants and objectors (see below).

July 11, 2005
An informational meeting was held in Wailuku among applicants and objectors, to share information. MP&R submitted new information to correct pumpage amounts originally provided for Well No. 5329-14, and to update other information from their investigations. The table in Exhibit 7 is therefore updated for Well Nos. 5329-04 and 5329-14, WUP Nos. 709 and 713. Note that MP&R has consistently and correctly located the War Memorial Stadium Well (Well No. 5329-14), but incorrectly referred to it as “5329-04”, while now reporting that the Maui Stadium Well (Well No. 5329-04), adjacent to the Baldwin High School Well, is now paved over and not in service. It is an indication of the confusion generated by this miscommunication that the Public Notice for September 7 did not carry the correction for these two wells as done for Exhibit 7, the working hearing document. Similarly, the revised amount requested for 5329-14 was corrected for the hearing document but not corrected for the public notice.

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

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

ISSUES/ANALYSIS:

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

(1) **Water availability**

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

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

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

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

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

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

Table 1. Iao Aquifer System Area – Basal Portion

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

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

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

Other detailed information on wells is found in Exhibit 8.

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

(2) Reasonable-beneficial

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

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

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

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

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

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

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

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

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

(3) Interference with other existing legal uses

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

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

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

(4) Public interest

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

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

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

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

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

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

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

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

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

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

**RECOMMENDATIONS:**

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

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

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

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

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

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

Respectfully submitted,

DEAN A. NAKANO
Acting Deputy Director

Exhibit(s):

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

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

Dear Mr. Gentry:

Supreme Court Directions for Water Use Permit Applications

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

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

The Supreme Court’s opinion is summarized as follows:

1. Practicable Alternatives

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

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

EXHIBIT 2
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
PUBLIC HEARING
Applications for Water Use Permits
lao Ground Water Management Area, Maui

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

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

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

<table>
<thead>
<tr>
<th>Well Name</th>
<th>Well No</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Requested amount (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wailuku Shaft 33</td>
<td>5330-05</td>
<td>Kehalani*</td>
<td>707</td>
<td>3-5-1:1</td>
<td>5.771</td>
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<tr>
<td>Mokuhau Well 1</td>
<td>5330-09</td>
<td>MDWS</td>
<td>700</td>
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<td>MDWS</td>
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<td>Waiehu Heights Well 1</td>
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<td>MDWS</td>
<td>697</td>
<td>3-3-2:28</td>
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<td>695</td>
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<td>Waiehu Well 2</td>
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<td>MDWS</td>
<td>703</td>
<td>3-3-17:31</td>
<td>1.513</td>
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<td>DWS</td>
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<tr>
<td>Kepaniwai Well</td>
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<td>MDWS</td>
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<td>691</td>
<td>3-4-34:34</td>
<td>0.100</td>
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</table>

Total from all sources = 19.499

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

<table>
<thead>
<tr>
<th>Well Name</th>
<th>Well No</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Requested amount (mgd)</th>
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<td>702</td>
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<td>Baldwin High School</td>
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<td>MP&amp;R</td>
<td>710</td>
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<td>Maui Stadium</td>
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<td>MP&amp;R</td>
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<td>3-2-13:29</td>
<td>0.324</td>
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<tr>
<td>Waiehu Golf 2</td>
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<td>Black George Tunnel</td>
<td>5332-01</td>
<td>HC&amp;S</td>
<td>685</td>
<td>3-3-3:3</td>
<td>not identified</td>
</tr>
<tr>
<td>Iao Needle Tunnel 1</td>
<td>5333-01</td>
<td>HC&amp;S</td>
<td>684</td>
<td>3-6-3:1</td>
<td>not identified</td>
</tr>
<tr>
<td>Iao Needle Tunnel 2</td>
<td>5333-02</td>
<td>HC&amp;S</td>
<td>686</td>
<td>3-3-3:3</td>
<td>not identified</td>
</tr>
<tr>
<td>*Living Waters #1</td>
<td>5631-01</td>
<td>LWLF</td>
<td>704</td>
<td>3-2-13:15</td>
<td>&gt;6.890</td>
</tr>
</tbody>
</table>

Total from all sources

**Competing applications – do not double count.

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

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

COMMISSION ON WATER RESOURCE MANAGEMENT

Dated: October 7, 2004
Publish in: Maui News issue of October 12, 2004
Ms. Kapua Sproat  
Earthjustice  
223 South King St., Ste. 400  
Honolulu, HI 96813

Dear Ms. Sproat:

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

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

Hawaiian Water Rights

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

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

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

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

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

However, in reviewing the Court’s 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: Clyde Namuo, Office of Hawaiian Affairs
PUBLIC HEARING NOTICE

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

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

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

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

- **Basal Sources:**
  
<table>
<thead>
<tr>
<th>Name</th>
<th>Well No</th>
<th>Applicant</th>
<th>WUPA No</th>
<th>TMK</th>
<th>Amount (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Uses</strong> as of July 21, 2003 and completed applications submitted by the July 21, 2004 deadline</td>
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<tr>
<td>Mokuhau Well 1</td>
<td>5330-09</td>
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<td>700</td>
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<td>701</td>
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<td>MDWS</td>
<td>697</td>
<td>3-3-2:28</td>
<td>0.165</td>
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<td>MDWS</td>
<td>698</td>
<td>3-3-2:28</td>
<td>1.415</td>
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<td>Waiehu Well 1</td>
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<td>MDWS</td>
<td>695</td>
<td>3-3-17:31</td>
<td>1.480</td>
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<td>Waiehu Well 2</td>
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<td>MDWS</td>
<td>696</td>
<td>3-3-17:31</td>
<td>2.439</td>
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<td>Waiehu Well 3</td>
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<td>703</td>
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<td>1.513</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wailuku Shaft 33</td>
<td>5330-05</td>
<td>Kehalani</td>
<td>707</td>
<td>3-5-1:1</td>
<td>5.771</td>
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<tr>
<td>Wailuku Shaft 33</td>
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<td>MDWS</td>
<td>702</td>
<td>(3-5-1:1)</td>
<td>(5.771) not to be double-counted</td>
</tr>
<tr>
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<td>LWLF</td>
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<td>3-2-13:15</td>
<td>0.020</td>
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- **Caprock Sources:**
  
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<th>Name</th>
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<th>Applicant</th>
<th>WUPA No</th>
<th>TMK</th>
<th>Amount (mgd)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Existing Uses</strong> as of July 21, 2003 and accepted as completed applications submitted by the July 21, 2004 deadline</td>
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<tr>
<td>War Memorial Stadium</td>
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<td>MP&amp;R</td>
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<td>3-8-7:55</td>
<td>0.038?</td>
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<tr>
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<td>0.039?</td>
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<td>712</td>
<td>3-2-13:29</td>
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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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</tbody>
</table>

EXHIBIT 5
High-level Dike Sources (impacting stream flows, to be later combined with the IIFS petition proceedings)

<table>
<thead>
<tr>
<th>Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Amount (mgd)</th>
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<td>WACI</td>
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<td>3-3-3:3</td>
<td>unknown</td>
</tr>
</tbody>
</table>

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

None

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

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

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

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

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

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

COMMISSION ON WATER RESOURCE MANAGEMENT

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

Dated: March 28, 2005

Publish in: Maui News issue of April 1, 2005
PUBLIC HEARING NOTICE

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

The following applications for water use permits for existing groundwater use in the Iao Ground Water Management Area were accepted for public hearing by the Commission at its meeting on September 22, 2004. The public hearing originally commenced on October 28, 2004. This public hearing will be the third session and continuation of the original October 28, 2004 hearing and will be held:

September 7, 2005, 1:00-4:30 p.m. (Wednesday)
State Office Building, Conference Room B (3rd Floor)
54 High Street, Wailuku Hawaii 96793

The hearing officers will gather information on basal aquifer and caprock wells only. 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>
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<td>Mokuhaeu Well 1</td>
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<td>MDWS</td>
<td>700</td>
<td>3-3-2:24</td>
<td>1.994</td>
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<td>701</td>
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<td>2.221</td>
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<tr>
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<td>MDWS</td>
<td>697</td>
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<tr>
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<tr>
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<td>707</td>
<td>3-5-1:1</td>
<td>0.221</td>
</tr>
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<table>
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<tr>
<th>Name</th>
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<tr>
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<tr>
<td>Wailuku Shaft 33</td>
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<tr>
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* not to be double-counted against WUP No. 707

- **Caprock Sources:**

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<th>Name</th>
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<th>WUPA No.</th>
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<th>Amount (mgd)</th>
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<tr>
<td><strong>Existing Uses</strong> as of July 21, 2003 and accepted as completed applications submitted by the July 21, 2004 deadline</td>
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<tr>
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<td>0.039</td>
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<tr>
<td>Baldwin High School</td>
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<td>MP&amp;R</td>
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<td>Papohaku Park</td>
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<td>711</td>
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<tr>
<td>None</td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes: Three caprock sources formerly noticed have been deleted from consideration, for stated reasons:

- Maui Stadium 5329-14 MP&R 713 is not used and is capped
- Waiehu Golf 1 5530-03 MP&R 708 is not used and is capped
- Waiehu Golf 2 5530-04 MP&R 714 Not a production well (booster pump from reservoir)

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)

EXHIBIT 6
All High-level Dike sources will be taken up at a later date and are not identified in this notice. Further, High-level Dike sources will be combined with a petition to amend the interim instream flow standard of four Wailuku District streams: Waihe'e, Waiehu, 'Iao, and Waikapū.

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

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

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

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

COMMISSION ON WATER RESOURCE MANAGEMENT

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

Dated: August 12, 2005

Publish in: Maui News issue of August 18, 2005
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Definitions:

**Alternatives**: practicable alternative sources of water for the end use, and an assessment of the economic cost associated with implementation. Applicant should 1) identify potential alternatives or explain why they are not available; 2) if available, whether alternative is practicable, given its advantages/disadvantages.

**Duties**: the minimum amount of water necessary for economic and efficient use. Applicant should identify standards and/or references relevant to the use, if applicable, and factors that modify use of the standards/references.

**Historical and/or cultural significance**: dual users case 2
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* special case 1
WATER USE PERMIT DETAILED INFORMATION

Source Information

AQUIFER:
- Sustainable Yield: 20 mgd
- Existing Water Use Permits: 0 mgd
- Available Allocation: 20 mgd
- Total other pending applications: 17.219 mgd
- These applications: 0.274 mgd

WELL:
- Caprock Wells (Well Nos. 5329-04, -05, -14; 5429-02; 5529-02)
- Keopulani Park, Baldwin H.S., Papohaku Park, Waiehu Golf Course
  TMKs: 3-8-7:55; 3-2-13:29, 6
- Waihee Mauka Well (Well No. 5531-01)
  northern Waihee Plain, el. 350 ft., TMK: 3-2-13:15

Use Information

Quantity Requested: 0.274 million gallons per day.
Existing Type of Water Use: Irrigation
Reported Water Usage: 0.274 mdp
Nearby Similar Water Usage: 0.400 mdp

EXHIBIT 8
Nearby Surrounding Wells and Other Registered Ground Water Use

There are 21 wells, including the captioned wells, within a mile of the caprock wells (see Exhibit 1). 10 of these wells are currently in use. From the limited field verification, current estimated existing ground water use from the Iao Aquifer System is approximately 17.551 mgd. Not all users have been fully verified to date.

Public Notice

In accordance with HAR §13-171-17, a public notice was published in the Honolulu Advertiser on August 11, 2004 and August 18, 2004 and a copy of the notice was sent to the Mayor's office. Copies of the completed application were sent to the Department/Board of Water Supply, Planning Department, Department of Land Utilization (Oahu only), Department of Health, Department of Hawaiian Home Lands, Office of Hawaiian Affairs, the various divisions within the Department of Land and Natural Resources, and other interested parties for comments. Written comments and objections to the proposed permit were to be submitted to the Commission by September 2, 2004.

Objections

The public notice specifies that an objector meet the following requirements: (1) state property or other interest in the matter; (2) set forth questions of procedure, fact, law, or policy, to which objections are taken; (3) state all grounds for objections to the proposed permits, (4) provide a copy of the objection letter(s) to the applicant, and (5) submit objections meeting the previous requirements to the Commission by July 2, 2000.

Early objections have been dismissed or withdrawn. To the best of staff's knowledge there are no objectors who have property interest within the Iao Aquifer System or who will be directly and immediately affected by the proposed water use.

Briefs in Support

Responses to objections, or briefs in support, regarding the application are required to be filed with the Commission ten (10) days after an objection is filed and, presumably, copies are served to the applicant. No briefs in support were filed with the Commission.
STANDARD WATER USE PERMIT CONDITIONS

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

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

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

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

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

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

7. The water use permit application and submittal, as amended, approved by the Commission at its August 25, 2004 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;

EXHIBIT 9
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 which will affect the permittee's water use.

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

16. The permittee shall prepare and submit a water shortage plan within 30 days of the issuance of this permit as required by HAR § 13-171-42(c). The permittee's water shortage plan shall identify what the permittee is willing to do should the Commission declare a water shortage in the Iao Ground-Water Management Area.
17. The water use permit shall be subject to the Commission's establishment of instream standards and policies relating to the Stream Protection and Management (SPAM) program, as well as legislative mandates to protect stream resources.

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

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

Ms. Megan Wells
Living Waters Land Foundation, LLC
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

Meeting Confirmation
Information on Reasonable and Beneficial Use

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

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

Sincerely,

DEAN A. NAKANO
Acting Deputy Director
Ms. Megan Wells
Living Waters Land Foundation, LLC
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

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 Waiāhole 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
PUBLIC HEARING NOTICE

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

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

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

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

- **Basal Sources:**

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**New Uses** arising after July 21, 2003 or completed applications submitted after the July 21, 2004 deadline
None
High-level Dike Sources (impacting stream flows, to be later combined with the IIFS petition proceedings)

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<th>WUPA No</th>
<th>TMK</th>
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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 with the Commission within ten (10) days after the close of the public hearing. Petition forms are available from the Commission.

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

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

COMMISSION ON WATER RESOURCE MANAGEMENT

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

Dated: March 28, 2005

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

BY U.S. MAIL & FACSIMILE TRANSMITTAL

Fax: (808) 587-0219

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

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

Dear Deputy Director Izu:

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

I. Traditional & Customary Native Hawaiian Rights & Practices.


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

1 Native Hawaiians may also possess appurtenant, riparian, or correlative rights, which may be used for traditional and customary purposes, such as the appurtenant, riparian, or correlative right to water for kalo cultivation on one’s own kuleana. See generally Lawrence H. Miike, M.D., J.D. Water and the Law in Hawai‘i (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 Waiāhole Combined Contested Case, 94 Haw. 97, 141 (2000) ("Waiāhole 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
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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.

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

“(A)n applicant for a water use permit bears the burden of establishing that the proposed use will not interfere with any public trust purposes; likewise, the Commission is duty bound to hold an applicant to its burden[].” In re Wai‘ola o Moloka‘i, Inc., 103 Haw. 401, 441 (2004) (“Wai‘ola”). Wai‘ola presented nearly identical issues: this Commission was tasked with considering the impact of a water use permit application for ground water withdrawals for municipal and other purposes on traditional and customary rights and practices. The Hawai‘i Supreme Court vacated this Commission’s order because the Commission “failed adequately to discharge its public trust obligation to protect native Hawaiians’ traditional and customary gathering rights[].” Id. at 443. In so doing, the Court placed “the burden of proving, inter alia, that the proposed water use would not abridge or deny traditional and customary native Hawaiian rights” squarely on the applicant’s and the Commission’s shoulders. Id. at 442. The Court also admonished the Commission for “erroneously 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. (emphasis in original).

In light of the Code’s mandates and Wai‘eala’s clear language, the burden of establishing that traditional and customary Native Hawaiian rights exist in the first instance rests with this Commission as trustee of Hawai‘i’s water resources trust and with any permit applicant who covets public trust resources. “[T]he Commission must not relegate itself to the role of a mere ‘umpire, passively calling balls and strikes for adversaries appearing before it,’ but instead must take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decisionmaking process.” Wai‘āhole 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 ʻĪao, at the October 28, 2004 public hearing on Maui, and in the petition to restore stream flow in Waiheʻe, North and South Waiehu, ʻĪao and Waikapū streams and their tributaries (ʻNā Wai ʻEhā”) filed by Earthjustice on June 25, 2004, this Commission is tasked with investigating and making specific findings regarding: (1) the identity and scope of cultural, historical and natural resources in the area affected by the permit applications for ʻĪao, 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 ʻNā Wai ʻEhā area. If the Commission determines that such rights exist, all water use permit applicants must overcome the presumption in favor of such protected public trust purposes.

Given the limitations of the outdated declarations of water use and Hawaiʻi Water Plan, we understand the enormity of the task facing this Commission and the applicants seeking water use permits for ʻĪao. Although the Hawaiʻi Supreme Court has made clear that this burden lies with the Commission and permit applicants, not the practitioners, several workable avenues are available to help provide the necessary information. The Commission, in partnership with the permit applicants, could, for example: (1) review declarations of water use for all TMKs and uses within the affected area; (2) request from plantation interests including Wailuku Agribusiness and HC&S, a list of all individuals who receive kuleana water; (3) publish notices in local papers and broadcast on local TV (Akaku) and radio stations requests for information from practitioners from the affected area; (4) locally notice and hold public meetings in Central Maui for practitioners who may be affected by the pending applications; (5) contact Hawaiian agencies with offices or representatives in the affected area, including the Office of Hawaiian Affairs, Queen Liliʻuokalani Children’s Center, and Alu Like for lists of local practitioners or contacts; (6) contact elected representatives at the county, state, and federal levels for recommended contacts; (7) contact cultural consultants or experts from the area, including those listed in state Office of Environmental Quality Control’s list of cultural consultants and others potentially available through the Bailey House for contact information for local practitioners or other resources; (8) contact culturally-based groups from the area including hula hālau, Hawaiian Civic Clubs, ‘Onipa’a Nā Hui Kalo, Maui Cultural Lands, Maui Cultural Resources Commission and
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the like for information and recommendations; (9) contact state agencies, including the historic preservation division and Island Burial Councils for lists of local practitioners or contacts; and (10) contact schools and organizations of higher learning, including the University of Hawai‘i and Maui Community College for lists of Hawaiian organizations, clubs, local practitioners, and other contacts from the area. These are just a sampling of potential sources of information; many more are available to this Commission and the permit applicants.

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

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

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

II. Municipal Uses.

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

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

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

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

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2 This Commission determined that while potable water is delivered through the Central Maui system to provide for both potable and non-potable needs, the County was unable to “differentiate between these major categories of use.” State Commission on Water Resource Management, Lao and Waiehe 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 Waiahōlē) 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 § 359 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 ʻLao 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 Waiahōlē, 94 Haw. at 177 n.90 (analogizing correlative rights to ground water to riparian rights in surface water); id. at 172-73 (rejecting artificial ground-surface distinction). See also id., at 180 n.95 (citing ground water statutes from other states preserving the right of landowners to withdraw water for “domestic” uses, which would not extend to municipal uses).
may take from a private stream all the water it needs for the domestic use of its inhabitants is not generally accepted and is expressly denied in a number of cases.” 2 J. Sackman, Nichols on Eminent Domain § 5.05[2][a][vii], at 5-247 (rev. 3d ed.) (citing cases). “A private riparian proprietor has no right at common law to divert water for purposes of sale, and it would seem that a municipal or a public service corporation should stand in no better position.” Id.

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

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


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

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

Analysis of 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 Iao, may include aggregate domestic uses, but are otherwise qualitatively and quantitatively different because of their large-scale, consumptive, and diversionary nature. Inclusion of such uses (which include many other uses besides domestic, including commercial uses, and in most cases would drain a water source dry) as a public trust purpose would constitute an unprecedented, fundamental deviation from long-standing public trust principles.

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

* The substance of the Clifton court’s holding was that the state held potable drinking water reserves in trust, 53 Y.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, Wai‘ahole 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, Wai‘ahole I and other public trust precedent do not support including municipal uses as a “public trust purpose.” The reasoning of the Hawai‘i Supreme Court in Wai‘ahole I applies with equal force here: “while the state water resources trust acknowledges that [public] use for [municipal purposes] may produce important public benefits and that such benefits must figure into any balancing of competing interests in water, it stops short of embracing [such] use as a protected ‘trust purpose.’” 94 Haw. at 138.


The November 15 letter also points out that municipal uses are not “private commercial uses” discussed in Wai‘ahole I. Of course, the only uses at issue in Wai‘ahole I were private commercial uses,” so claiming that Wai‘ahole 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 Wai‘ahole 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 Wai‘ahole 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[].”).
Letter to Yvonne Izu Re: Burdens Of Proof And Legal Standards Regarding: (1) Traditional & Customary Native Hawaiian Rights & Practices; & (2) Municipal Uses

December 17, 2004
Page 12 of 13

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 Waiāholo 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. Waiāholo, 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. Waiāholo 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.” Waiāholo 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
Letter to Yvonne Izu Re. Burdens Of Proof And Legal Standards Regarding: (1) Traditional & Customary Native Hawaiian Rights & Practices; & (2) Municipal Uses
December 17, 2004
Page 13 of 13

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.” Waiāhole 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 Waiāhole 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. Kapun 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)
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December 14, 2004

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

re: Water Use Permit Application No. 704
Living Waters #1 (Well No. 5531-01)

Dear Ms. Izu:

Thank you for your letter dated November 23, 2004 in regard to the above stated Permit Application. There are several points in your letter that I would like to have clarified:

1. On the issue of the assertions by Mahealani Ventura-Oliver and Patty Conte that there were significant sites near the well which led to the recommendation by the Historic Preservation Division that no action on the permit application be taken until a survey had been made: On November 17, 2004 I wrote to the Historic Preservation Division and asked that it provide a letter to your office withdrawing its position in the absence of any evidence of significant historic sites and provide me a copy of the letter. To date I have received nothing from Historic Preservation retracting their "concerns". Your letter indicates at paragraph 1 that there has been a clarification letter from HP and that your office no longer considers the sites and artifacts a problem. If you have received a written clarification from HP, could you please provide me with a copy.

2. I did not attend the hearing on Maui on October 28, 2004 as I was on the Mainland. However, representatives of Living Waters did attend the hearing and testified. It is my understanding that other than the objections voiced by Mahealani Ventura-Oliver's group, there were no other objections to Living Waters's application. If there are any objections other than the Ventura-Oliver ones which may impede the processing of Living Waters's Application, could you please provide me with copies of such objections, indicating which ones, in your office's view, present a hurdle to my client's obtaining a use permit.

3. Finally, if I understand the last paragraph of your letter correctly, applications by others than Living Waters to continue existing water uses, may impact and delay Living Waters ability to obtain its permit. Can you provide me any further details on this possible complication.
As I pointed out in my letter of November 17, 2004 to HP, there are farmers who have been engaged in farming activities on Living Waters property for years who will be severely impacted if water flow to their farms is suddenly terminated by Wailuku Agribusiness and there is no other alternate source of water for them. Any suggestions you can give for how to avoid this undesirable situation pending the deliberations by your office on Living Waters’s Application for a permit would be greatly appreciated.

Sincerely yours,

Mary Blaine Johnston

cc  Living Waters Land Foundation
Ms. Mary Blaine Johnston, Esq.
P.O. Box 1030
Kula, HI 96790

Dear Ms. Johnston:

Historic Preservation Review and Commission Action
Water Use Permit Application No. 704
Living Waters Well #1 (Well No. 5531-01)

Thank you for your letter dated November 17, 2004, faxed the same day, concerning your belief that the Commission has deferred action pending an archaeological inventory survey of certain properties.

It is our understanding that the initial correspondence from the Historic Preservation Division (HP) reflected assertions by Mahealani Ventura-Oliver and contractor Patty Conte, and that subsequent communications on the subject had resulted in an understanding that the parcel of concern was not yours nor involved with your activities. We recommended that a clarification letter from HP be sent to us for the record, which has been done.

Please be advised that your application was not held up on this account. We are obliged to notify HP when land disturbance is indicated by an application, and they have 30 days to respond. Government actions subject to permit may be delayed if there are archaeological concerns, but private actions can only be delayed if they “will affect” sites or artifacts, in HP’s opinion. That clearly is not the case here.

However, the initial water use permit application process following designation of an aquifer as a water management area requires that we first address the continuation of uses already existing as of the date of designation. As it happens, your application for a pump installation permit coincided with designation, and therefore the permit could not be issued without a water use permit. Consequently, approval of your “new” use must necessarily follow decision-making on the continuation of existing uses. Living Waters Land Foundation has testified on behalf of its application at the public hearing held on Maui on October 28, 2004, a hearing which is still open pending the assemblage of additional important information on “existing use” applications.
If there are no objections to an application, the Commission must act within 90 days. Because there were objections to your application that required a hearing, the deadline for action turns to 180 days, or in this case to January 11, 2005. It is possible that the Commission, upon the recommendation of the hearing officers, will continue the process beyond 180 days in order to facilitate adequate consideration of the issues.

It also happens that some of the applications to continue existing water use may affect stream flows, and are being separated to address with a petition to restore stream flow filed on June 25, 2004. While we intend to address these issues as expeditiously as possible, they represent a complication that may delay decision-making on your application. You may rest assured that the Commissioners and staff are very aware that these delays affect people’s livelihoods. Every effort will be made to reach a sound decision as quickly as possible.

Sincerely,

YVONNE Y. IZU
Deputy Director

C: Historic Preservation Division
Living Waters Land Foundation, LLC
November 17, 2004

Kathleen Dagher
Department of Land and Natural Resources
State of Hawaii
Historic Preservation Division
Kakuhihiwai Building, Room 555
601 Kamokila Boulevard
Kapolei, Hawaii 96707

re: Chapter 6E-42 Historic Preservation Review- Request for Comments for a Water Use Application for the Iao Ground Water Management Area, Maui
(Well No. 5531-01[State/CWRM]
Waihe‘e Ahupua‘a, Wailuku District, Island of Maui
TMK: (2) 3-2-013:015

Dear Ms. Dagher:

On September 15, 2004, P. Holly McEldowney in your office prepared a Memorandum that was addressed to Yvonne Izu, Deputy Director of the Commission of Water Resource Management (referenced as Log No. 2004.2734/Doc. No. 0409CD11) regarding the well permit application submitted by my client Living Waters Land Foundation, LLC. (I enclose a copy of that Memorandum).

Based upon a review “of reports, maps and aerial photography”, your office recommended that no further action be taken on the well permit application of Living Waters Land Foundation, LLC, “until an archaeological inventory survey has been conducted.” As a result of your office’s recommendation, the Commission on Water Resource Management has indicated it will not proceed with further processing of the well permit application until it receives written notice from your office that you have no documentation of significant historic sites on or near the proposed well site.

The September 15, 2004 Memorandum mentioned a report done by Patty Conte of CRM Solutions which purported to have found historic sites based upon a field inspection. In fact, Ms. Conte’s field inspection was of two parcels that are not near the proposed well site. In her “Notice of Field Inspection Completed” dated February 21, 2004, as well as her “Verification of Traditional Hawaiian Land Use Within TMK 3-2-12:13-14, Hananui, Island of Maui” dated February 20, 2004, she specifically identifies the parcels she inspected as Tax Map Key Nos. (2) 3-2-013:13-14. Living Waters Land Foundation’s well is located upon Tax Map Key No. (2) 3-2-013:15 as identified in the September 15, 2004 Memorandum. Ms. Conte’s inspection and
consequent report simply has no relevance to the application for the well permit as it concerns entirely different property.

However, to be sure there were no historic sites on parcel 15 owned by Living Waters and the site of the well, my client had Eric Fredericksen of Xamanek Research do a field inspection of the correct parcel. His report was submitted to your office several weeks ago. His inspection revealed that there were no historic sites of significance in the area of the proposed well.

As the report by Ms. Conte upon which you based your recommendation that no action be taken pending an archeological survey was not of the property upon which the well is located and as it has been established by Mr. Frederickson’s survey of the correct tax map parcel that there are no significant historic sites, we ask that you prepare a follow-up Memorandum to the Commission of Water Resource Management to notify them that there is no evidence of significant historical sites and thus there is no reason for a delay in the processing by it of the well permit application.

As you may or may not be aware, there are a number of farmers presently farming on my client’s property who need to have uninterrupted access to water for their crops. We thus ask that you expedite advising the Commission on Water Resource Management that there are no issues of concern about historic sites. Please provide me a copy of the Memorandum you send to the Commission on Water Resource Management.

If you have any questions, please feel free to contact me at 808-878-8885.

Sincerely yours,

[Signature]
Mary Blaine Johnston

Encs.

cc Charles Ice, Commission on Water Resource Management
Living Waters Land Foundation, LLC
FROM: Charley  
DATE: 19 Nov 04

TO: BAUER, G.  
TO: GOODING, K  
TO: FUJII, N.  
TO: OHYE, M  
TO: YOSHINAGA, M  
TO: SWANSON, S.  
TO: KUNIMURA, I.  
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C.c. ASSION ON WATER RESOURCE MANAGEMENT

and response. To return for signature.
MEMORANDUM

TO: Yvonne Izu, Deputy Director
Commission of Water Resource Management

FROM: Holly McEldowney, Administrator
State Historic Preservation Division

SUBJECT: Chapter 6E-42 Historic Preservation Review – Request for Comments for a Water Use Application for the Iao Ground Water Management Area, Maui (Well No. 5531-01) [State/CWRM] Waihe'e Ahupua'a, Wailuku District, Island of Maui

September 15, 2004

Thank you for the opportunity to review and comment on the Request for Comments for a Water Use Application for the Iao Ground Water Management Area, Maui, which was received by our staff August 10, 2004. We provide the following comments.

Our review is based on reports, maps, and aerial photographs maintained at the State Historic Preservation Division. In February 2004, Patty Conte of CRM Solutions conducted a field inspection which included the subject property. The purpose of the field inspection was to determine the presence or absence of historic sites. During the field inspection at least ten previously unidentified historic sites and/or site remnants were identified.

Based on the findings of the field inspection and in order to determine the effect of the proposed undertaking on historic sites, we recommend that no action be taken on the subject permit application until an archaeological inventory survey has been conducted of the proposed project area 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.

CD:jen

Michael Foley, Director, Dept of Planning, 250 S. High Street, Wailuku, HI 96793
Maui Cultural Resources Commission, Dept of Ping, 250 S. High St, Wailuku, HI 96793
February 21, 2004

State Historic Preservation Division
DLNR Maui Annex
130 Mahalani Street
Wailuku, Hawaii 96793

Notice of Field Inspection Completed

At the request of Ms. Mahealani Ventura-Oliver, this firm has conducted an archaeological field inspection of a portion of the land comprising Royal Patent 7584, situated within TMK (2) 3-2-013:13-14. The purpose of the inspection was to confirm the presence or absence of sites associated with traditional/cultural Hawaiian land use in this location. Sites and site/remnants were observed, with approximate locations of some plotted on a map that was given to Ms. Ventura-Oliver for her use.

For your records, CRM Solutions Hawaii recommends that in the event future ground altering disturbance is planned or proposed within the area of the subject TMK, that a thorough archaeological inventory survey be undertaken before any such work is allowed to proceed.

Sincerely,

Patty J. Conte, M.A.
Principal Investigator
February 20, 2004

To Whom It May Concern:

VERIFICATION OF TRADITIONAL HAWAIIAN LAND USE WITHIN
TMK 3-2-13:13-14
HANANUI, ISLAND OF MAUI

This letter is being submitted to verify traditional Hawaiian land use within the abovementioned TMK, also described in Royal Patent 7584, Land Claim Award 781 to A.M. Birch. Evidence of such use is the presence of numerous traditionally constructed and modified natural pohaku (stone) features, including hale (house), pa iliina (burial mounds) and kanu ana (burial caves).

This area is extremely culturally sensitive. As stated in S.2869, Religious Land Use and Institutionalized Persons Act of 2000 and Hawaii Revised Statute 852-1, the lineal and cultural descendants of the family members who resided there during the pre-Contact period (before A.D. 1778 when Captain Cook arrived) as well as those who have had a documented presence on the land since 1839, must be afforded unrestricted access to continue caring for the these locations as kahu malama (stewards) of the significant sites shown on map enclosed with this letter of verification.

Respectfully submitted,

Patty J. Conte, M.A.

Principal Investigator
November 18, 2004

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

Dear Mr. Tengan:

Central Maui Ground Water Production – Summary of Recent Findings

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

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

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

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

Sincerely,

[Signature]

YVONNE Y. IZU  
Deputy Director
Fax Transmittal

Date: November 17, 2004
Time: 4:00 p.m.

To: Kathleen Dagher
Historic Preservation Division
Fax No. 808-692-8020

Charles F. Ice
Commission on Water Resource Management
Fax No. 808-587-0215

Re: Living Waters Land Foundation Application for Well #5531-01

TRANSMITTED PLEASE FIND:

DESCRIPTION OF DOCUMENT NO. PAGES
Letter dated November 18, 2004 re Well Permit Application (Well 5531-01) (w/encs) 5

Transmitted for:

(xx) your information ( ) per your request
( ) signature & return ( ) your approval
( ) review & comment ( ) per your message
(xx) your files (xx) hard copy to follow
( ) filing & return ( ) see remarks
( ) per phone conversation

REMARKS:

MARY BLAINE JOHNSTON
November 17, 2004

Kathleen Dagher
Department of Land and Natural Resources
State of Hawaii
Historic Preservation Division
Kakauhewa Building, Room 555
601 Kamokila Boulevard
Kapolei, Hawaii 96707

By fax: 808-692-8020

re: Chapter 6E-42 Historic Preservation Review - Request for Comments for a Water Use Application for the Iao Ground Water Management Area, Maui
(Well No. 5531-01[State/CWRM]
Waihe‘e Ahupua‘a, Wailuku District, Island of Maui
TMK: (2) 3-2-013:015

Dear Ms. Dagher:

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If you have any questions, please feel free to contact me at 808-878-8885.

Sincerely yours,

Mary Blaine Johnston

Encs.

cc Charles Lee, Commission on Water Resource Management
Living Waters Land Foundation, LLC
September 15, 2004

MEMORANDUM

TO: Yvonne Izu, Deputy Director
Commission of Water Resource Management

FROM: F. Holly McElidowney, Administrator
State Historic Preservation Division

SUBJECT: Chapter 6E-42 Historic Preservation Review — Request for Comments for a Water Use Application for the Iao Ground Water Management Area, Maui (Well No. 5631-01) [State/CWRM] Wailea Ahipua'a, Wailuku District, Island of Maui
TMK: (213-2-013-013)

Thank you for the opportunity to review and comment on the Request for Comments for a Water Use Application for the Iao Ground Water Management Area, Maui, which was received by our staff August 10, 2004. We provide the following comments.

Our review is based on reports, maps, and aerial photographs maintained at the State Historic Preservation Division. In February 2004, Patty Conte of CRM Solutions conducted a field inspection which included the subject property. The purpose of the field inspection was to determine the presence or absence of historic sites. During the field inspection at least ten previously unidentified historic sites and/or site remnants were identified.

Based on the findings of the field inspection and in order to determine the effect of the proposed undertaking on historic sites, we recommend that no action be taken on the subject permit application until an archaeological inventory survey has been conducted of the proposed project area 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.

CC:
Michael Foley, Director, Dept of Planning, 250 S. High Street, Wailuku, HI 96793
Maul Cultural Resources Commission, Dept of Planning, 250 S. High St, Wailuku, HI 96793
February 21, 2004

State Historic Preservation Division
DLNR Maui Annex
130 Mahalani Street
Wailuku, Hawaii 96793

Notice of Field Inspection Completed

At the request of Ms. Mahealani Ventura-Oliver, this firm has conducted an archaeological field inspection of a portion of the land comprising Royal Patent 7584, situated within TMK (2) 3-2-013:13-14. The purpose of the inspection was to confirm the presence or absence of sites associated with traditional/cultural Hawaiian land use in this location. Sites and site/remnants were observed, with approximate locations of some plotted on a map that was given to Ms. Ventura-Oliver for her use.

For your records, CRM Solutions Hawaii recommends that in the event future ground altering disturbance is planned or proposed within the area of the subject TMK, that a thorough archaeological inventory survey be undertaken before any such work is allowed to proceed.

Sincerely,

Patty J. Conte
Patty J. Conte, M.A.
Principal Investigator
To Whom It May Concern:

VERIFICATION OF TRADITIONAL HAWAIIAN LAND USE WITHIN
TMK 3-2-13:13-14
HANANUI, ISLAND OF MAUI

This letter is being submitted to verify traditional Hawaiian land use within the abovementioned TMK, also described in Royal Patent 7584, Land Claim Award 781 to A.M. Birch. Evidence of such use is the presence of numerous traditionally constructed and modified natural pohaku (stone) features, including hale (house), pa ilina (burial mounds) and kanu ana (burial caves).

This area is extremely culturally sensitive. As stated in S.2869, Religious Land Use and Institutionalized Persons Act of 2000 and Hawaii Revised Statute 852-1, the lineal and cultural descendants of the family members who resided there during the pre-Contact period (before A.D. 1778 when Captain Cook arrived) as well as those who have had a documented presence on the land since 1839, must be afforded unrestricted access to continue caring for the these locations as kahu malama (stewards) of the significant sites shown on map enclosed with this letter of verification.

Respectfully submitted,

Patty J. Conte, M.A.

Principal Investigator
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

Cl: ss
November 15, 2004

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

Dear Ms. Sproat:

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

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

Hawaiian Water Rights

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

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

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

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

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

However, in reviewing the Court’s Waiåhole 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 Waiåhole I “prescribes a ‘higher level of scrutiny’ for private commercial uses (emphasis added)” (94 Haw. 97, 142).

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

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

Sincerely,

YVONNE Y. IZU
Deputy Director

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

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

Dear Mr. Namuo:

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

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

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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

Cl: ss

c: Kapua Sproat, Earthjustice
backup pump available at well site
MEMORANDUM

TO: Yvonne Izu, Deputy Director
Commission of Water Resource Management

FROM: Melanie A. Chinen, Administrator
State Historic Preservation Division

Waihe'e Ahupua'a, Wailuku District, Island of Maui
TMK: (2) 3-2-013:015

November 8, 2004

These are our revised comments pertaining to the Request for Comments for a Water Use Application for the Iao Ground Water Management Area, Maui. Our previous comments recommended that no action be taken on the subject permit application until an archaeological inventory survey has been conducted of the proposed project area to determine whether significant historic sites are present (SHPD DOC NO.: 0409CD11/LOG NO.: 2004.2734).

On October 23, 2004 Erik Fredericksen, Xamanek Researches, accompanied by Jonathon Kurtz, (Living Water Land Foundation LWLF), conducted a field inspection of the project area. Based on the findings of the field inspection (October 26, 2004 letter from Mr. Fredericksen to this office), we now understand LWLF was granted a water well drilling permit prior to the installation of the wellhead in September 2003, and the subject permit application is for the pumping permit. We also understand the wellhead was installed within a c. 1980 USSUS erosion control berm.

The field inspection consisted of driving down the existing dirt access roads to the wellhead site. These roads are currently in use for LWLF field operations. A segment of the Spreckelsville Ditch (SIHP 1508) is located approximately 100m to the northeast of the wellhead and did not appear to be impacted by the wellhead installation. No new historic sites were identified during the field inspection.

Given the above information, we now believe there were "no historic properties affected" by the wellhead installation.

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

CD:jen
c: Michael Foley, Director, Dept of Planning, 250 S. High Street, Wailuku, HI 96793
Maui Cultural Resources Comm, Dept of Ping, 250 S. High St, Wailuku, HI 96793
November 5, 2004

Mr. Charles Ice
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu Hawaii 96809

By fax: 808-587-0219

Re: Application of Living Waters Land Foundation, LLC:
Waihee Mauka Well, Living Waters #1 (Well No. 5531-01) or
for new uses

Dear Mr. Ice:

I want to provide some follow-up comments to add to my testimony I gave at the hearing on Maui on October 28. The presence of Mahealani Ventura-Oliver and her group as well as Mr. Chumbley of Wailuku Agribusiness was intimidating to me and as a result, I did not cover all the points I wanted to make.

The points that I wanted to make, but did not feel comfortable with saying are as follows:

1) Ms. Ventura-Oliver and her group members stated at the hearing that the water should go to the local people and to local farmers. Local people and local farmers are using Living Waters Land Foundation’s land - the precise kind of use Ms. Ventura-Oliver’s group says should be using the land. That they refuse to acknowledge that we are in the area and farming clearly shows that their purpose of objecting to our application is not a concern over the aquifer and the appropriate use of the water but a personal vendetta against the owner of the land.

2) Ms. Ventura-Oliver and her group have never substantiated any of their claims or supported any of their objections with any documentation. Ms. Ventura-Oliver does not hold title to the land and has not asserted a claim against the property on which the well is located. Further, Milton Lai, head of the Waihee Community Association that “she does not live in the area and does not represent the local community in any way”, has specifically told her. Judge August of the Second Circuit Court has made a determination about all of her claims against us and has ruled that her claims have no legal basis or merit and that she is not entitled to go onto Living Waters property. (See enclosed Preliminary Injunction).

3) Although Mahealani and her husband John Oliver sued the Second Circuit Court, the Maui County Police Dept, DLNR, Maui County etc, as well as Wailuku Agribusiness and Living Waters Land Foundation, they did not even show up for the case initiated by them. Judge Cardoza of the Second Circuit Court dismissed the case, finding it frivolous and granted the dozen or so attorneys who did show up to court to defend their clients their requested dismissal.
4) When Mahealani and her husband attempted to make a claim, similar to the one asserted by them against Living Waters, that they had title to property owned by Koolau Cattle Company (property which adjoins LLW property), Judge Shackley F. Raffetto, like Judge August, denied their claims and issued an Injunction against them, prohibiting them from going on this property also. (See Injunction enclosed).

All three Maui Circuit Court judges have ruled against the Olivers's claims to ownership to any property in the area, rejecting the same sort of rhetoric and unsubstantiated claims presented by them to the Water Commission to defeat LWLF's well permit application.

4) The "archeological problem" was the result of further manipulations caused by Ms. Ventura-Oliver to hamstring Living Water's efforts to acquire the water needed to enable the farmers currently farming the land as well as further expansion of agriculture activity by Living Waters. As testified to by Eric Frederickson a respected archeologist, in his written report, based upon his inspection of the well and surrounding area, there are no archeologically significant sites, thus, the "problem" Ms. Oliver's group has attempted to create simply does not exist.

5) I wanted to point out that based on the testimony that I witnessed at the hearing on Maui the Sierra Club, Earth Justice, and OHA did not oppose our application. I believe we were the only application that was not opposed by any of them.

6) This leaves the only objection of our application being Mahealani and a few of her friends. One of the friends that testified for Mahealani from Lahaina side, told me after hearing my testimony that he had been misinformed as to who we were and our purpose and that he could not see why Mahealani was fighting us. I also had another Hawaiian group activist who also testified tell me after he testified that he would support us any way he could.

7) I could not clearly state at the hearing without jeopardizing our farmers that LWLF will not and cannot ever sign an agreement with Wailuku Ag for water for our farmers. This means that these farmers' livelihoods and farms are in your hands. The survival of their farms is dependent on your expeditious granting of our pumping permit.

Thank you for your consideration,

Megan Wells
Land Manager
Living Waters Land Foundation, LLC
MARY BLAINE JOHNSTON 1755-0  
P.O. Box 1030  
Kula, Maui Hawaii 96790  
Tel. No. 808-878-8885  
Fax No. 808-878-1227  

Attorney for Defendants Living Waters Land  
Foundation, LLC, Patricia Bragg, Megan Wells,  
and John Kurtz

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  
STATE OF HAWAII

MAHEALANI VENTURA-OLIVER, DOE  
ALIENI JURIS (sic), JOHN OLIVER, DOE  
SUI JURIS (sic),  

Demandant.

vs.

CIRCUIT COURT OF THE SECOND  
CIRCUIT HOAPILI HALE (sic), KOOLAU  
CATTLE CO. & BETSILL BROTHERS  
CONSTRUCTION, INC., PATRICIA  
BRAGG, MEGAN WELLS, LIVING  
WATERS LAND FOUNDATION LLC,  
DAVID & DONNA LEE SINGER, STEVE  
GOODFELLOW, ANA HO LLC,  
WAILUKU AG., INC., AVERY  
CHUMBLEY, CORPORATION COUNSEL,  
COUNTY OF MAUI, PLANNING  
DEPARTMENT, COUNTY OF MAUI,  
DLNR, DIRECTOR, MAUI COUNTY  
POLICE, STERLING KIM, JOHN VAREL,  
JOHN KURTZ, JOHN DOES 1-100,  
JANE DOES 1-100, DOE CORPORATIONS,  
AGENCIES 1-100,  

Defendants.

Civil No. 04-1-0348 (3)  
Part One (sic)  
Non-Statutory Abatement (sic)  
ORDER GRANTING  
DEFENDANTS LIVING  
WATERS' LAND  
FOUNDATION, LLC,  
PATRICIA BRAGG, MEGAN  
WELLS AND JOHN KURTZ'S  
MOTION TO DISMISS AND FOR  
AWARD OF ATTORNEY'S FEES  
AND COSTS; CERTIFICATE  
OF SERVICE

Date: October 15, 2004  
Time: 8:30 a.m.  
Judge: Hon. Joseph E. Cardoza

I hereby certify that this is a full, true and  
correct copy of the Original.  

N.Yotsuya, Clerk  
SECOND JUDICIAL CIRCUIT  
STATE OF HAWAII
ORDER GRANTING
DEFENDANTS LIVING WATERS LAND FOUNDATION, LLC,
PATRICIA BRAGG, MEGAN WELLS AND JOHN KURTZ
MOTION TO DISMISS AND FOR ATTORNEYS FEES AND COSTS

Defendants Living Waters Land Foundation, LLC, Patricia Bragg, Megan Wells and John Kurtz's Motion to Dismiss [Complaint], having come on for hearing before the Honorable Joseph E. Cardoza on October 15, 2004. Mary Blaine Johnston appearing on behalf of Defendants Living Waters Land Foundation, LLC, Patricia Bragg, Megan Wells and John Kurtz, and “Demandants” [Plaintiffs] Mahealani Ventura-Oliver (“Doe Alieni Juris”) and John Oliver (“Doc Sui Juris”) failing to appear and the Court having considered the submissions of the parties and being fully advised thereon and there appearing could cause therefore,

IT IS HEREBY ORDERED that Defendants Living Waters Land Foundation, LLC, Patricia Bragg, Megan Wells and John Kurtz's Motion to Dismiss is GRANTED.

The Court further finds that each and every allegation of the Complaint of “Demandants” Mahealani Ventura-Oliver and John D. Oliver against Defendants aforesaid is frivolous and is not reasonably supported by the facts and the law in this civil action.

Based upon the Declaration of Mary Blaine Johnston filed with this Court on October 19, 2004, attesting to attorneys’ fees and costs incurred by Defendants, pursuant to Hawaii Revised Statutes 607-14.5, the Court awards attorneys fees in the amount of $630.00 and costs in the amount of $42.50 to Defendants Living Waters Land Foundation, LLC, Patricia Bragg, Megan Wells and John Kurtz.
Judgment for attorneys fees and costs in the amount indicated above shall issue.

DATED: Wailuku, Hawaii OCT 21 2004

/S/ JOSEPH E. CARDOZA (SEAL)
JUDGE OF THE ABOVE-ENTITLED COURT

Order Granting Defendants Living Waters Land Foundation, I.I.C., Patricia Bragg, Megan Wells and John Kurtz's Motion to Dismiss and For Award of Attorneys Fees and Costs; Mahealani Ventura-Oliver, et al. v. Circuit Court of the Second Circuit Hoapili Hale, et al., Civil No. 04-1-0348(3); Second Circuit Court, State of Hawaii.
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing will be served on the following parties at the addresses shown below by depositing same in the United States mail postage prepaid on October 49, 2004:

Mahealani Ventura-Oliver
John Oliver
General Delivery
Wailuku, Hawaii 96793

Plaintiffs pro se

Paul R. Mancini, Esq.
Peter A. Horovitz, Esq.
Mancini, Welch & Geiger
33 Lono Avenue, Suite 470
Kahului, Hawaii 96732
Attorneys for Wailuku Agribusiness Co. Inc.
and Avery Chumbley

Jack R. Naiditch, Esq.
P.O. Box 790279
Paia, Hawaii 96779

Attorney for David and Donna Lee Singer

Brian Jenkins, Esq.
2065 Main Street, Suite 101
Wailuku, Hawaii 96793

Attorney for Defendant John Varel

Brian T. Moro, Esq.
Department of the Corporation Counsel
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

Attorney for Defendants County of Maui, Maui County Planning Dept., Maui County Police Department
Gary W. Zakian, Esq.
635 Kenolio Road
Kihei, Hawaii 96753

Attorney for Defendant Koolau Cattle Company, LLC and Betsill Brothers Construction, Inc.

Aina Ho, LLC
P.O. Box 298
Makawao, Hawaii 96768
Defendant

Mark J. Bennett, Esq.
Attorney General
State of Hawaii
425 Queen Street
Honolulu, Hawaii 96813

Attorney for Defendants DLNR and
Defendant Circuit Court of the Second Circuit

B. Martin Luna
Craig G. Nakamura
Blaine J. Kobayashi
P.O. Box 1086
Wailuku Maui Hawaii 96793-1086
Attorneys for Defendant Steve Goodfellow

Sterling Kim
187 Hauani Street
Pukalani, Hawaii 96768

David M. Jorgensen
2145 Wells Street, Suite 204
Wailuku Maui Hawaii 96793

Attorney for Defendant North Shore Waichu, LLC


MARY BLAINE JOHNSTON
Attorney for Defendants
Living Waters Land Foundation, LLC
Patricia Bragg, Megan Wells and Jonathan Kurtz
IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

LIVING WATERS LAND FOUNDATION, LLC, a Hawaii Limited Liability Company, ) CIVIL NO. 04-1-0058(1)
Plaintiff, ) (Injunctions)
) PRELIMINARY INJUNCTION

vs.

MAHEALANI VENTURA-OLIVER,
JOHN OLIVER, JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; et al.,

Defendants
Preliminary Injunction

The State of Hawaii

To: The Director of Public Safety of the State of Hawaii, his/her deputy or any police officer or other person authorized by the laws of the State of Hawaii.

On Friday, October 8, 2004, Plaintiff Living Waters Land Foundation, LLC's (hereinafter referred to as "LWLF") Motion for Preliminary Injunction came on for hearing before the Honorable Joel E. August. Plaintiff LWLF was represented by Mary Blaine Johnston, Brian R. Jenkins and Jade Lynne Ching. Neither Defendant Mahealani Ventura-Oliver nor Defendant John D. Oliver made an appearance or opposed the Motion for Preliminary Injunction. Plaintiff LWLF presented evidence and requested that a Preliminary Injunction be granted against both Defendants MAHEALANI VENTURA-OLIVER and JOHN D. OLIVER, enjoining and restraining them from certain acts more particularly described in this Preliminary Injunction, until further order of this Court.

Now, therefore, the Court finds, based upon the evidence presented to the Court, that there is substantial danger of irreparable harm to LWLF, that it is likely to prevail on the merits at trial, and public interest supports the granting of a preliminary injunction to maintain the status quo during the pendency of this matter.

Now, therefore, MAHEALANI VENTURA-OLIVER and JOHN D. OLIVER, Defendants herein, and their agents, employees, servants, and attorneys and others acting in concert with them are hereby absolutely enjoined and restrained, until further order of this Court, from:
1. Entering on, to Plaintiff's property and using, damaging, constructing or altering any improvements on Plaintiff LWLF's Property, or in any way interfering with LWLF's real property identified as Tax Map Key number (2) 3-2-13: 015, which is located in Waihee, County of Maui.

2. Harassing, intimidating or threatening LWLF's workers, employees or persons farming on said property.

3. The Maui Police Department is authorized to enforce this Preliminary Injunction.

DATED: Wailuku Maui Hawaii

/s/ JOEL E. AUGUST (Seal)

JUDGE OF THE ABOVE-ENTITLED COURT

LIVING WATERS LAND FOUNDATION, LLC, v. MAHEALANI VENURA-OLIVER and JOHN D. OLIVER, et al., Preliminary Injunction, Civil No. 04-1-0058(1), Second Circuit Court, State of Hawaii.
November 4, 2004

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

Dear Attendee:

Clarification of by Hearing Officer Lawrence Miike Regarding Domestic Use

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

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

Sincerely,

YVONNE Y. IZU
Deputy Director

RH:ss
Attachments
November 3, 2004

Roy/Charlie:

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

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

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

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

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

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

Larry Miike

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1 94 Hawai'i 97, 137; 9 P.3d 409, 449.
2 65 Hawai'i 531, 560; 656 P.2d 57 (1982).
public 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 Repoun, 65 Haw. at 560 n.20, 656 P.2d at 76 n.20 (citing article XI, section 1 as an acknowledgment of the public interest in "a free-flowing stream for its own sake").

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

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

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

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

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

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

<table>
<thead>
<tr>
<th>Well Name</th>
<th>Well No.</th>
<th>Applicant</th>
<th>WUPA No.</th>
<th>TMK</th>
<th>Requested amount (mgd)</th>
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<tr>
<td>Wailuku Shaft 33</td>
<td>5330-05</td>
<td>Kehalani**</td>
<td>707</td>
<td>3-5:1:1</td>
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Total from all sources 19.489

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:

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

COMMISSION ON WATER RESOURCE MANAGEMENT

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

Dated: October 7, 2004

Publish in: Maui News issue of October 12, 2004
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Mr. Charles Lee
Commissioner of Water Resource Management
Department of Land and Natural Resources
P.O. Box 601
Honolulu, Hawaii 96804
Vax Fax: 808-586-0219

Attention: Mr. Charles Lee and concerned Commissioners

Subject: Application of Banyan Waters Land Foundation, L.C., Well 7, 533-6

Dear Mr. Lee,

I am writing on behalf of Banyan Waters Land Foundation, L.C., to request the right to object for lack of due process by Mary Elaine Johnson, attorney for L.W.L.F., was faxed to you on Sept 22, 2004.

We object to any and all wells being drilled without the proper planning of legal ownership whether state or private to the land and where there is an exercise of power, let us narrow this concern to one area, wherein we live:

1) In the area of Na Wai Eha that includes all Makahikiwai, all kaupuna, the ha in Ewa and Kualoa that is now called the valleys of Waipapa, Waikane, Waihe'e and Waihe'e that are not being managed correctly in accordance with natural laws and common laws of Hawaii. Those laws are known as the kanaka; these laws are in place to protect the inalienable ownership of our natural resources.

2) The overuse of well water has disturbed the balance and our springs are drying up, the indigenous are out of control and our ocean sustainability is on the verge of collapse.

3) We are concerned for our future generations and the health of our commercial and industrial facilities.

Instead of paper and pen, I am sure the community here would like to invite you for a site visit, a stroll in the woods and viewing of documents all of which is entirely too much information to condense into a letter form. If you are unable to attend personally, please send an assistant to visit and document the meeting.

We are very concerned with the over-use of water and the depletion of our aquifer and marine life, and vegetable economy. We are sure that you are too.

Please make the effort to be with us and hear our collective voices until commencement of Council sessions. Please be sure to visit and meet with us and share your views with us.

Maliu Mokua Na Wa‘i Ela

cc: Peter Young, Chairperson, via email
Dean of Land and Natural Resources
Oahu District, Deputy Director - Land, via email
Yvonne Y. Lee, Deputy Director - Water, via email
Maliu Mokua Na Wa‘i Ela
Aha ku Moku o Na Wai Eha

October 9, 2004

Mr. Charles Ice
Commission of Water Resource Management
Department of Land and Natural Resources
P.O. box 621
Honokului, Hawaii 96809
via Fax: 808-587-0219

Attention: Mr. Charles Ice and concerned Commissioners

Subject: Application of Living Waters Land Foundation, LLC: Well # 5531-01

Dear Mr. Ice:

Aloha mai ia ka Aha ku Moku o Na Wai Eha,

We are in receipt of the objections to our right to object for lack of due pr

We object to any and all wells being used without the proper premise of
private to the land where there is a proposed use, let us narrow this concern to one

1) In the area of Na Wai Eha; that includes all Maunakahalawai, all ahupua’a, ili aina, ili
kupono and okana that is now called the valleys of Waikapu, Wailuku, Waiehu and
Waihe’e that are not being managed correctly in accordance with natural laws and
common laws of Hawaii. Those laws are known as the kanawai, these laws are in place to
prevent the imbalance of our natural resources. Our objections are to the breaking of
these laws.

2) The overuse of well water has disturbed this balance and our springs are drying up, the
instream use is out of control and our ocean sustainability is on the verge of collapse.

3) The conditions that your procedures are premised upon, create the chain reaction that
displaces us from our cultural lifestyles and deprived us of our procedural due process.

4) L WLF application is not the only well use that we object to; David Singer’s proposed use
for development and the Kehalani homes/ commercial use development are two more.

Instead of paperwork and hearsay, the communities here would like to invite you for a site visit, kuka’olelo
and viewing of documents all of which is entirely too much information to condense into a faxed copy. If you
are unable to attend personally, please send an assistant. We will record and document the meeting.

We are very concerned with the over-use of water and the degradation of our aquatic and marine life/ taro
and vegetable ecology. We are sure that you are too.

Please make the effort to be with us and hear our collective voices, will the second week of November be
agreeable?

Please respond to the mea kuka’olelo no ka aha: Oliver Dukelow at 249-8888 and leave a message. The
several ahupua’a will gather upon your confirmation of a date to meet and the applicants will be invited to
attend. An agenda will be faxed to you or your representative, with a reconfirmation.

Me ka mahalo,

Aha ku Moku o Na Wai Eha

cc: Peter Young, Chairperson, via e mail
Board of Land and Natural Resources
Dan Davidson, Deputy Director – Land, via e mail
Yvonne Y. Izu, Deputy Director – Water, via e mail
Aha ku Moku o Na Wai Eha:
Aha o Waikapu, Wailuku, Puuohala, Paukukalo, Waiehu, Kapoino, Waihe’e, Kahakuloa, na Hono a Piilani,
Lahaina, Olowalu, Ukumehame.
MEMORANDUM

TO: Yvonne Izu, Deputy Director
Commission of Water Resource Management

FROM: P. Holly McEldowney, Administrator
State Historic Preservation Division

SUBJECT: Chapter 6E-42 Historic Preservation Review – Request for Comments for a Water Use Application for the Iao Ground Water Management Area, Maui (Well No. 5531-01) [State/CWRM] Waihe`e Ahupua`a, Wailuku District, Island of Maui

TMK: (2) 3-2-013:015

Thank you for the opportunity to review and comment on the Request for Comments for a Water Use Application for the Iao Ground Water Management Area, Maui, which was received by our staff August 10, 2004. We provide the following comments.

Our review is based on reports, maps, and aerial photographs maintained at the State Historic Preservation Division. In February 2004, Patty Conte of CRM Solutions conducted a field inspection which included the subject property. The purpose of the field inspection was to determine the presence or absence of historic sites. During the field inspection at least ten previously unidentified historic sites and/or site remnants were identified.

Based on the findings of the field inspection and in order to determine the effect of the proposed undertaking on historic sites, we recommend that no action be taken on the subject permit application until an archaeological inventory survey has been conducted of the proposed project area 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.

CD:jen

c: Michael Foley, Director, Dept of Planning, 250 S. High Street, Wailuku, HI 96793
Maui Cultural Resources Commission, Dept of Ping, 250 S. High St, Wailuku, HI 96793
September 22, 2004

Mr. Charles Ice
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu Hawaii 96809

By fax: 808-587-0219

re: Application of Living Waters Land Foundation, LLC:
Waiheee Mauka Well, Living Waters #1 (Well No. 5531-01) or
for new uses

Dear Mr. Ice:

On behalf of my client, Living Waters Land Foundation, LLC, in response to the September 1, 2004 Objections by Mahealani Ventura-Oliver and the "Aha Ku Moku of Na Wai Eha", a copy of which objection my client did not receive until September 13, 2004, I would like to provide the following responses which supplement the previous information provided to your office in my letter dated September 2, 2004:

Objections 1 & 2: Objection to water being used for "development" and objection to "development":

Response: Ms. Ventura-Oliver provides no back-up support for her claim that the well is being sought so that my client can "develop" its property. Living Waters has no intention of "developing" the property other than for extended agricultural use. (Exhibit 6 to my September 2, 2004 letter previously submitted outlines Living Waters’ plan for the property owned by it.) Unless, Ms. Ventura-Oliver and her group can substantiate their allegation that my client has plans to "develop" the property, this objection should be disregarded as it has no basis in fact.

Objection 3: Living Water is "taking water, at present in 2-3 foot pipes set in old auwais on property they are illegally occupying."

Response: Again, there is no substantiation given by Ms. Ventura-Oliver and her group for this accusation. The statement is simply false.

The remainder of the comments/objections contained in Statement 3 of Ms. Ventura-Oliver’s "Objections" are largely incomprehensible. My client is unaware of a lawsuit against the State and has no connection with Kanuha Family or its property. Unless, Ms. Ventura-Oliver and her group can explain what the objection is and how it any way relates to Living Waters, this
Mr. Charles Ice  
September 22, 2004  
Page 2

objection should be disregarded.

**Objection 4:** David Singer’s Q/D (Quitclaim Deed) did not include our interests.

**Response:** David Singer owns property that has nothing to do with Living Waters’ property.

**Objection 5:** Valerie Deva and Don Harris Q/D (Quitclaim Deed) did not include Ms. Ventura-Oliver and her group’s “interests.”

**Response:** As discussed in detail in my September 2, 2004 letter to your office, the Objectors have already adjudicated and lost their claim that they have an interest in the area known as “Hananui.” However, assuming that the Objectors, on appeal, eventually prevail in their claim that they have an interest in “Hananui”, an area that is only a portion of Living Waters’ land, that interest has nothing to do with the property upon which the well is located, which area is designated as “Kou”. Kou was land retained by the Government at the time of the Mahele until the early 20th century when it was deeded to Wailuku Agribusiness. Ms. Ventura-Oliver has no interest in Kou nor has she ever claimed an interest in Kou as far as Living Waters is aware.

**Objection 6.** Objectors don’t want “their” roads closed and their “mauka makai” rights cut off.

**Response:** Living Waters has no idea what roads or what mauka makai rights related to its property are being referred to. Without a showing of relevance of this objection to my client’s property, this objection should be disregarded.

Ms. Ventura-Oliver and her group continue to make false statements in connection with their objections to Living Waters’ well permit application. Living Waters believes that unless their objections are supported by some factual basis that has relevance to its application, the objections should be viewed as a campaign, based on untruths and negative comments, designed to place my client in a bad light before the Commission for purposes of defeating the well permit application.

Sincerely yours,

Mary Blaine Johnston

cc Mahealani Ventura-Oliver

Po‘e ho’oilina a ’Aha ku moku o Na Wai Eha
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Fax Cover Sheet

Megan J. Wells

Home office: 808/244-0231 Fax: 808/244-6860

Date: 9/22/04 No. of Pages: 4
(Includes cover sheet)

To: State Water Commission Fax #: 587-0249

Attn: Charlie Ice Phone #: 587-0251

From: Megan J. Wells, for Living Waters Land Foundation

Remarks: Have one letter from our farmers tying asked me to fax them to you as part of our application. Thanks

Should you have any questions, or trouble reading this fax please call 808/244-0231.
September 18, 2004
To the State Water Commission

We have just heard that Wailuku Ag has threatened to shut off the water to our farms. This is very disturbing because we have put years of hard work into our farm.

We have been cultivating this land for over 5 years. We were leasing from Wailuku Ag and now we lease from Living Waters.

We grow a variety of vegetables and grow dry land taro. We also grow bananas, papayas and tapioca and sell them to the farmers market.

When the property was sold to the Living Waters they took great interest in protecting our farms. During the escrow we had trespassers stealing crops and because Wailuku Ag would not help us in any way Living Waters stepped in to protect us even though they were not yet the owners.

We have been told from the first time meeting with the new owner that they would protect the farming and trees on the property and strive to make things easier for us farmers. They put in a road that helped us get in and out of our farms because we would have no way in or out when it rained because our access provided by Wailuku Ag to our farms would go under water 3-4 ft when it rained. This was dangerous for us and it wasn't until Living Waters became the owner that anything was done to help us.

We have been told that it was their intention from the beginning to help us with our water situation. We have been buying water from Wailuku Ag and it makes all our hard work pays very little after we pay our water bill.

This threatening us to cut off our water makes us feel unsure about planting. If we don't plant then months from now we will have no income. If we plant and have no water then we have worked hard for nothing. This is hard for us to live with. We would feel so much more secure if Wailuku Ag did not control our water. To them we are only a business and a way to make money on the water. They do not care about our farms or that we need them to survive. The money we make on our farm goes to putting our children thru school. It is how we pay for them to go to college. It is critical to our families.

Living Waters has told us from the beginning that they wanted to get water for us that we could have for free so we could more easily live off our farms. We could grow much more food and different kinds if we get this water provided to us.

Please let them help us. They are not any kind of developer as they have mistakenly been accused of. They really do care about the trees and the farms and have shown that with their actions since they became owners.

Sincerely,

Conchita Rivera
Conchita Rivera and family
September 16, 2004
To Whom It May Concern:

We have been farming on the land in Waiehu now owned by Living Waters for 10 years. We presently have 10.4 acres that we previously leased from Wailuku Ag and are now leasing from Living Waters Land Foundation. We are farming all of it and are growing bananas, papayas, peanuts, corn, taro, okra. We sell every week to the farmers markets and a Filipino Market. This is our livelihood and we work at it 7 days week with other family members.

We have been paying Wailuku Ag for water all this time ($400+ a month). When Living Waters purchased the property they told us that their purpose for buying was to save the Macadamia nut groves and start tending the trees and harvesting the nuts. This is true as the nuts were harvested last year employing many local people and picking has already begun this year. We were also told that the property would be certified organic which has also taken place.

As far as any plans for any type of developing of the property, nothing like that has ever been mentioned and we have not seen one thing in the last 2 years that would indicate that the owner has plans for anything other than a personal residence and farming projects.

The owner also told us that they want to create more organic farms and provide free water to us and the other farmers as a way to help us and promote what we are doing. She told us that she appreciated how hard we work and that we provide something really important to the community. She even lowered our lease payments since she took over.

I have been told that she is trying right now to get us alternative water so that we will not be at the mercy of Wailuku Ag for the survival of our farm. A few months back Wailuku Ag cut the water off to our farm for a week to hook up water from the same system to Betsil Bros. Construction. This was very frightening, as we did not know when we would have water again.

I hope you will help us and the other farmers here to be more secure with our farms and approve the efforts for water being made on the farmer's behalf.

Sincerely,

Justina Evangelista

[Signature]
September 15, 2004
State Water Commission

Dear Commission,

I am writing you to ask that you approve the attempts by Living Waters to secure water for our family's farm in Waiehu.

We have been farming on the land for about 4 years. We grow beans, bananas, papayas, and tomatoes. We put our hearts into our crops and our farm also sustains us for our food and our income.

We previously leased with Wailuku Ag and were afraid when the property came up for sale. We heard that some developers were trying to buy the land and that would mean the end of the Macadamia nut groves and our farm.

We were relieved to find that the person that eventually got the property was into growing organic food and had a dream to make this land the bread basket of Maui. She met with us while in escrow and let us know that she was buying the land to save the land from the developers trying to get it and to make sure that the land would forever be protected from residential development. She told us that she wanted to take care of the trees and to support and encourage farming on Maui and especially on this land. She has been true to her word about this. She lowered our lease payment and put in a culvert to make it safe for us to get in during the rainy season. She has told us from our first meeting that she wanted to get water somehow to help us make our farm more productive. We could grow many other things that need more water if the cost of our water did not cut into our livelihood.

Our water situation has been a worry to us. Just a few months ago our water was shut off by Wailuku Ag and we were panicked because we had just put in 100 young tomato plants that would not make it without watering. Living Water was very frustrated as there was nothing they could do to help us. This is not a good way for us to live, having to wonder if we will have water or lose our crops. The water was turned off to connect a developer into the ditch system. This was obviously a priority to Wailuku Ag and our farms were not. There was something that broke from the hooking up and we were told it would be additional days before they would fix the problem. We were without water for 4 days.

At one point, during the culvert job, Living Waters workman mistakenly broke a water line. This pipe brought water to our farms. Wailuku Ag was contacted and they told Living Waters that only their employee would be allowed to repair the pipe. It took about an hour to repair it and Wailuku Ag submitted a bill to Living Waters for $600! When Living Waters said they would not pay such an unfair amount Wailuku Ag threatened that if they did not pay it in full that day that they would cut the water off to the farmers. Living Waters paid the bill to make sure we were not damaged. This situation is unacceptable.

Living waters is trying to get us water so we will be secure and so they can prevent being put in this position of extortion by Wailuku AG again. Please approve Living Water's request for water.

Sincerely,

Thomas Pasqual and family

[Signature]
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<th>FROM: Charley</th>
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You might find this interesting, especially the tabbed section. If signed, probably the deed doesn't have similar language.

I just don't know exactly which land was conveyed, which release lands have always remained so:

Q: Can a deed upset? (Common law interpretation?)
Fax Transmittal

Date: September 22, 2004  Time: 2:45 p.m.

To: Charles F. Ice  Fax No. 808-587-0219
Commission on Water Resource Management

Re: Living Waters Land Foundation Application for Well #5531-01

TRANSMITTED PLEASE FIND:

DESCRIPTION OF DOCUMENT        NO. PAGES
Letter dated September 22, 2004  2

Transmitted for:

(xx) your information             ( ) per your request
( ) signature & return            ( ) your approval
( ) review & comment              ( ) per your message
(xx) your files                   (xx) hard copy to follow
( ) filing & return               ( ) see remarks
( ) per phone conversation

REMARKS:

MARY BLAINE JOHNSTON
September 22, 2004

Mr. Charles Ice
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu Hawaii 96809

re: Application of Living Waters Land Foundation, LLC:
Waihee Mauka Well, Living Waters #1 (Well No. 5531-01) or
for new uses

Dear Mr. Ice:

On behalf of my client, Living Waters Land Foundation, LLC, in response to the September 1, 2004 Objections by Mahealani Ventura-Oliver and the “‘Aha Ku Moku of Na Wai Eha”, a copy of which objection my client did not receive until September 13, 2004, I would like to provide the following responses which supplement the previous information provided to your office in my letter dated September 2, 2004:

Objections 1 & 2: Objection to water being used for “development” and objection to “development”:

Response: Ms. Ventura-Oliver provides no back-up support for her claim that the well is being sought so that my client can “develop” its property. Living Waters has no intention of “developing” the property other than for extended agricultural use. (Exhibit 6 to my September 2, 2004 letter previously submitted outlines Living Waters’ plan for the property owned by it.) Unless, Ms. Ventura-Oliver and her group can substantiate their allegation that my client has plans to “develop” the property, this objection should be disregarded as it has no basis in fact.

Objection 3: Living Water is “taking water, at present in 2-3 foot pipes set in old auwais on property they are illegally occupying.”

Response: Again, there is no substantiation given by Ms. Ventura-Oliver and her group for this accusation. The statement is simply false.

The remainder of the comments/objections contained in Statement 3 of Ms. Ventura-Oliver’s “Objections” are largely incomprehensible. My client is unaware of a lawsuit against the State and has no connection with Kanuha Family or its property. Unless, Ms. Ventura-Oliver and her group can explain what the objection is and how it any way relates to Living Waters, this
Mr. Charles Ice  
September 22, 2004  
Page 2

objection should be disregarded.

Objection 4: David Singer’s Q/D (Quitclaim Deed) did not include our interests.

Response: David Singer owns property that has nothing to do with Living Waters’ property.

Objection 5: Valerie Deva and Don Harris Q/D (Quitclaim Deed) did not include Ms. Ventura-Oliver and her group’s “interests.”

Response: As discussed in detail in my September 2, 2004 letter to your office, the Objectors have already adjudicated and lost their claim that they have an interest in the area known as “Hananui.” However, assuming that the Objectors, on appeal, eventually prevail in their claim that they have an interest in “Hananui,” an area that is only a portion of Living Waters’ land, that interest has nothing to do with the property upon which the well is located, which area is designated as “Kou.” Kou was land retained by the Government at the time of the Mahele until the early 20th century when it was deeded to Wailuku Agribusiness. Ms. Ventura-Oliver has no interest in Kou nor has she ever claimed an interest in Kou as far as Living Waters is aware.

Objection 6. Objectors don’t want “their” roads closed and their “mauka makai” rights cut off.

Response: Living Waters has no idea what roads or what mauka makai rights related to its property are being referred to. Without a showing of relevance of this objection to my client’s property, this objection should be disregarded.

Ms. Ventura-Oliver and her group continue to make false statements in connection with their objections to Living Waters’ well permit application. Living Waters believes that unless their objections are supported by some factual basis that has relevance to its application, the objections should be viewed as a campaign, based on untruths and negative comments, designed to place my client in a bad light before the Commission for purposes of defeating the well permit application.

Sincerely yours,

Mary Blaine Johnston

cc Mahealani Ventura-Oliver  
Po’e ho’oilina a ‘Aha ku moku o Na Wai Eha
Concerning our well pumping application, I would like to add the following documents to our case for your information. Our attorney Mary Blaine Johnston was not aware that you had requested that these be included in our last response to you.

1) Copy of the letter from Wailuku Ag terminating our farmers’ water unless we sign a water agreement with them.

2) A copy of the Water Agreement they are demanding we sign or they will cut off our farmers’ water (see paragraph # 4.07). I hope this clarifies why we cannot even consider signing it.

I hope this will further explain the predicament that we are in concerning our farmers and their immediate need for an alternative source of water and why because of the timing, the well is our only current option to save their farms.

Sincerely,

Megan Wells
For Living Waters Land Foundation
July 30, 2004

Living Water Land Foundation
Brian Jenkins, Esq.
Brumbaugh & Jenkins Attorneys at
P. O. Box 640
Wailuku, Hi 96793-0640

Dear Mr. Jenkins,

This letter is to serve as official notice that agricultural water will not be available as of September 30, 2004 on TMK: 3-2-13-15 in Waiehu. Agricultural water will be available only through a Water Delivery Agreement with Wailuku Agribusiness Co.

Please call Clayton Suzuki at 244-2208 should you have any questions.

Respectfully yours,

Clayton Suzuki
Land Manager

Cc ABC, Wailuku Agribusiness
EXHIBIT "E"

WATER DELIVERY AGREEMENT
WATER DELIVERY AGREEMENT

THIS AGREEMENT is made this ___ day of March, 2003, by and between WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, or its assignee whose address is 253 E. Walko Road, Wailuku, Hawaii, 96793 ("Seller"), and and [redacted] a Hawaii limited liability company whose address is [redacted] ("Buyer").

SECTION 1: DEFINITIONS

1.01. Anniversary Date. "Anniversary Date" shall mean the first day of April of each year following the date of this Agreement.

1.02. [Reserved]

1.03. County Rate. "County Rate" means the price the Board of Water Supply of the County of Maui (County of Maui) or any successor supplier of potable water to the general public on the Island of Maui would charge per gallon of water delivered by the County of Maui or such successor to the Property for general agricultural uses, based upon an assumed usage equal to the Maximum Delivery at the time the County Rate is determined. Should there be no rate for agricultural purposes which is different from the rate(s) for other purposes, the County Rate shall be a "Calculated Percentage" of the rate then charged by the County of Maui or such successor supplier of water for potable water for household use, i.e. the residential rate. The Calculated Percentage shall be determined by dividing the last County of Maui agricultural rate by the then current residential rate, if there are more than one residential rates, then the lowest residential rate based upon the Maximum Delivery.

By way of example, if the last agricultural rate of the County of Maui was $0.72 per 1,000 gallons and the then existing residential rate or the mean residential rate is $2.05 per 1,000 gallons then the Calculated Percentage would be 35.2%, (i.e. $0.72 per 1,000 divided by $2.05 per 1,000 gallons) and the County Rate would be $0.719 per 1,000 gallons.

If there is no County agricultural rate and no County residential rate, the County rate shall be the last County rate applicable to and used pursuant to this Agreement, which rate shall be adjusted annually (January 1st of each year), that is, increased or decreased pursuant to the percentage change in the United States Department of Labor Consumer Price Index, for all consumers, applicable to Honolulu, Hawaii, until a County agricultural or residential rate is reinstated.

1.04. Quarterly Delivery Charge. "Quarterly Delivery Charge" means, for each calendar quarter, the Gallons Delivered in that quarter times the Water Rate.

1.05. Minimum Quarterly Charge. "Minimum Quarterly Charge" means fifty percent (50%) of the full utilization charge for any given quarter. For example, assuming a
Maximum Daily Delivery of 100,000 gallons, County Rate of $0.76 per 1,000 gallons, and 90
days in the quarter, the following would apply: 100,000 gallons x 90 days = 9,000,000 gallons
(full utilization). At the assumed County Rate of $0.76 per 1,000 gallons, the Quarterly Delivery
Charge based upon full utilization would be (9,000,000 gallons / 1,000) x $0.76 = $6,840.00/mo.
based upon full utilization. The corresponding Minimum Quarterly Charge would be 50% of
$6,480.00 or $3,240.00.

1.06 Quarterly Additional Charge. "Quarterly Additional Charge" means the
Quarterly Delivery Charge less the Minimum Quarterly Charge in any quarter where the
Quarterly Delivery Charge exceeds the Minimum Quarterly Charge.

1.07 Delivery Location. "Delivery Location" means a single point of
delivery which will be approximately as shown on Exhibit A attached hereto.

1.08 Gallons Delivered. "Gallons Delivered" means the total number of
gallons of water delivered by Wailuku to the Property and taken by Buyer as measured
by the water meter(s) described in section 4.03.

1.09 Maximum Delivery. "Maximum Delivery" means an average of
________ gallons per day.

1.10 Property. "Property" shall mean that certain real property more
particularly described in Exhibit A attached hereto.

1.11 Water Rate. "Water Rate" means the County Rate in effect from time to
time which on the date hereof is $0.76 per thousand gallons.

1.12 Water System. "Water System" shall mean the two ditch commonly known
as __________ Ditch, and Reservoir __________, as identified by Wailuku, and including
all man-made collection and diversion mechanisms, pumps, valves, waterways, pipelines, filter
systems, electrical lines and related water transmission facilities, located on the property and
associated with the same and the Delivery Location.

SECTION 2: TERM.

2.01. This Agreement, and every provision hereof, shall continue in full force
and effect forever, subject, however, to termination in the event of default as provided in section
5.05 below.

SECTION 3: WAILUKU'S OBLIGATION TO DELIVER WATER.

3.01 Wailuku's Principal Obligation. Wailuku shall deliver in the Water
System all water required by Buyer, exclusively for irrigation of agricultural activities on the
Property up to the Maximum Delivery, subject, however, to possible disruption by force majeure
as provided in section 3.07 and to curtailment or rationing under certain circumstances as
provided in section 3.05. Such water shall be delivered at the Delivery Location.
It is the intent of the parties that this Agreement commits to Buyer the delivery of only a portion of the waters regularly transmitted by the Water System. The parties contemplate and expect that the Water System will generally distribute more water than the Maximum Delivery.

This Agreement shall not be construed to prevent Wailuku from making commitments to deliver or use for its own account the portions of the water that will generally be transmitted by the Water System in excess of the Maximum Delivery, nor shall this Agreement be construed to give priority or preference to delivery of the Maximum Delivery to Buyer. The use and withdrawal of water by Buyer shall be subject to availability and priority use by Wailuku's kuleana obligations and then Wailuku, and shall not impair or otherwise hinder the rights reserved by Wailuku, and shall be subject to the provisions of Section 3.03 below.

3.02. Delivery from the Delivery Location. Water shall be delivered and withdrawn only at the Delivery Location. Buyer shall install, at its sole cost and expense, water meter(s) at the Delivery Location; provided, however, that the location and size of the meter(s) shall be subject to the prior written approval of Wailuku, which approval will not be unreasonably withheld or delayed.

3.03. Rationing. Given the natural fluctuations in rainfall and other factors, the parties acknowledge that there will be periods of time when the water available in the Water System will be insufficient to satisfy all delivery commitments of the Water System then in effect, including the Maximum Delivery. Upon any such insufficiency or shortage of water, Wailuku shall be entitled to ration the available water and to reduce the quantity of water delivered to Buyer during such period of insufficiency or shortage so that Buyer may receive less than the Maximum Delivery, provided however, Wailuku shall use its best efforts to deliver to Buyer an equitable percentage of the water available to Wailuku, after rationing such water to all users, with priority given to kuleana users. If rationing occurs at any time during the term of this water agreement then section 1.05 Minimum Quarterly Charge will be adjusted downward to reflect the comparable rationing ratio from normal usage.

3.04. Time of Delivery. Buyer shall consult and coordinate with Wailuku as Buyer designs its system for taking water. The parties shall endeavor to agree upon the time and manner for the taking and delivery of water, otherwise the time of delivery shall generally be as requested by Buyer.

3.05. Quality of Water Delivered. Wailuku shall be required to deliver only surface water of a quality suitable for agricultural irrigation and of a quality actually taken by Wailuku from the Water System (including any suspended solids, debris, silt or sediment) for use in its own agricultural operations. For this purpose all water that enters or happens to be in the Water System shall be considered surface water. Such water need not be fit for consumption by
humans or by animals of any kind. Wailuku expressly disclaims any warranties with respect to
the potability and other qualities of the water delivered, except as specifically stated herein.
Without limiting the foregoing, water of a quality actually taken by Wailuku from the Water
System (including any suspended solids, debris, silt or sediment) for use in its own agricultural
operations shall be adequate in all respects to satisfy Wailuku's commitment to Buyer. Any
water treatment or purification desired by Buyer shall be performed by Buyer on its property,
using its equipment and at its expense. Wailuku shall have no liability for damages resulting
from any substances in the water.

3.06 Maintenance of Water System. Wailuku shall have no obligation to
use, operate, maintain, repair, improve and/or replace all or any portion of the Water System;
provided that it will generally maintain and repair the Water System to the extent necessary to
meet its delivery obligations under Section 3.01. Nothing in this Agreement shall be interpreted
to restrain Wailuku from improving, moving, changing, reconstructing, conveying or abandoning
portions of the Water System; provided this sentence shall not be construed to terminate
Wailuku's delivery obligation under and subject to section 3.01 above.

Any maintenance, repair, improvement and/or replacement of all or any portion of
the Water System required and performed by Wailuku, for use thereof by Wailuku, shall be at the
direction and expense of Wailuku, subject to contribution of one percent (1%) of such costs from
Buyer relating to the use thereof by Buyer, provided, however, that if such costs are related to
damage or interference caused by or through Buyer, then Buyer shall pay for all costs caused by
Buyer.

3.07. Force Majeure. Any failure or delay in Wailuku's performance of its
obligations hereunder which is caused by or results from an event or events beyond Wailuku's
control shall be excused; and Wailuku shall have no liability for any damages, actual,
consequential, exemplary or otherwise, arising from such failure or delay. Events constituting
force majeure shall include: acts of God, drought, public enemy, sabotage, civil disorder,
mudslide, erosion, pollution, or any governmental condemnation, law, order, rule, regulation,
decision or ordinance.

If and to the extent that water shall be available in that portion of the Water
System capable of delivering water to the Delivery Location or other delivery point then in effect
after the event of force majeure, such water, if insufficient to satisfy the users of such water, shall
be subject to rationing as provided above in section 3.03.

If, in the sole judgment of Wailuku, the event of force majeure shall be
susceptible to correction or repair at a cost not exceeding the total Minimum Quarterly Charge or
Quarterly Delivery Charge actually paid by Buyer to Wailuku for the thirty-six (36) months
immediately preceding the event of force majeure, Wailuku will proceed with the appropriate
repair or corrective effort. If the anticipated cost to overcome the event of force majeure shall exceed the total Minimum Quarterly Charge or Quarterly Delivery Charge actually paid by Buyer for the thirty-six (36) months immediately preceding the event of force majeure, Wailuku shall have no duty to proceed with corrective work unless Buyer shall advance all sums to pay the cost of the work in excess of the total Minimum Quarterly Charge and Quarterly Delivery Charge paid by Buyer for such 36 months. If Buyer shall tender or make such excess sums available, then Wailuku shall proceed with the corrective work. Buyer shall receive abatement or credit against charges under this Agreement on account of Buyer's funds spent on corrective work. The parties may agree to spend amounts for corrective work other than as required above, on terms and conditions then acceptable to both parties.

3.08. No Pumping, No Ground Water. Wailuku shall have no obligation to pump water or to develop ground water or water from subsurface sources and no obligation to deliver water by means other than gravity flow.

SECTION 4: BUYER'S OBLIGATIONS.

4.01. Payment of Minimum Quarterly Charge. Buyer agrees to pay, over and above all other charges herein set forth, the Minimum Quarterly Charge (as defined in section 1.05) applicable from time to time, payable in advance on or prior to the 1st calendar day of each calendar quarter. Such Minimum Quarterly Charge reflects the standing commitment of a significant portion of the Water System to the delivery requirements of Buyer under this Agreement. The Minimum Quarterly Charge shall be payable without regard to actual water deliveries. Notwithstanding anything to the Contrary, Wailuku hereby waives payment of the Minimum Quarterly Charge until the earlier of 1) actual delivery of water under section 3. above or 2) the fourth quarter of 2003. Accordingly, the Minimum Quarterly Charge shall be due and payable not later than October 1, 2003.

4.02. Payment of Quarterly Additional Charge. Buyer shall pay to Wailuku within ten (10) days after the end of each calendar quarter, as an additional charge, the Quarterly Additional Charge (as defined in section 1.06).

4.03. Net Charges, General Excise Taxes. The Minimum Quarterly Charge, the Quarterly Delivery Charge and all other charges under this Agreement (including any prepayment of the Minimum Quarterly Charge pursuant to section 4.01 above) shall be net above taxes and assessments charges of any kind otherwise payable by Buyer; and Buyer shall also pay (in addition to such charges) the amount of taxes payable by Wailuku under the Hawaii General Excise Tax Law, or any similar law which may be hereafter enacted, on account of the receipt, actual or constructive, by Wailuku of such charges and the payment or reimbursement of general excise taxes and any other taxable gross income attributable to this Agreement.
4.04. **Security Deposit.** Concurrently with the execution of this Agreement, Buyer shall deliver a pledge of a time certificate of deposit ("TCD") naming Wailuku as payee (together with a pledge and security agreement in the form attached hereto as Exhibit B) in the amount of $___________ as security for Buyer's payment obligations under this Agreement and not as liquidated damages. The Pledge Agreement shall provide that upon default by Buyer in its payment obligations under Section 5.03, and Buyer's failure to timely cure the same, Wailuku shall have the right to obtain the proceeds of the TCD, or any portion of the TCD as is needed to satisfy such payment obligations without further instructions from Buyer. If Wailuku terminates water delivery as a result of a default by Buyer under this Agreement, any continuation of water delivery shall be subject to Buyer's obligation to replace the TCD on the same terms as provided herein. Buyer shall renew the TCD from time to time upon its expiration and delivery a replacement pledge to Wailuku upon each such renewal. All interest earned on the TCD shall be paid to Buyer. CAN ALSO BE ACCOMPLISHED BY A STANDBY LETTER OF CREDIT PROVIDED IT AUTOMATICALLY RENEWS, IS IRREVOCABLE WITHOUT WAILUKU AG.'S CONSENT AND IS PAYABLE ON DEMAND BY WAILUKU AG.

4.05. **Water Measurement.** Buyer shall install and maintain at its sole cost and expense at the Delivery Location a water meter or meters or other measuring devices as shall be approved by Wailuku for the measurement and recording of water quantities actually delivered pursuant to this Agreement. Wailuku and Seller shall at all times have access to all such meters or devices to read or check the same.

4.06. **Restrictions on Water Use.** The water delivered pursuant to this Agreement shall be used only for irrigation and agricultural activities on the Property and shall not be sold or transferred by Buyer and all water delivered shall be used only on the Property and not outside the Property. The water delivered pursuant to this Agreement shall not be made available to the general public or for public use within the meaning of chapter 269, Hawaii Revised Statutes, or any regulations promulgated thereunder. In its withdrawal and use of water hereunder, Buyer shall do no act or thing (or omit to do any act or thing) which causes Wailuku to be deemed a public utility engaged in the sale of water under law and subject to regulation by the State of Hawaii Public Utility Commission and/or the Water Commission of the State of Hawaii.

4.07. **Opposition to Governmental Taking or Designation.** Buyer shall not request, support or encourage, directly or indirectly, any governmental taking, use or management of all or any part of the Water System or watersheds or water sources from which water arises and thereafter flows on Wailuku's land or into the Water System, nor shall Buyer request, support or encourage, directly or indirectly, any governmental taking, use or
management of any ground water sources or aquifers underlying or in the vicinity of the Property or any of Wailuku's land. Buyer shall not request, support or encourage, directly or indirectly, the designation of any water management area or similar area or zone under the State Water Code or any other similar legislation which may hereafter be enacted. Buyer shall cooperate with Wailuku in opposing any such taking, use, management or designation, PROVIDED such cooperation does not entail substantial out-of-pocket expense to Buyer. If any governmental authority shall manage or exercise control over any part of the Water System or watersheds or water sources from which water arises and thereafter flows into the Water System, Wailuku and Buyer shall with respect thereto endeavor to agree on their course of action in dealing with such governmental authority, but Buyer shall in connection therewith defer to Wailuku's leadership in dealing with the governmental authority and shall cooperate in implementing the approach decided upon by Wailuku for dealing with such governmental authority.

4.08 Interest on Past Due Amounts. All amounts which shall become due and payable under this Agreement from either party to the other shall bear interest payable at the greater of one percent (1%) per month from the due date or dates until paid; PROVIDED that this provision for interest shall not be construed to authorize delay in payment of any amounts becoming due hereunder.

4.09 Late Charges. If Buyer shall fail to pay all or any portion of any quarterly installment of the Minimum Quarterly Charge or the Quarterly Delivery Charge when due, Wailuku, in addition to its other remedies, may collect, and Buyer shall pay on demand, a late charge equal to five percent (5%) of the amount overdue.

4.10 Compliance with Law. Buyer shall be responsible for obtaining, at its expense, but with Wailuku's cooperation, all permits, approvals, licenses and certificates as may be required for the withdrawal and use of water by Buyer hereunder.

SECTION 5: MUTUAL COVENANTS.

5.01 Delegation of Wailuku's Duties. Wailuku shall have the right to assign, delegate and surrender any or all of Wailuku's rights, powers, privileges and duties under this Agreement or in the Water System to any person, corporation, association or other legal entity, provided that such assignee shall assume in writing Wailuku's duties and responsibilities under this Agreement relating to such delegated rights, powers privileged and/or duties and, provided that such assignment shall not prevent Wailuku or its assignee from satisfying the obligations to Buyer under this Agreement. Buyer shall attorn and perform to such successor in interest to Wailuku. Notwithstanding the foregoing, Wailuku shall be released from any obligations assumed by such successor hereunder upon assignment and assumption of such obligations.
5.02. **Assignment by Buyer.** No such assignment shall be construed to permit the use or sale outside of the Property of any water delivered pursuant to this Agreement. After any such assignment, all references in this Agreement to Buyer shall mean the assignee, except where Buyer is intended to have continuing liability.

Buyer may mortgage or assign Buyer's interest in this Agreement as collateral or security for a debt or other obligation only if such mortgage or assignment shall be coupled with a mortgage of the Property to secure such debt or obligation and provided that any foreclosure of such mortgage shall include foreclosure against Buyer's interest in this Agreement, so that the foreclosure purchaser shall succeed to Buyer's obligations under this Agreement. Further, such mortgage must provide that the sole and exclusive right of a mortgagee or assignee under such mortgage and assignment shall be the right to receive water as provided by this agreement, and such mortgagee or assignee shall have no other water rights. Proceeds of any such foreclosure sale shall be applied first to cure any delinquencies in payments owing under this Agreement as of the date of court confirmation of the foreclosure. Except for the purchaser pursuant to any such foreclosure, Wailuku shall have no obligation to deliver water to any person or entity purporting to acquire Buyer's rights under this Agreement by operation of law or involuntary assignment, transfer, foreclosure, execution or other analogous action.

5.03. **Reservation of Wailuku's Rights.** Nothing in this Agreement shall be construed to transfer or assign to Buyer any water rights owned, leased or held by Wailuku, all of which water rights are expressly reserved to Wailuku. The term "water rights" shall not be construed to include Wailuku's delivery obligation under section 3.01. Without limiting Wailuku's liability and obligation under this Agreement, Wailuku shall have the full right and ability to increase the flow of water through the Irrigation Ditches, acquire and develop additional water rights and resources on lands other than the Property, to contract with other parties for the delivery of water not necessary for the performance of this Agreement and to buy, sell, lease, assign, encumber or otherwise receive or transfer lands, water rights, equipment, easements, appurtenances and other rights and assets, whether or not part of the Water System.

5.04. **Condemnation.** If there shall be any taking or condemnation by any authority having the power of eminent domain of all or any part of the Water System or any other assets of Wailuku outside of the Property, all compensation and damages payable for or on account of such taking or condemnation shall be payable to and be the sole property of Wailuku, and Buyer shall have no interest or claim to such compensation or damages or any part thereof whatsoever. If and to the extent that any such taking or condemnation prevents or materially interferes with Wailuku's performance under this Agreement, such taking or condemnation shall constitute an event of force majeure under section 3.07 above. Buyer shall not request, encourage or support, directly or indirectly, any taking or condemnation of all or any part of the
Water System or any other assets of Waiaku outside of the Property and shall, if so requested by Waiaku, actively oppose such taking or condemnation. Buyer may recover any amount or damages that may be separately awardable to Buyer for damage to its property (including any easements that are being used by Buyer and any improvements installed by Buyer to exercise such easements) by any governmental taking or condemnation, provided that such separate award does not diminish the compensation that Waiaku would otherwise receive. Buyer shall not intervene or request to be cited as a party in any condemnation action commenced against Waiaku or its property. Reference to “taking or condemnation” in this section shall also mean and pertain to any sale or other transfer under bona fide and imminent threat or likelihood of condemnation by prior condemning authority.

5.05. *Events and Consequences of Default.* This Agreement is upon the express condition that if any one or more of the following events of default shall occur:

(a) Buyer shall fail to pay any charges or other amounts arising under this Agreement when due, and such failure shall continue for a period of twenty (20) days thereafter; or

(b) Buyer shall materially fail to observe or perform any other of the covenants in this Agreement and on the part of Buyer to be observed and performed and such failure shall continue for a period of thirty (30) days after Waiaku gives written notice to Buyer, unless Buyer shall have taken steps in good faith within such period to remedy the same and shall continue to so act with diligence and continuity reasonably satisfactory to Waiaku; or

(c) Buyer shall be adjudged bankrupt or seek protection under any provision of the Federal Bankruptcy Act; or

(d) Any material interest of Buyer under this Agreement shall be the subject of garnishment, attachment, execution or other legal process, unless Buyer shall take prompt steps in good faith to dissolve or set aside the same; THEN, AND IN CASE OF ANY SUCH EVENT OF DEFAULT, Waiaku may, upon the occurrence of such event of default or at any time thereafter during the continuance of such default, at Waiaku's option, terminate this Agreement or permanently reduce the Maximum Delivery by such amount as Waiaku shall determine in its sole discretion, by giving thirty (30) days' written notice (which may be given simultaneously with any notice of default) to Buyer, all without prejudice to any other remedy or right. Waiaku may have for such default or other breach of this Agreement. Buyer shall have the continuing right to cure the default in whole (not in part) within such 30-day notice period, time being of the essence as to such notice and cure period. If Waiaku elects to reduce the Maximum Delivery rather than terminate this Agreement, the Minimum Quarterly Charge shall not be reduced. If Waiaku elects to terminate this Agreement, after such termination Buyer shall continue to be liable to Waiaku for the full payment of Buyer's monetary obligations under
strict performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment for the future of any such terms, covenants or conditions, but the same shall be and remain in full force and effect.

5.11. Parties in Interest/Binding Effect. All of the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon Wailuku and its successors and assigns and Buyer and its successors and assigns to the same extent as such terms, covenants and conditions inure to the benefit of and are binding upon Wailuku and Buyer, respectively. Nothing in this Agreement is intended to benefit or confer any rights on any other person or entity except as provided in sections 5.01 and 5.02 above. This Agreement shall not be construed to create a Partnership or joint venture between Wailuku and Buyer.

This Agreement shall not be deemed to be a covenant running with the land and nothing herein contained shall be construed as a conveyance by either party of any of its rights in or to its property.

5.12. Interpretation. The headings of sections and subsections in this Agreement are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Agreement. The use of any gender shall include all genders. Use of the singular shall include the plural, and use of the plural shall include the singular, as appropriate in the context. This Agreement contains all of the agreements between the parties relating to the subject of water service to the Property and supersedes all other prior or concurrent oral or written letters, agreements and understandings. This Agreement shall be construed and interpreted under and pursuant to the laws of the State of Hawaii. All provisions of this Agreement have been negotiated by the parties at arm's length and with full representation of their respective legal counsel. If this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against either party as the drafter of the Agreement.

5.13. Notices. Any notice or demand to be given to or served upon either party in connection with this Agreement shall be deemed to have been sufficiently given or served for all purposes by being personally delivered or sent as registered or certified mail, postage prepaid, addressed in the case of Wailuku to it at the place designated for the payment of charges under this Agreement, or at such other address as Wailuku may from time to time designate in writing to Buyer, and in the case of Buyer, at his address as set forth above, or at such other address as Buyer may from time to time designate in writing to Wailuku, and any such notice or demand shall be deemed conclusively to have been given or served upon the earlier to occur of the actual date of delivery or five (5) days after the date of mailing, if mailed in Hawaii.
this Agreement (with the obligation of Wailuku to mitigate damages) and for compliance with all of Buyer's covenants under this Agreement.

5.06. Events and Consequences of Default by Wailuku. If Wailuku shall fail or refuse (including, without limitation thereto, material default by Wailuku in performance of any obligation it may have under section 5.07 above) without proper excuse, to deliver water in the quantity required by this Agreement, Buyer shall provide written notice of the same to Wailuku and Buyer and Wailuku shall immediately meet and confer to remedy the alleged failure to provide such water, if any. If after Buyer and Wailuku have met and conferred (or if within 10 business days after such written notice the parties do not meet) and Buyer continues to maintain that Wailuku is failing to provide water as required under this Agreement, Buyer may then seek judicial relief, including a mandatory injunction, to obtain access to the water from the Water System in order to obtain Buyer's share of such water due under this Agreement. If Buyer claims that Wailuku is in breach of this Agreement or negligent in the conduct of its obligations, Buyer shall give written notice to Wailuku of the same and provide a reasonable opportunity to cure the alleged breach and/or negligence, prior to taking any judicial or administrative action in furtherance of such claims.

5.07. Costs of Enforcement. Buyer shall pay Wailuku's attorneys' fees and such expenses as may be incurred to induce or compel payment of all Minimum Quarterly Charge and Quarterly Delivery Charge hereafter owing by Buyer to Wailuku under this Agreement, whether suit is brought or not. In case of any other arbitration or suit to resolve disputes between Wailuku and Buyer, the prevailing party shall be entitled to receive its attorneys' fees and other costs, plus interest from the other party.

5.08. Estoppel Certificates. From time to time, Wailuku and Buyer shall provide each to the other, upon written request therefor, estoppel certificates certifying that, if such be the case, there are no outstanding breaches of the terms, conditions or covenants contained in this Agreement, provided that the party requesting the same shall pay the other party's reasonable costs of preparing such certification.

5.09. Consents and Approvals. In instances where the consent or approval of either party is called for by the terms of this Agreement, such consent or approval shall be requested in writing and shall not be unreasonably or arbitrarily withheld. No consent fee shall be charged, except for reasonable costs of advice or review by legal counsel, technical consultants or other third-party consultants.

5.10. Nonwaiver of Breach. The acceptance of payments by Wailuku shall not be deemed to be a waiver by Wailuku of any breach by Buyer of any term, covenant or condition of this Agreement or of Wailuku's right to declare a default and enforce a termination or reduction in Maximum Delivery for any such breach. The failure of either party to insist upon
5.14. **No Recordation.** Neither party will record this Agreement, either directly or indirectly as an exhibit or attachment to any other recorded document, in the Hawaii Bureau of Conveyances or in any other filing or record system intended to give actual or constructive notice of any liens or encumbrances on lands or land titles. This Agreement is not intended to create an interest in any real property, and any such interest which may be intended by the parties shall arise only from separate instruments executed and duly recorded by the parties.

5.15. **Compliance with Rule Against Perpetuities.** If any of the terms or conditions of this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory or common law provision, (b) the rule restricting restraints on alienation or (c) any other statutory or common law rules imposing time limits, then this Agreement shall terminate upon the expiration of twenty-one (21) years after the death of the last survivor of the now living lawful descendants of Queen Elizabeth II of England.

5.16. **Facsimile/Counterparts.** Fax (facsimile) copies of this executed Agreement shall be fully binding and effective for all purposes. Fax signatures on documents will be treated the same as original signatures. The Agreement may be executed in counterparts, and said execution shall have the same effect as if all parties executed the same original copy hereof.

5.17. **Exhibits.** The following exhibits are attached to and made a part of this Agreement:

- Exhibit A: Map showing the Water System and Delivery Location
- Exhibit B: Pledge and Security Agreement

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first written above.

WAILUKU AGRIBUSINESS CO., INC.

By __________________________
Its __________________________

By __________________________
Its __________________________

“Seller”
FROM: ROY
TO: INIT. BAUER, G.
TO: INIT. CHING, F.
TO: INIT. DANBARA, S.
TO: INIT. FUJII, N.
TO: INIT. GOODING, K.
TO: INIT. HARDY, R.
TO: INIT. HIGA, D.
TO: INIT. ICE, C.
TO: INIT. IMATA, R.
TO: INIT. IZU, Y.
TO: INIT. KUNIMURA, I.
TO: INIT. MATHIAS, T.
TO: INIT. NAKAMA, L.
TO: INIT. NAKANO, D.
TO: INIT. OHYE, M.
TO: INIT. SAKODA, E.
TO: INIT. STAHL, K.
TO: INIT. SUBIA, S.
TO: INIT. SWANSON, S.
TO: INIT. UYENO, D.
TO: INIT. YODA, K.
TO: INIT. YOSHINAGA, M.

DATE: SEP - 7
SUSPENSE DATE: 

TO: MATHIAS, T.
TO: NAKAMA, L.
TO: NAKANO, D.
TO: OHYE, M.
TO: SAKODA, E.
TO: STAHL, K.
TO: SUBIA, S.
TO: SWANSON, S.
TO: UYENO, D.
TO: YODA, K.
TO: YOSHINAGA, M.

FOR: Approval
FOR: Signature
FOR: Information
FOR: See Me
FOR: Review & Comment
FOR: Take Action
FOR: Type Draft
FOR: Type Final
FOR: File
FOR: Xerox _ copies

PLEASE:
See Me
Review & Comment
Take Action
Type Draft
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-. Is PHP "permit to conduct" archeological activities like a driller's license? weird kind of blanket permit.
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August 9, 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 Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 808-587-0251.

Class
Attachment(s)

Response:

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

Contact person: Skippy Han

Signed: Skippy Han

Phone: 243-5834
Date: 9/8/04
September 8, 2004

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

FROM: Skippy Hau, Aquatic Biologist

SUBJECT: Living Waters Land Foundation, LLC for Well No. 5531-01
Water Use Permit Application

I reviewed the application and found their proposal consistent with the agricultural zoning. The vegetation areas should help with improving water recharge to the watershed and aquifer. Maintaining agricultural areas should help reduce runoff into stream and gulch areas.

As stated, the water will be used for agricultural needs. The well will insure a water source needed for dry conditions. Conversely, during the rainy season, their water use should be less. The 20,000 gallons per day request appears justified.

Will the reduction in stream diversion water result in more water being allowed to flow in the stream? Maintaining a minimum flow in streams will help insure stream ecosystems become stable and natural stream habitat & riparian vegetation could be restored in the flood plain areas.
Aloha,

I have just received a response from Mimi Johnson, to Charles Ice, Commission on Water Resources Management, O'ahu.

She is one of many attorneys that work for the Living Waters Land Foundation Trust, she alleges "threats" and a "threatening group" in the tone of her letter. She also implies slander, her paraphrasing has much to do with the misinformation that is out there right now being cultivated in the community of which you do not have to privilege to speak directly with.

What Mimi does not tell you and is obviously not aware of, is that in all of our ali'i titles a distinct and valid 33 1/3 percent of shared interests exist and they have yet to receive this nontransferable interests today, because their quitclaim deed, based upon a quitclaim deed from Valerie Deva and Don Harris from Wailuku Agribusiness, Inc. does not carry with it any warranty or lawful guaranty of any kind to any interests if any - Ticor Title Code 11.03; section B; There are no implied covenants as to the title or as to the encumbrances on the property if the transfer is by Quitclaim deed, a Quitclaim deed not does not convey after acquired title of the grantor. If title has never been jurisdictionally acquired - Royal Patent in use at present; then the "grantor" has never of course now you see - never "acquired the Title" especially out of an unfinished probate requiring lawful delivery of title at the end of that Probate of the holder of Title. "quitclaim deeds are normally used to convey interests Less then Fee: to release a special interest in land such as an oil lease, and to evidence renunciation or abandonment of UNCERTAIN or UNKNOWN interests.

Kukilahau vs. Gill: The holder of a deed after the issuance of a Royal Patent is subject to the holder of the Patent, in whose Title a 33 1/3 percent is reserved as in: Koe na kuleana o na kanaka; in english it means: The properties of the people are herewith reserved. Like many in the community, we share interests tot he whole ahupua'a. So, of course Living waters has no idea that they spent their good money on one of the infamous "Land Deals" here in Hawaii that happen way too often. Regardless of what they say, I have a right and so does my family - to object to this use of water, because your organization asks for it in the fulfillment of its process and procedures. This right to object is not "threatening" or "slandering", it is a protected right to speak freely in this nation. IF, When the Living Waters Luxury Ag. Lots subdivision is built twenty years from now, in theory, what chance for justice and equanimity would a native family who lawfully possesses a share of that 33 1/3 percentage of all ali'i title have, exactly? IF this is allowed to go forward. IF Living waters were so certain about their Title based on a "quitclaim deed" having no delivery of Title prior, why did they file a claim to Ticor Title Insurance Co.? I receive my manuals and up to date Title information from the same company, I teach Title classes using this manual and give free talks about title here in Hawaii.

As a Title Examiner, it is clear to me that not many people in any forum in Hawaii are willing to talk about Inception of Title, Jurisdictional Matters or Muniments of Title and it leads to corporations creating false
allegations of "threats" that lead to "civil suits" out of ignorance or denial of the Title issue here in Hawaii. Most times, when a foreign buyer makes a purchase of a quitclaim or otherwise not delivering title, they look at the normal access and cultural, subsistence activity of the natives and locals as "trespassing" this is in conflict with Chapter 1, Chapter 6 and Chapter 7 of the Hawaii revised statutes. HRS 6E-1 is very plain.

The TMK system being superimposed over our ruling legal descriptions of the Royal Patent still used at present, started in 1908 and breaks on and off until 1946; not reflecting Adjudicated Title from 1845 to 1908. This foreign identification system mapped out by the plantation engineers themselves, does not reveal the truthful construct of the Ahupua'a and serves as a severely inadequate form of verifying what Mimi states as "ownership" as it is defined in the western realm and not as it is known and defined today in 'Olelo Hawaii in our Royal Patents in the legal precedent language, wherein the Mo'i, Ali'i, Government, Private persons and the shared interests are as Tenants in Common, throughout the whole archipelago. So, speaking from that Focused on Legal Title point of view - all lands of Hawaii are in a state of litigation in civil suit and are all connected by the Royal Patents.

I hope that your Commission does the right thing by the community and takes note of our Objections, we are the people in this community and we care about it so much so as to not divide and segregate it through "threats" or a "threatening group", sell it off and to propose to own "all of it" exclusive of our neighbors.

I hope that your intelligence has not been insulted by the Living Waters complaint, threatening deny my right to Object to their proposed use of a well that will inevitable adversely affect the lifestyle of this community and my own family's interests. Please take note that the well that is hand drawn may not be exactly within our boundaries, but that well is over the Kope Gulch, taking water from a natural source that will adversely affect the shoreline makai.

The water measures as I am sure you are more aware of, are an average rainfall a year; the years represented in the application were drought years on this island and I am referring all of Maunakahalawai, the second wettest mountain in the World.

I have exercised my Right to Object without dishonor to your Commission as requested by your Commission in Public Notice to all concerned. Thank you for respecting my Lawful Right to Object.

O wau iho no,
Mahealani Ventura-Oliver
Title Examiner
Aloha Title Co.
584 Haiki Pl.
Waiehu, HI 96793
808-249-0113 or 808-870-0422
Fax: 808-244-0469
September 2, 2004

Mr. Charles Ice
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu Hawaii 96809

re: Application of Living Waters Land Foundation, LLC:
Waihee Mauka Well, Living Waters #1 (Well No. 5531-01) or
for new uses

Dear Mr. Ice:

I am the attorney for Living Waters Land Foundation, LLC. On August 26, 2004 you emailed to Megan Wells, a representative of Living Waters, objections to my client’s application for water use, that had been presented to you by Mahealani Ventura-Oliver and Pilialoha Teves and indicated that my client had ten days to respond to the objections. This letter is in response to those objections.


Ms. Ventura-Oliver presents three reasons why new water use should be denied. Each statement she has made is unsupported by back-up documentation. Each statement is erroneous:

1. “The property is currently in litigation in Civil No. 26478.”

Response: There is no Civil Action number 26478. There is a Supreme Court Appeal Number 26478, which is an appeal of the Circuit Court action, Mahealani Ventura-Oliver v. Wailuku Agribusiness Co., Inc. et al., Civil No. 03-1-0186(3), Second Circuit Court, State of Hawaii.

This action was brought by Ms. Ventura-Oliver to quiet title to certain land that is a portion of Tax Map Key No. (2) 3-2-13:15, being property owned now by my client Living Waters Land Foundation, LLC, which was acquired from the previous owner Wailuku Agribusiness Co., Inc. In that action, Ms. Ventura-Oliver asserted a claim to an area known as
“Hananui”, a part of Tax Map Key 3-2-13:15, through an alleged ancestor named Alexander Birch who was the original grantee on the Land Commission Award at the time of the Mahele. Judge Joseph Cardoza ruled against Ms. Ventura-Oliver’s claim to an ownership interest in this parcel. (A copy of the “Order Granting Defendant Wailuku Agribusiness, Co. Inc.’s Motion for Summary Judgment on All Claims” and the Judgment filed by the Court on December 19, 2003 are attached as Exhibits 1a and 1b). Ms. Ventura-Oliver’s attorneys asked the Court to reconsider its ruling in early 2004. The Court refused to alter its determination that Ms. Ventura-Oliver had not proven she had an ownership interest in Hananui. An appeal was taken (Appeal No. 26478).

Thus, the current legal status of Ms. Ventura-Oliver’s claims is that she does not own the property she claims she owns. The decision of the judge is on appeal but the litigation has been concluded. Her statement that the matter “is currently in litigation” is incorrect.

2. Ms. Ventura-Oliver’s implied assertion that the well is located on property she may own:

Response: Even if Ms. Ventura-Oliver had prevailed on her claim that she has an ownership interest in Hananui, it would make no difference to the application by Living Waters for a well permit, as the well is not located in the Hananui portion of TMK No. 3-2-13:15, but is positioned in an a different area of TMK No. 3-2-13:15 identified as “Kou”. While the land described as Hananui was granted to Alexander Birch, Ms. Ventura-Oliver’s alleged ancestor, the land described as Kou was retained by the government and after the turn of the century was deeded to private landowners.

Attached as Exhibit 2 is a Tax Map showing TMK No. 3-2-13:15 and adjoining parcels. The shaded areas are the area described as parcel 15. This includes both Hananui (which is outlined in bold black line) and Kou where the well is located. Ms. Ventura-Oliver’s claim is to Hananui not Kou. Thus, she has no standing to assert that the well is on property she may own as it clearly falls outside the area she has asserted an ownership interest in.

Attached as Exhibit 3 is the survey map done by surveyor Bruce Lee which identifies the location of the well with more detail.

3. “The State Historic Preservation Dept. has requested to complete an archeological survey at this time.”

Response: Ms. Ventura-Oliver has provided no documentation that there has been a request to do an archeological survey, nor does she specify precisely what area she is referring to. Ms. Wells, Living Waters representative, has spoken with the State Historic Preservation Department which has indicated they have not made such a request, and if they had, that the request would have been in writing to the Owner. My client has received no such request from.
Mr. Charles Ice  
September 2, 2004  
Page 3

this department.

4. “My family’s burials and sites are in the area and there is more to be determined.”

Response: Ms. Ventura-Oliver has asserted that she has access rights to family burial sites. Her assertion is purportedly based on a letter dated February 20, 2004 prepared by Patty J. Conte, an archeologist, which letter Ms. Ventura-Oliver has circulated to support her claims. I enclose as Exhibit 4 a copy of Ms. Conte’s letter with attached maps showing the purported burial sites. It should be noted that the report deals with sites located on TMK (2) 3-2-13:13 & 14, not TMK 3-2-13:15, an area that is not near the well site and not located on property owned by Living Waters. (Parcels 13 and 14 are below the area of Hananui in an area identified on the tax map as “Polipoli”.)

II. Response to Pilialoha Teves Objections:

Response: The basis for this objection is not clear. Apparently, there is an assertion that Living Waters doesn’t need water for agricultural purposes. Another email dated August 11, 2004 circulated by Ms. Ventura-Oliver soliciting individuals to oppose the well permit application claims a well is not necessary because the average rainfall is 450-600 inches a year. Enclosed as Exhibit 5 is a chart prepared by Wailuku Agribusiness during the time period 1992 - 2001 showing the average annual rainfall in Waiehu as 29.09 inches per year.

The August 11 email from Ms. Ventura-Oliver, is slanderous of Patricia Bragg and her plans for the Living Waters property, an issue that will be taken up in a different forum. By way of a letter dated July 10, 2004, Ms. Wells, as Land Manager for Living Waters, provided the Commission on Water Resource Management a description of plans for the property which describe the agricultural activities, including putting the Macadamia Nut Farm begun by Wailuku Agribusiness back into production plus expanding the agricultural use of the property. The need for sufficient water to make the agricultural activities successful is the purpose of Living Waters seeking a well permit. (A copy of Ms.Wells’s is enclosed as Exhibit 6.)

The objections of Pilialoha Teves conclude with a statement that by granting the well permit, the Commission could cause the County and State “to become bankrupt”. No basis for this statement is provided and the Commission is asked to disregard this comment as an unwarranted threat, consistent with the threatening tactics of Ms. Ventura-Oliver and her group which have resulted in two separate injunctions being issued against them by two Second Circuit Court judges - Judge Joel August and Judge Shackley Raffetto. All three of the Second Circuit Court judges who have reviewed Ms. Ventura-Oliver’s claims vis-a-vis the subject property have rejected either finally or preliminarily that her claims are valid.
Mr. Charles Ice  
September 2, 2004  
Page 4

If you need any further information, please don’t hesitate to contact me. If you receive any further objections, please forward them to me for comment.

Sincerely yours,

Mary Blaine Johnston

Encs.

cc Living Waters Land Foundation, LLC/Patricia Bragg  
Mahealani Ventura-Oliver  
Pilialoha Teves c/o Mahealani Ventura-Oliver  
Megan Wells
IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MAHEALANI VENTURA-OLIVER, )

Plaintiff,

vs. )

WAILUKU AGRIBUSINESS CO., INC.; )
GILBERT SCHMITT; LEIMOMI SCHMITT; )
MOMILANI VENTURA; KEOKI )
VENTURA; RONALEE VENTURA; PINO )
SOUZA; LLOYD L. SCHMITT, III; JENNY )
BLACK; LAVELLE SCHMITT; )
CHERYLANE K. SCHMITT; UNKNOWN )
HEIRS OF ALEXANDER M. BIRCH; STATE )
of HAWAII; COUNTY OF MAUI; JOHN )
DOES; JANE DOES; DOE )
corporations, partnerships, and )
entities 1-10, )

Defendants. )

CIVIL NO. 03-1-0186(3) )
(Quiet Title Action)

ORDER GRANTING DEFENDANT )
WAILUKU AGRIBUSINESS, CO., INC.'S )
motion for Summary Judgment )
on all claims

HEARING )
DATE: December 3, 2003 )
TIME: 8:30 a.m. )
JUDGE: Hon. Joseph E. Cardoza

NO TRIAL DATE

I hereby certify that this is a full, true and correct copy of the original.

[Signature]
clerk, Second Judicial Circuit

EXHIBIT 1a
ORDER GRANTING DEFENDANT WAILUKU AGribusiness, CO., INC.'S
MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS

Defendant WAILUKU AGribusiness, CO., INC., a Hawaii corporation's
Motion for Summary Judgment on All Claims filed herein on November 26, 2003 (the "Wailuku
MSJ") came on for hearing before this honorable Court at 8:30 a.m. on Wednesday, December 3,
2003. Peter A. Horovitz, Esq. appeared on behalf of WAILUKU AGribusiness CO., INC.
("Wailuku Ag."). James R. McCarty, Esq. and Ruby A. Hamili, Esq. appeared on behalf of
Plaintiff MAHEALANI VENTURA-OLIVER ("Plaintiff"). There were no other appearances.

Based upon the records, pleadings, declarations and affidavits filed herein, the
arguments presented by counsel at hearing hereof, for good cause and for the reasons stated by
the Court at hearing hereof, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
that there are no issues of material fact and Wailuku Ag. is entitled to judgment as a matter of law on
all claims. Accordingly, the Wailuku MSJ is granted in full.

There being no other matters to resolve, and no just reason for delay, pursuant to
Rules 54(b) of the Hawaii Rules of Civil Procedure, the foregoing shall be considered as a final
order and judgment.

DATED: Wailuku, Hawaii, __________ DEC 19 2003

/S/ JOSEPH E. CARDOZA (SEAL)

Judge of the above-entitled Court

APPROVED AS TO FORM

JAMES R. MCCARTY, ESQ.
RUBY A. HAMILI, ESQ.
Attorneys for Plaintiff
MAHEALANI VENTURA-OLIVER

MAHEALANI VENTURA-OLIVER v. WAILUKU AGribusiness CO., INC.; CIVIL NO. 03-1-0188(3); ORDER GRANTING DEFENDANT
WAILUKU AGribusiness CO., INC.'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS

80003 -2-
IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MAHEALANI VENTURA-OLIVER, )

Plaintiff,

vs. ) CIVIL NO. 03-1-0186(3)

WAILUKU AGRIBUSINESS CO., INC.; ) (Quiet Title Action)
GILBERT SCHMITT; LEIMOMI SCHMITT; ) JUDGMENT
MOMILANI VENTURA; KEOKI ) [RE: ORDER GRANTING DEFENDANT
VENTURA; RONALEE VENTURA; PINO ) WAILUKU AGRIBUSINESS, CO., INC.'S
SOUZA; LLOYD L. SCHMITT, II; JENNY ) MOTION FOR SUMMARY JUDGMENT
BLACK; LAVELLE SCHMITT; ) ON ALL CLAIMS]
CHERYLANE K. SCHMITT; UNKNOWN )
HEIRS OF ALEXANDER M. BIRCH; STATE )
OF HAWAI'I; COUNTY OF MAUI; JOHN )
DOES; JANE DOES; DOE )
CORPORATIONS, PARTNERSHIPS, AND )
ENTITIES 1-10, )

Defendants. )

________________________________

NO TRIAL DATE

JUDGMENT

In accordance with Rule 58 of the Hawaii Rules of Civil Procedure, and pursuant to that certain ORDER GRANTING DEFENDANT WAILUKU AGRIBUSINESS, CO., INC.'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS, filed herein, summary judgment

EXHIBIT 1b
is hereby entered in favor of Defendant WAILUKU AGribusiness CO., INC., and against Plaintiff on all claims. This Court expressly directs that said summary judgment is entered as a final judgment as there are no just reasons for delay, pursuant to Rule 54(b) of the Hawaii Rules of Civil Procedure.

DATED: Wailuku, Hawaii, 

DEC 19 2003

Judge of the above-entitled Court

APPROVED AS TO FORM

JAMES R. McCARTY, ESQ.
RUBY A. HAMIL, ESQ.
Attorneys for Plaintiff
MAHEELANI VENTURA-OLIVER
Well Geographic Location:
Latitude 20° 55' 25.12"
Longitude 156° 31' 00.4"

PLOT PLAN
(Provide Latitude and Longitude of well referenced to NAD27 to nearest second)

Well Elevation
Benchmark Elevation 404.88
(0.01 ft. above msl)

Concrete Pad

Benchmark reference control point
Street monument North Hiaha Place "Waiehu Ocean View Estates"
Elevation is 48.18 feet (well)

Surveyor's stamp and signature

EXHIBIT 3
February 20, 2004

To Whom It May Concern:

VERIFICATION OF TRADITIONAL HAWAIIAN LAND USE WITHIN
TMK 3-2-13:13-14
HANANUI, ISLAND OF MAUI

This letter is being submitted to verify traditional Hawaiian land use within the abovementioned TMK, also described in Royal Patent 7584, Land Claim Award 781 to A.M. Birch. Evidence of such use is the presence of numerous traditionally constructed and modified natural *pohaku* (stone) features, including *hale* (house), *pa ilina* (burial mounds) and *kanu ana* (burial caves).

This area is extremely culturally sensitive. As stated in S.2869, Religious Land Use and Institutionalized Persons Act of 2000 and Hawaii Revised Statute 852-1, the lineal and cultural descendants of the family members who resided there during the pre-Contact period (before A.D. 1778 when Captain Cook arrived) as well as those who have had a documented presence on the land since 1839, must be afforded unrestricted access to continue caring for the these locations as *kahu malama* (stewards) of the significant sites shown on map enclosed with this letter of verification.

Respectfully submitted,

Patty J. Conte, M.A.

Principal Investigator

EXHIBIT 4
PERMIT TO CONDUCT
ARCHAEOLOGICAL ACTIVITIES
IN THE STATE OF HAWAI'I
FOR CALENDAR YEAR 2004

CRM Solutions Hawai'i, Inc.
Name of individual/archaeological firm, agencies or organizations, etc.

The bearer of this permit has met the minimal professional standards for archaeologists as provided in chapter 13-281, HAR, as demonstrated in an accepted permit application submitted under section 13-282-3, HAR, and has been deemed qualified to conduct archaeological activities in the State of Hawai'i.

Hawai'i Department of Land and Natural Resources, State Historic Preservation Division

No. 0403
### Rainfall Waiehu

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Rain gauge is on 550 acres
July 10, 2004
State of Hawaii
Commission on Water Resource Management
Re: Living Waters Land Foundation, LLC (AKA L.WLF)
Water use Permit Application

Dear Water Commission,

On our 550 acres we have over 150 acres in mature macadamia nut trees. These groves (approx. 17,000 trees) were being watered by Wailuku Agribusiness, the previous owner, out of the existing ditch system on our property from Waiehu and Waihee stream diversions.

I noticed that at a hearing with your commission on Maui, Wailuku Ag represented that there had been a large decrease in their use of water in our area without mentioning that it was because these large groves, along with the neighbors 170 acres mac nut plantation, were no longer being watered even though the trees were still viable and producing.

The trees on our property have now been designated “Certified Organic” and it is our intention to continue harvesting the nuts. We harvested last year with great success. Our groves, according to Mac Nut Farms on the Big Island, are healthier than their trees because of the richness of our area (Waihee/ Waiehu) for farming. This is even in spite of the fact that the trees had not been cared for at all during the last 5 years of ownership by Wailuku Ag.

According to CT AHR University of Hawaii, the trees will require 5,500 gal /per acre/per day x 150 acres =825,000 GPD during the dry times of the year to bring them up to optimum yield.

We also already have extensive existing diversified agriculture including banana, papaya, Kalo, tapioca, Guava, eggplant and many other varieties of vegetables being farmed on our land. There are 5 groups of families farming approx. 20 acres. These farmers have been leasing this property for 10-15 years. They are using approximately 40,000 GPD (2,000 GPD x 20 acres) on their farms. Currently they have to buy the ditch water on our property from Wailuku Ag and they tell us that they are paying a high price and are therefore not able to afford using all the water they really need. The Foundation (LWLF) plans to provide them with free water to better support them in their attempts to make a living from their crops. All of them want to expand their farms when we can supply them the water.

We are also planning to offer (5) x five acre plots and (10) x two acre plots to the public for additional organic farm leases as soon as we can provide them with water. We have had many requests from the local community and would like to provide as many people in our immediate area the opportunity to grow their own food. So we will need water as we make these lands available to farming.

EXHIBIT 6
Maui is far from self-sufficient when it comes to food production and it has been our Foundation’s goal from the beginning to address this problem through prevention of prime Ag land going to residential development. Waihee & Waiehu are considered to be the best growing areas on Maui when you look at weather, rainfall and soil and proximity to markets for distribution. Living Waters Land Foundation being made aware of this fact purchased this property specifically to protect the existing groves and keep this prime growing area in true agriculture. They were aware of the concern that this area was being sold off to residential developers who say they are creating “farm” subdivisions. In reality, this type of high-end residential estate development taking place on Maui’s best Ag zoned lands usually end up with CC&R’s that prevent any real farming.

We are also planning to start a nursery for indigenous plants and trees to undertake forest restoration on our conservation zoned lands (Approx. 200 + acres) as well as provide acclimated organic starts and nitrogen enriching cover crops to our farmers. We would also like to begin propagating timber bamboo for construction purposes. We are encouraging all the farmers to use mulches and ground covers to reduce water usage when ever possible. We feel that the surface water on the property, IE the existing ditch water, would be the best source for the groves and other Ag projects, as was the original purpose of the ditches, but if we can not use that water then we will need to use our well as the source.

I hope this clarifies our intentions for water use on our property. If there are any questions please contact me on Maui at 808-244-0231.

Sincerely,

Megan Wells, Land Manager
For Living Water Land Foundation
Fax Transmittal

Date: September 2, 2004
Time: 2:45 p.m.

To: Charles F. Ice
Commission on Water Resource Management

Re: Living Waters Land Foundation Application for Well #5531-01

TRANSMITTED PLEASE FIND:

DESCRIPTION OF DOCUMENT
Letter dated September 2, 2004 (w/encs.) 16

Transmitted for:

( ) your information
( ) signature & return
( ) review & comment
( ) filing & return
( ) per phone conversation

( ) per your request
( ) your approval
( ) per your message
(xx) hard copy to follow
( ) see remarks

REMARKS:

MARY BLAINE JOHNSTON

SEP-02-2004 02:47PM FAX:8088781227 ID:DLNR WATER COMMISHIN PAGE:001 R=96
September 2, 2004

Mr. Charles Ice
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu Hawaii 96809

By fax: 808-587-0219

re: Application of Living Waters Land Foundation, LLC:
    Waihee Mauka Well, Living Waters #1 (Well No. 5531-01) or
    for new uses

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Waters Land Foundation, LLC, which was acquired from the previous owner Wailuku
Agribusiness Co., Inc. In that action, Ms. Ventura-Oliver asserted a claim to an area known as
“Hananui”, a part of Tax Map Key 3-2-13:15, through an alleged ancestor named Alexander Birch who was the original grantee on the Land Commission Award at the time of the Mahele. Judge Joseph Cardoza ruled against Ms. Ventura-Oliver’s claim to an ownership interest in this parcel. (A copy of the “Order Granting Defendant Wailuku Agribusiness, Co. Inc.’s Motion for Summary Judgment on All Claims” and the Judgment filed by the Court on December 19, 2003 are attached as Exhibits 1a and 1b). Ms. Ventura-Oliver’s attorneys asked the Court to reconsider its ruling in early 2004. The Court refused to alter its determination that Ms. Ventura-Oliver had not proven she had an ownership interest in Hananui. An appeal was taken (Appeal No. 26478).

Thus, the current legal status of Ms. Ventura-Oliver’s claims is that she does not own the property she claims she owns. The decision of the judge is on appeal but the litigation has been concluded. Her statement that the matter “is currently in litigation” is incorrect.

2. Ms. Ventura-Oliver’s implied assertion that the well is located on property she may own:

Response: Even if Ms. Ventura-Oliver had prevailed on her claim that she has an ownership interest in Hananui, it would make no difference to the application by Living Waters for a well permit, as the well is not located in the Hananui portion of TMK No. 3-2-13:15, but is positioned in an a different area of TMK No. 3-2-13:15 identified as “Kou”. While the land described as Hananui was granted to Alexander Birch, Ms. Ventura-Oliver’s alleged ancestor, the land described as Kou was retained by the government and after the turn of the century was deeded to private landowners.

Attached as Exhibit 2 is a Tax Map showing TMK No. 3-2-13:15 and adjoining parcels. The shaded areas are the area described as parcel 15. This includes both Hananui (which is outlined in bold black line) and Kou where the well is located. Ms. Ventura-Oliver’s claim is to Hananui not Kou. Thus, she has no standing to assert that the well is on property she may own as it clearly falls outside the area she has asserted an ownership interest in.

Attached as Exhibit 3 is the survey map done by surveyor Bruce Lee which identifies the location of the well with more detail.

3. “The State Historic Preservation Dept. has requested to complete an archeological survey at this time.”

Response: Ms. Ventura-Oliver has provided no documentation that there has been a request to do an archeological survey, nor does she specify precisely what area she is referring to. Ms. Wells, Living Waters representative, has spoken with the State Historic Preservation Department which has indicated they have not made such a request, and if they had, that the request would have been in writing to the Owner. My client has received no such request from
Mr. Charles Ice  
September 2, 2004  
Page 3

this department.

4. “My family’s burials and sites are in the area and there is more to be determined.”

Response: Ms. Ventura-Oliver has asserted that she has access rights to family burial sites. Her assertion is purportedly based on a letter dated February 20, 2004 prepared by Patty J. Conte, an archeologist, which letter Ms. Ventura-Oliver has circulated to support her claims. I enclose as Exhibit 4 a copy of Ms. Conte’s letter with attached maps showing the purported burial sites. It should be noted that the report deals with sites located on TMK (2) 3-2-13:13 & 14, not TMK 3-2-13:15, an area that is not near the well site and not located on property owned by Living Waters. (Parcels 13 and 14 are below the area of Hanamui in an area identified on the tax map as “Polipoli”.)

II. Response to Pilialoha Teves Objections:

Response: The basis for this objection is not clear. Apparently, there is an assertion that Living Waters doesn’t need water for agricultural purposes. Another email dated August 11, 2004 circulated by Ms. Ventura-Oliver soliciting individuals to oppose the well permit application claims a well is not necessary because the average rainfall is 450-600 inches a year. Enclosed as Exhibit 5 is a chart prepared by Wailuku Agribusiness during the time period 1992-2001 showing the average annual rainfall in Wailuku as 29.09 inches per year.

The August 11 email from Ms. Ventura-Oliver, is slanderous of Patricia Bragg and her plans for the Living Waters property, an issue that will be taken up in a different forum. By way of a letter dated July 10, 2004, Ms. Wells, as Land Manager for Living Waters, provided the Commission on Water Resource Management a description of plans for the property which describe the agricultural activities, including putting the Macadamia Nut Farm begun by Wailuku Agribusiness back into production plus expanding the agricultural use of the property. The need for sufficient water to make the agricultural activities successful is the purpose of Living Waters seeking a well permit. (A copy of Ms. Wells’s is enclosed as Exhibit 6.)

The objections of Pilialoha Teves conclude with a statement that by granting the well permit, the Commission could cause the County and State “to become bankrupt”. No basis for this statement is provided and the Commission is asked to disregard this comment as an unwarranted threat, consistent with the threatening tactics of Ms. Ventura-Oliver and her group which have resulted in two separate injunctions being issued against them by two Second Circuit Court judges - Judge Joel August and Judge Shackley Raffetto. All three of the Second Circuit Court judges who have reviewed Ms. Ventura-Oliver’s claims vis-a-vis the subject property have rejected either finally or preliminarily that her claims are valid.
Mr. Charles Ice  
September 2, 2004  
Page 4

If you need any further information, please don't hesitate to contact me. If you receive any further objections, please forward them to me for comment.

Sincerely yours,

Mary Blaine Johnston

Encs.

cc Living Waters Land Foundation, LLC/Patricia Bragg  
Mahealani Ventura-Oliver  
Pilioloha Teves c/o Mahealani Ventura-Oliver  
Megan Wells
IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  

STATE OF HAWAII  

MAHEALANI VENTURA-OLIVER, )  

Plaintiff, )  

vs. )  

WAILUKU AGRIBUSINESS CO., INC.; )  
GILBERT SCHMITT; LEIMOMI SCHMITT; )  
MOMILANI VENTURA; KEOKI )  
VENTURA; RONALEE VENTURA; PINO )  
SOUZA; LLOYD L. SCHMITT, III; JENNY )  
BLACK; LAVELLE SCHMITT; )  
CHERYLANE K. SCHMITT; UNKNOWN )  
HEIRS OF ALEXANDER M. BIRCH; STATE )  
of HAWAII; COUNTY OF MAUI; JOHN )  
DOES; JANE DOES; DOE )  
corporations, partnerships, and )  
entities 1-10, )  

Defendants. )  

CIVIL NO. 03-1-0186(3) )  
(Quiet Title Action) )  

ORDER GRANTING DEFENDANT )  
WAILUKU AGRIBUSINESS CO., INC.'S )  
motion for summary judgment )  
on all claims )  

HEARING )  
DATE: December 3, 2003 )  
TIME: 8:30 a.m )  
JUDGE: Hon. Joseph E. Cardoza )  

NO TRIAL DATE  

I hereby certify that this is a full, true and  
correct copy of the Original  

Court, Second Judicial Circuit  

EXHIBIT 4
ORDER GRANTING DEFENDANT WAILUKU AGRIBUSINESS, CO., INC.'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS

Defendant WAILUKU AGRIBUSINESS, CO., INC., a Hawaii corporation's Motion for Summary Judgment on All Claims filed herein on November 26, 2003 (the "Wailuku MSJ") came on for hearing before this honorable Court at 8:30 a.m. on Wednesday, December 3, 2003. Peter A. Horovitz, Esq. appeared on behalf of WAILUKU AGRIBUSINESS CO., INC. ("Wailuku Ag."). James R. McCarty, Esq. and Ruby A. Hamili, Esq. appeared on behalf of Plaintiff MAHEALANI VENTURA-OLIVER ("Plaintiff"). There were no other appearances.

Based upon the records, pleadings, declarations and affidavits filed herein, the arguments presented by counsel at hearing hereof, for good cause and for the reasons stated by the Court at hearing hereof, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there are no issues of material fact and Wailuku Ag. is entitled to judgment as a matter of law on all claims. Accordingly, the Wailuku MSJ is granted in full.

There being no other matters to resolve, and no just reason for delay, pursuant to Rules 54(b) of the Hawaii Rules of Civil Procedure, the foregoing shall be considered as a final order and judgment.

DATED: Wailuku, Hawaii, DEC 19 2003

/S/ JOSEPH E. CARDOZA (SEAL)
Judge of the above-entitled Court

APPROVED AS TO FORM

JAMES R. MCCARTY, ESQ.
RUBY A. HAMILI, ESQ.
Attorneys for Plaintiff
MAHEALANI VENTURA-OLIVER

MAHEALANI VENTURA-OLIVER v. WAILUKU AGRIBUSINESS CO., INC.; CIVIL NO. 03-1-0186(3); ORDER GRANTING DEFENDANT WAILUKU AGRIBUSINESS CO., INC.'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS

80003
IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

MAHEALANI VENTURA-OLIVER, Plaintiff,

vs.

WAILUKU AGRIBUSINESS CO., INC.; GILBERT SCHMITT; LEIMOMI SCHMITT; MOMILANI VENTURA; KEOKI VENTURA; RONALEE VENTURA; PINOSOUZA; LLOYD L. SCHMITT, III; JENNY BLACK; LAVELLE SCHMITT; CHERYL K. SCHMITT; UNKNOWN HEIRS OF ALEXANDER M. BIRCH; STATE OF HAWAII; COUNTY OF MAUI; JOHN DOES; JANE DOES; DOE CORPORATIONS, PARTNERSHIPS, AND ENTITIES 1-10, Defendants.

CIVIL NO. 03-1-0186(3) (Quiet Title Action)

JUDGMENT

[RE: ORDER GRANTING DEFENDANT WAILUKU AGRIBUSINESS, CO., INC.'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS]

HEARING
DATE: December 3, 2003
TIME: 8:30 a.m.
JUDGE: Hon. Joseph E. Cardoza

JUDGMENT

In accordance with Rule 58 of the Hawaii Rules of Civil Procedure, and pursuant to that certain ORDER GRANTING DEFENDANT WAILUKU AGRIBUSINESS, CO., INC.'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS, filed herein, summary judgment is granted.
is hereby entered in favor of Defendant WAILUKU AGRIBUSINESS CO., INC., and against
Plaintiff on all claims. This Court expressly directs that said summary judgment is entered as a
final judgment as there are no just reasons for delay, pursuant to Rule 54(b) of the Hawaii Rules
of Civil Procedure.

DATED: Wailuku, Hawaii, DEC 19 2003

APPROVED AS TO FORM

JAMES R. McCARTY, ESQ.
RUBY A. HAMIL, ESQ.
Attorneys for Plaintiff
MAHEALANI VENTURA-OLIVER
Well Geographic Location:
Latitude 20° 55' 25.12"
Longitude 156° 31' 00.4"

PLOT PLAN
(Provide Latitude and Longitude of well
referenced to NAD27 to nearest second)

September 09, 2004
Tax Map Key:(2) 3-2-013:015

EXHIBIT 3
February 20, 2004

To Whom It May Concern:

VERIFICATION OF TRADITIONAL HAWAIIAN LAND USE WITHIN
TMK 3-2-13:13-14
HANANUI, ISLAND OF MAUI

This letter is being submitted to verify traditional Hawaiian land use within the abovementioned TMK, also described in Royal Patent 7584, Land Claim Award 781 to A.M. Birch. Evidence of such use is the presence of numerous traditionally constructed and modified natural pohaku (stone) features, including hale (house), pa ilina (burial mounds) and kanu ana (burial caves).

This area is extremely culturally sensitive. As stated in S.2869, Religious Land Use and Institutionalized Persons Act of 2000 and Hawaii Revised Statute 852-1, the lineal and cultural descendants of the family members who resided there during the pre-Contact period (before A.D. 1778 when Captain Cook arrived) as well as those who have had a documented presence on the land since 1839, must be afforded unrestricted access to continue caring for these locations as kahu malama (stewards) of the significant sites shown on the map enclosed with this letter of verification.

Respectfully submitted,

Patty J. Conte, M.A.

Principal Investigator
PERMIT TO CONDUCT
ARCHAEOLOGICAL ACTIVITIES
IN THE STATE OF HAWAI'I
FOR CALENDAR YEAR 2004

CRM Solutions Hawai`i, Inc.
Name of individual/archaeological firm, agencies or organizations, etc.

The bearer of this permit has met the minimal professional standards for archaeologists as provided in chapter 13-281, HAR, as demonstrated in an accepted permit application submitted under section 13-282-3, HAR, and has been deemed qualified to conduct archaeological activities in the State of Hawai'i.

DLNR CHAIRPERSON
Mary Blaine Johnston
SHPD ADMINISTRATOR

Hawai'i Department of Land and Natural Resources, State Historic Preservation Division

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Rain gauge is on 550 acres
July 10, 2004
State of Hawaii
Commission on Water Resource Management
Re: Living Waters Land Foundation, LLC (AKA LWLF)
Water use Permit Application

Dear Water Commission,

On our 550 acres we have over 150 acres in mature macadamia nut trees. These groves (approx. 17,000 trees) were being watered by Wailuku Agribusiness, the previous owner, out of the existing ditch system on our property from Waiehu and Waiehu stream diversions.

I noticed that at a hearing with your commission on Maui, Wailuku Ag represented that there had been a large decrease in their use of water in our area without mentioning that it was because these large groves, along with the neighbors 170 acres mac nut plantation, were no longer being watered even though the trees were still viable and producing.

The trees on our property have now been designated “Certified Organic” and it is our intention to continue harvesting the nuts. We harvested last year with great success. Our groves, according to Mac Nut Farms on the Big Island, are healthier than their trees because of the richness of our area (Waiehu/ Waiehu) for farming. This is even in spite of the fact that the trees had not been cared for at all during the last 5 years of ownership by Wailuku Ag.

According to CTAHR University of Hawaii, the trees will require
5,500 gal /per acre/per day x 150 acres = 825,000 GPD during the dry times of the year to bring them up to optimum yield.

We also already have extensive existing diversified agriculture including banana, papaya, Kalo, tapiroca, Guava, eggplant and many other varieties of vegetables being farmed on our land. There are 5 groups of families farming approx. 20 acres. These farmers have been leasing this property for 10-15 years. They are using approximately 40,000 GPD (2,000 GPD x 20 acres) on their farms. Currently they have to buy the ditch water on our property from Wailuku Ag and they tell us that they are paying a high price and are therefore not able to afford using all the water they really need. The Foundation (LWLF) plans to provide them with free water to better support them in their attempts to make a living from their crops. All of them want to expand their farms when we can supply them the water.

We are also planning to offer (5) x five acre plots and (10) x two acre plots to the public for additional organic farm leases as soon as we can provide them with water. We have had many requests from the local community and would like to provide as many people in our immediate area the opportunity to grow their own food. So we will need water as we make these lands available to farming.
Maui is far from self-sufficient when it comes to food production and it has been our Foundation’s goal from the beginning to address this problem through prevention of prime Ag land going to residential development. Waihee & Waiehu are considered to be the best growing areas on Maui when you look at weather, rainfall and soil and proximity to markets for distribution. Living Waters Land Foundation being made aware of this fact purchased this property specifically to protect the existing groves and keep this prime growing area in true agriculture. They were aware of the concern that this area was being sold off to residential developers who say they are creating “farm” subdivisions. In reality, this type of high-end residential estate development taking place on Maui’s best Ag zoned lands usually end up with CC&R’s that prevent any real farming.

We are also planning to start a nursery for indigenous plants and trees to undertake forest restoration on our conservation zoned lands (Approx. 200 + acres) as well as provide acclimated organic starts and nitrogen enriching cover crops to our farmers. We would also like to begin propagating timber bamboo for construction purposes. We are encouraging all the farmers to use mulches and ground covers to reduce water usage when ever possible. We feel that the surface water on the property, IE the existing ditch water, would be the best source for the groves and other Ag projects, as was the original purpose of the ditches, but if we can not use that water then we will need to use our well as the source.

I hope this clarifies our intentions for water use on our property. If there are any questions please contact me on Maui at 808-244-0231.

Sincerely,

Megan Wells, Land Manager
For Living Water Land Foundation
ALOHA,
This may be a second time you get this, kala mai no ku'u hemahema, Ano Ai:

PLEASE TAKE NOTICE OF THIS OBJECTION:

IN RE: WELL APPLICATIONS FOR WELL # 25531-01 AND # 5431-04 AND 5330-05.

WE, THE "AHA KU MOKU OF NA WAI EHA ("THE ASSEMBLAGE IN WHOM THE MOKU BELONGS" UNDER ADJUDICATED TITLE)

WE HEREBY OBJECT TO THE TAKING OF WATER FOR DEVELOPMENT PURPOSES; ON THE FOLLOWING GROUNDS:

1) NO LAWFUL TRANSFER OF TITLE TO PROPERTIES (THAT INCLUDE THE WATER) BEING PROPOSED FOR DEVELOPMENT.
2) WE, AS A COMMUNITY VEHEMENTLY DENY ANY MORE ILLEGAL DEVELOPMENT OF OUR MOKU BASED ON THE ABOVE. This includes the taking of water and displacement of our DUE PROCESS.
3) LIVING WATERS LLC IS TAKING WATER AT PRESENT IN 2-3 FOOT PIPES SET IN OLD AUWAI'S ON THE PROPERTY THEY ARE ILLEGALLY OCCUPYING; FILING IN SUIT AGAINST THE STATE FOR INSTREAM FLOW; FILING TRO'S AGAINST THE KANUHA FAMILY FOR AN EASEMENT ON THE KANUHA PROPERTY; APPLYING FOR A WELL FROM YOU AND THE PROPERTY ITSELF IS IN LITIGATION.
4) DAVID SINGER'S Q/D DID NOT INCLUDE OUR INTERESTS
5) VALERIE DEVA & DON HARRIS Q/D FROM AVERY CHUMBLEY DID NOT INCLUDE OUR INTERESTS.
6) WE DO NOT WANT OUR ROADS CLOSED AND CHANGED INTO PRIVATE ROADS THAT SHUT US OFF FROM OUR MAUKA MAKAI RIGHTS AS IS GOING ON -- ON OUR ISLAND RIGHT NOW.
7) WE REPRESENT ALL OF OUR COLLECTIVE OHANA AT PRESENT, LINEAL AND CULTURAL DESCENDANTS OF MOKU O NA WAI EHA.

WE ARE THE PO'E AHA KU MOKU composed OF PO'O REPRESENTING APPROXIMATELY 200-300 PEOPLE. WE ARE APPOINTED UNDER THE KANAWAI HO'ILINA TO OBJECT ON ALL OF OUR FAMILIES BEHALF AND TO PROTECT THEIR ROYAL PATENTS AND LAND COMMISSION AWARDS THAT INCLUDE A BUNDLE OF RIGHTS, PROTECTED BY THE 1839 CONSTITUTION. OUR KUPUNA HAVE SET THIS FORTH AND WE HAVE COME TOGETHER TO OBJECT ON THIS DATE: SEPTEMBER 1, 2004 AS A COMMUNITY OF KANAKA MAOLI HAWAII.
THE PO'O HO'ILINA ARE:
MAHEALANI VENTURA-OLIVER FOR: KALILI, KALEOHANO, NAHUINA, KUANE'A, KAMAMALU, NAMAHANA, MOIKEHA AND KAME'EIAMOKU, BIRCH, KAMAKEA, PEPEIAO AND KEALOHAPAU'OLE, KAWA'AKAAUKAHI, LUNALILO, A KOE NA KULEANA O NA KANAKA, ET AL.
KEEAUMOKU KAPU FOR: KEEAUMOKU NUI, NAMAHANA, KAMAMALU, KEKAI, KALEO, KAIAL'IILI'I, KALEOPU'UPU'U, KEAHI, HEWAHEWANUI, LUNALILO, A KOE NA KULEANA O NA KANAKA, ET AL.
FOSTER AMPONG: KALEOHANO, TIMOTEO, KEKAHUNA, KANUHA, LUNALILO, KAMAMALU A KOE NA KULEANA O NA KANAKA, ET AL.
SUSAN KA'AWA, FOR KA'AWA, HEWAHEWA NUI, KAMAMALU, KAUHI LUNALILO A KOE NA KULEANA O NA KANAKA, ET AL.
OLIVER DUKELOW FOR PEPEHU, MAULE, AWANA, LUNALILO, KAMAMALU, A KOE NA KULEANA O NA KANAKA, ET AL.
MAGARET HOOPII FOR NA HOOPII, KAMAKA, LUNALILO, KAMAMALU A KOE NA KULEANA O NA KANAKA, ET AL.
NELSON ARMITAGE FOR LUNALILO, KAMAMALU A KOE NA KULEANA O NA KANAKA, ET AL AND THE CONSTITUENTS OF THE ORGANIZATION OF THE REINSTATED GOVERNMENT RESPECTIVELY; NUMBERING ANOTHER 200 PERSONS.

INCLUDE TO THIS LIST OF FAMILIES; THE OIHANA OF OTHERS FROM OUTER ISLANDS WHO COME TO OUR PU'UHONUA, HEIAU, KU'AHU, AHU, TRAILS, KU'ULA, PA'ILINA, KANU ANA, ETC. TO PRACTICE CULTURAL BELIEFS, TO FISH, DIVE, COLLECT AND GATHER LIMU DEPENDENT UPON THE MULIWAI - FRESH WATER, SPECIES THAT ARE GATHERED IN THE IUKA, AND WE EACH HAVE THAT EXACT INALIENABLE FREEDOM THAT THIS IS TO BE PROTECTED BY LAW.
ADD TO THIS OBJECTION: LEGAL SPECIES THAT ARE THREATENED BY THE LOSS OF STREAM FLOW, DEGRADATION OF THE WATER SCOPE AREA TO REPLENISH THE NATURAL FLOW AND RETURN OF OUR FRESH WATER, RUN OFF ACCIDENTS, STORM DRAIN POLLUTION, LOSS OF ENVIRONMENT AND GENOCIDE OF OUR PEOPLE. LET US LIVE.

DO NOT INFRINGE UPON THE POPULACE TO SATISFY A FEW WHO WANT TO CONTROL THE WATER FOR THEIR PERSONAL BENEFITS THAT DO NOT HELP THE COMMUNITY AT ALL, ESPECIALLY THAT WHICH IS BASED ON QUITCLAIM DEEDS AND FRAUDULENT TRANSFERS FROM A PLANTATION.
BY YOUR COMMISSION APROVING THESE APPLICATIONS, WE ARE THEREBY DISPLACED FROM OUR CONSTITUTIONAL RIGHTS, SUBJECT TO DEPRIVATION OF OUR PROPERTIES AND ADVERSELY AFFECTED BY YOUR DECISION.

"KOE NA KULEANA O NA KANAKA" IS A RESERVATION OF OUR PROPERTY RIGHTS INCLUDING EVERY RIGHT THEREETO, WITHIN EVERY ALI'I LAND COMMISSION AWARD AND ROYAL PATENT THAT REPRESENTS NO LESS THAN A 33 1/3 PERCENT OF THAT TITLE.

E OLA I KA WAI HA HAWA'I MAOLI.

Mahealani Ventura-Oliver
Po'e ho'oilina a 'Aha ku moku o Na Wai Eha
Aloha Title Co.
584 Haiki Pl.
Waiehu, HI 96793
808-249-0113 or 808-870-0422
Fax: 808-244-0469
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Need to discuss with req. branch on exiting use criteria.
It appears pure, Hawaiian rights is not one of them.
DEPARTMENT OF WATER SUPPLY
Water Resources and Planning Division
200 South High Street
Wailuku HI 96793
Telephone (808) 270-7199 • Fax (808) 270-7833/270-7136

TO

Date: 9/2/04

Attention Charley Lee

FAX # (808) 587-0219
PHONE # (808) 587-0257

SUBJECT: WUPA - Iao Ground Water Mgt Area

No. of Pages 3 (including this transmittal)

REMARKS:

Original to follow

Transmitter Eva

If you have not received all of the pages, please call (808) 270-7199 or 270-8044.
August 9, 2004

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

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

Mr. Clyde W. Nana'o, Administrator
Office of Hawaiian Affairs
Attn: Mr. Jonathan Scheurer

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

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

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

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

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

Transmitted for your review and comment is a copy of a water use permit application for Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 Lee at 587-0251.

Class
Attachment(s)

Response:

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

Contact person: George Y. Tengan, Director
Phone: (808) 270-7816

Signed:

Date: September 2, 2004
September 1, 2004

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

Re: Water Use Permit Application - Living Waters Land Foundation
Iao Ground Water Management Area, Maui

Dear Mr. Young:

Thank you for the opportunity to comment on this water use permit application. We have the following comments:

**Zoning Compliance**
The property is designated Agriculture by the State Land Use Commission. To date we have not received comments from the Department of Planning on Zoning and Community Plan designation.

**Aquifer Status and Proposed Amount of Withdrawal**
The quantity of water requested on the water use permit application form is stated as 20,000 gallons per day (gpd). However, the application letter states that a larger pump is needed with a maximum capacity of 540,000 gpd. It should be clarified what pump size and pumpage is intended in the application. Provided that the requested water quantity is 20,000 gpd and the proposed pump be appropriately sized to accommodate the proposed usage, the Department has no objections to this application at this time.

We concur with the applicant that existing ditch water would be the most appropriate source for agricultural use in the area. Ditch water irrigation would not require treatment and the distribution system for agricultural irrigation should still be in place.

Should you have any questions, please contact our Water Resources and Planning Division at (808) 270-7199.

Sincerely,

George Y. Tengan
Director

By Water All Things Find Life
September 1, 2004

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

RE: Comments on the application for Water Use Permit for Well 5531-01 ("Waihe'e Mauka Living Waters #1") by Maui County, TMK No. 3-2-13:15, in the 'Iao Ground Water Management Area, Maui.

Mr. Young and Commissioners,

The Office of Hawaiian Affairs (OHA) appreciates the opportunity to comment on this Water Use Permit Application (WUPA).

OHA does not object to the referenced application, but we do offer the following comments at this time. We must note like all of the other applications we have reviewed for water from the 'Iao Ground Water Management Area, the application is incomplete as submitted. While the letter submitted with the application describes a number of laudable uses of the water, it is not clear how the requested amount of water will be actually used, other than generally for irrigation and individual domestic use. Nor does the application address the potential effects of this withdrawal on Native Hawaiian Water Rights.

However, as the requested amount is quite small in relationship to the overall yield of the aquifer and competing existing and potential uses, we find (based on the limited information available in the application) that the likely impact will be insignificant.

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

Sincerely,

Clyde W. Nāmu'o
Administrator

CC: Living Waters Land Foundation LLC
P.O. Box 2667
Wailuku, HI 96973
August 9, 2004

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

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

Mr. Clyde W. Namu'o, Administrator
    Office of Hawaiian Affairs
    Attn: Mr. Jonathan Scheuer

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

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

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

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

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

Transmitted for your review and comment is a copy of a water use permit application for Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: Jonathan Lycke Scheuer Phone: (808) 594-1946
Signed: Date: 9/2/04
August 9, 2004

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

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

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

Transmitted for your review and comment is a copy of a water use permit application for Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 2004.

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

Class
Attachment(s)

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

Contact person: George Y. Tengan, Director
Signed: ____________________________
Phone: (808) 270-7816
Date: September 2, 2004
DEPARTMENT OF WATER SUPPLY
COUNTY OF MAUI
200 South High Street
WAILUKU, MAUI, HAWAII 96793-2155
Telephone (808) 270-7816 • Fax (808) 270-7833
www.mauiwater.org

September 1, 2004

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

Re: Water Use Permit Application - Living Waters Land Foundation
Iao Ground Water Management Area, Maui

Dear Mr. Young:

Thank you for the opportunity to comment on this water use permit application. We have the following comments:

Zoning Compliance
The property is designated Agriculture by the State Land Use Commission. To date we have not received comments from the Department of Planning on Zoning and Community Plan designation.

Aquifer Status and Proposed Amount of Withdrawal
The quantity of water requested on the water use permit application form is stated as 20,000 gallons per day (gpd). However, the application letter states that a larger pump is needed with a maximum capacity of 540,000 gpd. It should be clarified what pump size and pumpage is intended in the application. Provided that the requested water quantity is 20,000 gpd and the proposed pump be appropriately sized to accommodate the proposed usage, the Department has no objections to this application at this time.

We concur with the applicant that existing ditch water would be the most appropriate source for agricultural use in the area. Ditch water irrigation would not require treatment and the distribution system for agricultural irrigation should still be in place.

Should you have any questions, please contact our Water Resources and Planning Division at (808) 270-7199.

Sincerely,

George Y. Tengan
Director

C: engineering division

C:\WP\docs\WUPA\WUPA 5531-01 Living Waters comments.wpd

By Water All Things Find Life
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 Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: Daniel S. Quinn
Phone: 587-0240
Signed: [Signature]
Date: 8/31/04
August 9, 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 Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 not currently active.

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

No objections

Other comments: Original source of private title is LC Award 3275R; issued between 1845 and 1855.

Contact person: Gary Martin Phone: 587-0421

Signed: Gary Martin Date: 8/2/2004
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 Applications  
Iao Groundwater Management Area, Maui

We have reviewed the subject applications forwarded by your transmittals dated August 9, 2004, and find that Waihee 3 Well (No. 5431-04) and Waihee Mauka Living Waters #1 (No. 5531-01), as generally represented on the USGS maps, are designated within the boundary of the State Land Use Agricultural District. Wailuku Shaft 33 (No. 5330-05), as generally represented on the USGS map, is designated within the boundary of the State Land Use Urban 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 (HRS), do not explicitly list wells as permissible activities or uses within the Agricultural District, we have in the past noted that when the requested water was directly accessory to the uses specified in the aforementioned sections, the activities appeared to be appropriate uses within the Agricultural District. To the extent that the water requested from the Waihee 3 Well would be used for municipal use, we would defer to the County zoning designation of the respective parcel, which we understand permits water wells as minor utility facilities.

With respect to the Waihee Mauka Living Waters #1 Well, to the extent that the water will be used for the irrigation of macadamia nut orchards and various other crops, as well as for individual domestic use, these activities would appear to be appropriate uses within the Agricultural District.
With respect to Wailuku Shaft 33, please be advised that pursuant to section 205-2(b), HRS, activities or uses within the Urban District are the jurisdiction of the respective counties as provided by their ordinances or regulations. As such, we suggest that you contact the County of Maui Department of Planning directly for their comments on this matter.

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

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

Enclosures
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  

August 9, 2004  

Transmitted for your review and comment is a copy of a water use permit application for Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 objections or comments  
( ) Objections attached  
( ) Only comments attached  

Contact person: Beat Saekiwatari  
Phone: 587-3822  

Signed: LINDA LINGLE  
Date: 8/13/04  

Signed: Peter T. Young  
Chairperson  

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

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

Mr. Clyde W. Namau'o, Administrator
Office of Hawaiian Affairs
Attn: Mr. Jonathon Scheurer

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

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

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

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

SUBJECT: Water Use Permit Application
La`io Ground Water Management Area, Maui

Transmitted for your review and comment is a copy of a water use permit application for Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 Iice at 587-0251.

Class Attachment(s)

Response:
X We have no objections or comments

Objections attached

Only comments attached

Contact person: Bill Wong
Phone: 586-4258

Signed: Bill Wong
Date: AUG 30 2004
Thank you for your comments on this water use permit application (WUPA). We believe this is in regards to WUPA No. 704, Well no. 553-01 - Living Waters Land Foundation, LLC. Per the public notice and WUPA process requirements, you are required to copy your objection to the applicant so that they may respond. However, we will be forwarding this objection to the applicant for you. Also, for your information, we are scheduling a public hearing on this WUPA for sometime in late October. There will be another public notice that sets the official date, time, and place on Maui for this public hearing. If you have any questions please feel free to call either Charley Ice (587-0251) or myself.

Roy Hardy
Commission on Water Resource Management
808-587-0274
Pilialoha Teves <kinailehua@juno.com>

To Pilialoha Teves <kinailehua@juno.com>
cc Charley F Ice/DLNR/StateHiUS@StateHiUS
bcc
Subject Re: Application by Living Waters for well no. 553-01

Dear Sirs,

I have to disagree with the idea that Living Waters is requesting this access. Why do they need well rights when all they are doing is agriculture. Wailuku Ag used surface waters for their ag. projects.

Then there is the real issue here. The rightful owners of the land and the waters. Do not make the wrong decision and place the County and State into a situation where they will be bankrupt because of the desire of greed by a few. The truth will is being revealed. Do what is right for the people of Maui, not the people with the big check books.

Sincerely,

Pilialoha Teves
----- Original Message ----- 
From: Gordon Schwartz
To: megan.wells@verizon.net
Sent: Thursday, August 19, 2004 1:54 PM
Subject: Complete Mahealani to Kapua

Aloha you folks,

This is a copy of an email that I received from Mahealani, which was sent to a lot of people. Feel free to share this at the hui meeting today. Call or email if you have questions. Mahealani told me that we should expect similar objections to our petition unless we address some of "the community's" concerns. She is preparing a map of areas where access has been blocked and affidavits from community members who have been denied access. We'll know more after we get that.

mahalo,
kapua
D. Kapua Sproat, Attorney
Earthjustice
223 South King St., Suite 400
Honolulu, HI 96813-4501
phone: (808) 599-2436, ext. 16
fax: (808) 521-6841

----- Original Message ----- 
From: AlohaTitle@aol.com [mailto:AlohaTitle@aol.com]
Sent: Wednesday, August 11, 2004 4:24 PM
Subject: Na Wai Eha; water controversy

Aloha kakou,

FYI- For those of you sequestered here on Maui, and forced to read the Maui News (biased?? No...) you may have seen the public notice for any objections to be raised against the application for the use of water from well no. 553-01; applied for by The Living Waters Land Foundation LLC. They got a -- You guessed it! A Quitclaim deed from Valerie Deva and Don Harris, that they got from who else, Avery Chumbley on behalf of "Firesale Liquidation of Other People's Property we've stolen" Corporation/Plantation land grubbers-Wailuku Ag.

But wait, there's something wrong with this picture,
The average rainfall in Na Wai Eha is 450-600 inches a year and Patricia Bragg, owner of the "LWLF" feels that this amount of water is just well...... poorly inadequate to her evaluation; the "LWLF" are applying for the unsupervised right to tap an arterial vein of fresh potable water straight out of the Heart of the Iao Aquifer! In some years we receive more rain than Mauna Waialeale! 500 to 700 inches a year!! NO, no this cannot be enough!! "More, have to have more" she screams from her Mansion in Santa Barbara, clinging to her balcony railing with a glass of organic vinegar cider in one hand, (perhaps with a splash of vodka) an evil grimace takes shape on her face...at the thought of the $millions$ she will add to her California Empire!! It will be Organically Subsidized with GMO/Luxury Ag Lots with Stunning Ocean......
Views!! Drunken from the surge of power that her "Quitclaim" to Hawaiian lands has given her, she counts each drop of water at 50 cents on the dollar for each home she will develop, pouring over the mountain range obliterating the sun, blocking the heathens from the oceans they wish they could get to! By the way, she is in the "Hui o Na Wai Eha".

Anyway, so why do they have to tap a fresh water well if they are just farming? Don't they know that Maunakahalawai, aka the "West Maui Mountains" is the second wettest place in the world??

**Object.** Please e mail an objection based on your own thoughts, however practical they are. Your ahupua'a rights depend on it.

To **OBJECT**: Contact Roy.Hardy@hawaii.gov and Peter.Young@hawaii.gov

O wau me ka mahalo
Mahealani Ventura-Oliver
Title Examiner & Certified Paralegal
Aloha Title Co.
584 Haiki Pl.
Waiiehu, HI 96793
808-249-0113 or 808-870-0422
Fax: 808-244-0469
August 25, 2004

Ms. Megan Wells
Living Waters Land Foundation LLC
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

Supreme Court Directions for Water Use Permit Applications

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

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

The Supreme Court’s opinion is summarized as follows:

1. Practicable Alternatives

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

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

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

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

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

Sincerely,

YVONNE Y. IZU
Deputy Director

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<td>KUNIMURA, I.</td>
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<td>YOSHINAGA, M.</td>
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Additional notes:"

Please sign & return in mail, fax, by 5/4/04.

World Markets"
To:        Peter T. Young, Chairman  
            Commission on Water Resource Management

From:  Micah A. Kane, Chairman  
            Department of Hawaiian Home Lands

Subject:  Water Use Permit Application, Living Waters Land Foundation, LLC, Well No. 5531-01, Iao Groundwater Management Area, Maui

Thank you for the opportunity to provide comments on the subject water use permit application. The applicant requests 20,000 gpd to irrigate 550.62 acres currently supplied by Wailuku Agribusiness, Inc. Applicant is asking for a new groundwater source to backup this existing surface water use.

The Department of Hawaiian Home Lands (DHHL) has significant landholdings in the area as stated in our memo to you dated July 13, 2004. New uses in this aquifer may limit our ability to provide water for our future projects. According to Ch. 174C-49, HRS, new use applicants must meet a number of criteria in order to get water use approval. As such, DHHL has concerns regarding the subject application as follows.

1. According to our records, the listed owner of the subject well is the Living Waters Land Foundation, LLC (LWLF). However, the landowner of record for TMK 3-2-13:15, the location of water use, is the Wailuku Agribusiness Co. Ltd, rather than LWLF as stated on the application.

2. LWLF states that water was previously provided by Wailuku Agribusiness through existing surface water ditch systems on the property. As such, LWLF may already have a source of water for their irrigation needs.
3. Lastly, the application states that multiple 5-acre and 2-acre leases will be made available if the subject request is approved. LWLF further states on their application that they will provide free water to the future lessee's on land that they don't appear to own.

The DHHL respectfully requests that the CWRM carefully review new applications and provide clarity with respect to ownership and leasehold issues, consumption figures that are consistent with the request, and provide other information required under the Water Code as part of the review process.

Thank you for your consideration. If you have questions, please call Rebecca Alakai at 587-6423.
August 9, 2004

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

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

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

Transmitted for your review and comment is a copy of a water use permit application for Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: Rebecca Makai

Signed: Alakai

Phone: 587-4483

Date: 8/17/04
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 821
HONOLULU, HAWAII 96809

August 9, 2004

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

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

Mr. Clyde W. Namu' o, Administrator
Office of Hawaiian Affairs
Attn: Mr. Jonathan Scheurer

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

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

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

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

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

Transmitted for your review and comment is a copy of a water use permit application for Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 objections or comments

( ) Objections attached

( ) Only comments attached

Contact person: Paul Tas

Phone: 270-7735

Signed: [Signature]

Date: 8/16/04
sounds reasonable. I’m forwarding the emailed objection to the WUPA for the well in question. Twist is now it seems like it has more to do with burials than landownership now, and I don’t know how this affects the WUPA (well already drilled). Will have to follow up with the case number to see if landownership is the issue as claimed.

Yvonne Izu/DLNR/StateHiUS

To: Roy Hardy/DLNR/StateHiUS

Charley F Ice/DLNR/StateHiUS@StateHiUS, Lenore Y Nakama/DLNR/StateHiUS@StateHiUS, Ryan R Imata/DLNR/StateHiUS@StateHiUS

cc: Yvonne Izu@hawaii.gov@StateHiUS

Subject: Re: Living Waters Foundation well permits & landownership.

I don’t know that we should suspend permits that have already been issued.

We could have a situation where we issue a well construction permit, and the next month the current landowner, X, sells the property to Y, who begins to construct the well. However, X’s son claims that X is incompetent and that the sale to Y should be void. X’s son brings a lawsuit. We did nothing wrong or negligent in issuing the permit, and I don’t think we should get involved in the matter by suspending the permit. Whether Y can continue to be on the land and drilling the well is a matter that will be worked out in the lawsuit. I don’t want to set a precedent that we will take the initiative to suspend a permit when there’s litigation.

However, for pending applications, I think that it would be wise for us to suspend processing the application so long as there is ongoing litigation regarding land ownership.

Roy Hardy/DLNR/StateHiUS

To: Yvonne Izu@hawaii.gov@StateHiUS

Charley F Ice/DLNR/StateHiUS@StateHiUS, Lenore Y Nakama/DLNR/StateHiUS@StateHiUS, Ryan R Imata/DLNR/StateHiUS@StateHiUS

Subject: Re: Living Waters Foundation well permits & landownership.

Spoke with both Mehealani (249-0113) and John Oliver (870-1594) who responded to the public notice for WUP regarding a lawsuit concerning landownership for what appears to be Living Waters Foundation well #1 on TMK 3-2-013:015. There is also a second well in question for LWF on TMK 3-2-002:007. Both parcels provided ‘quitclaim deed’ documentation back in the beginning of 2003 of the land transfers from Wailuku Ag to Patricia Bragg who signed the LWF well construction applications, and well #1 has been drilled already but awaits the WUP before a PIP is issued. Well 2 was issued a WCP already too. The MLS lists well #1 as still owned by Wailuku Ag and #2 as owned by LWF. They will be providing the written objections to the WUPA that should outline this more clearly. The mentioned that Kapua Sproat is also involved in a lawsuit regarding water rights & LWF, but I haven’t heard anything (left a message with Kapua to call back - she gets back on Fri 8/13).

Question for Yvonne: If we find that landownership is indeed in litigation, then shouldn’t we suspend the affected well & water use permits that are currently active or applied for?
Dear Members of the Commission on Water Resource Management, herewith is an e mailed version of my objection to the following application:

**OBJECTION: to Application filed by Living Waters Land Foundation LLC in Re: Mauka Living Waters # 1**

Tax map key # 3-2-13:15

New water use should be denied on the grounds that 1) The Property is currently in litigation civil no. 26478 and 2) The State Historic Preservation Dept. has requested to complete an archaeological survey at this time. 3) My family's burials and sites are in the area and there is more to be determined.

Without going into too much detail, I would like to add that with Constructive notice; there are penalties enforceable under "Deprivation of Property" laws in the Hawaii Penal Code. My attorneys are: James R. McCarty @ 808-681-7293 and Ruby Hamili @ 808-573-5208, if you need to verify this factual matter.

I appreciate your attention this matter, review of the facts and filing for notice to others.

Me ka mahalo,
Mahealani Ventura-Oliver
Title Examiner & Certified Paralegal
Aloha Title Co.
584 Haiki Pl.
Waiehu, HI 96793
808-249-0113 or 808-870-0422
Fax: 808-244-0469
PUBLIC NOTICE

Applications for Water Use Permit
Iao 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 Mauka Living Waters #1 (Well No. 5531-01)
Applicant: Living Waters Land Foundation LLC
P.O. Box 2667
Wailuku, HI 96973
Date Completed Application Received: July 15, 2004
Aquifer: Iao System, Wailuku Sector, Maui
Water Source: Waihee Mauka Living Waters #1 (Well No. 5531-01) at Kope Gulch, makai of Spreckels Ditch, Maui, Tax Map Key 3-2-13:15
Quantity Requested: 0.020 million gallons per day.
New Water Use: Irrigation of 553.62 acres currently supplied by Wailuku Agribusiness, Inc. and applicant is asking for a new groundwater source to backup this existing surface water use.
Place of Water Use: Same description as source at Tax Map Key: 3-2-13:15

Waihee 3 (Well No. 5431-04)
Applicant: County of Maui
Department of Water Supply
200 S. High Street
Wailuku, HI 96793
Date Completed Application Received: July 21, 2004
Aquifer: Iao System, Wailuku Sector, Maui
Water Source: Waihee 3 (Well No. 5431-04) at Waihee, Maui, Tax Map Key 3-2-17:018
Quantity Requested: 1.513 million gallons per day.
Existing Water Use: Municipal
Place of Water Use: Central Maui Service System at Various Tax Map Keys

Wailuku Shaft 33 (Well No. 5330-05)
Applicant: Kehalani Mauka, LLC
1100 Alakea St., 27th Floor
Honolulu, HI 96813
Date Completed Application Received: July 23, 2004
Aquifer: Iao System, Wailuku Sector, Maui
Water Source: Wailuku Shaft 33 (Well No. 5330-05), Maui, Tax Map Key 3-5-1:67
Quantity Requested: 5.771 million gallons per day.
Existing & New Water Use: Municipal
Place of Water Use: Kehalani Project at Tax Map Key: 3-4-07:2; 3-5-01:1,17,60,61,63,64,66,67

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 September 2, 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

Dated: AUG 3 2004

Chairperson

Publish in: Maui News issues of August 11 and 18, 2004
Let's meet and discuss. Seems like various solutions to a problem not well defined yet here. Only problem I see right now is a new pump installation in a new WMA. Current (unwritten) policy is that they need a WUP first. We should review and update the permit processing policy Lenore wrote up (g:work/policies/permit processing) at this meeting. I'll set it up.

Charley F ice/DLNR/StateHiUS

I'd like to entertain a meeting on the following, to find a way. Please think about the possibilities:

We're at the step of processing the PIP for a well just completed (WCR1 submitted) -- in lao (north of Wailuku, near Waiehu Village), a "new" use. Rather than put them off until we deal with all the "existing" uses (applications don't even have to be in until July 16, 2004), I'd like to be able to act, in a timely way, on all applications that come in. Here's how:

The problem in lao arose from concentrated pumpage, and only because they hit the SY did the problems become painfully obvious. Had they spaced their wells ideally, would we have noticed any problems? (We would have capped pumpage with everybody looking good.) I think a better way to manage is by well performance, such as at Pearl Harbor.

While we're waiting for the numerical model to cast its magic over the situation, can we base some decisions on well performance, and adjust later as necessary? Wouldn't we want to provide a requirement, though the WUP, for the overpumping wells to step down gradually? That provides the incentive to develop new sources. If someone comes in with a well-located source for small amounts of use (40,000 gpd in this case), what prevents us from allowing it (except our old protocol), within the SY? We already know what the existing use is, and could be developing a management plan.

Another example is the proposed new source south of lao Stream ("Wailuku Shaft Replacement"), which we seem agreed is still a little too close -- would we permit a large withdrawal there based on what we know now? We've suggested it's too close, but now that the aquifer is designated, isn't it time to take a management hand and not leave them guessing? It will be 3 more years before we get a numerical model, and we'll all be old before that happens. Can we act now? What tentative guidelines should we be offering? Can't we base decisions on pump tests?
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<tr>
<th>Taxkey</th>
<th>Subdiv/Condo/Tnr</th>
<th>Address</th>
<th>Owner/Lessee</th>
<th>Beds</th>
<th>Baths</th>
<th>Land area</th>
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This information has been supplied by third parties and has not been independently verified by Hawaii Information Service and is, therefore, not guaranteed.
PUBLIC NOTICE

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

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P.O. Box 2567
Wailuku, HI 96973
Date Completed Application Received: July 15, 2004
Aquifer: Iao System, Wailuku Sector, Maui
Water Source: Waihee Mauka Living Waters #1 (Well No. 5531-01) at Kope Gulch, makai of Spreckels Ditch, Maui, Tax Map Key 3-2-13:15
Quantity Requested: .020 million gallons per day.
New Water Use: Irrigation of 553.62 acres currently supplied by Wailuku Agribusiness, Inc. and applicant is asking for a new groundwater source to backup this existing surface water use.
Place of Water Use: Same description as source at Tax Map Key: 3-2-13:15

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Applicant: County of Maui
Department of Water Supply
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Quantity Requested: 1.513 million gallons per day.
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Place of Water Use: Central Maui Service System at Various Tax Map Keys

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Applicant: Kehalani Mauka, LLC
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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 September 2, 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

Dated: AUG-3 2004

Publish in: Maui News issues of August 11 and 18, 2004
August 9, 2004

Ms. Megan Wells
Living Waters Land Foundation, LLC
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

We acknowledge receipt, on July 15, 2004, of your completed water use permit application for the Waihee Mauka Living Waters #1 (Well No. 5531-01). You can expect your application to be processed within ninety (90) days from the date of receipt unless there are objections to your application.

Enclosed is a copy of the public notice for your water use permit application which will be published in the Maui News issues of August 11, 2004 and August 18, 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,

YVONNE Y. IZU
Deputy Director
August 9, 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 Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: ____________________________  Phone: ____________________________
Signed: ____________________________  Date: ____________________________
August 9, 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

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

Class
Attachment(s)

Response:

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

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

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

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

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

( ) No objections

( ) Other comments:

Contact person: Phone:

Signed: Date:
August 9, 2004

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

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

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

Transmitted for your review and comment is a copy of a water use permit application for Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 objections or comments
( ) Objections attached
( ) Only comments attached

Contact person: ___________________________ Phone: _______________

Signed: ___________________________ Date: _______________
TO: Honorable Micah Kane, Director  
Department of Hawaiian Home Lands  
Honorable Chiyome L. Fukino, M.D., Director  
Department of Health  
Mr. Clyde W. Namu'o, Administrator  
Office of Hawaiian Affairs  
Attn: Mr. Jonathon Scheurer  
Honorable Dain P. Kane, Chairperson  
County Council  
County of Maui  
Mr. George Y. Tengan, Director  
Department of Water Supply  
County of Maui  
Mr. Michael W. Foley, Director  
Planning Department  
County of Maui  

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

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

Transmitted for your review and comment is a copy of a water use permit application for Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 Lee at 587-0251.

Class  
Attachment(s)  

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

Contact person: ______________________________________ Phone: ________________________________  
Signed: __________________________________________ Date: ________________________________
August 9, 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
Lao 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 Living Waters Land Foundation, LLC for Well No. 5531-01, which will be published in the Maui News.

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

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

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

Sincerely,

Peter T. Young
Chairperson

Enclosures
TO: Other Interested Parties

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

August 9, 2004

In addition to serving you notice as required by 174C-52 (a), HRS, we transmit for your review and comment a copy of a water use permit application for Living Waters Land Foundation, LLC for Well No. 5531-01. Public notice of this application will be published in the Maui News issues of August 11, 2004 and August 18, 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 September 2, 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 Icc at 587-0251.

Cl:ss
Attachment(s)

Response:

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

Contact person: ____________________________ Phone: ____________________________

Signed: ____________________________ Date: ____________________________
INTERESTED OTHERS LIST

ADDITIONAL STANDARD CORRESPONDENCE

Kapua Sproat
EarthJustice
223 South King Street 4 F1
Honolulu, HI 96813

James Williamson, Vice-President
Maui Meadows Homeowners Association
PO Box 1935
Kihei, HI 96753
State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
APPLICATION FOR WATER USE PERMIT

Instructions: Please print in ink or type and send 15 copies of completed application with attachments to the Commission on Water Resource Management, P.O. Box 521, Honolulu, Hawaii 96809. Application must be accompanied by a non-refundable filing fee of $25.00 payable to the Dept. of Land and Natural Resources. The Commission may not accept incomplete applications. For assistance, call the Regulation Branch at 587-0225.

For further information and updates to this application form, visit http://www.state.hi.us/dlnr/cwrm.

PERMITTE INFORMATION

1. (a) APPLICANT (b) LANDOWNER OF SOURCE
Firm Name: Living Waters Land Foundation, LLC
Contact Person: Megan Wells
Address: P.O. Box 2667
Phone: 244-0231
Fax: 244-0860
E-mail: meganwells@devizen.net

2. WATER MANAGEMENT AREA: 

3. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER: 5531-01
(b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME:
(c) LOCATION: Address Waimea Valley, Tax Map Key 3-2-13-15

4. SOURCE TYPE (check one): Stream

5. METHOD OF TAKING WATER (check one): Artesian

USE INFORMATION

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

7. QUANTITY OF WATER REQUESTED: 20,000 gallons per day (averaged over 1 year)

8. METHOD OF MEASUREMENT: Flowmeter

9. QUALITY OF WATER REQUESTED: Fresh

10. PROPOSED USE: 
(a) Municipal (including hotels, stores, etc.)  
(b) Industrial  
(c) Military  
(d) Other Explain

11. PROPOSED TIME OF WATER WITHDRAWAL OR DIVERSION: 

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: We were told by the State Water Commission that the reason our well construction permit was approved was because they believe that the capacity of the well was too small to significantly affect the aquifer. The pump test results confirm this.

NOTE: Signing below indicates that the signatories understand and swear that: 1) the information provided on this application is accurate and true to the best of their knowledge; 2) item 14 is the responsibility of the applicant prior to Commission approval; 3) if necessary, further information may be required before the application is considered complete; 4) if a water use permit is granted by the Commission, this permit is subject to prior existing permitted uses, changes in sustainable yields and instream flow standards, reserved uses as defined by the Commission, and Hawaiian Home Lands future uses, and 5) upon permit approval, a payment plan must be submitted by the applicant should the Commission require one.

Appl. 
Landowner (print) Living Waters Land Foundation

Sign. 7/2/04
Date 7/2/04

Signature

WUPAFORM (3/1/00)
<table>
<thead>
<tr>
<th>PROJECT NAME &amp; PHASES (include address if applicable)</th>
<th>EXISTING or NEW USE (if existing, fill in date of first use)</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE LUC</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS or NET ACRES</th>
<th>GPD/UNIT or GPD/ACRE</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
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TOTAL GPD

(For Oahu only) DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE

DATE

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

Instructions for completing Table 1: Individual projects and phases must be listed separately and numbered sequentially on Table 1. Copy Table 1 and attach additional sheets if necessary. Please indicate individual projects and phases on TMK maps by clearly delineating project areas and indicating sequential number within delineated areas to coincide with Table 1. Please attach a separate sheet giving the address and a brief description of each project and phase listed above. In addition, if the proposed use is existing, please provide the WUP No. or indicate when the existing use was initiated. Also, the Department of Planning and Permitting (DPP) must sign below application is acceptably complete. Please consult with DPP at 650 South King Street, 7th Floor, Honolulu, HI 96813 Attn: Arthur D. Chalacomee
Living Waters Land - Patricia Braga
25-Jul-2002

Wailuku Agribusiness Co., Inc.

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Total: 43.20 34.74 28.78 29.15 40.80 39.50 16.87 17.88 17.69 22.24 29.09
July 13, 2004

Ms. Meagan Wells  Fax 244-6860
Wailuku, Maui

Dear Ms. Wells:

The following is information on the irrigation requirements for macadamia trees. To provide a more accurate recommendation that is specific to your location, more information from your growing area is needed.

Macadamia will do well if there is 50-70 inches of rainfall per year and the rainfall is well distributed. One location where macadamia trees have consistently produced well is at our University of Hawaii Kona Experiments Station in Kainaliu. The average rainfall at the station is about 70 inches per year. The rainfall monthly pattern (inches) is shown in the table below.

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The rainfall pattern shows that rainfall is 70 in/year with a drier season from December to late spring when trees flower, and a wetter season during the summer when the nuts undergo growth and oil formation. Based on this data it is estimated that trees will need about 5 to 7 inches of rain/month during the summer but can tolerate 3 to 4 inches/month during the winter.

Therefore about one and a half (1.5) acre inch of rainfall/week is needed during summer and about one (1.0) acre inch of rainfall/week is needed during winter months. These amounts can be provided with irrigation if rainfall does not occur.

An acre inch/week is equivalent to 27,225 gallons/acre/week or 3,889 gallons/acre/day. This is assuming that there is no rainfall. Normally irrigation is applied to supplement the rainfall. This is the simplest method to calculate irrigation requirements for your trees and assumes a worst case scenario when there is little or no rain for an extended period. Total rainfall/year is important, more important is the distribution of your rainfall. More sophisticated methods to determine irrigation requirements are available using pan evaporation data. But these calculations require some pan evaporation data from your location or a site that is close to your farm. I can show you how this is done if you are interested in using this methodology.

Please call me if you have any questions.

Sincerely,

Mike A. Nagao
Horticulturist

cc. W. Nishijima
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**TOTAL** $50.00

**REMARKS:**

LINE (1) Well No. 5531-01, tmk: 3-2-13:15
LINE (2) tmk: 3-5-1:02 to 05
LINE (3) 
LINE (4) 
LINE (5) 
LINE (6) 
LINE (7) 
LINE (8) 
LINE (9) 
LINE (10)
July 10, 2004
State of Hawaii
Commission on Water Resource Management
Re: Living Waters Land Foundation, LLC (AKA LWLF)
Water use Permit Application

Dear Water Commission,

On our 550 acres we have over 150 acres in mature macadamia nut trees. These groves (approx. 17,000 trees) were being watered by Wailuku Agribusiness, the previous owner, out of the existing ditch system on our property from Waiehu and Waihee stream diversions.

I noticed that at a hearing with your commission on Maui, Wailuku Ag represented that there had been a large decrease in their use of water in our area without mentioning that it was because these large groves, along with our neighbors 170 acres mac nut plantation (owner John Varel), were no longer being watered even though the trees were still viable and producing.

The trees on our property have now been designated “Certified Organic” and it is our intention to continue harvesting the nuts. Our neighbor’s plantation and ours were both harvested last year with great success. Our groves, according to Mac Nut Farms on the Big Island, are healthier than their trees because of the richness of our area (Waiehu/Waiehu) for farming. This is even in spite of the fact that the trees had not been cared for at all during the last 5 years of ownership by Wailuku Ag.

According to CTAHR University of Hawaii, the trees require 50-70 inches rainfall a year to not need irrigation. Our area has 30-65 (see attached). They are suggesting (see attached) 1.5 acre inch of rainfall/week during summer and possibly 1 acre inch of rainfall/week during winter months if it is unusually dry. 1.5 acre inch/week is equal to 5,834 gallons/acre/day x 150 acres = 875,100 gallons a day for 6 months to bring them up to optimum yield. Our present pump of course does not have the capacity to handle this as it can only put out 70,000 GPD. With a larger pump our capacity would be 540,000 GPD maximum.

We also already have extensive existing diversified agriculture including banana, papaya, Kalo, tapioca, Guava, eggplant and many other varieties of vegetables being farmed on our land. There are 5 groups of families farming approx. 20 acres. These farmers have been leasing this property for 10-15 years. They are using approximately 40,000 GPD (2,000 GPD x 20 acres) on their farms. Currently they have to buy the ditch water on our property from Wailuku Ag and they tell us that they are paying a high price and are therefore not able to afford using all the water they really need. The Foundation (LWLF) plans to provide them with free water to better support them in their attempts to make a living from their crops. All of them want to expand their farms when we can supply them the water.

We are also planning to offer (5) x five acre plots and (10) x two acre plots to the public for additional organic farm leases as soon as we can provide them with water. We have had many requests from the local community and would like to provide as many people in our immediate area the opportunity to grow their own food. So we will need water as we make these lands available to farming.

* 50-70 inches would include soil moisture retention, ET, and soil fertility.
  2000 acre for 170 acres total groves is somewhat less than state wide average, suggesting that the Kona moisture may be here.
Maui is far from self-sufficient when it comes to food production and it has been our Foundation’s goal from the beginning to address this problem through prevention of prime Ag land going to residential development. Waihee & Waiehu are considered to be the best growing areas on Maui when you look at weather, rainfall and soil and proximity to markets for distribution. Living Waters Land Foundation being made aware of this fact purchased this property specifically to protect the existing groves and keep this prime growing area in true agriculture. They were aware of the concern that this area was being sold off to residential developers who say they are creating “farm” subdivisions. In reality, this type of high-end residential estate development taking place on Maui’s best Ag zoned lands usually end up with CC&R’s that prevent any real farming.

We are also planning to start a nursery for indigenous plants and trees to undertake forest restoration on our conservation zoned lands (Approx. 200+ acres) as well as provide acclimated organic starts and nitrogen enriching cover crops to our farmers. We would also like to begin propagating timber bamboo for construction purposes. We are encouraging all the farmers to use mulches and ground covers to reduce water usage when ever possible. We feel that the surface water on the property, IE the existing ditch water, would be the best source for the groves and other Ag projects, as was the original purpose of the ditches, but if we can not use that water then we will need to use ground water as the source.

I hope this clarifies our intentions for water use on our property. If there are any questions please contact me on Maui at 808-244-0231.

Sincerely,

Megan Wells, Land Manager
For Living Water Land Foundation
Permitting Requirements

Well No. 5638-05 Name Walter Wauka/Living Waters

Application: □ Well Construction □ Pump Installation ☑ Both

complete for review 25 Feb 03 comment:

Response:
SDW 18 Feb 03
WW 25 Feb 03
CW 14 Feb 03
HEER 14 Feb 03
LD 21 Feb 03
HP ________

Well Construction Permit approved 25 Feb 03 issued 13 Mar 03 extended ______
signed copy returned ________ expiration notice _______

Well Completion Report Part 1 received ________ accepted ________

comment: __________________________________________________________________________
___________________________________________________________________________________

Pump Installation Permit approved ________ issued ________ extended ________
signed copy returned ________ expiration notice ________

Well Completion Report Part 2 received ________ accepted ________

comment: __________________________________________________________________________
___________________________________________________________________________________

Commission Action Required: ___________________________________________________________

Action Taken ________

Action Notice ________

Resolution:
July 10, 2004
State of Hawaii
Commission on Water Resource Management
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We are also planning to offer (5) x five acre plots and (10) x two acre plots to the public for additional organic farm leases as soon as we can provide them with water. We have had many requests from the local community and would like to provide as many people in our immediate area the opportunity to grow their own food. So we will need water as we make these lands available for farming.
Maui is far from self-sufficient when it comes to food production and it has been our Foundation's goal from the beginning to address this problem through prevention of prime Ag land going to residential development. Waihee & Waiehu are considered to be the best growing areas on Maui when you look at weather, rainfall and soil and proximity to markets for distribution. Living Waters Land Foundation being made aware of this fact purchased this property specifically to protect the existing groves and keep this prime growing area in true agriculture. They were aware of the concern that this area was being sold off to residential developers who say they are creating "farm" subdivisions. In reality, this type of high-end residential estate development taking place on Maui’s best Ag zoned lands usually end up with CC&R’s that prevent any real farming.

We are also planning to start a nursery for indigenous plants and trees to undertake forest restoration on our conservation zoned lands (Approx.200 + acres) as well as provide acclimated organic starts and nitrogen enriching cover crops to our farmers. We would also like to begin propagating timber bamboo for construction purposes. We are encouraging all the farmers to use mulches and ground covers to reduce water usage when ever possible. We feel that the surface water on the property, IE the existing ditch water, would be the best source for the groves and other Ag projects, as was the original purpose of the ditches, but if we can not use that water then we will need to use ground water as the source.

I hope this clarifies our intentions for water use on our property. If there are any questions please contact me on Maui at 808-244-0231.

Sincerely,

Megan Wells, Land Manager
For Living Water Land Foundation
State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources
APPLICATION FOR WATER USE PERMIT

WATER MANAGEMENT AREA:

SOURCE INFORMATION
1. (a) APPLICANT
   Firm/Name: Living Waters Land Foundation,
   Contact Person: Megan Wells

   Address: P.O. Box 2667
   Phone: 244-0231, Fax: 244-0836
   E-mail: megan.wells@uvizam.net

2. (a) EXISTING WELL/STREAM DIVERSION NAME AND STATE NUMBER:
   (If source doesn't presently exist, please attach well construction/stream diversion permit or application)
   Name: Taal Aquifer
   State: Maui
   Number: 5531-01

3. (b) PROPOSED (NEW) WELL/STREAM DIVERSION NAME:
   Name: Waiteke Valley

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

4. SOURCE TYPE (check one):
   □ Stream
   □ River
   □ Well
   □ Pump
   □ Other (explain)

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

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

7. QUANTITY OF WATER REQUESTED:
   □ 20,000 gallons per day (averaged over 1 year)

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

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

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

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

12. APPLICANT MUST ESTABLISH THAT THE PROPOSED USE OF WATER:
    (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.

13. REMARKS, EXPLANATIONS:

   We were told by the State Water Commission that the reason our well construction permit was approved was because they believe that the capacity of the well was too small to significantly affect aquiifers. The permit was then reviewed and approved.

NOTE: Signing below indicates that the signatories understand and swear that: 1) The information provided on this application is accurate and true to the best of their knowledge; 2) Item 14 is the responsibility of the applicant prior to Commission approval; 3) If necessary, further information may be required before the application is considered complete; 4) If a water use permit is granted by the Commission, this permit is subject to prior existing permitted uses, changes in sustainable yields and instream flow standards, reserved uses as defined by the Commission and Hawaiian Home Lands future uses; and 5) Upon permit approval, a water shortage plan must be submitted by the applicant should the Commission require one.

Applicant (print)
Living Waters Land Foundation
Signature
Date 7/2/04

Landowner (print)
Living Waters Land Foundation
Signature
Date 7/2/04

WAUPA FORM (3/1/00)
# 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</th>
<th>POTABLE or NONPOTABLE</th>
<th>TMK</th>
<th>STATE LHD</th>
<th>CURRENT COUNTY ZONING CODE</th>
<th>UNITS or NET ACRES</th>
<th>GDP/UNIT or GDP/ACRE</th>
<th>4-YEAR CUMULATIVE PROJECTED DEMAND</th>
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(For Oahu only) DEPARTMENT OF PLANNING AND PERMITTING SIGNATURE

DATE

Instructions for completing Table 1: Individual projects and phases must be listed separately and numbered sequentially on Table 1. Copy Table 1 and attach additional sheets if necessary. Please indicate individual projects and phases on TMK maps by clearly delineating project areas and indicating sequential number within delineated areas to coincide with Table 1. Please attach a separate sheet giving the address and a brief description of each project and phase listed above. In addition, if the proposed use is existing, please provide the WUP No. or indicate when the existing use was initiated. Also, the Department of Planning and Permitting (DPP) must sign before application is acceptably complete. Please consult with DPP at 650 South King Street, 7th Floor, Honolulu, HI 96813 Attn: Arthur D. Challacombe.
Living Waters (And) - Patricia Braga
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</table>
July 13, 2004

Ms. Meagan Wells  Fax 244-6860
Waihee, Maui

Dear Ms. Wells:

The following is information on the irrigation requirements for macadamia trees. To provide a more accurate recommendation that is specific to your location, more information from your growing area is needed.

Macadamia will do well if there is 70-70 inches of rainfall per year and the rainfall is well distributed. One location where macadamia trees have consistently produced well is at our University of Hawaii Kona Experiments Station in Kailua. The average rainfall at the station is about 70 inches per year. The rainfall monthly pattern (inches) is shown in the table below. The trees receive no supplemental irrigation.

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</table>

The rainfall pattern shows that rainfall is 70 in/year with a drier season from December to late spring when trees flower, and a wetter season during the summer when the nuts undergo growth and oil formation. Based on this data it is estimated that trees will need about 5 to 7 inches of rain/month during the summer but can tolerate 3 to 4 inches/month during the winter.

Therefore about one and a half (1.5) acre inch of rainfall/week is needed during summer and about one (1.0) acre inch of rainfall/week is needed during winter months. These amounts can be provided with irrigation if rainfall does not occur.

An acre inch/week is equivalent to 17,225 gallons/acre/week or 3,889 gallons/acre/day. This is assuming that there is no rainfall. Normally irrigation is applied to supplement the rainfall. This is the simplest method to calculate irrigation requirements for your trees and assumes a worst case scenario when there is little or no rain for an extended period. Total rainfall/year is important, more important is the distribution of your rainfall. More sophisticated methods to determine irrigation requirements are available using pan evaporation data. But these calculations require some pan evaporation data from your location or a site that is close to your farm. I can show you how this is done if you are interested in using this methodology.

Please call me if you have any questions.

Sincerely,

Mike A. Nagao
Horticulturist

cc, W. Nishijima
The first attachment is the Water agreement between Living Waters and Wailuku Water which is what the Farmers have been using for the last 4 years. 

You did not get this from me but from Waihee Community Ass.

---------- Forwarded message ----------
From: Lucienne DeNaie <laluz@maui.net>
Date: Mar 8, 2010
Subject: Facts regarding Living Waters proposed subdivision
To: michael.victorino@mauicounty.us

Aloha Council member Victorino and staff

Mahalo for your offer of sending a letter of inquiry to the Public Works Department regarding inconsistencies in the Living Waters/Patricia Bragg subdivision application with our state and county laws.

As we researched more aspects of the consolidation-resubdivision application, it became apparent that it might be beneficial for your office to address several inquiries to various departments and agencies having jurisdiction over specific aspects of this proposed action.

We also contacted Earthjustice and requested that they forward the specific water "agreement" that Bragg has on file with Wailuku Water Co. and the subsequent decision by the PUC that any issuance of additional water meters by WWCo must wait until the CWRM disposition of the Na Wai Eha stream flow restoration matter is settled.

Please find attached:
1. A cover letter to you explaining the main points of the inquiry to various state and county departments and agencies
2. The body of facts to be presented to those agencies for your use in drafting your letter. Appropriate state and county statutes have been included wherever possible.
3. The two submittals of public documents by Earthjustice attorney Issac Moriwakle ("WWC-Living Waters contract" and "1-9-09 order suspending Docket" from PUC proceedings). Mr. Moriwakle's note to you is copied below.

Please call if you need additional maps or other documents

We are sincerely grateful for your assistance

Lucienne de Naie, Johanna Kamaunu and other concerned Waihee-Waiehu residents
NOTE FROM ISAAC MORIWAKE:

Aloha Councilman Victorino:

I am writing to provide information requested by community members on the number of water meters Living Waters Land Foundation and Wailuku Water Company (WWC), which I understand is at issue in a pending county subdivision application. The contract between Living Water and WWC, which is a public record filed with the state Water Commission and Public Utilities Commission (PUC) refers to "a" or "the" water meter, indicating that only a single water meter is provided. Further, the PUC in a January 9, 2009 Order expressly ordered that the "status quo shall be maintained," and that WWC "shall maintain . . . the current supply of water to customers" and is "prohibited from adding any new customers."

I have attached both of the referenced documents for your information. Please feel free to contact me if you have any questions or need further information.

Mahalo,
Isaac

Isaac H. Moriwake
Earthjustice
223 S. King St., Suite 400
Honolulu, HI 96813
T: 808-599-2436
F: 808-521-6841
www.earthjustice.org

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*please consider the environment before printing

Content-Type: application/pdf; name="WWC-LivingWaters Contract.pdf"
Content-Description: WWC-LivingWaters Contract.pdf
Wailuku Water Company

WATER DELIVERY LICENSE

Licensee: ___ Living Waters ___ , TMK: 3-2-013-015 ___

(the "Property").

Wailuku Water Company (Wailuku), will provide for the delivery of irrigation water from its water system up to a daily maximum delivery of 33,333 gallons/day under the following conditions:

1. Discretionary Delivery. Wailuku will have priority as to water use. Wailuku will use its sole discretion in determining if and when water is available for delivery.

2. Metered Delivery. The water will be metered by Wailuku. Licensee will be billed for a transportation fee of water in accordance with Wailuku's delivery rate schedule, which is subject to change. Payments will include State of Hawaii General Excise tax of 0.5%. There will be a minimum charge of $20.00 for each monthly period. Payments by Licensee for water delivered shall be received by Wailuku within 30 days from the date of Wailuku's invoice. Payments received later than thirty (30) days from invoice shall be charged a late fee of 5% of the outstanding invoice, as well as a 1% interest charge on such outstanding invoice.

3. Meter Fee. Wailuku reserves the right to approve the installation and location of the water meter. Licensee will be required to pay a fee of $ ____ for a ___ inch water meter. Requests for a larger meter must be made in writing. The difference between the cost of a new meter and the original meter shall be paid by the Licensee prior to installation.

4. Maintenance. Licensee shall be responsible for keeping the area surrounding the meters clean and accessible to allow for meter readings and maintenance.

5. Meter Testing. Wailuku reserves the right to test the meter without prior notice. Any unauthorized tampering with the water source or meter by the Licensee will result in the termination of the license.

6. Meter Malfunction. Licensee must report the malfunction of the water meter as soon as possible. Any cost incurred by Wailuku for maintenance of the meter will be reimbursed by the Licensee.

7. System Interruption. In the event of a break or malfunction of Wailuku's irrigation lines, filters, or other interruptions in its system, the repairs will be undertaken at Wailuku's discretion. Accordingly, Licensee hereby indemnifies and holds harmless Wailuku and its employees for any losses or damages it may incur during a break or malfunction of Wailuku's irrigation lines, filter, or other disruption to the system or service.
8. **No Obligations on Quantity or Quality of Water.** Although the water being delivered is only for irrigation purposes, Wailuku does not guarantee the quality or quantity of the water to be delivered. Licensee hereby indemnifies and holds harmless Wailuku, and its employees for any loss or damage Licensee incurs from the use of the water to be delivered.

9. **Applicable Rate.** The current Monthly Water Delivery Charge per 1,000 gallons for this License shall be: $0.85.

10. **Term.** This Agreement may be terminated by Wailuku by Wailuku giving Licensee three (3) days prior written notice of its termination, stating in such notice the date of termination.

11. **Rationing.** Given the natural fluctuations in rainfall and other factors, the parties acknowledge that there will be periods of time when the water available in Wailuku's delivery system will be insufficient to satisfy all delivery commitments of the Water System then in effect, including your requirements. Upon any such insufficiency or shortage of water, Wailuku shall be entitled to ration the available water and to reduce the quantity of water delivered to you during such period of insufficiency or shortage, provided however, Wailuku shall use its best efforts to deliver to you an equitable amount of the water available, after rationing such water to all users, with priority given to kuleana users.

12. **Restrictions on Water Use.** The water delivered pursuant to this Agreement shall be used only for irrigation and agricultural activities on the Property and shall not be sold or transferred by you or any other person or entity off of the Property. The water delivered pursuant to this Agreement shall not be made available to the general public or for public use within the meaning of Chapter 269, Hawaii Revised Statutes, or any regulations promulgated thereunder.

13. **Interpretation.** The headings of sections and subsections in this Agreement are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Agreement. The use of any gender shall include all genders. Use of the singular shall include the plural, and use of the plural shall include the singular, as appropriate in the context. This Agreement contains all of the agreements between the parties relating to the subject of water service to the Property and supersedes all other prior or concurrent oral or written letters, agreements and understandings. This Agreement shall be construed and interpreted under and pursuant to the laws of the State of Hawaii. All provisions of this Agreement have been negotiated by the parties at arm's length and with full representation of their respective legal counsel. If this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against either party as the drafter of the Agreement.

14. **No Recordation.** Neither party will record this Agreement, either directly
or indirectly as an exhibit or attachment to any other recorded document, in the Hawaii Bureau of Conveyances or in any other filing or record system intended to give actual or constructive notice of any liens or encumbrances on lands or land titles. This Agreement is not intended to create an interest in any real property, and any such interest which may be intended by the parties shall arise only from separate instruments executed and duly recorded by the parties.

15. Facsimile/Electronic Signatures/Counterparts. Fax (facsimile) and electronically signed copies of this executed Agreement shall be fully binding and effective for all purposes. Fax and electronic signatures on documents will be treated the same as original signatures. The Agreement may be executed in counterparts, and said execution shall have the same effect as if all parties executed the same original copy hereof.

WAILUKU WATER COMPANY
255 East Waiko Road
Wailuku, Hawaii 96793
Ph: 244-2208
Fax: 242-7068

By: ___________________________ Dated: 11-13-06
Its: ___________________________

LICENSEE

By: ___________________________ Dated: 11-13-06
Its: ___________________________

Print Name: Kurtis
Address: P.O. Box 4499
Town: Wailuku
State: HI
Zip Code: 96793
Phone No.: 967-2076
Fax No.:
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of
WAILUKU WATER DISTRIBUTION COMPANY,
LLC, and WAILUKU WATER COMPANY, LLC

DOCKET NO. 2008-0025

For a Certificate of Public
Convenience and Necessity to
Provide Non-Potable Water
Distribution Service in the Waihee,
Waiehu, Puuohala, Wailuku, and
Waikapu Areas and for Approval of
Rules and Regulations Pursuant to
Section 269-7.5, Hawaii Revised
Statutes; Approval of Rates and
Contracts Pursuant to Section
269-16, Hawaii Revised Statutes;
Approval of Waivers Pursuant to
Section 6-61-92, Hawaii
Administrative Rules; and Approval
Of Affiliate Transactions Pursuant
To Sections 269-19 and 269-19.5,
Hawaii Revised Statutes.

ORDER SUSPENDING DOCKET
AND DISMISSING AS MOOT REQUEST FOR LEAVE TO FILE REPLY
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
WAILUKU WATER DISTRIBUTION COMPANY, ) Docket No. 2008-0025
LLC, and WAILUKU WATER COMPANY, LLC )
)
For a Certificate of Public )
Convenience and Necessity to )
Provide Non-Potable Water )
Distribution Service in the Waihee, )
Waiheu, Puuohala, Wailuku, and )
Waikapu Areas and for Approval of )
Rules and Regulations Pursuant to )
Section 269-7.5, Hawaii Revised )
Statutes; Approval of Rates and )
Contracts Pursuant to Section )
269-16, Hawaii Revised Statutes; )
Approval of Waivers Pursuant to )
Section 6-61-92, Hawaii )
Administrative Rules; and Approval )
Of Affiliate Transactions Pursuant )
To Sections 269-19 and 269-19.5, )
Hawaii Revised Statutes. )

ORDER SUSPENDING DOCKET
AND DISMISSING AS MOOT REQUEST FOR LEAVE TO FILE REPLY

By this Order, the commission suspends this
docket pending a decision by the Commission on Water
Resource Management ("CWRM") on interim instream flow
standards in Case No. CCH-MA06-01 for 'Iao, Waihee, Waiehu, and
Waikapu Streams (collectively, "Na Wai 'Eha"), which Applicants
WAILUKU WATER DISTRIBUTION COMPANY, LLC ("WWDC") and WAILUKU
WATER COMPANY, LLC ("WWC") (jointly, "Applicants")¹ have

¹"Applicants and the DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"), an ex officio party pursuant to Hawaii Revised Statutes ("HRS")
identified as the sources of water to be provided to customers; and on water use permits affecting Na Wai 'Eha, which was designated by CWRM as a surface water management area ("SWMA"), unless otherwise ordered by the commission. During the period of suspension, the commission places certain conditions and requirements on Applicants, described below. In addition, the commission dismisses as moot the Request for Leave to Reply to Applicants' Response Filed on November 26, 2008, which was filed by HAWAIIAN COMMERCIAL & SUGAR COMPANY, A DIVISION OF ALEXANDER & BALDWIN, INC. ("HC&S") on December 15, 2008 ("Request for Leave").

I. Background

On February 8, 2008, Applicants filed an application ("Application"), requesting, among other things approval of: (1) a Certificate of Public Convenience and Necessity ("CPCN") to provide non-potable water distribution service in certain areas of Waihee, Waiehu, Puuohala, Wailuku, and Waikapu on the island of Maui, Hawaii; (2) approval of initial rates for the non-potable water distribution service; (3) a transfer of assets from WWC to WWDC and approval of affiliated transactions, including a lease from WWC to WWDC ("Proposed Lease"); and (4) a sale of property, plant and equipment from WWC to

§ 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62, are jointly referred to herein as the "Parties."
MICHAEL W. ATHERTON DEVELOPMENT, INC., WILLIAM S. FILIOS, TRUSTEE, BOYCE HOLDINGS, INC. (collectively, "Purchasers") under HRS § 269-19 ("Proposed Land Sale").

On February 20, 2008, Applicants filed an "Errata Sheet" with attached replacement pages for the Application; and on March 17, 2008, Applicants filed a "Supplement and Errata," with Supplement Exhibits A to E, for the Application.

On March 6, 2008, the commission issued Order No. 24079, which determined that HAR § 6-61-57(1), and not HAR § 6-61-57(2), shall govern the deadline for intervention in this docket. Thus, the commission ruled that the deadline for intervention in this docket would be ten days after the last public hearing held on the Application.

On May 14, 2008, the commission held a public hearing on the Application at Maui Waena Intermediate School in Kahului, Maui, Hawaii. Accordingly, the deadline for intervention was May 27, 2008.

By May 27, 2008, the following parties timely filed motions to intervene and/or participate in this proceeding:
(1) COUNTY OF MAUI, DEPARTMENT OF WATER SUPPLY ("DWS");
(2) MMK MAUI L.P. ("MMK");
(3) HUI O NA WAI ‘EHA and MAUI TOMORROW FOUNDATION, INC. (jointly, "Community Groups");
(4) OFFICE OF HAWAIIAN AFFAIRS ("OHA");
(5) Purchasers,
MTP OPERATING COMPANY, LLC, MAALAEA PROPERTIES, LLC, and WAIKAPU PROPERTIES, LLC (collectively, "Atherton Parties");
By Order issued on October 28, 2008, the commission, among other things, granted participation status in this proceeding to: (1) DWS; (2) MMK; (3) the Community Groups; (4) OHA; (5) the Atherton Parties; (6) HC&S; and (7) WCE (collectively, "Participants"). The commission also directed the Parties and Participants to submit statements of position as to whether the Application, as supplemented, is complete and properly filed under HRS § 269-16(f) and HAR § 6-61-88. In addition, the commission instructed the Parties and Participants to file a stipulated procedural schedule that, absent a waiver by the Parties and Participants, complies with the time requirements of HRS § 269-16(f)(3), within forty-five days from the date of the Order, for the commission's review and approval.²

II. Suspension

By letter dated November 3, 2008, the commission asked the Parties and Participants for their respective positions on whether the commission should or should not suspend this docket.

²By letter dated December 18, 2008, the commission approved a request filed by Applicants for an extension of time for the Parties and Participants to file a stipulated procedural schedule in this docket.
pending a decision by the CWRM in Case No. CCH-MA06-01.' The Parties and Participants subsequently submitted their position statements on suspension pursuant to that letter.' In sum, the Consumer Advocate, OHA, MMK, and HC&S were in favor of suspension; Applicants, DWS, the Atherton Parties, and WCE objected to suspension. While the Community Groups asserted that the Application was incomplete, they deferred to the commission to decide whether or not to suspend this docket.' Several Parties and Participants, regardless of whether they supported or objected to suspension, expressed concerns that, should the commission suspend the docket, it should maintain the status quo and place conditions on Applicants during the suspension period so that Applicants are not allowed to continue "business as usual" and avoid commission oversight during the suspension period.

'The commission's November 3, 2008 letter was prompted by the CWRM's decision in September 2008 to restore approximately 12 million gallons of water a day to several East Maui streams that were historically diverted by East Maui Irrigation Company for irrigation use by HC&S.

'The Parties and Participants also submitted their position statements on completeness of the Application pursuant to the commission's Order issued on October 28, 2008. On November 17, 2008, HC&S filed a statement addressing HC&S' positions on both the completeness and suspension issues ("HC&S' Statement"). On November 26, 2008, Applicants filed a response to HC&S' Statement ("Applicants' Response"). HC&S' Request for Leave, filed on December 15, 2008, requests leave to respond to Applicants' Response.

'See Community Groups' Statement of Position re. Suspension of Docket, filed on November 13, 2008 ("Community Groups' Suspension SOP"), at 2 ("The Community Groups defer to the PUC regarding how best to pursue necessary regulation of WWC's operations without working at cross-purposes with the CWRM.").
Some of the position statements -- in particular, HC&S' Statement -- provided relevant background information as to pending proceedings before the CWRM that affect Na Wai 'Eha. According to these filings, there are two such proceedings before the CWRM. The first proceeding, Case No. CCH MA06-01, arose out of a Petition to Amend the Instream Flow Standards for Na Wai 'Eha, dated June 25, 2004 ("IFS Proceeding"). As explained by HC&S:

Instream flow standards ("IFS") determine the quantity of water that must be left in the streams for, among other things, the protection of stream biota and traditional and customary native Hawaiian rights. HRS §§ 174C-3, 174C-71. The establishment of IFS thereby determines the amount of water that may be diverted for offstream uses, such as irrigation. In addition to water quantities, the IFS may establish at what points along the stream water may be diverted for offstream uses.

The IFS Proceeding is in a contested case and is still ongoing. When the commission held its public hearing in this docket in May 2008, the contested case hearing in the IFS Proceeding had closed in March 2008, and the parties to the IFS Proceeding were anticipating a proposed decision from the CWRM Hearings Officer to be issued in the Fall of 2008.

'HC&S Statement, at 4-5 (footnote and citation omitted).

'See id.

See Letter filed on November 13, 2008, from Applicants to the commission, at 1 ("Applicants' Suspension SOP"). According to WWC, the parties to the IFS Proceeding are: WWC, DWS, the Community Groups, OHA, and HC&S. See Letter dated and filed on December 31, 2007, from WWC to the Commission, at 1 n.1.

'See Community Groups' Suspension SOP, at 3.
However, CWRM granted a request by HC&S to re-open the hearing, which postponed the filing of closing briefs until December 2008 and any proposed decision until sometime after that. Applicants estimate that the CWRM may issue a Decision and Order in the IFS Proceeding between May to August 2009. The parties to the IFS Proceeding thereafter have the opportunity to appeal any final decision to the Intermediate Court of Appeals, and then to the Supreme Court.

The second proceeding arose out of the CWRM's designation of Na Wai 'Eha as a SWMA in April 2008 ("SWMA Proceeding"). HC&S describes this designation as follows:

As a result of this designation, "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 [Water Commission]." HRS § 174C-48(a).

Water use permits specify the specific identity of the authorized user, the purpose of use, the amount of water authorized for such use, and the location of use. Declaration of Ken C. Kawahara attached; see also Exhibit 4, attached hereto as an example of a water use permit. Although water use permits are transferable (i.e., the identity of the user may change) upon notification to the Water Commission under HRS § 174C-59.

See id.

See Applicants' Suspension SOP, at 2. See also OHA's Statement of Position re. Suspension of Docket Pending Decision by CWRM in CCH-MA06-01, filed on November 13, 2008 ("OHA's Suspension SOP"), at 2 (estimating issuance of a Decision and Order from CWRM "before mid-2009, at the earliest.").

See Applicants' Suspension SOP, at 2-3. See also Community Groups' Suspension SOP, at 3. To illustrate how long it may take the IFS Proceeding to be fully resolved on appeal, Applicants and the Community Groups mention the Waiahole water case on O'ahu that is still continuing on its third appeal after fifteen years.
the purpose, amount, and location of use may not be modified without a new permit being issued by the Water Commission. HRS § 174C-57(b). Declaration of Ken C. Kawahara, attached.

Once an area is designated as a SWMA, as Na Wai Eha was in April 2008, even those who are currently using water in that area (e.g., HC&S and Applicant in this case) must apply for water use permits, and there is no guarantee that all current uses and amounts will be approved. Waiahole I, 94 Haw. at 149, 9 P.3d at 461. Applications requesting permits to continue existing uses of Na Wai Eha water are still being accepted until April 30, 2009. Declaration of Ken C. Kawahara; Public Notice (Exhibit 3)."

In addition, OHA explains that existing and future users of water will have to prove in the SWMA Proceeding that their uses are "reasonable-beneficial" and consistent with the public trust in order to obtain water use permits from the CWRM to use water diverted from Na Wai 'Eha streams." The SWMA Proceeding is also subject to the contested case process."

Furthermore, regarding the CWRM's jurisdiction, HC&S maintains:

The Water Commission has "exclusive jurisdiction and final authority in all matters relating to implementation and administration of the state water code." HRS § 174C-7(a); see also, Ko'olau Agr. Co., Ltd. v. Commission on Water Resource Management, 83 Hawai'i 484, 489-90, 927 P.2d 1367, 1372-73 (1996) (stating that "The Code established the Commission on Water Resource Management (aka, CWRM) and bestowed upon it 'exclusive jurisdiction and final authority in all matters relating to implementation and

13HC&S' Statement, at 5-6 (footnote omitted).

14See OHA's Suspension SOP, at 2.

15See Community Groups' Suspension SOP, at 3.
administration of the state water code, except as specifically provided in this chapter.’"). "No state or county government agency may enforce any statute, rule, or order affecting the waters of the State controlled under the provisions of [the State Water Code]... inconsistent with the provisions [therein]." HRS § 174C-4(b)."

The commission has thoroughly reviewed the Parties' and Participants' filings on suspension. Against the backdrop provided therein related to the CWRM proceedings, and based on a review of the entire record herein, the commission finds it appropriate to suspend this docket pending a decision by CWRM in the IFS Proceeding and the SWMA Proceeding for the reasons discussed below.

As noted above, Applicants have requested, among other things, a CPCN in their Application. The commission's statute governing CPCNs, HRS § 269-7.5, provides, in relevant part:

(a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission's rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules governing the proposed service.

"See HC&S' Statement, at 4.

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(c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied."

The commission finds suspension reasonable and necessary in this instance because, until the CWRM allocates water to Applicants and approves of Applicants' usage, the commission will be unable to determine whether Applicants are fit, willing, and able to provide the proposed non-potable water distribution service. As explained by the Consumer Advocate:

The criteria for determining fitness and ability consider the following. First, one considers whether Applicant has sufficient financial resources to sustain operations, particularly during the initial year(s) of operation when the customer base is developing. Second, one must ascertain whether Applicant possesses the requisite technical knowledge to operate the plant facilities and ensure the reliable provision of the proposed regulated service in accordance with the Department of Health and Commission requirements. Third, one must determine whether Applicant has adequate plant facilities to handle the demands of the potential customers. Last, especially in the case of water utilities, one must determine whether the Applicant is authorized to use the water that is needed to provide the proposed service.

The Consumer Advocate notes that the CWRM has jurisdiction over who is authorized to use the available water resources within the State of Hawaii. Furthermore, Applicant is

\[\text{HRS §§ 269-7.5(a), 269-7.5(c) (emphasis added).}\]

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presently awaiting a decision by the CWRM on its request for authorization to use the non-potable water that is needed by Applicant to provide the proposed service.

Based on the above, the resolution of Case No. CCH-MA06-01 is critical to making a determination as to whether Applicant will be allowed to draw the non-potable water that is needed for the provision of the proposed service. Until a favorable ruling is received from the CWRM, Applicant cannot be found fit and able to provide the proposed non-potable water service."

Moreover, until the CWRM issues water permits to Applicants, Applicants cannot reasonably ascertain its service territory, as required by HRS § 269-7.5(a). HC&S expands on this point as follows:

Because the Water Commission, through the water use permit process described above, will determine the specific locations where Na Wai Eha water may be used, Applicant cannot credibly describe, and this Commission cannot reasonably determine, the service territory until water use permits are issued. By describing a large service territory encompassing all areas within the potential reach of their transmission infrastructure, Applicant misleads the public and this Commission into believing that Applicant can, and will be obligated to, serve anyone within the geographic area. In reality, Applicant will be able to legally provide water only to those specific areas yet to be approved by the Water Commission."

Furthermore, without adequate information about Applicants' projected customer base and the amounts of water that Applicants will be allowed to divert from the streams,

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11Letter filed on November 13, 2008, from the Consumer Advocate to the commission, at 2.

13HC&S' Statement, at 7.
the commission will not have sufficient information to make a
determination on Applicants' proposed rates and charges in the
Application.

Compelling policy reasons also support suspension of
this docket. Under HAR § 6-61-1, the commission is obligated
"to secure the just, speedy, and inexpensive determination of
every proceeding." To ensure a just and speedy resolution of
the docket and an efficient use of the commission's and
the Parties' and Participants' resources, it is essential that
the commission suspend, rather than proceed, only to later have
to reprocess this or a new or amended application after
the CWRM issues decisions on Applicants' ability to divert water.

The commission, however, does not intend for
a suspension period to continue indefinitely -- i.e., until all
appeals are exhausted in the IFS Proceeding and the SWMA
Proceeding. The suspension period will last until the CWRM
issues a decision in the IFS Proceeding and Applicants obtain
the necessary water use permits in the SWMA Proceeding.
The commission acknowledges that subsequent appeals of the CWRM
decisions may take many years, but at least the commission will
have some pronouncement from the CWRM on Applicants' right
to divert water for the commission to proceed with its own docket
while any appeals of the CWRM decisions are pending.
The commission finds this time period reasonable because,
as mentioned above, initial decisions are expected from
the CWRM in mid-2009. Also, as maintained by HC&S,
"decisions by administrative agencies are given force and
effect pending appeal. Each of the Water Commission’s three decisions in the Waiahole Ditch case remained in effect and have been implemented and enforced during the pendency of the appeals. Moreover, as discussed further below, if for any reason, decisions from the CWRM are delayed, the commission may, in its discretion, reassess the circumstances and lift the suspension.

Notwithstanding the suspension, the commission will continue to have oversight over Applicants. The following conditions and requirements shall apply during the suspension period:

(a) The status quo shall be maintained during the suspension period. Accordingly, Applicants and their affiliates: (i) shall maintain current rates and the current supply of water to customers; (ii) are prohibited from adding any new customers; and (iii) are prohibited from selling or transferring any of their assets. Thus, Applicants shall not proceed with the Proposed Lease and the Proposed Land Sale, as requested in the Application.

(b) Applicants shall be required to file semi-annual financial statements, which shall include a balance sheet and income statement. The first report shall be due thirty days after the reporting period covering January 1, 2009 to June 30, 2009.

29HC&S’ Statement, at 12 n.8.
(c) Applicants shall file a new or amended application immediately after the necessary water use permits have been obtained from the CWRM.

(d) Applicants shall file status reports every three months addressing the status of the IFS Proceeding and the SWMA Proceeding.

(e) The commission, at any time, may impose additional requirements on Applicants, and lift or extend the suspension if, in its discretion, it is reasonable and necessary to do so.

(f) The failure to adhere to the foregoing requirements may result in further regulatory action as authorized by law.

Because the commission decides herein to suspend this docket, Applicants' Request for Leave is dismissed as moot. The commission will also reserve ruling on the completeness of the Application and Applicants' waiver requests in the Application. Likewise, it is not necessary for the commission to set a deadline for the Parties and Participants to file a Stipulated Procedural Order for the docket.\footnote{Some Parties and Participants addressed in their filings the issue of whether HRS § 269-16(f) should only apply to rate increase requests and not to proceedings requesting a CPCN. The commission did not ask the Parties and Participants to brief this issue and it is not properly before the commission now. The commission therefore declines to discuss the issue herein.}
III.

Orders

THE COMMISSION ORDERS:

1. This docket is suspended until the CWRM issues a decision in the IFS Proceeding and Applicants obtain the necessary water use permits in the SWMA Proceeding, unless otherwise ordered by the commission.

2. During the suspension period, the following conditions and requirements shall apply:

   (a) The status quo shall be maintained. Accordingly, Applicants and their affiliates: (i) shall maintain current rates and the current supply of water to customers; (ii) are prohibited from adding any new customers; and (iii) are prohibited from selling or transferring any of their assets. Thus, Applicants shall not proceed with the Proposed Lease and the Proposed Land Sale, as requested in the Application.

   (b) Applicants shall be required to file semi-annual financial statements, which shall include a balance sheet and income statement. The first report shall be due thirty days after the reporting period covering January 1, 2009 to June 30, 2009.

   (c) Applicants shall file a new or amended application immediately after the necessary water use permits have been obtained from the CWRM.

   (d) Applicants shall file status reports every three months addressing the status of the IFS Proceeding and the SWMA Proceeding.
(e) The commission, at any time, may impose additional requirements on Applicants, and lift or extend the suspension if, in its discretion, it is reasonable and necessary to do so.

(f) The failure to adhere to the foregoing requirements may result in further regulatory action as authorized by law.

3. HC&S' Request for Leave is dismissed as moot.

DONE at Honolulu, Hawaii JAN - 9 2009

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By

Carlito P. Caliboso, Chairman

John E. Cole, Commissioner

Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

Kaiulani Kidani Shinsato
Commission Counsel

2008-0025.1aa
CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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Certificate of Service
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WAIKAPU PROPERTIES, LLC
Certificate of Service
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FARROKH A. IRANI
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Counsel for HAWAIIAN COMMERCIAL & SUGAR COMPANY,
A DIVISION OF ALEXANDER & BALDWIN, INC.
Dear Council Member Victorino

Mahalo for our meeting a few weeks ago. We promised to forward your office some talking points regarding Patricia Braggs proposed Living Waters “ag subdivision” on 553 acres in Waiehu.

We are grateful that you would use this research to forward letters of inquiry about the project to various county departments which have jurisdiction over approvals. We would also be grateful if you requested the Departments and agencies involved to hold off on any approvals for this project until the numerous issues involving compliance with state and county laws are resolved.

A number of new issues have surfaced during our research since we last met with you, all of which, it appears the county’s review process has not addressed.

In a nutshell, all the issues involved can be summarized as:

1. Lack of verifiable water source, and likely misinformation about water permits (well) and agreements (surface water from Wailuku Water Co). although the action is subject to s subject to MCC chapter 18.12.040 (“Show me the Water”) regarding verified source of water. As stated in MCC Title 18, chapter 18.04.020 paragraph C. condition 4.

2. Lack of BLNR review and permits for use of at least 100 acres of Conservation District land included in the proposed subdivision. Consolidation and re-subdivision is considered a “use” under HAR 13-5 pertaining to use of lands in the state Conservation District. A public hearing may be required as part of BLNR review.

3. Improper maps submitted with the project’s application, that omit existing easements.

4. Inadequate access, with roadways that do not meet minimum standards, and one completely landlocked lot with no access (which violates county subdivision laws)

5. Evasive strategies by landowner to avoid County requirements and find loopholes in County rules, for example the entire parcel (TMK 3-2-13: 15) that is the subject of the consolidation and re-subdivision appears to be qualifying for agricultural tax rate exemption based upon continuous cultivation, with no verified agricultural use.

Attached are the relevant points categorized by the various State or County Departments or agencies that they would likely be addressed to.

Mahalo for helping citizens see that our laws are upheld.

Lucienne de Naie
Discussion Points Prepared for Council member Victorino: Re: Living Waters "Subdivision"

TO DEPT OF PUBLIC WORKS

Constituents have brought a number of apparent inconsistencies with County codes and policies to the attention of the council member’s office regarding a proposed agricultural subdivision (TMK 3-2-13:15) on 533 acres of AG and Conservation designated and zoned land in Waiehu/ Waihee that is being proposed under the County’s Consolidation and Re-subdivision Rules. The project has been entitled Living Waters Subdivision and the landowner is Patricia Bragg.

We would appreciate your department not proceeding further on granting approvals to the proposed project until our office can have our concerns addressed. Our concerns can be summarized as follows:

1. County jurisdiction to allow lands designated by the state and zoned by the County as Conservation to be included in a consolidation and re-subdivision process with no DLNR review.
2. Processing the subdivision using 18.04.020 C without compliance with title 19 or chapter 205, MMC18.08.060 a,c,d, MCC18.08.070 b, MCC18.12.030 13 a, MCC18.040 a,d
3. Veracity of claims made by applicant about the availability of reliable water sources to supply future subdivision lots.
4. Ability of an unlicensed water delivery company (Wailuku Water Co.) to contract with this new proposed subdivision for new water meters when Wailuku Water has no PUC approval to operate.
5. Reliability of information about the project that has been provided by the applicant to the Department.
6. Compliance of project’s application documents with requirements of HRS, HAR and Maui County Code.
7. Claims of unclear titles issues on 15 of 26 parcels in the 553 acre piece. What documents have been provided? Clear title is normally required by county to subdivide
8. Public safety concerns regarding non-conformance of access road with rural subdivision standards.
9. Lack of outreach to the surrounding community about project plans, including landowner who has granted a road easement. This may be legal, but such omissions may indicate other irregularities.
10. Incomplete archaeological review.
11. Using exemption language of 18.04.020 C as a loophole to avoid needed scrutiny.
12. Parcel 3-2-13: 15 currently listed dedicated Ag land with a Agricultural Real Property Tax exemption based on continuous cultivation, which may not be verified.
DIRECT THESE QUESTIONS TO DEPARTMENT OF WATER SUPPLY

WATER SOURCE
Under MCC 18.04.020 C under, which this subdivision is being processed, it would need to comply with MCC 18.12.040 D. which states: Should a private water system be proposed, the subdivider shall provide written verification of a long term, reliable supply of water from the director of the department of water supply in accordance with chapter 14.12 of this code. (Ord. 3502 § 5, 2007: Ord. 2721 § 1, 1998: Ord. 789 § 1 (part), 1974: prior code § 11-1.14(d))

Our office has been informed that the property in question is claiming to have signed a water agreement for 8 separate water meters to be provided by Wailuku Water Delivery Co. a subsidiary of Wailuku Water Co. Wailuku Water Co. informed the state water commission in their 2008 submission for a contested case hearing that they had issued the Living Waters land one (1) water meter for agricultural purposes only.

Will your Department (Water Supply) be requiring proof of eight water meters for this eight lot agricultural subdivision?

Will your department accept water meters issued by a private water company, unlicensed by the PUC, before Water Use Permit allocations for various surface water users in Na Wai Eha are finalized by the CWRM?

DIRECT THIS QUESTION TO STATE WATER COMMISSION, DPW AND DWS

It is our understanding that irrigation well drilled on the Living waters acreage (Well 5531-01) may also be claimed as a potable water source for the 8 lots. According to the CWRM Bulletin (March 6, 2006 issue), this well was permitted February 22, 2006 for agricultural use. We have been informed by citizens that the well permit was issued with the promise that it would not be used for a subdivision.

The State Water Commission informed citizens that a pumping application representing the changed use by the eight (8) new lots of this subdivision and their new requirements would need to be applied for. The Commission also verified that existing well pumping permit would not be transferable or applicable because any changes of specific use, location and intent require a new application and approval.

Will the Water Department and the Public Works Director accept this well as a potable water source for 8 residences?

DIRECT THESE QUESTIONS TO DEPARTMENT OF PUBLIC WORKS

LAND USE PERMITS REQUIRED
Do the County's Consolidation and re-subdivision policies apply to Conservation zoned lands, such as the lands included in the Living waters Consolidation and Re-subdivision application, or would those lands, under HAR 13-5, require a permit from the state?

It is our understanding that three of the 8 lots in this application are mauka of the State Forest Boundary and are designated as Conservation, resource sub-zone (state) and zoned Conservation (county) and one of the four lots had mixed Ag and Conservation zoning.

Is it your department's view that the language of HAR 13-5-33 regarding BLNR Chairperson review and permit requirements for conservation lands would apply to portions of this 553 acre parcel, and need to be met?

It would appear that 183C-2 HRS defines “subdivision of land” in the conservation zone as a “Land use” and therefore subject to HAR 13-5 rules. According to HAR 13-5-22 (3), “consolidation followed by re-subdivision shall constitute a subdivision in the protective zone” which requires a departmental permit, reviewed and signed off by the DLNR chairperson, and a public hearing, if applicable.

The language in 13-5-24 Identified land uses in the resource subzone; (the designation of the land in question) states “in addition to the land uses identified herein all identified land uses and their associated permit or site plan approval requirements listed for the protective and limited subzones also apply to the resource subzone”.

Will your Department be reviewing this requirement as part of the proposed application?

If a permit would be required for any consolidation and re-subdivision of Conservation zoned lands, would your Department support a request for the state to hold a public hearing on Maui for the matter as is allowed under HAR 13-5-40 at the discretion of the chairperson of the DLNR?
RELIABILITY OF INFORMATION PROVIDED BY APPLICANT

Our office was presented with copies of newspaper stories where the applicant (Patricia Bragg) and her attorney state that they have no intention to create any subdivision of the 553 acres. The former owner, Wailuku Sugar, had consolidated 26 smaller lots into the larger 553 acre parcel that was sold to Ms. Bragg and she wanted the separate parcels recognized to preserve her water rights.

Did the Department of Public Works grant Ms Bragg/ Living Waters Foundation the separate lot determinations that she requested with the understanding that a further consolidation and re-subdivision would be forthcoming, or that she wanted to claim water rights?

Does Department of Public Works have a process to determine the consistency of claims and information provided by applicants when there are gaps between public claims and information given during requests for permits and approvals?

COMPLIANCE WITH STATE HRS AND MAUI COUNTY CODE REQUIREMENTS

Do Living Waters Subdivision maps submitted to DPW show existing ditch systems and their access roads, au wai, dip crossings, natural drainage areas or road and trail easements, Maui County water line easement, culverts and well location as required?

MCC18.08.060 “Existing conditions” lists these requirements for subdivision maps:

A. Location, width and names of all existing or platted streets and other public ways within or adjacent to the tract, together with easements, other rights-of-way, and other important features, such as corners, property boundary lines, and control of access lines adjacent to state highways;

C. The location and direction of all watercourses and approximate location of areas subject to inundation or stormwater overflow;

D. Existing uses of property, including location of all existing structures, wells, cisterns, private sewage disposal systems, utilities, etc. (Ord. 789 § 1 (part), 1974: prior code § 11-1.6(d)(2))

MCC18.08.070 Proposed plan of land subdivision.
The following information shall be included on the preliminary plat:

B. Existing and proposed easements, showing width and purpose

MCC18.08.080 Explanatory Information

C. The approximate location within the subdivision and in the adjoining streets and property of existing sewers and water mains, culverts and drainpipes,

Has the DPW been given a survey of the Living Water’s proposed subdivision lands as required for final plat preparation? Is a survey of the entire property being subdivided required?
A. In preparing the final plat, all surveying work shall be made by or under the supervision of a surveyor, and shall meet all requirements for any subsequent recordation.

Is the DPW considering approval even thought lot 6 is landlocked with no access?

MCC 18.12.030 Required information
13 (a) the director shall not approve any subdivision that causes any lot to be landlocked on the land subdivided or any adjacent land

VERIFICATION OF CLEAR TITLE TO ALL LANDS

Presentation has been made to my office that as many as 15 of 26 parcels of the living waters lands, now recognized as separate lots by the county, may not have clear title.

Subject to the provisions of Maui County Code below, has DPW received verification from the applicant that all persons with vested title in the land subdivided (553 acres) have been located and have consented to the action?

MCC 18.12.040 Supplemental information.
The following data shall be submitted with the final plats:
A. A complete title report issued by a licensed title company showing all persons vested with record title in the land subdivided whose consent is required by section 18.12.030(E)(13)(a) of this chapter;
Note* This does not state in the “portion” of land subdivided. The area without clear title is a part of the original parcel being subdivided.

ACCESS ROAD REQUIREMENTS AND NOTIFICATION TO EASEMENT HOLDERS

Documents in our office show that a 24 ft wide access road to the proposed subdivision is off of Malaihi Drive and traverses a privately owned lot, not affiliated with the applicant. The individual whose land the access road crosses has not received notice of the proposed subdivision.

Does DPW normally require subdivisions to provide a 40 ft wide access road easement off a county road? If so, will the proposed 24 ft wide easement be acceptable to meet safety regulations for this subdivision?

Does DPW require subdivision applicants to inform neighboring property owners who have easements across their lands that will be part of the proposed subdivision?

INCOMPLETE ARCHAEOLOGICAL REVIEW
Citizens in my district are concerned that the archaeological inventory being commissioned for the property will be confined to only a portion of the property. This is a concern because this property lies in very historically significant region.

Has the DPW communicated with SHPD to determine if the project’s archaeological Inventory survey will cover the entire 553 acres?
DIRECT THESE QUESTIONS TO DPW AND DLNR

MCC18.04.020C under which this subdivision is being processed states: "subject to the following conditions: compliance with title 19 or chapter 205" Title 19.02A.020 Title and purpose

#1 To encourage the most appropriate use of land
#3 To prevent certain uses that will be detrimental to existing uses and
# 4 To promote the health, safety and general welfare of the respective districts.

The property in question has ALISH classification of Prime Unique and other “Typical lots sizes are 50 acres and represent the most productive agricultural lands on Maui” ALISH classification calls for “protect existing agricultural production and limit future subdivision potential”

Has DPW considered compliance with title 19 in the approval process?

HAR 13-5-30 :PROCEDURES FOR PERMITS, SITE PLAN APPROVALS, AND MANAGEMENT PLANS states “The department shall regulate land uses in the conservation district by issuing one or more of the following approvals” and then lists the types of permits and variances that must be obtained.

HAR 13-5-30 c) criteria 4 states: “The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.”
HAR 13-5-30 c) criteria 8 states "The proposed land use will not be materially detrimental to the public health, safety and welfare.

HAR 13-5-30 also states" The applicant shall have the burden of demonstrating that a proposed land use is consistent with the above criteria”

Is Living Water’s application for Consolidation and Re-subdivision of 374 acres, including State designated Conservation lands, being evaluated in light of the provisions of HAR 13-5-30 (c) 4 & 8?

DIRECT THESE QUESTIONS TO CORP COUNSEL

Chapter 18.04.030 Administration. Consolidations and resubdivisions where no additional developable lots are created;

Does the statement in 18.04.030 that no “additional” lots are being created by the process mean that no “different” lots than what existed prior to consolidation are being created? Can lots with completely different boundaries, acreage and zoning not be considered something “additional” even though the number of lots appears to remain the same as what had previously existed?

Could your Department clarify whether the original lot in this proposed action that was half located in the Conservation zone is now considered “developable” because it is now proposed to be merged into new lots combined with agriculturally zoned lands?
DIRECT THIS QUESTION TO COUNTY ASSESSOR’S OFFICE

This applicant has a real property AG tax exemption for approx 150 acres of macadamia nuts base on continuous cultivation. The current owner purchased in 2002 from Wailuku Ag who had not harvested the nuts for the last 8 years or their ownership. Citizens in the area have reported that these acres were last cultivated and harvested in 2003 and 2004 but are now completely overgrown in cane grass. There has been no mowing, cultivation or harvesting of the nuts for the last 5 or 6 years and the nuts have been left to rot on the ground. Since the intent of the current owner does not appear to be to run a macadamia nut farm Citizens are concerned that land speculation has been the true intent.

Does this 150 acres of Macadamia nut trees qualify for an AG exemption when they are not being cultivated or harvested at all when there is only active farming be done by leasing farmers on approximately 20 acres?

AG Tax Exemption 3.48.350 F states; Failure of the owner to observe the restrictions on the use of his land shall cancel the dedication and special tax assessment privilege retroactive to the date of the dedication.
USING CONSOLIDATION AND RESUBDIVISION PROCESS TO EXEMPT PROJECT FROM NEEDED CONDITIONS AND REVIEW

In conclusion, our office hopes that DPW and other departments reviewing the Living Waters application will not let the consolidation and re-subdivision process serve as a "loophole" to exempt a project which appears to have many unanswered questions from requirements that protect the health, safety and well being of our local residents.

How can the DPW not consider the Living Waters application a subdivision when:
1) The portion of the lands mauka of the state Forest Reserve included in the subdivision are regarded as being subject to state rules regarding a "subdivision"

2) No separate existing lots with water service, roads etc exist on the property now and will not unless the subdivision is granted? This is not a consolidation and resubdivision of existing "developable lots." Several of the lots being consolidated are not currently developable due to their conservation designation.

3) Our office would like to clarify that the language of 18.04.020C is not being misinterpreted to allow a project such as this to avoid needed scrutiny.

4) The 553 acres in question are of the highest, most productive classification of Ag lands on Maui. Will this subdivision be consistent with and promote the objectives of Chapter 205 HRS (protecting ag lands)?

5) Please consider the implications of this action. This type of consolidation and resubdivision is not what was intended under the original statute and only serves to drive the price of extremely fertile farm land up out of the reach of any party truly wanting to farm it to produce the much needed food for Maui's sustainability.
To Charley.F.Ice@hawaii.gov

cc

04/30/2010 02:03 PM

Please respond to

Subject Living Waters WUP summary of history

Bryan for Waihe Association suggested I send the attached Subdivision Application to you.

See mention of the well as water source for the subdivision on page 3

Summary on the Living Waters WUP:
The farmers were to receive the well water until the stream water was available for diversion. The pumping permit was approved ahead of other users, because at the time Wailuku AG (WA) now Wailuku Water (WW) threatened to turn the water off to the 20 acres of leasing truck farmers that Living Waters (LW) inherited with the property when they bought it. These farmers had been (WA) tenants before it was sold to LW and since the land was owned by WA they provided the farmers water for a price. When the property changed hands, WA threatened to cut the water off if LW did not sign a water agreement. Since Living Waters was a petitioner against WA in the Earth Justice case, Kapua Sproat advised that agreeing to buy Living Water's own stream water being diverted out of N Waiheu Stream back from WA would weaken Earth Justice's case against them and not to sign. The agreement that WA wanted Living Waters to sign also demanded that LW testify on behalf of WA in any challenge to WA's right to divert water. Since the signing of this agreement was not an option under the circumstances, the State Water Commission granted the permit.

Because Valerie Deva was owed 10 acres of the 553 acres at the time of the issuance of the WUP she and her attorney notified the commission of her parcel that was mandated to be created for her by the court. During the Water Commission hearing where I testified to finally get the WUP approval, the commission asked me about the need to subdivide to create that one parcel for Deva. I assured them that no subdivisions other than doing a 3 lot (large lot) subdivision to create the Deva parcel would be done. I promised that the subdivision would only create one parcel for Deva, one for Patricia Bragg's build site, and the rest of the 550 acres would remain as one large piece.

My parcel promised to me in the purchase, that the well is on, got a separate lot determination in 2004 but no new TMK number was requested from the tax office because Bragg never would agree to do it. My promised parcel the, 27 acres the well is on, was excluded from the subdivision application because my attorney filed a Les Pendance on the property as part of my law suit against her. LW did not want my law suit to slow subdivision approval so they excluded it. Patricia Bragg had her attorney write "owners parcel" on my piece on the subdivision application even though for the 4 years prior to me getting the WUP there was no discrepancy that it was to be my piece and that we would share ownership in the well. I was to run/manage the alternative power (solar and hydro) for the well. We located the well next to my build site because it was higher on the property to allow gravity feeding to the farmers and to Patricia's house below next to them. I was also going to provide security to the well since it was 1 mile in on 4 wheel drive only roads.
We had planned on creating a reservoir to do catchment to add to the hydro and to use for Ag. Because I had always vowed to protect the well from ever being used for development I was cut out and denied my parcel. Bragg’s attorney knew that if the well was on my piece I would guard it with my life. When they decided to exploit the land instead of preserve it as was originally promised, they had to get rid of me knowing I would oppose it. They have no honest excuse for not pumping the well. The farmers needed the water and were promised it. The farmers offered to do all the labor to run pipe to get free water to their farms either from the stream or the well. Bragg would not agree to buy the pipe. I would have created the power to pump the well but they stopped me by denying conveying my piece to me starting in 2006 days after I got the WUP approved. Their plan was to evidently let me think that I was getting my parcel and share of the well until they got what they wanted out of me. Using my good reputation with the Hawaiians and environmentalists.

The farmers are still farming on LW land and have been continuously for the last 8 years using WW as their water source. Bryan from Waihee Ass. asked me to send you a copy of the Water agreement that Lucienne got from Earth Justice that shows the water contract that was signed by Jonathan Kurtz with WW. He thought proof of an alternative AG water source would be sufficient grounds to revoke the WUP. Since I am still in the broil of the law suit with LW, I would appreciate my name not being used as source for the above info. However I will testify at a hearing if requested.

We just heard that Jonathan is frantically trying to pump the well to keep the permit from being revoked but there is no piping to any use from the well and in fact the well head as of today is capped with a steel plate bolted over it. Bryan told me that just days ago Jonathan took him to see the well but they could not find it in the 10 ft tall cane grass. Bryan did not get a picture but at least he and his son witnessed the non use as of a few days ago.

Hope this helps bring justice,
Megan

Subdivision Application.pdf
Subdivision to be processed through:  
- Regular System
- Ordinance 2372 (MCC Section 18.04.020.C)
- Family Subdivision (MCC Section 18.20.280)
- Limited Subdivision (MCC Section 18.12.050)

PROPERTY INFORMATION

Subdivision Name: Living Waters Land Foundation Subdivision No. 1  
Tax Map Key(s): (2) 3.2-013:013 (PARCELS 1, 2, 3, 5, 6, 7, 8 + 9)  
Location: Wailuku  
Number of Lots: 8  
Acreage: 31.401

Proposed zoning (if different from existing):
State:  
County:  
CP:  

ENGINEER/SURVEYOR

Name: Land Surveyors, Inc.  
Contact Person: Bruce Lee  
Address: 498 Lower Main St., Suite D  
City/State: Wailuku HI Zip: 96793  
Phone: 808-8889  
Fax: 808-4842  
E-Mail: new.lee@hawaiiontel.net

AGENT (As authorized on sheet no. 4. All correspondence will be sent to this person.)

Name: Brumbaugh & Jenkins  
Contact Person: Brian R. Jenkins, Esq.  
Address: 800 Poli Street, Suite 101  
City/State: Wailuku HI Zip: 96793  
Phone: 842-8285  
Fax: 842-8286  
E-Mail: Brian@brumbaughjenkins.com

OWNER(S) OF RECORD  (Attach additional sheets if more than two owners)

Name: Living Waters Land Foundation, LLC
*Address:  
*City/State:  
*Zip:  
*Phone:  
*Fax:  
*E-Mail:  

*Information Optional
## EXPLANATORY INFORMATION
(Attach separate sheet if required)

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| 1. | **Covenants and Deed Restrictions:**
(MCC Section 18.08.080(B))
|   | □ Outline attached
|   | □ None proposed
| 2. | **Water System:**
(MCC Section 18.08.080(D))
|   | □ Subdivision will connect to the Department of Water Supply's system
|   | □ Subdivision will utilize a private water system

For private water system only - Statement of source, quality, and quantity of water: **See attached sheet.**

| 3. | **Provisions for sewage disposal (MCC Section 18.08.080(E)):**
|   | **All lots to be serviced by individual waste water systems to be approved for the Dept. of Health at time of development.**

| 4. | **Provisions for drainage and flood control (MCC Section 18.08.080(E)):**
|   | **Existing no improvements or construction planned or anticipated for this consolidation and resubdivision.**

| 5. | **Parcels of land proposed to be dedicated for public use and the conditions of such dedication (MCC Section 18.08.080(F)):**
|   | **None**

| 6. | **Improvements to be made by the subdivider and the approximate time such improvements are to be completed (MCC Section 18.08.080(G)):**
|   | **None**

*Planned or anticipated for this consolidation and resubdivision under Ordinance No. 2372.*
Private Water System for Living Waters Land Foundation Subdivision No. 1

This project is a consolidation of eight (8) existing parcels within Parcel 15 of Tax Map Key: (2) 3-2-013 into one lot and re-subdivision of said lot into eight (8) agricultural lots processed through Ordinance Number 2372 (MCC Section 18.04.020.C).

There is an existing water system that is presently being used for irrigation purposes on the present parcels, with water being provided by the Wailuku Water Company LLC. The owners of this proposed consolidation and re-subdivision, the Living Waters Land Foundation, LLC, also has an existing private water well on their adjoining Parcel 4 of Parcel 15 of Tax Map Key: (2) 3-2-013, that could be utilized for domestic and irrigation purposes, should it become necessary.

Since there is an existing private water system for these parcels and this project is basically an adjustment of lot lines, with no improvements planned or anticipated for this project, it is our understanding that a statement addressing water quality and quantity will not be required at this time.

It is also our understanding that a statement of source, quality and quantity will be required with any application for building permits on any of the newly created lots.
SUPPLEMENTARY INFORMATION
(Attach separate sheet if required)

Responses to the following items are optional only, but may aid in the processing of the application.

1. What research was done to prepare the preliminary plat? (e.g., names of previous subdivisions, subdivision file numbers, separate lot determination, maps, etc.) SEPARATE LOT DETERMINATION (SEE ATTACHED LETTER FROM DSA); WAINEE VALLEY LARGE LOT SUBDIVISION; MAALAWI AG. SUBDIVISION; WEST MAUI FOREST RESERVE; VARIOUS GRANTS AND KULEANAS

2. What is the purpose of this subdivision? CONSOLIDATION OF 8 PARCELS WITHIN PARCEL IS AND RE-SUBDIVISION IN 8 AGRICULTURAL LOTS FOR FARMING AND AGRICULTURAL USES.

3. Additional information which may aid in the processing of this application (e.g., proposed variances, concurrent subdivisions, etc.) NONE

4. Provide copies of SMA approval letters, change-in-zoning conditions, or other approval letters. SEPARATE LOT DETERMINATION LETTER
May 10, 2008

Mr. Brian R. Jenkins
BRUMBAUGH & JENKINS, Attorneys at Law
2065 Main Street, Suite 101
Wailuku, Hawaii 96793

SUBJECT: SEPARATE LOT DETERMINATION
TMK:(2) 3-2-013:015

Dear Mr. Jenkins:

This is in response to the letters and submittals received by our office on June 20, 2006, April 23, 2008, and April 29, 2008, requesting a separate lot determination for the subject tax map parcel.

Based upon the documents you submitted and information from our research of our subdivision records and the real property tax records, we recognize that there are twenty-six separate lots within TMK:(2) 3-2-013:015:

#1: Land Patent Grant Number 10,833.

#2: Land Patent Grant Number 10,816.

#3: Land Patent Grant Number 10,498.

#4: Portion of Land Patent Grant Number 10,562, which was recognized as a separate lot via our letter dated August 28, 2004.

#5: Land Patent Grant Number 10,376.

#6: Portion of Royal Patent Number 4475, Land Commission Award Number 7713, Apana 24 to V. Kamamalu.

#7: Land Patent Grant Number 10,296.
Mr. Brian R. Jenkins  
SUBJECT:  SEPARATE LOT DETERMINATION  
TMK:(2) 3-2-013:015  
May 10, 2008  
Page 2 of 4  

#8:  Land Patent Grant Number 9162.  

#9:  Portion of Royal Patent Number 7584, Land Commission Award Number 781 to Alexander M. Birch.  


#11:  Royal Patent Number 4110, Land Commission Award Number 3219, Apana 4 to Apapau.  

#12:  Royal Patent Number 3219, Land Commission Award Number 3439, Apana 2, to Kamahaalaoa.  

#13:  Royal Patent Number 6528, Land Commission Award Number 2475, Apana 1, Mahele 1 to Kahalehuki.  

#14:  Royal Patent Number 5151, Land Commission Award Number 3275-P, Apana 2 to Waiwaiole.  

#15:  Royal Patent Number 6528, Land Commission Award Number 2475, Apana 1, Mahele 2 to Kahalehuki.  

#16:  Royal Patent Number 3227, Land Commission Award Number 2474, Apana 2 to Kuhi.  Note: According to a “CERTIFICATE OF TITLE” issued by Title Guaranty of Hawaii on August 13, 2003, the tax map erroneously shows Apana 2 of Land Commission Award Number 2474 as Apana 3.  

#17:  Royal Patent Number 3216, Land Commission Award Number 5622 to Kaneiakala.  

#18:  Portion of Royal Patent Number 3229, Land Commission Award Number 3528, Apana 2 to Naoopu.  Note: According to a “CERTIFICATE OF TITLE” issued by Title Guaranty of Hawaii on August 13, 2003, the tax map erroneously shows Apana 2 of Land Commission Award Number 3229 as Apana 3.  

#19:  Portion of Royal Patent Number 3225, Land Commission Award Number 3460, Apana 2 to Kaia.
Mr. Brian R. Jenkins
SUBJECT:    SEPARATE LOT DETERMINATION
            TMK:(2) 3-2-013:015
May 10, 2008
Page 3 of 4

#20: Portion of Royal Patent Number 3225, Land Commission Award Number 3460, Apana 1 to Kaia. Note: According to a “CERTIFICATE OF TITLE” issued by Title Guaranty of Hawaii on August 13, 2003, the tax map erroneously shows Apana 1 of Land Commission Award Number 3460 as Apana 3.

#21: Portion of Royal Patent Number 3220, Land Commission Award Number 3377 to Puulau.

#22: Portion of Royal Patent Number 3231, Land Commission Award Number 8819, Apana 2 to Kamai.


#25: Portion of Royal Patent Number 3226, Land Commission Award Number 3275-D to Kaholomoana.

#26: Portion of Royal Patent Numbers 5154 and 6072, Land Commission Award Number 3275-E, Apana 6 to Kaleo.

For illustrative purposes only, enclosed is a copy of the subject tax map approximately depicting these twenty-six lots.

Please be advised that our review of this matter was limited to a separate lot determination for TMK:(2) 3-2-013:015 only. We did not make any determinations or validate any information regarding legal access, ownership, metes and bounds, and lot area.

A request for additional tax map key parcel numbers may be made with the Tax Map Section of the Department of Finance. A “Request For Tax Map Key Assignment/Combination” application is enclosed for your use. If you have any questions, please contact the Tax Map Section at 270-7297.

If you have any questions regarding this letter, please call Mr. Glen Ueno of our Development Services Administration at (808) 270-7252.
Mr. Brian R. Jenkins
SUBJECT: SEPARATE LOT DETERMINATION
TMK:(2) 3-2-013:015
May 10, 2008
Page 4 of 4

Sincerely,

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

Enclosures
xc: Tax Map Section w/enclosure
    Engineering Division w/enclosure
NOTARIZED OWNER'S ACKNOWLEDGMENT/ AUTHORIZATION TO SUBDIVIDE

TMK: (2) Lot No. 52,541,784

1. I am aware of and consent to the filing of this application.

2. I confirm that the information provided in this application is true and correct to the best of my knowledge and I assume all responsibility for the truth and validity of this application and all associated exhibits and documents submitted.

3. I agree to allow representatives of the County of Maui to go on or about the subject property for inspection purposes in connection with this application.

4. I confirm that I have uncontested legal ownership of the subject property, without any outstanding rights, reservations or encumbrances which could nullify the intended development and use of this subdivision.

5. If the owner is a corporation, partnership, limited liability company (LLC), governmental agency or other entity, I confirm that I am authorized to act on behalf of the corporation, partnership, LLC, governmental agency or other entity in processing this application.

Check, if applicable:

[ ] I (We), the owner(s) of the subject property, do authorize Brian R. Jenkins as my (our) agent(s) to represent me (us) in processing this application and to do any and all acts required to obtain final subdivision approval.

Signature of Owner Print Name Date

Patricia Bragg

Living Waters Land Foundation LLC, Manager

Company/Partnership/LLC/Agency/Entity Name Title

Signature of Owner Print Name Date

Company/Partnership/LLC/Agency/Entity Name Title

Attach additional sheets if more than two owners

S:\OSM\STI\NOAA\FORMS\Subdivision\Subdivision Applications\A4 - Sub App Owner.pdf (0208)
State of California

County of Santa Barbara

On June 27, 2008 before me, Patricia Bragg

personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Notarized Owner's Acknowledgement/Authorization to Subdivide

Document Date: 6/27/08

Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

Individual

Corporate Officer — Title(s):

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other:

Rights Thumbprint of Signer

Top of thumb here

Rights Thumbprint of Signer

Top of thumb here

Signature of Notary Public

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**APPLICATION CHECKLIST**

- ORIGINAL and nine copies of completed application (ORIGINAL and seven copies for applications processed under Ordinance 2372 (MCC Section 18.04.020(C)).
- Fifteen copies (eight copies for applications processed under Ordinance 2372 (MCC Section 18.04.020(C)) of the preliminary subdivision plat prepared by a licensed professional engineer or land surveyor. Maps must be folded to 8 ½” x 11” size.
- Filing fee of $250.00 plus $50.00 per developable lot. The filing fee shall be made payable to the “Director of Finance, County of Maui.”
- Two copies of the current title report(s).
- Eight copies of an approved ZONING AND FLOOD CONFIRMATION. Please contact the Department of Planning at (808) 270-7253 if there any questions.

---

**CHECKLIST FOR PRELIMINARY PLATS**

<table>
<thead>
<tr>
<th>CODE</th>
<th>DESCRIPTION</th>
<th>REQUIREMENTS</th>
<th>SUBMITTED</th>
<th>NONE/ NOT APPLICABLE</th>
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</thead>
<tbody>
<tr>
<td>18.08.050</td>
<td>General Information</td>
<td>- Name of Subdivision</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Date, North Point &amp; Scale of Drawing</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Tax Map Key Numbers</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Name &amp; Address of Owner(s)/Engineer or Surveyor</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Layout of Lot, Including Area &amp; Measurements</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Acreage of Subdivision/No. of Lots</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>18.08.060</td>
<td>Existing Conditions</td>
<td>- Location &amp; Names of Existing Roads, Including All Easement and R/W Information</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Width of Existing Roads/Access Easements Shown on Plat</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Contours Every 2&quot;, 5&quot; if Slope greater than 10%</td>
<td>AT FINAL IF YES</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Existing Use of Property Including Building, Wells, Cisterns, Private Sewage Disposal System, Utility System, Cesspools, etc.</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Location of 100 Year Flood Inundation Limits/Gulches</td>
<td>AT FINAL IF NO (LARGE LOT)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Location of Flood Zones (if other than Flood Zone C)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>18.08.070</td>
<td>Proposed Plan</td>
<td>- Street Location, Proposed Names, Radii of Curves</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Width of all Proposed Roads/Access Easements Shown on Plat</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Existing &amp; Proposed Easements, Showing Width &amp; Purpose</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Lots, Showing Approximate Dimensions, Minimum Lot Size &amp; Lot Numbers</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Sites (if any), Allocated for Purpose Other Than Single Family Dwellings</td>
<td>AT FINAL (LARGE LOT)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- 100 Year Flooded Width of Any Existing or Proposed Waterway</td>
<td>X</td>
<td></td>
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<tr>
<td>18.08.080</td>
<td>Explanatory Information</td>
<td>- Vicinity Map (Small Scale)</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Location of Existing Sewer, WL, Culverts, Drainpipe, Electric &amp; Communication Lines</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

**Statement of Accuracy:** I confirm that the preliminary plat has been prepared in conformance with Chapter 18.08 (Preliminary Plat), that the above information is true and correct to the best of my knowledge and that I have signed and stamped the preliminary plat.

**Engineer’s/Surveyor’s Signature:**

**Date:** 7/7/08
WATER USE PERMIT NO. 704

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

**Permit Information**

<table>
<thead>
<tr>
<th>Permit Information</th>
<th>Details</th>
</tr>
</thead>
</table>
| Water User:        | Living Water Foundation, I.I.C  
P.O. Box 2327  
Wailuku, HI 96793 |
| Landowner of Source: | Living Water Foundation, I.I.C  
P.O. Box 2327  
Wailuku, HI 96793 |
| Permitted Withdrawal Rate: | 0.020 mgd (Based upon a 12-month moving average) |
| Water Management Area: | Iao |
| Island: | Maui |
| Aquifer Sector/System: | Wailuku/Iao |
| System Sustainable Yield: | 20 mgd |
| Water Type: | Fresh |
| Original CWRM Date: | February 15th, 2006 |
| Standard Conditions: | 1-19 |
| Special Conditions: | 1-2 |

**Water Source**

<table>
<thead>
<tr>
<th>Water Source</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Well Number(s):</td>
<td>5531-01</td>
</tr>
<tr>
<td>Well Name:</td>
<td>Waihee Mauka 1</td>
</tr>
<tr>
<td>Water Source TMK Number(s):</td>
<td>2nd Division, 3-2-013:015</td>
</tr>
<tr>
<td>State Land Use Classification(s):</td>
<td>Conservation</td>
</tr>
<tr>
<td>County Zoning Classification(s):</td>
<td>Agriculture</td>
</tr>
<tr>
<td>Geographical Coordinates:</td>
<td>N/A</td>
</tr>
</tbody>
</table>

**End Use**

<table>
<thead>
<tr>
<th>End Use</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>End Use TMK Number(s):</td>
<td>2nd Division, 3-2-013:015</td>
</tr>
<tr>
<td>State Land Use Classification(s):</td>
<td>Conservation</td>
</tr>
<tr>
<td>County Zoning Classification(s):</td>
<td>Agriculture</td>
</tr>
<tr>
<td>Beneficial Use Explanation:</td>
<td>Use for 550 acres of trees</td>
</tr>
</tbody>
</table>
Background Information

Water Use Permit 704 was approved during the February 15th, 2006 Commission on Water Resource Management meeting. There are no monthly water use or salinity records on file for State Well No. 5531-01. Standard conditions 1-19 and special conditions 1-2 are the governing conditions for this water use permit. A complete list of all standard and special conditions is given in the permit file.

Field Investigation Information

Contact: Jonathan Kurtz
Site Address: Waihee Mauka 1
Wailuku, HI 96793

Brown and Caldwell conducted a field investigation on August 29th, 2008 from 9:00 a.m. until 11:00 a.m. with Mr. Jonathan Kurtz. During this time property TMK information was the only permit item verified due to the fact that Mr. Kurtz could not locate the wellhead. The physical location of this site is mauka of Kahekili Highway in the Waihee area on the island of Maui. Reference the TMK and GIS maps in the permit file for a visual representation of the site.

Summary of Findings for Water Use Permit No. 704

State Well No. 5531-01 is located on TMK parcel (2) 3-2-013:015 at unknown GPS coordinates. During the field investigation, the permittee could not locate the well head. The permittee and a representative from Brown and Caldwell searched a large overgrown area in which the well is supposedly located for approximately one hour before giving up. The permittee has indicated that pictures and other pertinent information about the well would be provided to Brown and Caldwell in the near future for inclusion in this report. Any such supporting documentation is included in the permit file. There appeared to be no electrical lines, distribution piping, or any other appurtenances that would suggest the well is currently equipped for use. Although not currently in use, the permittee has expressed that they would like to maintain water rights to the well with the hope of putting the well into service in the near future. Reference the Appendix for photographs of the overgrown wellhead area.

The following are a list of standard condition(s) that the permittee is found to be in non-compliance with:
(10) An approved flowmeter must be installed to measure monthly withdrawals and a month record of withdrawals, salinity, temperature, and pumping times must be kept and reported to the Commission on Water Resource Management on forms provided by the Commission on a yearly basis.

Although no water is being used, the permittee is still responsible for submitting water use and salinity records to the Commission. Since no reports are submitted, the permittee is found to be in violation of Standard Condition (10).

Recommendations

- Address the following discrepancies between the Commission’s electronic database and actual field investigation findings:
  - Permittee and landowner address information
  - Change permittee contact to Jonathan Kurtz at (808) 269-2078
- Address violation of Standard Condition (10) regarding non-reporting of water use and salinity levels
20-Year Water Use Permit Review
Water Use Permit No. 704

APPENDIX

Field Investigation Photographs
Figure 1 – Overgrown location of State Well No. 5531-01
Water Use Permit Survey
(Please complete one survey form for each WUP)

WUP Number: 704
Well Number(s): 5531-01

Contact Information (of the person who will be present at site visit):
Name: Jonathan Kriitz
Phone (for phone interview): 808-267-2078
Fax:
Email: jacomo@maui.net
Best time to reach for phone interview: 

Property Information (of the water use and well location):
Address: "Ihikili Huy (Waialae area) Box 2337"
City: Honolulu Zip: 96821
Well Location TMK (list all if multiple wells present): 3-2-13115
Water Use TMK (list all if used on multiple lots):

Water Use/Well Information:
Is the water source currently in use?
Yes ☐ No ☒
If no, please explain: no electricity to run pump

What are you currently using the water for? (example: "Use for 45 acres of diversified agriculture and 3 residences"): not in use

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

Do you submit monthly water use reports to the State?
Yes ☐ No ☒
If no, please explain: not in use

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

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

Once this survey is returned, a Brown and Caldwell representative will be contacting you to conduct a phone interview and finalize the exact date and time of your field investigation. Please fax/mail completed surveys by July 18th, 2008 and direct any questions related to this survey to Mr. Milo Smith of Brown and Caldwell at:
1099 Alakea Street, Suite #2400
Honolulu, HI 96813
Tel: (808) 203-2661
Fax: (808) 533-0226
mcsmith@brwncald.com

Received: 7/16/08 Information Updated: 7/16/08 Phone Interview Complete: 7/15/08

Notes/Comments:
Phone Interview

WUP Number: 704 Well Number(s): 5531-01

Contact Name: Jonathan Kurtz Phone Number: 808-269-2078

Attempt #1: Date/Time: 11/26/06 (11:05) Result: Removed
Attempt #2: Date/Time: N/A Result: N/A

Well Location TMK(s): 3-2-013-015
Water Use TMK(s):

Well Location TMK(s): 3-2-013-015

Water Source Address: Naiku Naiku Naiku
City: Waipahu Zip Code: 96793

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

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

How long have you been using this water source? N/A - Not in use

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

Scheduled field investigation day/time: 12/20/06 @ 9:00 am
Notes (Special directions, site conditions, potential hazards, general notes, etc.):

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

Interviewed By: Ms. __________________ Date: 12/15/06 Time: 11:00 a.m.
# Field Investigation Checklist

<table>
<thead>
<tr>
<th>Field</th>
<th>Value</th>
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</thead>
<tbody>
<tr>
<td>WUP Number</td>
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<tr>
<td>Well Number(s)</td>
<td>5531-01</td>
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<tr>
<td>Water Source</td>
<td>Source Location (2)</td>
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<tr>
<td>Well Location TMK(s)</td>
<td>3-2-013-015</td>
</tr>
<tr>
<td>Well Head GPS Coordinates</td>
<td></td>
</tr>
<tr>
<td>Well Type</td>
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</tr>
<tr>
<td>Currently using water source</td>
<td>Yes (x)</td>
</tr>
<tr>
<td>Notes/Comments</td>
<td></td>
</tr>
<tr>
<td>Is there a flow meter installed?</td>
<td>Yes (x)</td>
</tr>
<tr>
<td>Is the flow meter operational</td>
<td>Yes (x)</td>
</tr>
<tr>
<td>Notes/Comments</td>
<td>well not located</td>
</tr>
<tr>
<td>Water Use</td>
<td>Water Use TMK(s): (2)</td>
</tr>
<tr>
<td>What is the water being used for?</td>
<td>- not currently in use -</td>
</tr>
<tr>
<td>Is the water being used within the permitted boundaries?</td>
<td>Yes (x)</td>
</tr>
<tr>
<td>If no, explain</td>
<td>well not in use</td>
</tr>
<tr>
<td>Is there any observed wasting of water or water loss?</td>
<td>Yes (x)</td>
</tr>
<tr>
<td>If no, explain</td>
<td></td>
</tr>
<tr>
<td>Are the permit conditions being complied with?</td>
<td>Yes (x)</td>
</tr>
<tr>
<td>If no, explain</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
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<tr>
<td>Photographs of:</td>
<td></td>
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<tr>
<td>Water Source</td>
<td>(x)</td>
</tr>
<tr>
<td>Water Meter</td>
<td></td>
</tr>
<tr>
<td>Usage Area</td>
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</tr>
<tr>
<td>Pump/Motor</td>
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<tr>
<td>General Notes/Comments</td>
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<tr>
<td>Investigated By</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>5/21/2003</td>
</tr>
<tr>
<td>Time</td>
<td>11:00 a.m.</td>
</tr>
</tbody>
</table>
Standard Conditions List

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Variations of Standard Condition (20) are as follows:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. Standard Condition 16 is waived for saltwater wells.

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

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

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

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

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

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

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

28. The applicant shall follow the agreed monitoring plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

56. The permit holder may be required to relinquish this permit to BLNR, in accordance with Chapter 166.

57. The withdrawal from Well 1646-10 shall be recorded and reported to DLNR on a monthly basis by the permittee.

58. In the event that emergency water use occurs, the permittee shall notify the Commission in writing within one (1) day of pumping, to in form the Commission as to the nature of the emergency and the expected duration of the emergency. A water
use report shall also be filed pursuant to Standard Condition 10 and Administrative Rule 13-168-7.

59. Note DOH’s requirements related to non-potable water systems (attached to original permit).

60. Standard Condition 16 requiring the submittal of a water shortage plan is waived.

61. All non-potable spigots and piping shall be clearly labeled as “DO NOT DRINK, NON-POTABLE” to prevent direct human consumption.

62. Standard Condition 10 is modified. Due to the inability to take water level measurements, the requirement to measure monthly water levels is waived. In addition, as long as the U.S. Geological Survey is collecting and analyzing the chloride content of the well water, the requirement for the permittee to measure and report chlorides is also waived.

63. Well elevation components must be surveyed by a licensed surveyor and this information must be submitted to commission prior to issuance of permanent permit.

64. The permittee shall obtain approvals from the Department of Health and the U.S. Environmental Protection Agency prior to use of the water.

65. This water use permit, WUP No. <Insert #>, shall supersede WUP No. <Insert #>.

66. WUP No. <Insert #> is revoked.

67. Standard Condition 17 is waived.

68. Standard Condition 22 for interim water use permits shall not apply.

69. To supplement our records, we request that you provide a map of the Galbraith Est. lands west of Wahiawa (2100 ac +-) and the associated TMK’s for use area.

70. Deferred action on portion requested for golf course irrigation pending further refinement of irrigation requirement and a feasibility study for utilization of surface water sources, including Wahiawa Reservoir.

71. Written justification be provided for any 'cushion' of 0.5 mgd.

72. The water use permit shall be an interim permit. The duration of the interim permit shall be until treated wastewater is available and acceptable for use. The permittee shall continue discussions with Honolulu Board of Water Supply regarding the use of reclaimed water.

73. The permittee is put on notice that this is a qualified approval in that this permit may be modified or revoked prior to the expiration of the interim permit if the
Commission decides that the use of additional basal ground water for dust control and landscape irrigation is not reasonable-beneficial use.

74. The permittee encouraged to use drought-tolerant landscaping to conserve water.

75. Should the applicant provide written evidence that the county DHCD approves a 201E exemption for the elderly affordable housing project then the applicant may modify a corresponding portion of their existing aquacultural use to be used by the exemption approved project within the Commission approved water use permit limits under recommendation 5.

76. The applicant shall obtain a water lease/permit from Land Division prior to actual use of the well water.

77. Require the permittee to sign a contract by May 14, 1998 with the City Department of Wastewater Management to buy and use 0.400 mgd of R-1 water for a corresponding reduction in allocation for Well Nos. 1900-02, 17 to 20, and 1901-03.

78. Standard Condition 9 is waived.

79. Standard Condition 10 is modified to exempt the permittee from monthly measurements of salinity and temperature.

80. Standard Condition 10 is waived.

81. Applicant must seek a determination from BLNR and Land Mgt Div as to whether water license required. If required, license must be obtained prior to issuance of permit. If not, permit will be issued w/out further action.

82. Commission defers action on use in excess of 452,000 gpd pending additional info from BWS and further staff analysis.

83. The permit shall be subject to the Commission’s sustainable yield review by December 1990.

84. The Commission shall delegate to the Honolulu Board of Water Supply the authority to allocate the use of water for municipal purposes, in accordance with §174C-48(b) HRS.

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

86. BWS must participate in discussions, to be coordinated by Commission Staff, regarding a monitoring program to address impacts to Kaneohe Bay water quality, prior to any action on applications for future municipal uses.

87. A pump installation permit application must be made and approved prior to the installation of a permanent pump.
88. The water withdrawn shall be 0.7 mgd for municipal use.

89. The installed pump capacity of the well shall not be more than 700 gpm or 1.01 mgd.

90. The term of permit shall automatically expire twelve months from the date of issuance.

91. The Honolulu Board of Water Supply may continue to submit monthly water data on their own form, provided that the data are submitted in a format that is acceptable to the Commission staff.

92. Standard Condition 7 shall not apply.

93. Standard Condition 22 shall not apply.

94. Standard Condition 10 is modified to exempt the permittee from monthly measurements of salinity and temperature.

95. This permit shall be subject to conditions providing for stream restoration if the Commission determines that additional water should be returned to the streams.

96. HECO 1 mgd for industrial use

97. Campbell Estate 1 mgd for municipal use through BWS, by separate agreement with HECO

98. BWS 1 mgd for municipal use.

99. The permit shall be subject to the Commission’s sustainable yield review by <Insert Date>.

100. The applicant shall obtain the current version of the Department of Health’s Guidelines Applicable to Golf Courses in Hawaii. Where relevant and viable, items of the guidelines should be implemented and sustained appropriately. To obtain the current version, contact the Safe Drinking Water Branch, Environmental Management Division at 808-586-4258 (Honolulu).

101. The future use portion of the application shall be deferred until existing uses in the Koolauloa area are established.

102. The water to be withdrawn under this permit shall be a total of 0.03 mgd (0.02 mgd preserved plus an additional 0.01 mgd permitted use), averaged annually, for domestic and irrigation use.

103. Existing well 1851-09 shall be properly sealed by a licensed drilling contractor. A well modification permit application, enclosed, shall be submitted to the Department for approval of the well sealing. A filing fee for sealing the well will not be required.
104. The permittee is required to test the source using a certified private laboratory and submit the test results to the Commission within three (3) months. The Commission will then forward the results to the Department of Health for their review. The Department of Health recommends that the well be routinely tested for microbiological and chemical parameters thereafter.

105. The permittee is required to submit a completed Registration of Well and Declaration of Water use by <Insert Date>.

106. The permittee shall contact the Department of Health for a written determination on the status of their water system and comply with any Department of Health requirements for monitoring and testing.

107. In the event that the original spring source decontaminates, the new well authorized will be shut down.

108. That within each aquifer the total permitted use shall not exceed the sustainable yield.

109. That any water available for allocation shall be for in-district use.

110. That scheduled reductions to Oahu Sugar Co. permitted use shall be initiated upon final termination of an Osco lease or sub-lease, whichever occurs later.

111. That permits for water use issued in accordance with the proposed schedule shall be interim permits subject to review and adjustment by 1995.

112. That the permit shall be an interim permit for a new use which is afforded to existing users as specified in §13-171-20.

113. That the original allocation of 0.200 mgd shall be taken to hearing for possible revocation at a later date to complete the transfer of the water use permit entirely to Well No. 3407-02. This revocation would reduce the current allocation afforded to the Kunihiro Well (Well No. 3406-06) to zero.

114. This allocation incorporates the unspecified domestic needs of the applicant and therefore necessitates a single meter be installed at the well.

115. Should any impacts to nearby wells or streams be established by the use of this well, the applicant shall address these issues to the satisfaction of the Commission.

116. If an economically feasible nonpotable source is identified, the applicant shall convert to the alternative nonpotable source.

117. The permit shall be subject to the Chairperson's approval of a water use plan recommending possible measures to prevent or minimize saltwater contamination and establish courses of action to follow should the aquifer become to saline to use.
118. Permittee shall provide the necessary end-use information on the 10th residence to allow regulation of the use under Chapter 174C.

119. Standard Conditions 10 & 18 shall not apply.

120. Standard Condition 10 is modified to exempt the permittee from the requirement to install a flowmeter. Salt water withdrawals may instead be estimated based on pumping capacity and run time.

121. The applicant shall review the existing year-long period of pumpage and streamflow data and provide analysis on ground and surface water interaction. Deadline is January 25, 1994.

122. The water use permit for Well Nos. 2301-27 to -32 for 0.75 mgd (WUP No. 419) shall be revoked upon issuance of a pump installation permit for the well.

123. The permittee shall use mulching to decrease evaporative losses and manage irrigation scheduling to minimize water demand.

124. The permittee shall submit a detailed agricultural plan to support any future water use permit application for increased agricultural use at this parcel.

125. If not already obtained, the permittee shall seek and obtain any necessary permits from the Department of Health for the proposed discharge to Malaekahana Stream.

126. Standard Condition 10 is modified to waive the requirement for installing a water meter on Well Nos. 2358-21, 22, and 29. The permittee shall install a water meter on Well No. 2358-26 to measure total monthly flow through the discharge line. This quantity should then be assumed to be the rate of natural flow from the other three wells for monthly reporting purposes.

127. The permit shall be effective upon submittal of documentation by Navy that it has met the DOH requirements for a public system.

128. This WUP shall be subject to Army's application for a WUP to reduce the permitted use of the Army's Schofield Shaft (2901-02 to 04, 10) by 0.208 mgd to a new total of 5.648 mgd. The Army's application shall be submitted within 60 days after the approval of this WUP or this WUP shall be void. Approval of the modification request shall be obtained from the CWRM prior to use of Well No. 3100-02 and issuance of this WUP.

129. Navy shall submit an after-the-fact PIPA, and approval of the permit shall be obtained prior to use of the well.

130. The well shall not be used for drinking water purposes unless it is properly tested and treated.
131. This permit is approved subject to reclaimed water becoming a practical alternative and provided that the Department of Health approves the reuse application.

132. Should any opae ula be recovered in the well water, the permittee shall notify the Division of Aquatic Resources and provide specimens to the Division of Aquatic Resources for analysis.

133. If a single meter at the well is used, the Commission shall allow an additional 1,000 gallons per day to the water use permit amount for the domestic needs of two residences, although a permit for individual domestic consumption is not required. Otherwise, the applicant must provide a meter to separately measure the irrigation consumption.

134. This permit is approved under the requirement that conversion to either: 1) treated wastewater becoming available for reuse as an alternative supply source, provided that Department of Health concerns over the use of treated effluent over the potable water aquifer have been addressed; and/or 2) other nonpotable source becoming available will occur in a timely manner.

135. These permits shall be subject to a review of actual use within four years for possible modification of the permitted amount.

136. The permit shall be reviewed in two (2) years for possible additional revocation due to nonuse.

137. The allocation is based on the projects listed in Exhibit 5 (of Item 10 of the May 20, 1998 Staff Submittal), except for the Queen’s Beach GC (TMK 139-11-2,3), Lot 9 (TMK 139-17-51), and Varsity Place (TMK 128-24-35).

138. Kamehameha Schools Bishop Estate/Honolulu Board of Water Supply shall transfer the water use permit within ninety (90) days of the effective date of the transfer of the pump station to the Honolulu Board of Water Supply, pursuant to §174C-59 Hawaii Revised Statutes.

139. The permittee shall ensure that the water is recycled by either directing it into the Waiahole Ditch for use by downstream farmers (subject to the approval of the Agribusiness Development Corporation’s Board) or into Waikele Farm’s existing irrigation system.

140. The permittee shall file a completed application to modify WUP No. 758 to reduce the allocation by 0.100 mgd within 60 days. If a completed water use permit modification application is not received within 60 days from this submittal’s date, then the subject water use permit application (WUPA No. 767) shall be deemed denied without prejudice without the need for another hearing.

141. The water withdrawn shall be for municipal use. No improvements to the existing sources are required as the existing source capacities are greater than the increase.
142. Water license must be determined through LM.

143. Proposed other uses will be considered at a later date.
Ms. Megan Wells
Living Water Land Foundation, LLC
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

Notice of Commission Action
Water Use Permit Application
Waihee Mauka Well (Living Waters #1), Well No. 5531-01

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 January 30, 2002, the Commission:

Approved the water use permit for the reasonable-beneficial agricultural use of 20,000 gallons per day for the Waihee Mauka/Living Waters Well #1 (5531-01), subject to the standard water use permit conditions and the following special conditions:

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

2. 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.

Also, please note that your pump installation permit is also being issued under separate cover.

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

Sincerely,

DEAN A. NAKANO
Acting Deputy Director
Ms. Megan Wells  
Living Waters Land Foundation, LLC  
P.O. Box 2667  
Wailuku, HI 96793

Dear Ms. Wells:

Approval of Water Use Permit for Well No. 5531-01  
Iao Ground-Water Management Area, Maui

This letter transmits your water use permit for Waihee Mauka (Well No. 5531-01) for use of 0.020 million gallons per day (mgd) of water on a 12-month moving average basis that was approved by the Commission on Water Resource Management (Commission) on February 15, 2006. As part of the Commission's approval, the following special conditions were added and are part of your permit under Standard Permit Condition 19:

**Special Conditions**

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

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

Enclosed with this letter of approval are the following:

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

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

We draw your attention to two key conditions of your permit that require your response. First, you are required to keep a record of your monthly total pumpage, water level, salinity, and water temperature. This information must be submitted to the Commission on a regular yearly basis using the enclosed water use report form. You should make copies of the enclosed report form as needed.
Second, you are required to submit a water shortage plan to the Commission within thirty (30) days of the issuance date of this permit. Your water shortage plan simply identifies what you are willing to do should the Commission declare a water shortage situation in the Iao Ground-Water Management Area and can be as short as a one page letter. In a water shortage situation, the Commission may require temporary reductions in pumpage from all sources. The Commission is required, by law, to formulate a plan to implement such area-wide reductions, which should accommodate, include, and be consistent with your plans. Therefore, your help, by submitting your water shortage plan, is greatly needed in formulating the Commission's overall Water Shortage Plan.

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

Sincerely,

Peter T. Young
Chairperson

Attachments

c: Wailani Drilling, Inc.
GROUND-WATER USE PERMIT
WUP NO. 704

PERMITTEE

Permittee/Water User
Address
Living Waters Land Foundation, LLC
P.O. Box 2667
Wailuku, HI 96793

Landowner of Source
Address
Same

PERMITTED SOURCE INFORMATION

Island
Maui

Water Management Area
Wailuku

Aquifer Sector
Iao

Aquifer System
Waihee Mauka

System Sustainable Yield
20

Well Name

State Well No.
5531-01

PERMITTED USE INFORMATION

Reasonable beneficial use
Agricultural

Withdrawal (12 month moving ave.)
0.020 mgd

Location of water use

TMK #
3-2-13:15

State land use classification
AG

County zoning classification
Ag

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

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

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

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

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

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

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

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

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

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

W. Roy Daniel

PETER T. YOUNG, Chairperson
Commission on Water Resource Management

Attachment

c: Wailani Drilling, Inc.
Mary Blaine Johnston 1755
P.O. Box 1030
Kula, Maui Hawaii 96790
Telephone No. (808)878-8885
Facsimile: (808) 878-1227

Attorney for Respondents Patricia Bragg and
Living Waters Land Foundation, LLC

DISPUTE PREVENTION AND RESOLUTION

HONOLULU, HAWAII

In the Matter of the Arbitration of

VALERIE DEVA and DON HARRIS,
Claimants,

vs.

PATRICIA BRAGG and LIVING WATERS LAND FOUNDATION,
Respondents.

) ARB. NO. 04-0547-A
) SUBPOENA DUCES TECUM
) (Charles Ice, Commission on Water Resource Development)
) Hearing Date: Wednesday, December 14, 2005
) Time: 10:00 a.m.
) Arbitrator: G. Richard Morry

SUBPOENA DUCES TECUM

THE STATE OF HAWAII
TO THE SHERIFF OF THE STATE OF HAWAII
or his deputy or any police officer in the
State of Hawaii:

YOU ARE COMMANDED TO subpoena:

Charles Ice
Commission on Water Resource Development
Department of Land and Natural Resources
1151 Punchbowl Street, Room 227
Honolulu Hawaii 96813
to appear at the offices of Rush, Moore, 737 Bishop Street, Suite 2400, Honolulu, Hawaii, to give testimony on behalf of Respondents Patricia Bragg and Living Waters Land Foundation on Wednesday, December 14, 2005 at 10:00 a.m. Please bring with you documents related to the well use permit application of Living Waters Land Foundation, LLC for Well No. 5531, located on that certain property located at Waiehu Maui Hawaii, TMK No. (2) 3-2-13-015.


G. RICHARD MORRY
Arbitrator
December 13, 2005

Mr. Charles Ice
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu Hawaii 96809

re: 04-0547-A: Arbitration of Valerie Deva et al. v. Patricia Bragg and Living Waters Land Foundation

Dear Mr. Ice:

The Subpoena Duces Tecum which was served upon you to appear at the Arbitration Hearing on December 14, 2005 at the law offices of Rush Moore indicated that you were to appear at 10:00 a.m. Per my discussions with you and the other parties involved in the Arbitration, the actual time agreed upon for you to appear is 11:00 a.m. rather than 10:00 a.m. to accommodate your schedule.

If you have any questions, please contact me at 808-878-8885.

Sincerely yours,

Mary Blaine Johnston

cc Michael Lam Esq.
   Rick Morry, Esq. c/o of DPR
Fax Transmittal

Date: December 13 2005
To: Charles F. Ice
   Commission on Water Resource Management
   Rick Morry c/o DPR
   Michael Lam

Fax No. 808-587-0219
Fax No. 808-537-1377
Fax No. 808-523-1888

Re: 04-0547-A: Arbitration of Valerie Deva et al. v. Patricia Bragg and Living Waters Land Foundation

TRANSMITTED PLEASE FIND:

DESCRIPTION OF DOCUMENT NO. PAGES

Letter dated December 13, 2005 re: testimony 1

Transmitted for:

(xx) your information ( ) per your request
( ) signature & return ( ) your approval
( ) review & comment ( ) per your message
(xx) your files ( ) hard copy to follow
( ) filing & return ( ) see remarks
( ) per phone conversation

REMARKS:

MARY BLAINE JOHNSTON
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November 7, 2005

Custodian of Records
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu Hawaii 96809

re: 04-0547-A: Arbitration of Valerie Deva et al. v. Patricia Bragg and
Living Waters Land Foundation

Please find enclosed a check in the amount of $10.00 to cover the Witness Fee for
the Deposition Upon Written Interrogatories set for November 10, 2005 at 10:00 a.m., a subpoena
for which will be served on you by process server Thomas Mau.

If you have any questions, please don’t hesitate to contact me.

Sincerely yours,

Mary Blaine Johnston

Enc.

cc Linda Chow, Esq.
November 2, 2005

Mr. Charles Ice 
Commission on Water Resource Management 
Department of Land and Natural Resources 
P.O. Box 621 
Honolulu Hawaii 96809

re: 04-0547-A: Arbitration of Valerie Deva et al. v. Patricia Bragg and 
Living Waters Land Foundation

Dear Mr. Ice:

I am enclosing a copy of the Notice of Deposition for the Custodian of Records in your 
office to obtain a copy of the file related to water well known as Waihee-Mauka/Living Waters 
#1, Well No. 5530-05 (also sometimes denoted as Well No. 5531-01) located on property owned 
by Living Waters Land Foundation, LLC at Waiehu Maui Hawaii. The date for the deposition is 
November 9, 2005 at 9:00 a.m. at your office. I spoke with Linda Chow in the Attorney 
General’s Office about this deposition and am providing her a copy of the Notice also.

If possible, I would like to reschedule you to testify either on November 21 or 22 according to 
your availability. Please let me know what times would work for you on those dates, and if you 
aren’t available, dates and times before the end of November when you could testify. I don’t 
anticipate that your testimony should take more than 30 to 45 minutes.

Sincerely yours,

Mary Blaine Johnston

Enc.

cc Linda Chow, Esq.
MARY BLAINE JOHNSTON 1755  
P.O. Box 1030  
Kula, Maui Hawaii 96790  
Telephone No. (808)878-8885  
Facsimile: (808) 878-1227  

Attorney for Respondents Patricia Bragg and  
Living Waters Land Foundation, LLC  

DISPUTE PREVENTION AND RESOLUTION  
HONOLULU, HAWAII  

In the Matter of the Arbitration of  
VALERIE DEVA and DON HARRIS,  
Claimants,  

vs.  

PATRICIA BRAGG and LIVING WATERS  
LAND FOUNDATION,  
Respondents.  

) ARB. NO. 04-0547-A  
) NOTICE OF TAKING OF  
) DEPOSITION UPON WRITTEN  
) INTERROGATORIES; EXHIBIT A;  
) CERTIFICATE OF SERVICE  
)

NOTICE OF TAKING OF DEPOSITION UPON WRITTEN INTERROGATORIES  

TO:  
MICHAEL LAM  
SETH HARRIS  
Case, Bigelow & Lombardi  
737 Bishop Street, Suite 2600  
Honolulu Hawaii 96813  

Attorneys for Claimants  

PLEASE TAKE NOTICE that on behalf of Respondents/Counterclaimants Living Waters
Land Foundation and Patricia Bragg, a deposition upon written interrogatories of the Custodian of Records of the Commission on Water Resource Management, Department of Land and Natural Resources, 1151 Punchbowl Street, Room 227, Honolulu Hawaii 96813 will be taken by Iwado Court Reporters, at the office of the Commission on Water Resource Management, Department of Land and Natural Resources, 1151 Punchbowl Street, Room 227, Honolulu Hawaii 96813 on November 9, 2005 at 9:00 a.m.

The deposition will be taken upon written interrogatories, a copy of which is attached to Exhibit A attached hereto, and such cross, redirect and recross interrogatories as may be duly served herein, before a Notary Public duly authorized to administer oaths. The above deponent will be required by subpoena duces tecum attached as “Exhibit A” to have available for copying and/or inspection any and all records and documents of whatsoever nature in its care, custody and/or control, documents and other writings for the water well known as Waihee-Mauka/Living Waters #1, Well No. 5530-05 (also sometimes denoted as Well No. 5531-01) for property owned by Living Waters Land Foundation

DATED: Kula, Maui Hawaii, November 2, 2005.

MARY BLAINE JOHNSTON
Attorney for Respondents/
Counterclaimants Living Waters
Land Foundation, LLC and
Patricia Bragg

2
MARY BLAINE JOHNSTON 1755  
P.O. Box 1030  
Kula, Maui Hawaii 96790  
Telephone No. (808)878-8885  
Facsimile: (808) 878-1227  

Attorney for Respondents Patricia Bragg and  
Living Waters Land Foundation, LLC  

DISPUTE PREVENTION AND RESOLUTION  
HONOLULU, HAWAII  

In the Matter of the Arbitration of  
VALERIE DEVA and DON HARRIS,  
Claimants,  

vs.  

PATRICIA BRAGG and LIVING WATERS  
LAND FOUNDATION,  
Respondents.  

) ARB. NO. 04-0547-A  
) SUBPOENA DUCES TECUM;  
) INTERROGATORIES  
) (Custodian of Records, Commission  
) on Water Resource Management)  

SUBPOENA DUCES TECUM  

THE STATE OF HAWAII  
TO THE SHERIFF OF THE STATE OF HAWAII  
or his deputy or any police officer in the  
State of Hawaii:  

YOU ARE COMMANDED TO subpoena:  

CUSTODIAN OF RECORDS OF  
Commission on Water Resource Management  
Department of Land and Natural Resources  
1151 Punchbowl Street, Room 227  
Honolulu Hawaii 96813  

EXHIBIT A
to appear before a Notary Public (Iwado Court Reporter) duly authorized by law to administer oath at the Office of the Commission on Water Resource Management, Department of Land and Natural Resources, 1151 Punchbowl Street, Room 227, Honolulu Hawaii 96813 (Tel. No. 587-0214) on November 10, 2005 at at 9:00 a.m. for the taking of a deposition upon written interrogatories, a copy of which interrogatories is attached hereto, and such other cross, redirect and recross interrogatories as may be duly served herein, in the above-entitled matter.

Said Custodian of Records is required to bring with him/her and to release originals or complete and legible copies of any and all records and documents of whatsoever nature in his/her care, custody and/or control, related to the water well known as Waihee-Mauka/Living Waters #1, Well No. 5530-05 (also sometimes denoted as Well No. 5531-01) located on property owned by Living Waters Land Foundation, LLC at Waiehu, Maui Hawaii and described as TMK No. (2) 3-2-13-015.


_________________________
G. RICHARD MORRY
Arbitrator
INTERROGATORIES

1. Please state your name.

2. What is your residence address?

3. Are you employed?

4. What is your employer’s name?

5. What is your employer’s address?

6. What is your job or position with your employer?

7. In that position, do you have under your care, custody and control any and all records kept by your employer?

8. Among your employer’s records under your care, custody and control are there documents and other writings for the water well known as Waihee-Mauka/Living Waters #1, Well No. 5530-05 (also sometimes denoted as Well No. 5531-01) for property owned by Living Waters Land Foundation LLC, described as TMK No. (2) 3-2-13-015, which property is located at Waiehu Maui Hawaii?

9. If your answer to Question 8 is “No”, state the reason why there are no records or why the records are not being turned over.

10. Were you served with a subpoena duces tecum requiring your appearance before the notary public for the purpose of answering these questions and requiring you to bring with you any and all of your employer’s records pertaining to the above-mentioned project?

11. Do you have all of those records with you?

12. Are those records complete?

13. Has any portion of those records ever been removed from your care, custody and control prior to this time?
14. If so, when and by whom?

15. Has any portion of those records ever been altered prior to this time?

16. If so, when and by whom?

17. What identifies those records as pertaining to the above-mentioned project?

18. Would you please turn over to the notary public at this time the originals or complete
and legible copies of any and all of your employer's records pertaining to the above-mentioned
project, which you have brought with you pursuant to the requirements of the subpoena with
which you were served.

19. Please describe briefly but completely so that they may be readily identified the
records which you have turned over to the notary public.

20. Please describe how the back-up documentation for each and every draw/payment
check you are providing a copy of can be or is identified.

21. Please describe briefly but completely so that they may be readily identified any of
your employer's records pertaining to the above-mentioned project which you have not turned
over to the notary public, including both those records which you have brought with you and
those records which you have not brought with you.

22. Are you willing to waive the reading and signing of this deposition?
DISPUTE PREVENTION AND RESOLUTION
HONOLULU HAWAII

VALERIE DEVA and DON HARRIS, ) ARB. NO. 04-1-0547-A
) Claimants,
) CERTIFICATE OF SERVICE

vs.

PATRICIA BRAGG and LIVING WATERS LAND FOUNDATION,
) ) Respondents.

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing will be duly served on the
following by depositing the same in the U.S. mail, postage prepaid on November 2, 2005:

DISPUTE PREVENTION AND RESOLUTION
1001 Bishop Street
Suite 1155 Pauahi Tower
Honolulu, Hawaii 96813

A copy will be served on the following by mail on November 2, 2005:

MICHAEL LAM
SETH HARRIS
Case, Bigelow & Lombardi
737 Bishop Street, Suite 2600
Honolulu Hawaii 96813
Attorneys for Claimants

Dated: Kula Maui Hawaii, November 2, 2005.

MARY BLAINE JOHNSTON
Attorney for Respondents/Counterclaimants
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**Signatures:**

[Signature]

[Signature]

[Signature]
MARY BLAINE JOHNSTON 1755
P.O. Box 1030
Kula, Maui Hawaii 96790
Telephone No. (808)878-8885
Facsimile: (808) 878-1227

Attorney for Respondents Patricia Bragg and
Living Waters Land Foundation, LLC

DISPUTE PREVENTION AND RESOLUTION
HONOLULU, HAWAII

| In the Matter of the Arbitration of VALERIE DEVA and DON HARRIS, Claimants, | )
| vs. | )
| PATRICIA BRAGG and LIVING WATERS LAND FOUNDATION, Respondents. | )

ARB. NO. 04-0547-A

SUBPOENA DUCES TECUM;
INTERROGATORIES
(Custodian of Records, Commission on Water Resource Management)

SUBPOENA DUCES TECUM

THE STATE OF HAWAII
TO THE SHERIFF OF THE STATE OF HAWAII
or his deputy or any police officer in the
State of Hawaii:

YOU ARE COMMANDED TO subpoena:

CUSTODIAN OF RECORDS OF
Commission on Water Resource Management
Department of Land and Natural Resources
1151 Punchbowl Street, Room 227
Honolulu Hawaii 96813
to appear before a Notary Public (Iwado Court Reporter) duly authorized by law to administer oath at the Office of the Commission on Water Resource Management, Department of Land and Natural Resources, 1151 Punchbowl Street, Room 227, Honolulu Hawaii 96813 (Tel. No. 587-0214) on November 10, 2005 at 9:00 a.m. for the taking of a deposition upon written interrogatories, a copy of which interrogatories is attached hereto, and such other cross, redirect and recross interrogatories as may be duly served herein, in the above-entitled matter.

Said Custodian of Records is required to bring with him/her and to release originals or complete and legible copies of any and all records and documents of whatsoever nature in his/her care, custody and/or control, related to the water well known as Waihee-Mauka/Living Waters #1, Well No. 5530-05 (also sometimes denoted as Well No. 5531-01) located on property owned by Living Waters Land Foundation, LLC at Waiehu, Maui Hawaii and described as TMK No. (2) 3-2-13-015.

DATED: Honolulu, HI, November 2, 2005.

G. RICHARD MORRY
Arbitrator
INTERROGATORIES

1. Please state your name.

2. What is your residence address?

3. Are you employed?

4. What is your employer’s name?

5. What is your employer’s address?

6. What is your job or position with your employer?

7. In that position, do you have under your care, custody and control any and all records kept by your employer?

8. Among your employer’s records under your care, custody and control are there documents and other writings for the water well known as Waihee-Mauka/Living Waters #1, Well No. 5530-05 (also sometimes denoted as Well No. 5531-01) for property owned by Living Waters Land Foundation LLC, described as TMK No. (2) 3-2-13-015, which property is located at Waiehu Maui Hawaii?

9. If your answer to Question 8 is “No”, state the reason why there are no records or why the records are not being turned over.

10. Were you served with a subpoena duces tecum requiring your appearance before the notary public for the purpose of answering these questions and requiring you to bring with you any and all of your employer’s records pertaining to the above-mentioned project?

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14. If so, when and by whom?

15. Has any portion of those records ever been altered prior to this time?

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those records which you have not brought with you.

22. Are you willing to waive the reading and signing of this deposition?
NOTICE OF TAKING OF DEPOSITION UPON WRITTEN INTERROGATORIES

TO:  MICHAEL LAM
      SETH HARRIS
      Case, Bigelow & Lombardi
      737 Bishop Street, Suite 2600
      Honolulu Hawaii 96813

      Attorneys for Claimants

      PLEASE TAKE NOTICE that on behalf of Respondents/Counterclaimants Living Waters
Land Foundation and Patricia Bragg, a deposition upon written interrogatories of the Custodian of Records of the Commission on Water Resource Management, Department of Land and Natural Resources, 1151 Punchbowl Street, Room 227, Honolulu Hawaii 96813 will be taken by Iwado Court Reporters, at the office of the Commission on Water Resource Management, Department of Land and Natural Resources, 1151 Punchbowl Street, Room 227, Honolulu Hawaii 96813 on November 9, 2005 at 9:00 a.m.

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DATED: Kula, Maui Hawaii, November 2, 2005.

MARY BLAINE JOHNSTON
Attorney for Respondents/
Counterclaimants Living Waters Land Foundation, LLC and Patricia Bragg
MARY BLAINE JOHNSTON 1755
P.O. Box 1030
Kula, Maui Hawaii 96790
Telephone No. (808)878-8885
Facsimile: (808) 878-1227

Attorney for Respondents Patricia Bragg and
Living Waters Land Foundation, LLC

DISPUTE PREVENTION AND RESOLUTION
HONOLULU, HAWAII

In the Matter of the Arbitration of

VALERIE DEVA and DON HARRIS,
Claimants,

vs.

PATRICIA BRAGG and LIVING WATERS LAND FOUNDATION,
Respondents.

ARB. NO. 04-0547-A

SUBPOENA DUCES TECUM;
INTERROGATORIES

(Custodian of Records, Commission on Water Resource Management)

SUBPOENA DUCES TECUM

THE STATE OF HAWAII
TO THE SHERIFF OF THE STATE OF HAWAII
or his deputy or any police officer in the
State of Hawaii:

YOU ARE COMMANDED TO subpoena:

CUSTODIAN OF RECORDS OF
Commission on Water Resource Management
Department of Land and Natural Resources
1151 Punchbowl Street, Room 227
Honolulu Hawaii 96813

EXHIBIT A
to appear before a Notary Public (Iwado Court Reporter) duly authorized by law to administer
oath at the Office of the Commission on Water Resource Management, Department of Land and
Natural Resources, 1151 Punchbowl Street, Room 227, Honolulu Hawaii 96813 (Tel. No.
587-0214) on November 10, 2005 at at 9:00 a.m. for the taking of a deposition upon written
interrogatories, a copy of which interrogatories is attached hereto, and such other cross, redirect
and recross interrogatories as may be duly served herein, in the above-entitled matter.

Said Custodian of Records is required to bring with him/her and to release originals or
complete and legible copies of any and all records and documents of whatsoever nature in
his/her care, custody and/or control, related to the water well known as Waihee-Mauka/Living
Waters #1, Well No. 5530-05 (also sometimes denoted as Well No. 5531-01) located on property
owned by Living Waters Land Foundation, LLC at Waiehu, Maui Hawaii and described as TMK
No. (2) 3-2-13-015.


G. RICHARD MORRY
Arbitrator
INTERROGATORIES

1. Please state your name.

2. What is your residence address?

3. Are you employed?

4. What is your employer’s name?

5. What is your employer’s address?

6. What is your job or position with your employer?

7. In that position, do you have under your care, custody and control any and all records kept by your employer?

8. Among your employer’s records under your care, custody and control are there documents and other writings for the water well known as Waihee-Mauka/Living Waters #1, Well No. 5530-05 (also sometimes denoted as Well No. 5531-01) for property owned by Living Waters Land Foundation LLC, described as TMK No. (2) 3-2-13-015, which property is located at Waiehu Maui Hawaii?

9. If your answer to Question 8 is “No”, state the reason why there are no records or why the records are not being turned over.

10. Were you served with a subpoena duces tecum requiring your appearance before the notary public for the purpose of answering these questions and requiring you to bring with you any and all of your employer’s records pertaining to the above-mentioned project?

11. Do you have all of those records with you?

12. Are those records complete?

13. Has any portion of those records ever been removed from your care, custody and control prior to this time?
14. If so, when and by whom?
15. Has any portion of those records ever been altered prior to this time?
16. If so, when and by whom?
17. What identifies those records as pertaining to the above-mentioned project?
18. Would you please turn over to the notary public at this time the originals or complete
   and legible copies of any and all of your employer’s records pertaining to the above-mentioned
   project, which you have brought with you pursuant to the requirements of the subpoena with
   which you were served.
19. Please describe briefly but completely so that they may be readily identified the
   records which you have turned over to the notary public.
20. Please describe how the back-up documentation for each and every draw/payment
   check you are providing a copy of can be or is identified.
21. Please describe briefly but completely so that they may be readily identified any of
   your employer’s records pertaining to the above-mentioned project which you have not turned
   over to the notary public, including both those records which you have brought with you and
   those records which you have not brought with you.
22. Are you willing to waive the reading and signing of this deposition?
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing will be duly served on the following by depositing the same in the U.S. mail, postage prepaid on November 2, 2005:

DISPUTE PREVENTION AND RESOLUTION
1001 Bishop Street
Suite 1155 Pauahi Tower
Honolulu, Hawaii 96813

A copy will be served on the following by mail on November 2, 2005:

MICHAEL LAM
SETH HARRIS
Case, Bigelow & Lombardi
737 Bishop Street, Suite 2600
Honolulu Hawaii 96813
Attorneys for Claimants

Dated: Kula Maui Hawaii, November 2, 2005.

MARY BLAINE JOHNSTON
Attorney for Respondents/Counterclaimants
April 7, 2010

Ken C. Kawahara, P.E.
Commission on Water Resource Management
Department of Land and Natural Resources
State of Hawaii
Kalanimoku Building
1151 Punchbowl Street, Room 227
Honolulu, Hawai‘i 96813

Re: Well No. 5531-01 on TMK II 3-2-013:015, Waiehu, Waihee, Maui, Hawai‘i

Dear Mr. Kawahara,

I am the attorney for Living Waters Land Foundation, LLC which is the owner of TMK II 3-2-013:015 and State Well No. 5531-01. It has come to my client’s attention that the contact information for this well is outdated. Megan Wells has not been affiliated with Living Waters Land Foundation, LLC for a number of years. Please remove Megan Wells as the contact person.

The current contact person for all matters having to do with Well No. 5531-01 is Jonathon Kurtz, P.O. Box 2327, Wailuku, Hawai‘i 96793. Mr. Kurtz’ telephone numbers are: (808) 269-2078 and (808) 244-6083. Please feel free to contact me if you have any questions. Thank you.

Sincerely,

[Signature]

Brian R. Jenkins

cc. Living Waters Land Foundation, LLC
Jonathon Kurtz
Howzit Bryan,

Thanks for your questions about the Living Waters Water Use Permit (WUP).

The Commission approved their WUP 704 for 20,000 gpd for agricultural uses on January 30, 2006. A Special Condition is that if an permanent alternative source is found, the Commission reserves the right to revoke the ground water use permit after a hearing.

The Water Code provides that after four years nonuse, the Commission may revoke or suspend a portion or all of a WUP, after a hearing.

If the water were to be used for something else, they would need to come in for a new permit.

Living Waters has also applied for surface water use permits, both existing use and new use, which await the Decision & Order on the contested case hearing on Nā Wai ʻEhā. There will still be an official hearing on the applications, due to there being objections (and all the parties will be asked to split the notice cost equally). We are told that HC&S was planning to request a contested case, but Earthjustice is hoping to find an agreement to avoid it.

Living Waters also met with us in our office to discuss the possibility of a new diversion from North Waiehu Stream. We have not yet seen any applications for the relevant permits.
Hi Charley,
I am wondering if, since the well has never been pumped, and it has been over 3 years if the pumping permit expired. I am still hoping that the subdivision will not happen on the land I wanted to protect. I told you they put the well on the subdivision application as a water source but I think the Water Dept is hop to the fact that it was never permitted for that.
Thanks,
Megan Wells

Followed telephone call.
Megan wells no longer involved in this project (5631-ct)
# COMMISSION ON WATER RESOURCE MANAGEMENT

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Please: Sign, Review & Comment, Take Action, File, Xerox copies
February 3, 2009
State Water Commission
Attention: Charley Ice
Re: TMK # (2) 3-2-13 Parcel 15
553 acres owned by Living Waters Land Foundation
Subdivision Application

Dear Mr. Ice,
I live on Malaiei Rd in Waiehu. My street is the proposed entrance to the subdivision that Patricia Bragg and Living Waters are actively attempting to get approved in the Maui County Planning Department.

There are numerous false statements submitted by Bragg concerning a viable water source in an attempt to mislead the county to get approval. One misleading statement is about the well on the parcel being available for the subdivision. From what I’ve heard from folks who attended numerous State Water Commission hearings, Bragg’s pumping permit was granted on the basis that it would never be used for any attempt to subdivide. I was told that the commission was assured of this when they conceded to grant the permit ahead of other users.

The other misleading statement on the subdivision application also involves water and is a statement that Living Waters has eight (8) existing water meters with Wailuku Water Co. After discussions with the farmers that had been leasing land from Living Waters, who were the only ones using any water from Wailuku Water, I have been told that only one (1) meter has ever existed. There was only one meter for up to 33,000 gpd and since multiple farmers with different leases shared the water, they each personally installed their own private meter to prove what their share of the bill to Living Waters (who received one bill from Wailuku Water) would be each month. I find it highly dishonest for Living Waters to make the statement to the county that they have 8 water meters with Wailuku Water Co, coincidentally the exact numbers of lots they are trying to get subdivided.

I would like to request that you investigate these statements that the county is relying upon to recommend approval of this subdivision. I contacted Earth Justice about this and they assured me that records submitted to them from Wailuku Water Co show only one meter with Living Waters and that the Water agreement showing this is in your file as well as the PUC file. I have also forwarded the document for your convenience.

Thanks in advance for looking into this.
Dr. Roy Genatt

Dear Meredith Ching,
I previously sent this letter to Charlie Ice but now find that my request for the State Water Commission to send a formal letter to Maui County concerning this has only resulted in a later back to me. Can you help?

FILE ID: WUP.2k44.0
DOC ID: 3071
(Mr. Roy Genatt, via email):

Thank you for your inquiry concerning the Commission's approval of a water use permit (WUP No. 704) for Well No. 5531-01 (Living Waters).

While it is true that testimony at the time of approval represented that the property in question would not be subdivided, enforcing such a consideration is outside the jurisdiction of the Commission as it is subject first to land use approvals of the state and county. There was no condition attached to the permit to this effect for that reason. The internal use of the well among several parties is subject to agreement with the proprietor of the well, which is the Living Waters Trust. It is our understanding that there is no pump installed in Well No. 5531-01, and no power on-site to operate it, and therefore no water current use.

The water use permit approval was for 20,000 gallons per day (gpd) solely for irrigation purposes. A single individual household use is exempt from a water use permit, although additional households of domestic uses from the same source would require a water use permit. Should there be a subdivision of the property and a change in use to multiple households, or if there are other changes in use, amount of acreage, change of parcel location, etc., there would need to be an application to modify WUP No. 704 to that effect. A simple change in property ownership or redefinition of lots within the existing area would not require a new permit.

At this point, we do not know the disposition of ditch water, nor what conditions may apply to its delivery. A contested case hearing was conducted to determine what amounts of water would be available for off-stream diversion to the ditch for uses elsewhere. The results of that contested case are still forthcoming, expected this Spring. The proprietor of the ditch delivery system would not be permitted to take more than a prescribed amount required to remain in the streams.

A subsequent process for surface water use permit approvals will get underway once the April 30, 2009 deadline for filing existing use applications has passed. First are those uses already existing as of the April 30, 2008 date of designating the four Wailuku streams as surface water management areas. After they are accounted for, surface water uses proposed after April 30, 2008 (new uses) will be considered. That process will determine who has water use permits for the use of available surface water diversion.

There is no direct connection between the amounts of water the ditch proprietor is allowed to divert and the amounts it is compelled to provide or under what conditions it is to be provided. Part of this may be the problematic nature of available diversion flows and the integrity of the delivery system itself, but such matters are beyond the jurisdiction of the Commission. Rather, they are internal matters between the proprietor and the customers, as well as any obligations imposed by regulations, such as a Public Utilities Commission license. The Commission also does not have any jurisdiction over whether a meter issued to Living Water Trust by Wailuku Water Company could in turn be submetered to individual users from the Living Waters Trust.

As a separate matter, please be aware that the lao Ground Water Management Area is unable to supply all the water being requested from it, and consequently the Commission must make decisions about how best to use a public trust resource.
Potable ground water must be allocated primarily to uses with potable requirements, meaning that non-potable applications may not receive the allocations they request, especially where there are practicable alternatives, such as use of surface water or reclaimed wastewater. Users of potable water will be held to high standards of water conservation and prevention of waste. The Commission may defer or deny amounts currently being requested for irrigation, and other already-approved non-potable uses of potable water may also be subject to review and reduction in allocation, such as the Living Waters Trust water use permit. In any case, the non-use of the Living Water Well (5531-01) for a period of 4 years may be a cause for revisiting its water use permit with the potential of revocation. Please be informed that no final decisions have been made as of this date.

This may seem a fairly complicated matter, and while some of the issues you raise may not be within the Commission’s jurisdiction, please do not hesitate to call for clarification. Your questions may be directed to Charley Ice of our staff at (808) 587-0218, or toll free from Maui at 984-2400 x 70218.
February 3, 2009

State Water Commission

Attention: Charley Ice

Re: TMK # (2) 3-2-13 Parcel 15

553 acres owned by Living Waters Land Foundation

Subdivision Application

Dear Mr. Ice,

I live on Malaihi Rd in Waiehu. My street is the proposed entrance to the subdivision that Patricia Bragg and Living Waters are actively attempting to get approved in the Maui County Planning Department.

There are numerous false statements submitted by Bragg concerning a viable water source in an attempt to mislead the county to get approval. One misleading statement is about the well on the parcel being available for the subdivision. From what I’ve heard from folks who attended numerous State Water Commission hearings, Bragg’s pumping permit was granted on the basis that it would never be used for any attempt to subdivide. I was told that the commission was assured of this when they conceded to grant the permit ahead of
Well 5531-01  WUP 704
CONTACT INFO as of 7-8-08 - SKS
Megan Wells is "no longer associated with Living Waters LLC." There is some kind of litigation between them.

Living Waters LLC's attorney:
Brian Jenkins 805-242-5545
Living Waters LLC's business address:
199 Winchester Canyon Rd.
Goleta, CA 93117
Living Waters LLC's Land Mgr:
(overgrown-the person who capped well is.)
269-2078
April 24, 2008

[Snip]

Mr. Michael Robertson
Wailani Drilling, Inc.
P.O. Box 790299
Paia, HI 96779

Dear Mr. Robertson:

Well Completion Report Part II for Well No. 5531-01

We received your Well Completion Report Part II for the Living Waters I (Waihee Mauka) (Well No. 5531-01) on March 11, 2008 and acknowledge that it is complete.

This completes your obligations under the pump installation permit. A certificate of pump installation completion will be issued to the well operator/landowner and you will receive a copy. The certificate transfers responsibility of all aspects of well usage and maintenance from you to the well operator/landowner.

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

Sincerely,

KEN C. KAWAHARA, P.E.
Deputy Director

CI: ss

c: Living Waters Land Foundation
Ms. Megan Wells
Living Water Land Trust
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

Certificate of Pump Installation Completion for Well No. 5531-01 (TMK 3-2-013:015)

We are pleased to inform you that the Pump Installation work permitted for the Living Waters Well 1 (Wahee Mauka) (Well No. 5531-01) is complete and acceptable and welcome you as a new member to the community of well owners and groundwater users in Hawaii. This certificate of pump installation completion allows you to commence pumping your well for reasonable & beneficial water use.

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

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

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

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

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

5. Your approved pump has a capacity of 25 gpm at a head of 420 ft. In the future, pump replacements of equal or lesser capacity will not require an additional permit from the Commission, but will require the submission of a Well Completion Report Part II by the licensed pump installer. If the pump replacement is greater than the existing pump, you will need to apply for a new pump installation permit.
6. The landowner shall cause the well operator to maintain the installed meter or other appropriate means for measuring and reporting withdrawals and water levels, and appropriate devices or means for measuring chlorides and temperature. These data shall be measured monthly and reported to the Commission on a annual basis, on forms provided by the Chairperson (attached), in accordance with §13-168-7, HAR.

7. The proposed use shall not adversely affect existing or future legal uses of water in the area, including any surface water or established instream flow standards. The authorization to drill a well and/or install a pump shall not constitute a determination of correlative water rights. The landowner and well operator are notified that the quantity of water taken from the well and/or the pump capacity could be reduced by the Commission in the future.

8. In the event that your installed pump is less than 70 gallons per minute, and no elevation survey has been completed, you may be required to do one in the future.

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

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

Sincerely,

KEN C. KAWAHARA, P.E.
Deputy Director

Cl:ss
Encl: Water Use Report Forms

c: Maui Department of Water Supply
Wailani Drilling, Inc.
## WELL COMPLETION REPORT - PART II

**Pump Installation**

**Instructions:** Please print in ink or type and send completed report (with attachments, if applicable) to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. The Commission may not accept incomplete reports. This form shall be submitted within 60 days of the completion of work. For assistance, please consult the Hawaii Well Construction and Pump Installation Standards or call the Regulation Branch at 808-687-0226. For updates to this form or additional information, please visit our website at [http://www.hawaii.gov/dlnr/cwnm/](http://www.hawaii.gov/dlnr/cwnm/).

### Part II Form Checklist

1. **State Well No.:** E631-01
   - Well Name: Waihe'e Mauka (Living Waters)
   - Island: O'ahu

2. **Address:** Waihe'e, Waihe'e, Wailuku
   - Tax Map Key: 3-2-13-15

3. **Pump Installation Company:** Wailani Drilling Inc.

4. **Date Pump Installed:** 7-10-2018

5. **PERMANENT PUMP INFORMATION**
   - Pump Type, Make, Serial No.: Grundfos, P10332 US
   - Rated Capacity: [Top: 12 gpm at head of: 40 ft, Bottom: 32 gpm at head of: 420 ft]
   - Motor Type, H.P., Voltage, rpm:
     - Top: Franklin, 3/4 HP, 230V, 3/44 rpm, Model: 2243009204
     - Bottom: Franklin, 5 HP, 230V, 3450 rpm, Model: 2243035202
   - Pump type (check one):
     - [X] Submersible
     - [ ] Rotary
     - [ ] Centrifugal
     - [ ] Rotary-Gear
     - [ ] Impulse

6. **Method of flow measurement:**
   - [X] Flowmeter w/ totalizer
   - Manufacturer: Hiwatt
   - Model no.: MM-2.0
   - Size: 2"
   - Other, explain and attach schematic

7. **Fill in the as-built section on the other side of this sheet.**

8. **Attach the rating curve for the installed pump.**

9. **Attach photograph of well clearly showing the benchmark on the concrete pad, the well head, and the method of flow measurement.**

10. **Well Owner Company:** Living Waters Foundation
    - Address: PO Box 2667, Wailuku HI 96793
    - Phone: 244-0231/244-0845

11. **Land Owner Company:** Sorn Ltd
    - Address: 20900 South Aiea, #845
    - Phone: 244-0231/244-0845

12. **Remarks**
    - [ ]

---

**Pump Installation Contractor (print):**

Michael Robertson

**Signature:**

Michael Robertson

**Date:** 7-10-18

---

Received by email 11-Mar-08, 10:24 am
7. AS-BUILT PUMP SECTION  (Please attach as-built if different from diagram provided below)

Bench mark elevation
surveyed to nearest 0.01 ft. = 404.88 ft. mean sea level

Elevation of top of chase tube
425.04 ft. mean sea level

2 H.P. at 414'
Pump intake depth = 4140 ft.
(referenced to bench mark)

Chase tube depth = 4140 ft.
(referenced to bench mark)

If airline installed,
bottom of airline elevation = 414 ft. mean sea level
Performance Curves 10 GPM Model 10S

FLOW RANGE: 5-14 GPM OUTLET SIZE: 1⅝ " NPT

SPECIFICATIONS SUBJECT TO CHANGE WITHOUT NOTICE.
4' MOTOR STANDARD, 3450 RPM.

Performance conforms to ISO 9906 Annex A
© 2 ft. min. submergence.
Performance Curves 25 GPM Model 25S

FLOW RANGE: 18-32 GPM
OUTLET SIZE: 1½" NPT
NOMINAL DIA. 4"

SPECIFICATIONS SUBJECT TO CHANGE WITHOUT NOTICE
PUMP INSTALLATION PERM
Waihee Mauka (Living Waters #1), Well No. 5531-01

Note: This permit shall be prominently displayed at the site until the work is completed

In accordance with Department of Land and Natural Resources, Commission on Water Resource Management's Administrative Rules, Section 13-168, entitled "Water Use, Wells, and Stream Diversion Works", this document permits the pump installation for Waihee Mauka (Living Waters #1) (Well No. 5531-01) at TMK 3-2-13:15, Maui, subject to the Hawaii Well Construction & Pump Installation Standards (HWCPIS - February 2004) which include but are not limited to the following conditions:

1. The Chairperson to the Commission on Water Resource Management (Commission), P.O. Box 500, Hilo, must be notified, in writing, at least two (2) weeks before any work covered by this permit commences installation activities in accordance with §13-168-15, Hawaii Administrative Rules.

2. No withdrawal of water shall be made other than for testing until a Certificate of Pump Installation is issued by the Commission.

3. This permit shall be prominently displayed, or made available, at the site of construction work.

4. The pump installation permit shall be for installation of a 25 gpm rated capacity, or less, pump. Pump may be reduced in the event that the pump test data does not support the capacity.

5. A water-level measurement access shall be permanently installed, in a manner acceptable to the Commission.

6. The permittee shall install an approved meter or other appropriate means for measuring and reporting withdrawals and appropriate devices or means for measuring chlorides and temperature at the well head.

7. Well Completion Report Part II shall be submitted to the Chairperson within 60 days after completion of work. This form can be obtained by contacting the staff or on the internet at www.hawaii.gov/dlnr/cwrm.

8. The permittee, well operator, and/or well owner shall comply with all applicable laws, rules, and ordinances in connection with the permit. Non-compliance may be grounds for revocation of the permit.

9. The pump installation permit application and any related staff submittal approved by the Commission are incorporated into this permit by reference. This permit is also subject to the HWCPIS. If the HWCPIS are not followed and as a consequence water is wasted or contaminated, a lien on the property may result. Any variances from the HWCPIS shall be approved by the Chairperson prior to invoking the variance.

10. The work proposed in the pump installation permit application shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Chairperson upon a showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Chairperson no later than the date the permit expires.

11. The permittee, its successors, and assigns shall indemnify, defend, and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the applicant, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit.

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

Date of Approval: February 15, 2008
Expiration Date: February 15, 2008
PETER T. YOUNG, Chairperson
Commission on Water Resource Management

I have read the conditions and terms of this permit and understand them. I accept and agree to meet these conditions as a prerequisite and underlying condition of my ability to proceed and understand that I shall not commence work until I and the pump installer have signed, dated, and returned the permit to the Commission. I understand that this permit is not to be transferred to any other entity. I also understand that non-compliance with any permit condition may be grounds for revocation and fines of up to $5,000 per day starting from the permit date of approval.

Installer's Signature: Michael Robertson
Printed Name: Michael Robertson
Firm or Title: Waiani Drilling, Inc.

Please sign both copies of this permit, return one to the Chairperson, and retain the other for your records.

Attachments
Wailani Drilling, Inc.
Michael Robertson • Lic. #C57-20115
P.O. Box 790299 • Paia, HI 96779
Phone: 808-579-8768 • Fax: 579-8769
E-mail: waikane2@msn.com

Waihee Mauka (Living Waters #1) Well #5531-01

GPS : N 20° 55’ 20.3”
     W 156° 22’ 23.6”
February 22, 2006

Ref: 5531-01.pip

Mr. Michael Robertson
Wailani Drilling, Inc.
1885 Main Street, #408
Wailuku, HI 96793

Dear Mr. Robertson:

Pump Installation Permit
Waihee Mauka (Living Waters #1) (Well No. 5531-01)

Enclosed are two (2) originals of your approved Pump Installation Permit for the captioned well(s) that authorize permanent pump installation work for your well(s). As part of the Chairperson’s approval, the following special conditions were added and are part of your permit under Permit Condition 11:

Special Conditions

1. If the elevation benchmark needs to be altered, the permittee, well operator, and/or well owner shall ensure that the benchmark is transferred (or the well resurveyed) and documentation of the new benchmark shall be submitted to the Commission within sixty (60) days after the pump is installed.

The permittee is responsible for all conditions of the permit. This includes ensuring the submission of a completed Well Completion Report Part II form within sixty (60) days after the pump installation work is completed. Be advised that you may be subject to fines of up to $5,000 per day for any violations of your permit conditions starting from the permit approval date.

Please sign both permit originals and return one for our files.

IMPORTANT - Pump installation shall not commence until a fully signed permit is returned to the Commission.

Finally, this letter is notice that we have accepted your Well Completion Report - Part I as complete as of February 4, 2004.

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

Sincerely,

[Signature]

Peter T. Young
Chairperson

Enclosure

c: Living Waters Land Foundation, LLC
USGS
Maui DWS
PUMP INSTALLATION PERMIT

Wailua Mauka (Living Waters #1), Well No. 5531-01

Note: This permit shall be prominently displayed at the site until the work is completed.

In accordance with Department of Land and Natural Resources, Commission on Water Resource Management's Administrative Rules, Section 13-168, entitled "Water Use, Wells, and Stream Diversion Works", this document permits the pump installation for Waihee Mauka (Living Waters #1) (Well No. 5531-01) at TMK 3-2-13:15, Maui, subject to the Hawaii Well Construction & Pump Installation Standards (HWCPIS - February 2004) which include but are not limited to the following conditions:

1. The Chairperson to the Commission on Water Resource Management (Commission), P.O. Box 621, Honolulu, HI 96809, shall be notified, in writing, at least two (2) weeks before any work covered by this permit commences and staff shall be allowed to inspect installation activities in accordance with §13-168-15, Hawaii Administrative Rules.

2. No withdrawal of water shall be made other than for testing until a Certificate of Pump Installation Completion has been issued by the Commission.

3. This permit shall be prominently displayed, or made available, at the site of construction work until work is completed.

4. The pump installation permit shall be for installation of a 25 gpm rated capacity, or less, pump in the well. This permanent capacity may be reduced in the event that the pump test data does not support the capacity.

5. A water-level measurement access shall be permanently installed, in a manner acceptable to the Chairperson, to accurately record water levels.

6. The permittee shall install an approved meter or other appropriate means for measuring and reporting withdrawals and appropriate devices or means for measuring chlorides and temperature at the well head.

7. Well Completion Report Part II shall be submitted to the Chairperson within 60 days after completion of work. This form can be obtained by contacting staff or on the internet at www.hawaii.gov/dlnr/cwrm.

8. The permittee, well operator, and/or well owner shall comply with all applicable laws, rules, and ordinances, and non-compliance may be grounds for revocation of this permit.

9. The pump installation permit application and any related staff submittal approved by the Commission are incorporated into this permit by reference. This permit is also subject to the HWCPIS. If the HWCPIS are not followed and as a consequence water is wasted or contaminated, a lien on the property may result. Any variances from the HWCPIS shall be approved by the Chairperson prior to invoking the variance.

10. The work proposed in the pump installation permit application shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Chairperson upon a showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Chairperson no later than the date the permit expires.

11. The permittee, its successors, and assigns shall indemnify, defend, and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the applicant, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit.

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

Date of Approval: February 15, 2006
Expiration Date: February 15, 2008

PETER T. YOUNG, Chairperson
Commission on Water Resource Management

I have read the conditions and terms of this permit and understand them. I accept and agree to meet these conditions as a prerequisite and underlying condition of my ability to proceed and understand that I shall not commence work until I and the pump installer have signed, dated, and returned the permit to the Commission. I understand that this permit is not to be transferred to any other entity. I also understand that non-compliance with any permit condition may be grounds for revocation and fines of up to $5,000 per day starting from the permit date of approval.

Installer’s Signature: C-57, C-57a, or A License #: 20115 Date: 

Printed Name: Michael Robertson Firm or Title: Wailani Drilling, Inc.

Please sign both copies of this permit, return one to the Chairperson, and retain the other for your records.

Attachments
LINDA LINGLE
GOVERNOR OF HAWAI’I

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

February 9, 2004

Ms. Megan Wells
Waihe’e Mauka, Living Waters #1
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

Well Completion Report for Well No. 5531-01

We received your Well Completion Report Part I for the Waihe’e Mauka, Living Waters #1 (Well No. 5531-01) on September 29, 2003, and acknowledge that it is complete as of February 4, 2004. Please note that the surveyed location of the well causes the well number to change. The captioned number is correct, a change from your earlier records. Please be sure to refer to the correct number in the future.

At this point, we would normally have issued a pump installation permit for your well. But on July 21, 2003, the Iao Aquifer became a Water Management Area under the State Water Code, meaning that all withdrawals from that aquifer, including your well, now also require a water use permit, and consequently, prior to issuing your pump installation permit, a water use permit must now also be obtained. We have enclosed an application for your use.

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

Sincerely,

ERNEST Y.W. LAU
Deputy Director

Cl: ss

c: Wailani Drilling, Inc.
FROM: Charley  DATE: 12 May 08

TO:            INIT.                     TO:          INIT.                      FOR:                      PLEASE:
___ IMATA, R.  ___                         ___ KAWAHARA, K.  ___ Approval  ___ Review & Comment
___ UYENO, D.  ___                         ___ HARDY, R.  ___  ___ Signature  ___ Type Draft
___ CHONG, R.  ___                         ___ SAKODA, E.  ___  ___ Information  ___ Type Final
___ KIMURA, J. ___                         ___ NAKAMA, L. ___  ___ File
___ OHYE, M.  ___                         ___ DANBARRA, S ___  ___ Xerox copies  ___ File
___ FUJII, N.  ___                         ___ HOAGBIN, S. ___  ___ Take Action:
___ YOSHINAGA, M. ___                    ___ YODA, K.  ___  ___ Xerox copies  ___ Please See Me
___ SWANSON, S. ___                  ___ CHING, F.  ___  ___ Xerox copies  ___ Please See Me
___ KUNIMURA, I. ___                 ___                        ___  ___ Xerox copies  ___ Please See Me
___ ENGLAND, D. ___                  ___                        ___  ___ Xerox copies  ___ Please See Me

26Jun07
### Brief Chronology for Waihee Mauka Well (Living Waters #1, Well No. 5531-01)

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
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<tbody>
<tr>
<td>January 23, 2003</td>
<td>WCPIA accepted as complete</td>
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<td>February 25, 2003</td>
<td>WCP approved</td>
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<td>April 25, 2003</td>
<td>Driller faxed notice to commence work on the well</td>
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<td>July 21, 2003</td>
<td>'Lao Aquifer area designated a ground water management area (existing users have one year to apply to continue existing uses, which are protected under the Water Code by giving first consideration of reasonable-beneficial use); designation is public process – notices &amp; hearings</td>
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<tr>
<td>September 29, 2003</td>
<td>Well completion report submitted for 5531-01; acknowledgement noted that intervening designation of aquifer now required, in addition, a water use permit for “new” use (subsequent to designation of WMA) prior to issuing a pump installation permit.</td>
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<tr>
<td>July 15, 2004</td>
<td>Water use permit application 704 accepted for 5531-01</td>
</tr>
<tr>
<td>September 22, 2004</td>
<td>Commission approved all applications received as of the existing use application deadline for water use permits, including existing and new uses*, for public hearing [application incomplete as of the deadline must be treated as “new” uses]</td>
</tr>
<tr>
<td>October 28, 2004</td>
<td>Public hearing convened; subsequently continued April 22, 2005 and September 7, 2005, then closed</td>
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<tr>
<td>September 28, 2005</td>
<td>Deferred action on WUP 704 for 5531-01 pending completion of processing existing use water use permits (as action on pump installation could not have occurred before the well completion report, no use was existing at designation; the application was for a new use)</td>
</tr>
</tbody>
</table>
1. **Pump Tests Check**  
   Diane England (initial)

   - **Step-Drawdown Test:** followed WCPI Stds, analysis attached  
     - **Yes:** ☐  
     - **No:** ☐  
     - If no, describe deficiency: ☑  

   - **Constant Rate Test:** followed WCPI Stds, analysis attached  
     - **Yes:** ☐  
     - **No:** ☐  
     - If no, describe deficiency: ☑  

   - **Potential Well Interference:** ☐
   - **Potential Stream Impacts:** ☐
   - **Additional Testing or Data Required:** ☐
   - **Pump Test Comments Attached:** 650 gpm ☑

2. **Well Log Check**  
   Geology Code for Well Index: TW  
   Fm Name: Wailuku D. England (initial)

   - **Geology Code for Well Index:** TW
   - **Fm Name:** Wailuku

3. **Construction Check**  
   Mitch Ohye (initial)

   - **data complete:** ☐  
   - **followed Special Cond & elevations:** ☐  
   - **well database updated:** ☐  
   - **Latitude:** NAD27
   - **Longitude:** NAD83

4. Charley Ryan (initial) take action based on above analysis

   ATTACHMENTS FOR PUMP INSTALLATION PERMIT (2x):
   1. COVER LETTER
   2. COUNTY COMMENTS (DWS/SMA)
   3. DOH COMMENTS
   4. DLNR COMMENTS (LD/OCC/DHP)
   5. WCR 1 Accept
   6. WELL CONST. COMPLETION CERTIFICATE
   7. USGS MAP UPDATED
   8. PARCEL CHECK
   9. WELL DATABASE INPUT CHECK
   10. GLENN'S PUMP TEST WORKSHEET
   11. WELL AS-BUILT CHECK PRINT

   - **not necessary - only WCP or BOTH:**
     - To be sent to driller/pump installer
   - **To Landowner:**
     - Staff internal checks

5. Roy (initial) check (Entered WCR 1/WCCC accept date into database)
6. Susan Hoagbin (initial) finalize
7. Ken (initial) signature
8. Mitch (initial) signature (Entered PIP issue date if attached/required)
9. Charley/Ryan File
Please check at pumping rate = \(38\) (2 pumps together)

Let Same see.

Ok - can they send it in.

Normally, in what o.k. to issue well if no reliance on giving well or any for WUP.

Well in claimed exploratory. Otherwise policy of issue has been not to issue PIP prior to WUP. See attached.
State of Hawaii
COMMISSION ON WATER RESOURCE MANAGEMENT
Department of Land and Natural Resources

WELL COMPLETION REPORT - PART I
Well Construction

Instructions: Please print in ink or type and send completed report (with attachments, if applicable) to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. The Commission may not accept incomplete reports. This form shall be submitted within 60 days of the completion of work. For assistance, please consult the Hawaii Well Construction and Pump Installation Standards or call the Regulation Branch at 587-0225. For updates to this form or additional information, please visit our website at http://www.state.hi.us/dlnr/cwrm/

1. State Well No.: 5521-01
   Well Name: Waihee-Mauka/Living Waters #1
   Island: Maui

2. Address: below Spreckels Ditch, south of Waihee Village
   Tax Map Key: 3-2-13:15


4. Drilling method used during construction: ✔ Rotary  ☐ Percussion  ☐ Other (describe)

5. Date Well Construction (drilled, cased, grouted) completed: 9/2/03

   Fill out attached Driller's Log

   In addition to the driller's log, if a geologic log was prepared, please submit with this form.

6. Was the subject well cored? ☐ Yes  ✔ No

7. Initial water-level encountered 420 ft. below ground
   Date and time of measurement: 8/28/03

8. Step-Drawdown Test completed? ☐ No  ✔ Yes
   Attach Step-Drawdown Test form (12/17/97 SDPTD Form)

9. Constant Rate Aquifer Test completed? ☐ No  ✔ Yes
   Attach Constant Rate Aquifer Test form (12/17/97 CRPTD Form)

Parameters prior to pump test:

10. Water-level: 10.09 ft. above msl
    Date and time of measurement: 9/5/03

11. Chloride: 25 ppm
    Date and time of sampling: 9/5/03

12. Temperature: 69°F
    Date and time of measurement: 9/5/03

13. Fill in the as-built section on the other side of this sheet.

14. Fill in attached surveyor's report.

15. If a pump is not planned to be installed, please describe (below in the remarks section) how well is secured to prevent unauthorized access (example: lockable cover, threaded coupling, etc.)

16. The proposed manufacturer's rated pump capacity is 10 gpm at a head of 522 ft.
    (Attach pump specifications and rating curve)

17. Remarks:
    2 Pumps are installed on the same column pipe
    1 for Solar and 1 for generator power

Licensed Driller (print) Mike Robertson  C-57 Lic. No. 2015

Signature  Date 9/22/03

Permittee (print) Patricia Braag for
Living Waters Land Foundation L.L.C.

Signature  Date 9/20/03
13. AS-BUILT WELL SECTION

(Please attach as-built if different from diagram provided below)

Elevation at top of casing 405.9 ft, msl* (to nearest 0.01 ft.)

Hole Diameter: 12.5 in.

Minimum of 2° Radius & 4° Thick Concrete Pad

Ground Elevation: 403.8 ft, msl

Bench mark elevation: 404.8 ft, msl* (Survey to nearest 0.01 ft.)

Cement Grout: 29.6 ft (min. 70% of distance from ground elevation to top of water surface or 500 ft, whichever is less.)

Total Depth 429 ft.

Annular space between hole and casing (min.3):

3 in.

Rock or Gravel Packing:

N/A ft

Material:

□ Crushed Basalt

□ Rounded Gravel

Solid Casing: (> 90% x (Ground Elev.-Water Level Elev))

Length: 409 ft

Nominal Diameter: 6 in.

Wall Thickness: .280 in.

Bottom Elevation: -5.12 ft, msl

Water Level Elevation: 10.09 ft, msl*

Solid Casing Material:

Carbon Steel: compliant with (check one or more): □ ANSI/AWWA C200 □ API Spec. 5L □ ASTM A53 □ ASTM A139

Stainless Steel: (check one):

□ ASTM A409 (production wells) □ ASTM A312 (monitor wells)

ABS Plastic conforming to ASTM F480 and ASTM D1527: (check one) □ Schedule 40 □ Schedule 80

PVC Plastic conforming to ASTM F480 and (ASTM D1785 or ASTM D2241): (check one): □ Schedule 40 □ Schedule 60 □ Schedule 120

Thermoset Plastic: (check one)

□ Filament Wound Resin Pipe conforming to ASTM D2996

□ Centrifugally Cast Resin Pipe conforming to ASTM D2997

□ Reinforced Plastic Mortar Pressure Pipe conforming to ASTM D3517

□ Glass Fiber Reinforced Resin Pressure Pipe conforming to AWWA C950

□ PTFE Fluorocarbon Tubing conforming to ASTM D3296

□ FEP Fluorocarbon Tubing conforming to ASTM D3296

Open Casing: X Perforated □ Screen

Length: 20 ft

Nominal Diameter: 6 in.

Wall Thickness: .280 in.

Bottom Elevation: -25.12 ft, msl

Open Hole:

Length: N/A

Diameter: _________ in.

Bottom Elevation: _________ ft, msl

Open Casing Material:

Carbon Steel: compliant with (check one or more): □ ANSI/AWWA C200 □ API Spec. 5L □ ASTM A53 □ ASTM A139

Stainless Steel: (check one):

□ ASTM A409 (production wells) □ ASTM A312 (monitor wells)

ABS Plastic conforming to ASTM F480 and ASTM D1527: (check one) □ Schedule 40 □ Schedule 80

PVC Plastic conforming to ASTM F480 and (ASTM D1785 or ASTM D2241): (check one): □ Schedule 40 □ Schedule 60 □ Schedule 120

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□ Glass Fiber Reinforced Resin Pressure Pipe conforming to AWWA C950

□ PTFE Fluorocarbon Tubing conforming to ASTM D3296
## DRILLER'S LOG

### Depths (ft.) | Rock Description, Water Level, etc. | Dates | Depths (ft.) | Rock Description, Water Level, etc. | Dates
---|---|---|---|---|---
0 to 16 | Topsoil & Clay | 8/27/03 | 256 to 272 | Blue Rock | 8/28/03
16 to 36 | Clay & Loose Rock | | 272 to 276 | Med. Tan Rock | |
36 to 56 | Clay & Soft Rock | | 276 to 281 | Blue Rock | |
56 to 70 | Tan Soft Rock | | 281 to 306 | Tan Rock | |
70 to 72 | Red Clay & Rock | | 306 to 386 | Blue Rock | |
72 to 76 | Tan Rock | | 386 to 396 | Tan Rock | |
76 to 78 | Red Clay & Tan Rock | | 396 to 406 | Tan Rock | |
78 to 106 | Red Clay | | 406 to 415 | Soft Rock | |
106 to 126 | Tan Rock Med. | | 415 to 429 | Pahoehoe | 8/28/03
| & Water | | | | |
126 to 140 | Tan Rock Hard | | | |
140 to 142 | Tan Rock Med. | | | |
142 to 146 | Tan Rock Soft | | | |
146 to 158 | Hard Blue Rock | | | |
158 to 160 | Soft Blue Rock | 8/28/03 | | |
160 to 178 | Hard Tan Rock | Brown Clay | | |
178 to 196 | Hard Tan Rock | | | |
196 to 206 | Soft Tan Rock | | | |
206 to 256 | Red Clay & Tan Rock | | | |

### Remarks:

---

WCR1 Form 11/12/02 Page 4 of 4
Well Geographic Location
Latitude: 20° 55' 25.12"
Longitude: 156° 31' 00.40"

PLOT PLAN
(Provide Latitude and Longitude of well
referenced to NAD87 to nearest second)

Date: September 16, 2003

Well Elevation
Benchmark Elevation 404.88'
(124.81 ft. above msl)

Concrete Pad

County Street Monument
P.T. Hoauna Street
Elevation = 136.82 MSL

Surveyor's stamp and signature

BRUCE R. LEE
LICENSED PROFESSIONAL LAND SURVEYOR
No. 5983-LS
HAWAII, U.S.A.

BRUCE R. LEE
LPLS Certificate No. LS-5983

Tax Map Rev: (2) 3-2-013:015 Project No. 02-5670
## CONSTANT-RATE PUMP TEST DATA

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<th>Actual elapsed time (min)</th>
<th>Depth to water (nearest 0.1 ft)</th>
<th>Drawdown (unadjusted to nearest 0.1 ft)</th>
<th>Pumping rate Q (gpm)</th>
<th>EC (μmhos)</th>
<th>Cl (mg/l)</th>
<th>Temp. °F or °C</th>
<th>Remarks</th>
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START TEST Date: 9/5/03 Time of day: 7:45 a.m.

Data in this table is for:
- Pumped Well
- Observation Well

Additional remarks:
- Start Test
- Start pump/Cl' taken
| Suggested elapsed time (min) | Actual elapsed time (min) | Depth to water (nearest 0.1 ft) | Drawdown to nearest depth (unadjusted 0.1 ft) | Pumping rate (gpm) | EC (µmhos) | Cl⁻ (mg/l) | Temp. °F °C | Remarks | Data in this table is for Pumped Well Observation Well
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1 Chloride sampling required
2 Use same ending drawdown figure as start for recovery
Table 2 (CRPTD Form 12/17/97)

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END TEST  Date: 9/5/03  Time of day: 4:45 pm

ADDITIONAL REMARKS:

Person in charge of pump test (print): Mike Robertson

Signature: ____________________________

The signature above indicates that the data reported on this form is accurate and true to the best of the person's knowledge who operated this pump test.
Performance Curves 25 GPM Model 25S

FLOW RANGE: 18 - 32 GPM
OUTLET SIZE: 1½ " NPT
NOMINAL DIA. 4"

CAPACITY (GPM)

HEAD (FEET)

FLOW RANGE: 18 - 32 GPM
OUTLET SIZE: 1½ " NPT
NOMINAL DIA. 4"

OPERATING RANGE: 18 to 32 GPM
CAPACITIES BELOW 18 GPM
SEE MODEL 14S

CAPACITIES ABOVE 32 GPM
SEE MODEL 30S

3450 RPM
Performance Curves 10 GPM Model 10S

FLOW RANGE: 5 - 14 GPM
OUTLET SIZE: 1¼ " NPT
NOMINAL DIA. 4'

SPECIFICATIONS SUBJECT TO CHANGE WITHOUT NOTICE.
4" MOTOR STANDARD. 3450 RPM.
Performance conforms to ISO 9906 Annex A.
@ 2 ft. min. submergence.
Well Geographic Location
Latitude: 20° 55' 25.12"
Longitude: 156° 31' 00.40"

PLOT PLAN
(Provide Latitude and Longitude of well
referenced to NAD27 to nearest second)

Date: September 16, 2003
Tax Map Key: (2) 3-2-013:015
Project No. 02-5670

Well Elevation
Benchmark Elevation 404.881
(0.01 ft. above msl)

Concrete Pad

Benchmark reference control point
County Street Monument
P.T. Hoauna Street
Elevation = 136.82 MSL

Surveyor's stamp and signature

BRUCE R. LEE, LPLS
Certificate No. LS-5983
FAX: Transmitting 1 page, including this one; call 587-0251 with any reception problems.

TO: Peter Horowitz

FROM: Charley Ice

Date: 10 February 04

I don't find anything other than standard conditions 6 & 8 that may apply. The application does not indicate a need to address correlative rights, and therefore it wouldn't be considered misrepresentational not to do so.

(copy of memo)
<table>
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<th>Message</th>
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<tr>
<td>Hi! Wells 5531-01</td>
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<tr>
<td>Charley - you know 5630-01</td>
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WANTS TO SEE YOU
Date 4/25/2003

To: Charley Ice
For: Water Resource Commission
Re: Start Work Notice

Dear Charley:

This is to provide written notice for starting work on the following well:

Waihee-Mauka/Living Waters #1, Well No. 5530-05

Owners also want to take advantage of the declaratory ruling #DEC-ADM98-G5 because proposed pumps are rated less than 70 g.p.m.

Please fax receipt form to me to confirm.

Confirmed: 28 Apr'03

Mike Robertson

25 gpm + 10 gpm (2)
WELL CONSTRUCTION PERMIT

Waihee-Mauka/Living Waters #1, Well No. 5530-05

Note: This permit shall be prominently displayed at the site until the work is completed.

In accordance with Department of Land and Natural Resources, Commission on Water Resource Management's Administrative Rules, Section 13-168, entitled "Water Use, Wells, and Stream Diversion Works," this document permits the construction and testing of Waihee-Mauka/Living Waters #1 (Well No. 5530-05) at below Speckels Ditch north of Waihee Village, Maui, TMK 3-2-13:15, subject to the Hawaii Well Construction & Pump installation Standards (12/97) which include but are not limited to the following conditions:

1. The Chairperson of the Commission on Water Resource Management (Commission), P.O. Box 621, Honolulu, HI 96809, shall be notified, in writing, at least two (2) weeks before any work authorized by this permit commences and staff shall be allowed to inspect installation activities in accordance with §13-103-15, Hawaii Administrative Rules.

2. The well construction permit shall be for construction and testing of the well only. A minimum 1-inch diameter monitor tube shall be permanently installed, in a manner acceptable to the Chairperson, to accurately record water levels. The permittee, well operator, and/or well owner shall coordinate with the Chairperson and conduct a pumping test in accordance with the Standards (a pumping test worksheet is attached). The permittee, well operator, and/or well owner shall submit to the Chairperson the test results as a basis for supporting an application to install a permanent pump and withdraw water for use. No permanent pump may be installed until a pump installation permit is approved and issued by the Chairperson.

3. In basal ground water, the depth of the well may not exceed one-fourth (1/4) of the theoretical thickness (41 times initial head) of the basal ground water unless otherwise authorized by the Chairperson.

4. The permittee, well operator, and/or well owner shall incorporate mitigation measures to prevent construction debris from entering the aquatic environment, to schedule work to avoid periods of high rainfall, and to revegetate any cleared areas as soon as possible.

5. In the event that subsurface cultural remains such as artifacts, burials or concentrations of shells or charcoal are encountered during construction, the permittee, well operator, and/or well owner shall stop work and contact the Department's Historic Preservation immediately.

6. The proposed well construction shall not adversely affect existing or future legal uses of water in the area, including any surface water or established instream flow standards. This permit or the authority to construct the well shall not constitute a determination of correlative water rights.

7. The following shall be submitted to the Chairperson within sixty (60) days after completion of work:
   b. Elevation (referenced to mean sea level, nstl) survey by a Hawaii-licensed surveyor.
   c. As-built sectional drawing of the well.
   d. Plot plan and map showing the exact location of the well.
   e. Complete pumping test records, including time, pumping rate, drawdown, chloride content, and other data.

8. The permittee, well operator, and/or well owner shall comply with all applicable laws, rules, and ordinances; non-compliance may be grounds for revocation of the permit.

9. The well construction permit application is incorporated into this permit by reference and is subject to the Hawaii Well Construction & Pump Installation Standards (January 23, 1997; HWCPIS). If the HWCPIS are not followed and as a consequence water is wasted or contaminated, a lien on the property may result.

10. The permit may be revoked by the Commission if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The work proposed in the well construction permit application shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Chairperson upon a showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Chairperson no later than three (3) months prior to the date the permit expires. If the commencement date is not met, the Commission may revoke the permit after giving the permittee, well operator, and/or well owner notice of the proposed action and an opportunity to be heard.

11. If the well is not to be used it must be properly capped. If the well is to be abandoned then the permittee, well operator, and/or well owner must apply for a well abandonment permit in accordance with §13-160-12(1) prior to any well sealing or plugging work.

12. The permittee, its successors, and assigns shall indemnify, defend, and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the applicant, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit.

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

Date of Approval: February 25, 2003
Expiration Date: February 25, 2005

PETER T. YOUNG, Chairperson
Commission on Water Resource Management

I have read the conditions and terms of this permit and understand them. I accept and agree to meet these conditions as a prerequisite and underlying condition of my ability to proceed and understand that I shall not commence work until I and the driller have signed, dated, and returned the permit to the Commission. I also understand that non-compliance with any permit condition may be grounds for revocation and fines of up to $1000 per day starting from the permit date of approval.

Permittee's Signature: Patricia Bragg for LWLF LLC. Date: 3/20/03
Printed Name: Patricia Bragg for LWLF LLC. Firm or Title: Living Waters Land Foundation, LLC

Driller's Signature: Mike Robertson C-57 License # 23515 Date: 1/20/03
Printed Name: Mike Robertson Firm or Title: Waialani Drilling, Inc

Please sign both copies of this permit, return one to the Chairperson, and retain the other for your records.

Attachment

USGS
Department of Health/ Safe Drinking Water, Wastewater, and Clean Water Branches
Hawaii Department of Water Supply
Waialani Drilling, Inc
Log #: 31836  
Doc #: 0303CD23

Applicant/Agency: Dean A. Nakano, Acting Administrator  
Commission on Water Resource Management

Address: P.O. Box 621  
Honolulu, HI 96809

SUBJECT: Chapter 6E-42 Historic Preservation Review – Well Construction/Pump Installation Permit Application for the Proposed Waihe‘e-Mauka Living Well #1 (Well No.5530-05) [State/COWRM]

Ahupua‘a: Waihe‘e  
District, Island: Wailuku

TMK: (2) 3-2-013:015

1. We believe there are no historic properties present, because:

   - a) intensive cultivation has altered the land
   - b) residential development/urbanization has altered the land
   - c) previous grubbing/grading has altered the land
   - d) an acceptable archaeological assessment or inventory survey found no historic properties
   - e) other: In the event that historic sites (human skeletal remains, etc.) are identified during the construction activities, 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.

2. This project has already gone through the historic preservation review process, and mitigation has been completed ___.

   - ✓ Thus, we believe that “no historic properties will be affected” by this undertaking

Staff: Cathleen A. Dagher  
Assistant Maui/Lana‘i Island Archaeologist  
(808) 692-8023  

Date: 11 March 2013
March 7, 2003

Honorable Ernest Lau, Deputy Director
Commission on Water Resource Management
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Proposed Well Permits in Iao & Waihee Aquifers:
  TMK 3-2-001:001 - Waihee-Varel Well - 50,000 GPD for MacNut trees & other irrigation
  TMK 3-2-013:015 - Waihee Mauka / Living Water Well #1 - 40,000 GPD for Mac Nut trees
  TMK 3-2-002:007 - Waihee Rivermouth Living Waters Well #2 - 40,000 GPD for Fruit trees
  TMK 3-2-001:001 - Waihee Laquidara Well - 30,000 GPD for trees & horse stockwater/pasture

Dear Mr. Lau,

Thank you for the opportunity to submit comments regarding the proposed wells.

We would oppose the approval of any wells in the Iao & Waihee aquifers apart from those to be dedicated to the county for the purposes of distribution of withdrawals.

The Commission is well aware of the challenges we face in managing these aquifers even under current conditions. To add private wells to a system in such straits would only exacerbate the situation.

With the aid of the county, we are currently in negotiation for watershed lands and surface water collection facilities in these areas. We would recommend that such surface water sources, should the county be successful in acquiring them, would be a more appropriate source of water for the proposed irrigation projects.

We believe that the highest priority should be given to maintaining the health of these aquifers for municipal and drinking water uses, and that additional burden other than county distribution of withdrawals should not be placed on these aquifers pending acquisition of surface collection facilities and/or drilling in East Maui.

For the Commission’s information, we are also currently in the process of preparing a letter for the County Planning Department, requesting that additional land use approvals be slowed.

In addition, we note that download of PDF from the web can be problematic at times, and would prefer to receive hard copies of all well applications for Maui County. We have the responsibility for protecting the water resources of the County at the County level, and are unable to do so unless we reliably receive pertinent information.

Thank you for your assistance in protecting these aquifers. Please feel free to contact me at (808) 270-7816, or Ellen Kraftsow of my staff at (808) 270-8045 (phone), kraftsow@maugateway.com, or FAX (808) 270-7833, should you have any questions.

Sincerely,

George Y. Vengan, Director

By Water All Things Find Life
March 13, 2003

Ref: 5530-05.wcp

Ms. Megan Wells
Living Waters Land Foundation
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

Well Construction Permit
Waihee-Mauka/Living Waters #1 (Well No. 5530-05)

Enclosed are two (2) copies of your approved Well Construction Permit for the captioned well(s) that authorize well construction activities but excludes installation work for your permanent pump. As part of the Chairperson’s approval, the following special conditions were added and are part of your permit under Permit Condition 13:

Special Conditions

1. Attached for your information is a copy of the Department of Health’s (DOH) review comments. Please note DOH’s requirements related to discharge of effluent from well drilling and testing activities.

This permit **does not** authorize work for your permanent pump installation. Approval and issuance of your pump installation permit is contingent upon completed application and information provided to and accepted by Commission staff as required in the Well Construction & Pump Installation Standards (1/23/97) and any special conditions performed under this permit. However, a permanent pump may be installed prior to the permanent pump installation permit issuance in accordance with the Commission’s April 15, 1998 Declaratory Ruling No. DEC-ADM98-G5, which states that:

"Permanent pump installation for capacities between 0-70 gpm and where the proposed use is for private individual needs in non-ground-water management areas may be allowed prior to the final pump installation permit issuance. When required as a condition of the well construction permit, subsequent pumping tests shall validate the acceptability of the permanent pump. The permanent pump installed prior to final pump installation permit issuance is subject to removal if the testing shows that a smaller pump is required to reduce the potential of affecting neighboring wells and localized upconing at the applicant’s well."
If you qualify and wish to take advantage of this ruling, please include a written request to install the permanent pump prior to final pump installation permit issuance when you return to us your signed well construction permit.

Please sign and have the contractor sign both permit originals and return one for our files. Also, copies of the aquifer pump test worksheet and the well completion report form are enclosed for your use.

**IMPORTANT** - Drilling work shall not commence until a fully signed permit is returned to the Commission. Please provide all the information in this packet to your well drilling contractor. The permittee, well operator, and/or well owner are responsible for all conditions of the permit. This includes ensuring that the well construction contractor, or other party who constructs the well(s), submits a completed Part I of the Well Completion Report form (enclosed) within sixty (60) days after the well construction work is completed. Be advised that you may be subject to fines of up to $1000 per day for any violations of your permit conditions starting from the permit approval date.

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

Sincerely,

[Signature]

Peter T. Young
Chairperson

Enclosures

c: Wailani Drilling, Inc.
In accordance with Department of Land and Natural Resources, Commission on Water Resource Management's Administrative Rules, Section 13-158, entitled "Water Use, Wells, and Stream Diversion Works", this document permits the construction and testing of Waihee-Mauka/Living Waters #1 (Well No. 5530-05) at below Spreckels Ditch north of Waihee Village, Maui, TMK 3-2-13:15, subject to the Hawaii Well Construction & Pump Installation Standards (1/23/97) which include but are not limited to the following conditions:

1. The Chairperson of the Commission on Water Resource Management (Commission), P.O. Box 621, Honolulu, HI 96809, shall be notified, in writing, at least two (2) weeks before any work authorized by this permit commences and staff shall be allowed to inspect installation activities in accordance with §13-166-15, Hawaii Administrative Rules.

2. The well construction permit shall be for construction and testing of the well only. A minimum 1/4-inch diameter monitor tube shall be permanently installed, in a manner acceptable to the Chairperson, to accurately record water levels. The permittee, well operator, and/or well owner shall coordinate with the Chairperson and conduct a pumping test in accordance with the Standards (a pump testing worksheet is attached). The permittee, well operator, and/or well owner shall submit to the Chairperson the test results as a basis for supporting an application to install a permanent pump and withdraw water for use. No permanent pump may be installed until a pump installation permit is approved and issued by the Chairperson.

3. In basal ground water, the depth of the well may not exceed one-fourth (1/4) of the theoretical thickness (41 times initial head) of the basal ground water unless otherwise authorized by the Chairperson.

4. The permittee, well operator, and/or well owner shall incorporate mitigation measures to prevent construction debris from entering the aquatic environment, to schedule work to avoid periods of high rainfall, and to revegetate any cleared areas as soon as possible.

5. In the event that subsurface cultural remains such as artifacts, burials or concentrations of shells or charcoal are encountered during construction, the permittee, well operator, and/or well owner shall stop work and contact the Department's Historic Preservation immediately.

6. The proposed well construction shall not adversely affect existing or future legal uses of water in the area, including any surface water or established instream flow standards. This permit or the authorization to construct the well shall not constitute a determination of correlative water rights.

7. The following shall be submitted to the Chairperson within sixty (60) days after completion of work:
   b. Elevation (referenced to mean sea level, msl) survey by a Hawaii-licensed surveyor.
   c. As-built sectional drawing of the well.
   d. Plot plan and map showing the exact location of the well.
   e. Complete pumping test records, including time, pumping rate, drawdown, chloride content, and other data.

8. The permittee, well operator, and/or well owner shall comply with all applicable laws, rules, and ordinances; non-compliance may be grounds for revocation of this permit.

9. The well construction permit application is incorporated into this permit by reference and is subject to the Hawaii Well Construction & Pump Installation Standards (January 23, 1997; HWCPIS). If the HWCPIS are not followed and as a consequence water is wasted or contaminated, a lien on the property may result.

10. The permit may be revoked by the Commission if work is not started within six (6) months after the date of approval or if work is suspended or abandoned for six (6) months, unless otherwise specified. The work proposed in the well construction permit application shall be completed within two (2) years from the date of permit approval, unless otherwise specified. The permit may be extended by the Chairperson upon a showing of good cause and good-faith performance. A request to extend the permit shall be submitted to the Chairperson no later than three (3) months prior to the date the permit expires. If the commencement date is not met, the Commission may revoke the permit after giving the permittee, well operator, and/or well owner notice of the proposed action and an opportunity to be heard.

11. If the well is not to be used it must be properly capped. If the well is to be abandoned then the permittee, well operator, and/or well owner must apply for a well abandonment permit in accordance with §13-166-12(f) prior to any well sealing or plugging work.

12. The permittee, its successors, and assigns shall indemnify, defend, and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the applicant, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit.

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

Date of Approval: February 25, 2003
Expiration Date: February 25, 2005

I have read the conditions and terms of this permit and understand them. I accept and agree to meet these conditions as a prerequisite and underlying condition of my ability to proceed and understand that I shall not commence work until I and the driller have signed, dated, and returned the permit to the Commission. I also understand that non-compliance with any permit condition may be grounds for revocation and fines of up to $1000 per day starting from the permit date of approval.

Permittee's Signature: _______________________________ Date: ________________

Printed Name: _______________________________ Firm or Title: _______________________________

Driller's Signature: _______________________________ C-57 License #: _______________________________ Date: ________________

Printed Name: _______________________________ Firm or Title: _______________________________

Please sign both copies of this permit, return one to the Chairperson, and retain the other for your records.

Attachment:

USGS Department of Health's Safe Drinking Water, Wastewater, and Clean Water Branches
Maui Department of Water Supply
Wailani Drilling, Inc.
FROM: CHARLEY BAUER, G
CHING, F.
DANBARA, S.
FUJII, N.
GOODING, K.
HARDY, R.
HIRANO, E.
ICE, C.
IMATA, R.
JINNAI, R.

TO: KUNIMURA, I.
MATHIAS, T.
NAKAMA, L.
NAKANO, D.
OHYE, M.
SAKODA, E.
SUBIA, S.
SWANSON, S.
UYENO, D.
YODA, K.

DATE: 12 Mar C3 SUSPENSE DATE: __________

WELL NUMBER: 5530.05 WELL NAME: Waihe'e Makua/ Living Waters - 5A

WELL CONSTRUCTION

ATTACHMENTS FOR WELL CONSTRUCTION PERMIT:
1 COVER LETTER
2 PERMIT (2x)
3 SDWB
4 WWB
5 CWB
6 HEER
7 LD
8 HP
9 PUMP TEST
10 WCR I FORM
11 WELL CHECK PRINTOUT

TO BE SENT TO APPLICANT
FOR OFFICE USE ONLY

ATTACHMENTS FOR PUMP INSTALLATION PERMIT:
1 COVER LETTER
2 PERMIT (2x)
3 SDWB
4 WWB
5 CWB
6 HEER
7 LD
8 HP
9 WCR II FORM
10 WUR FORM
11 GLENN'S WORKSHEET

TO BE SENT TO APPLICANT
FOR OFFICE USE ONLY

PLEASE:
1 Review & Comment
2 Type Final
3 Signature
4 Information
5 File
Xerox copies

Expect to see NUWD objections could push back to 12-Mar trigger but they could control land use.
February 6, 2003

TO: Honorable Chiyome L. Fukino, M.D., Director
   Department of Health
   Attention: Dennis Tulang, Wastewater Branch
   William Wong, Safe Drinking Water Branch
   Dr. Keith Kawaoka, Hazardous Evaluation and Emergency Response
   Alec Wong, Clean Water Branch

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

SUBJECT: Well Construction/Pump Installation Permit Application
          Waihe'e Mauka/Living Waters #1 (Well No. 5530-05)

Transmitted for your review and comment is a copy of the captioned Well Construction/Pump Installation permit application.

We would appreciate your comments on the captioned application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your department. Please respond by returning this cover memo form by February 20, 2003. If we do not receive comments or a request for additional review time by this date, we will assume that you have no comments.

Please find the attached maps to locate the proposed well. If you have any questions about this permit application, request additional information, or request additional review time, please contact Charley Ice of the Commission staff at 587-0251.

CLASS
Attachment(s)

RESPONSE:

[ ] This well qualifies as a source which will serve as a source of potable water to a public water system (defined as serving 25 or more people at least 60 days per year or has 15 or more service connections) and must receive Director of Health approval prior to its use to comply with Hawaii Administrative Rules (HAR), Title 11, Chapter 20, Rules Relating to Potable Water Systems, §11-20-29

[ ] This well does not qualify as a source serving a public water system (serves less than 25 people or more people at least 60 days per year or 15 service connections) and if the well water is used for drinking, the private owner should test for bacteriological and chemical presence before initiating such use and routinely monitor the water quality thereafter. However, if future planned use from this source increases to meet the public water system definition then Director of Health approval is required prior to implementation.

[ ] If the well is used to supply both potable and non-potable purposes in a single system, the user shall eliminate backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water. Backflow prevention devices should be routinely inspected and tested.

[ ] It does not appear that this well will be used for consumptive purposes and is not subject to Safe Drinking Water Regulations.

[ ] For the applicant's information, a source of possible wastewater contamination [ ] is [ ] not located near the proposed well site (information attached).

[ ] An NPDES permit is required.

[ ] Other relevant DOH rules/regulations, information, or recommendations are attached.

[ ] No comments/objections

Contact Person: Lori N. Kajiwara
Phone: 587-4294

Signed: Lori N. Kajiwara
Date: 2-21-2003
Facsimile Request and Cover Sheet

Wastewater Branch
919 Ala Moana Blvd. Room 309
Honolulu, Hawaii 96814-4920
(808) 586-4294  Fax (808) 586-4300

Date: 2/20/20

To: Roland Tejano, Maui District Health Office
Ph (808)984-8232 Fax (808)984-8222

From: Lori Kajiwara, Planning/Design Section
Email: ikajiwara@eha.health.state.hi.us

Subject: Request for Information

Do you have any IWS files or records on or nearby for the following well site:
(2) 3-2-13:15  Waihee Mauka/ Waihee Valley

Please check all that apply:
[ ] sevared  [ ] no record  [ ] cesspool  [ ] septic tank  [ ] aerobic unit

File # if applicable:  
# of Bedrooms  
Submit Date:  
Plan Approval Date:  
System "Approval for Use" Date:  

Other:  

Please fax site/plot plan if available.  Thank you.
February 6, 2003

TO: Dede Mamiya, Administrator
   Land Division

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

SUBJECT: Well Construction/Pump Installation Permit Application
          Waihe'e Mauka/Living Waters #1 (Well No. 5530-05)

Transmitted for your review and comment is a copy of the captioned Well Construction/Pump Installation permit application.

We would appreciate your comments on the captioned application with regard to the programs, plans, and objectives specific to your division. Please respond by returning this cover memo form by February 20, 2003. If we do not receive comments or a request for additional review time by this date, we will assume you have no comments.

Please find the attached maps to locate the proposed well. If you have any questions about this permit application, request additional information, or request additional review time, please contact Charley Ice of the Commission staff 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.

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

[ ] A water lease/permit has been obtained by the applicant through lease no. ________________

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

[ ] Other relevant Land Division rules/regulations, information, or recommendations are attached.

[ ] No objections

XX] Other comments: Original source of private title is Land Commission Award 7713:24 issued between 1845 and 1855.

Contact Person: Gary Martin

Phone: 587-0251

Signed: Gary Martin

Date:
February 6, 2003

TO:  
Honorable Chiyome L. Fukino, M.D., Director  
Department of Health  
Attention: Dennis Tulang, Wastewater Branch  
William Wong, Safe Drinking Water Branch  
Dr. Keith Kawacka, Hazardous Evaluation and Emergency Response  
Alec Wong, Clean Water Branch

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

SUBJECT:  
Well Construction/Pump Installation Permit Application  
Waihe'e Mauka/Living Waters #1 (Well No. 5530-05)

Transmitted for your review and comment is a copy of the captioned Well Construction/Pump Installation permit application.

We would appreciate your comments on the captioned application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your department. Please respond by returning this cover memo form by February 20, 2003. If we do not receive comments or a request for additional review time by this date, we will assume that you have no comments.

Please find the attached maps to locate the proposed well. If you have any questions about this permit application, request additional information, or request additional review time, please contact Charley Ice of the Commission staff at 587-0251.

RESPONSE:

[] This well qualifies as a source which will serve as a source of potable water to a public water system (defined as serving 25 or more people at least 60 days per year or has 15 or more service connections) and must receive Director of Health approval prior to its use to comply with Hawaii Administrative Rules (HAR), Title 11, Chapter 20, Rules Relating to Potable Water Systems, §11-20-29.

X This well does not qualify as a source serving a public water system (serves less than 25 people or more people at least 60 days per year or 15 or more service connections) and if the well water is used for drinking, the private owner should conduct bacteriological and chemical presence before initiating such use and routinely monitor the water quality thereafter. However, if future planned use from this source increases to meet the public water system definition then Director of Health approval is required prior to implementation.

X If the well is used to supply both potable and non-potable purposes in a single system, the user shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water. Backflow prevention devices should be routinely inspected and tested.

[] It does not appear that this well will be used for consumptive purposes and is not subject to Safe Drinking Water Regulations.

[] For the applicant’s information, a source of possible wastewater contamination [] is [] not located near the proposed well (information attached).

[] An NPDES permit is required.

[] Other relevant DOH rules/regulations, information, or recommendations are attached.

[] No comments/objections

Contact Person: Bill Wong  
Phone: 586-4258  
Signed: Bill Wong  
Date: FEB 3 2003
To: Charlie Tie

Attn: Wailuku Commission

Date: 2/5/03

REMARKS: Page #2 is John Vail's deed (100 acres)
#3 is Wailuku Ag ordering to Deva (550 acres)
Maunaloa #4 is Deva to Bragg (550 acres)
Riminiouth #5 is Wailuku ag to Bragg (3.25 acres)

Call me if you need more than this.
February 6, 2003

TO: Honorable Chiyome L. Fukino, M.D., Director
Department of Health
Attention: Dennis Tulang, Wastewater Branch
William Wong, Safe Drinking Water Branch
Dr. Keith Kawaoaka, Hazardous Evaluation and Emergency Response
Alec Wong, Clean Water Branch

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

SUBJECT: Well Construction/Pump Installation Permit Application
Waihe'e Mauka/Living Waters #1 (Well No. 553-05)

Transmitted for your review and comment is a copy of the captioned Well Construction/Pump Installation permit application.

We would appreciate your comments on the captioned application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your department. Please respond by returning this cover memo form by February 20, 2003. If we do not receive comments or a request for additional review time by this date, we will assume that you have no comments.

Please find the attached maps to locate the proposed well. If you have any questions about this permit application, request additional information, or request additional review time, please contact Charley Ice of the Commission staff at 587-0251.

Class: Attachments

RESPONSE:

1. This well qualifies as a source which will serve as a source of potable water to a public water system (defined as serving 25 or more people at least 60 days per year or has 15 or more service connections) and must receive Director of Health approval prior to its use to comply with Hawaii Administrative Rules (HAR), Title 11, Chapter 20, Rules Relating to Potable Water Systems, §11-26-19.

2. This well does not qualify as a source serving a public water system (serves less than 25 people or more people at least 60 days per year or 15 service connections) and if the well is used for drinking, the private owner should test for bacterial and chemical presence before initiating such use and routinely monitor the water quality thereafter. However, if future planned use from this source increases to meet the public water system definition then Director of Health approval is required prior to implementation.

3. If the well is used to supply both potable and non-potable purposes in a single system, the user shall eliminate cross connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable outlets with warning signs to prevent inadvertent consumption of non-potable water. Backflow prevention devices should be routinely inspected and tested.

4. It does not appear that this well will be used for consumptive purposes and is not subject to Safe Drinking Water Regulations.

5. For the applicant's information, a source of possible wastewater contamination is located near the proposed well site (information attached).

6. An NPDES permit is required.

7. Other relevant DOH rules/regulations, information, or recommendations are attached.

8. No comments/objections. We defer to wastewater and drinking water concerns.

Contact Person: Dr. Keith Kawaoaka Phone: 586-4249

Signed: [Signature] Date: 2/12/03

Fax to: Commission on Water Resources Management: 587-0219
TO: Honorable Chiyoue L. Fukino, M.D., Director  
Department of Health  
Attention: Dennis Tulang, Wastewater Branch  
William Wong, Safe Drinking Water Branch  
Dr. Keith Kawaoeka, Hazardous Evaluation and Emergency Response  
Alec Wong, Clean Water Branch
FROM: Peter T. Young, Chairperson  
Commission on Water Resource Management
SUBJECT: Well Construction/Pump Installation Permit Application  
Waihe'e Moku living Waters #1 (Well No. 5530-05)

February 6, 2003

Transmitted for your review and comment is a copy of the captioned Well Construction/Pump Installation permit application.

We would appreciate your comments on the captioned application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your department. Please respond by returning this cover memo form by February 20, 2003. If we do not receive comments or a request for additional review time by this date, we will assume that you have no comments.

Please find the attached maps to locate the proposed well. If you have any questions about this permit application, request additional information, or request additional review time, please contact Charley Ice of the Commission staff at 587-0251.

Class Attachment(s)

RESPONSE:

This well qualifies as a source which will serve as a source of potable water to a public water system (defined as serving 25 or more people at least 60 days per year or has 15 or more service connections) and must receive Director of Health approval prior to its use to comply with Hawaii Administrative Rules (HAR), Title 11, Chapter 20, Rules Relating to Public Water Systems, §11-20-29.

This well does not qualify as a source serving a public water system (serves less than 25 people or more people at least 60 days per year or 15 service connections) and if the well water is used for drinking, the private owner should test for bacteriological and chemical presence before initiating such use and routinely monitor the water quality thereafter. However, if future planned use from this source increases to meet the public water system definition then Director of Health approval is required prior to implementation.

If the well is used to supply both potable and non-potable purposes in a single system, the user shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water. Backflow prevention devices should be routinely inspected and tested.

It does not appear that this well will be used for consumptive purposes and is not subject to Safe Drinking Water Regulations.

An NPDES permit is required.

No comments/objections

Contact Person: Alex Wong  
Phone: 586-4309

Signed: Alex Wong  
Date: 2/6/03
The Department of Health, Clean Water Branch has the following comments:

1. For Well-Drilling Activities

Any discharge to State waters of treated process wastewater effluent associated with well drilling activities is regulated by Hawaii Administrative Rules, Title 11, Chapter 55, Appendix I, effective September 22, 1997. Treated process wastewater effluent covered by this general permit includes well drilling slurries, lubricating fluids wastewaters, and well purge wastewaters. This general permit does not cover well pump testing. The applicable Notice of Intent Forms and filing fee shall be submitted at least thirty (30) days before the start of discharge to the Department of Health, Clean Water Branch at 919 Ala Moana Boulevard, Room 301, Honolulu, Hawaii 96814-4920 or P.O. Box 3378, Honolulu, Hawaii 96801-3378. Inquiries may be directed to the Clean Water Branch at (808) 586-4309 or by fax at (808) 586-4352.

2. For Well Pump Testing

The discharger shall take all measures necessary to prevent the discharge of pollutants from entering State waters. Such measures shall include, if necessary, containment of the initial discharge until the discharge is essentially free of pollutants. If the discharge is entering a stream or river bed, best management practices shall be implemented to prevent the discharge from disturbing the clarity of the receiving water. If the discharge is entering a storm drain, the discharger must obtain written permission from the owner of that storm drain prior to discharge. Furthermore, best management practices shall be implemented to prevent the discharge from collecting sediments and other pollutants prior to entering the storm drain.

JS/cr
February 6, 2003

Ms. Megan Wells
Living Waters Land Foundation
P.O. Box 2667
Wailuku, HI 96793

Dear Ms. Wells:

Well Construction/Pump Installation Permit Application for Well No. 5530-05

We acknowledge receipt, on January 23, 2003, of your completed Well Construction/Pump Installation permit application and filing fee for the Waihe'e Mauka/Living Waters #1 (Well No. 5530-05). You can expect your application to be processed within ninety (90) days from this date.

For your information, the process of constructing a well is normally regulated and permitted in two (2) steps. First, a well construction permit is issued for drilling and testing purposes only. Based upon information provided by you through a Well Completion Report Part 1 (Well Construction), a pump installation permit (upon completed application) may then be issued to authorize pump work. If a pump is installed then a Well Completion Report Part 2 (Pump Installation) is required.

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

Sincerely,

DEAN A. NAKANO
Acting Deputy Director

Class

C: Wailani Drilling, Inc.
February 6, 2003

TO: Honorable Chiyome L. Fukino, M.D., Director
   Department of Health
   Attention: Dennis Tulang, Wastewater Branch
            William Wong, Safe Drinking Water Branch
            Dr. Keith Kawaoka, Hazardous Evaluation and Emergency Response
            Alec Wong, Clean Water Branch

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

SUBJECT: Well Construction/Pump Installation Permit Application
         Waihe'e Mauka/Living Waters #1 (Well No. 5530-05)

Transmitted for your review and comment is a copy of the captioned Well Construction/Pump Installation permit application.

We would appreciate your comments on the captioned application for any conflicts or inconsistencies with the programs, plans, and objectives specific to your department. Please respond by returning this cover memo form by February 20, 2003. If we do not receive comments or a request for additional review time by this date, we will assume that you have no comments.

Please find the attached maps to locate the proposed well. If you have any questions about this permit application, request additional information, or request additional review time, please contact Charley Ice of the Commission staff at 587-0251.

RESPONSE:

[ ] This well qualifies as a source which will serve as a source of potable water to a public water system (defined as serving 25 or more people at least 60 days per year or has 15 or more service connections) and must receive Director of Health approval prior to its use to comply with Hawaii Administrative Rules (HAR), Title 11, Chapter 20, Rules Relating to Potable Water Systems, §11-2 - 9.

[ ] This well does not qualify as a source serving a public water system (serves less than 25 people or more people at least 60 days per year or 15 service connections) and if the well water is used for drinking, the private owner should test for bacteriological and chemical presence before initiating such use and routinely monitor the water quality thereafter. However, if future planned use from this source increases to meet the public water system definition then Director of Health approval is required prior to implementation.

[ ] If the well is used to supply both potable and non-potable purposes in a single system, the user shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water. Backflow prevention devices should be routinely inspected and tested.

[ ] It does not appear that this well will be used for consumptive purposes and is not subject to Safe Drinking Water Regulations.

[ ] For the applicant’s information, a source of possible wastewater contamination [ ] is [ ] not located near the proposed well site (information attached).

[ ] An NPDES permit is required.

[ ] Other relevant DOH rules/regulations, information, or recommendations are attached.

[ ] No comments/objections

Contact Person: Phone:

Signed: Date:
February 6, 2003

TO: Dede Mamiya, Administrator  
Land Division

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

SUBJECT: Well Construction/Pump Installation Permit Application  
Waihe'e Mauka/Living Waters #1 (Well No. 5530-05)

Transmitted for your review and comment is a copy of the captioned Well Construction/Pump Installation permit application.

We would appreciate your comments on the captioned application with regard to the programs, plans, and objectives specific to your division. Please respond by returning this cover memo form by February 20, 2003. If we do not receive comments or a request for additional review time by this date, we will assume you have no comments.

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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, [ ] 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: __________________________
LINDA LINGLE  
GOVERNOR OF HAWAII

TO: Holly McEldowney, Acting Administrator  
Historic Preservation

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

SUBJECT: Well Construction/Pump Installation Permit Application  
Waihe'e Mauka/Living Waters #1 (Well No. 5530-05)

February 6, 2003

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Please find the attached maps to locate the proposed well. If you have any questions about this permit application, request additional information, or request additional review time, please contact Charley Ice of the Commission staff at 587-0251.

Class Attachment(s)

RESPONSE:

[ ] There may be areas in the vicinity of the well site that contain subsurface cultural remains such as artifacts, burials or concentrations of shells or charcoal.

[ ] Other relevant Historic Preservation rules/regulations, information, or recommendations are attached.

[ ] No objections

[ ] Other comments:

Contact Person: ___________________________ Phone: __________

Signed: ___________________________ Date: __________
**SECTION 1: WELL LOCATION INFORMATION**

<table>
<thead>
<tr>
<th>Island</th>
<th>MAUl</th>
<th>Proposed Use</th>
<th>Irrigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aquifer System</td>
<td>WAILUKU</td>
<td>Proposed Withdrawal</td>
<td>60000</td>
</tr>
<tr>
<td>Aquifer Sector</td>
<td>IAO</td>
<td>System Sustainable Yield</td>
<td>20</td>
</tr>
</tbody>
</table>

**SECTION 2: WELL SECTION DATA**

(enter data in grey cells only)

<table>
<thead>
<tr>
<th>Elevation at top of casing</th>
<th>351 ft., m.s.l.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ground Elevation</td>
<td>360 ft., m.s.l.</td>
</tr>
<tr>
<td>Cement Grout</td>
<td>280 ft.</td>
</tr>
<tr>
<td>Rock Packing</td>
<td>12.5 in.</td>
</tr>
<tr>
<td>Hole Diameter</td>
<td>12.5 in.</td>
</tr>
<tr>
<td>Total Depth</td>
<td>400 ft.</td>
</tr>
<tr>
<td>Estimated Head</td>
<td>6.5 ft., m.s.l.</td>
</tr>
<tr>
<td>Calculated Aquifer Thickness</td>
<td>266.5 ft.</td>
</tr>
<tr>
<td>County Water Supply (Y/N ?)</td>
<td>NO</td>
</tr>
</tbody>
</table>

**Solid Casing**

<table>
<thead>
<tr>
<th>Material</th>
<th>Steel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designation</td>
<td>ASTM A53</td>
</tr>
<tr>
<td>Length</td>
<td>381 ft.</td>
</tr>
<tr>
<td>Diameter</td>
<td>6 in.</td>
</tr>
<tr>
<td>Wall Thickness</td>
<td>0.25 in.</td>
</tr>
</tbody>
</table>

**Casing**

<table>
<thead>
<tr>
<th>Material</th>
<th>Steel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Designation</td>
<td>ASTM A53</td>
</tr>
<tr>
<td>Length</td>
<td>20 ft.</td>
</tr>
<tr>
<td>Diameter</td>
<td>6 in.</td>
</tr>
<tr>
<td>Wall Thickness</td>
<td>0.25 in.</td>
</tr>
</tbody>
</table>

**Open Hole**

<table>
<thead>
<tr>
<th>Length</th>
<th>0 ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diameter</td>
<td>0 in.</td>
</tr>
</tbody>
</table>

**SECTION 3: CHECKLIST**

(values to check are shaded)

**Well Depth**

<table>
<thead>
<tr>
<th>Theoretical Thickness of Aquifer</th>
<th>266.5 ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/4 Aquifer Thickness</td>
<td>65.63 ft.</td>
</tr>
<tr>
<td>Depth of Well below Sea Level</td>
<td>50 ft.</td>
</tr>
</tbody>
</table>

(disregard if the well is not basal)

**Well Casing**

<table>
<thead>
<tr>
<th>Minimum Wall Thickness</th>
<th>Steel</th>
</tr>
</thead>
<tbody>
<tr>
<td>County or Non-County</td>
<td>non-county</td>
</tr>
<tr>
<td>Minimum Wall Thickness Provided</td>
<td>0.250 in.</td>
</tr>
</tbody>
</table>

(disregard if this is a non-county well)

**Annular Space**

<table>
<thead>
<tr>
<th>Calculated Depth of Grouting</th>
<th>240.5 ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depth of Grouting provided</td>
<td>280 ft.</td>
</tr>
<tr>
<td>Thickness of Annular Space</td>
<td>3.25 in.</td>
</tr>
</tbody>
</table>

If the cell above reads #N/A, reference HWCPIS

(refer to HWCPIS Section 2.2)

(refer to HWCPIS Section 2.4 c)

(refer to HWCPIS Section 2.4 d)

(refer to HWCPIS Section 2.4 e)

(refer to HWCPIS Section 2.6 c)

(refer to HWCPIS Section 2.6 d)
### Commission on Water Resource Management

**ROUTE SLIP FOR NEW APPLICATIONS**

**FROM:** CHARLEY BAUER, G.

**DATE:** 29-Jan-03

**TO:**

| BAUER, G. | INIT. | TO: LUM, A. | INIT. | FOR: Approval | 3 Approval |
| CHING, F. | INIT. | NAOKAMA, L. | INIT. | Signature | 3 Signature |
| FUJII, N. | INIT. | NAKANO, D. | INIT. | Information | 4 Information |
| HARDY, R. | INIT. | NISHIOKA, L. | INIT. | | |
| HIGA, D. | INIT. | OHYE, M. | INIT. | | |
| HIRANO, E. | INIT. | SAPODA, E. | INIT. | | |
| ICE, C. | INIT. | SWANSON, S. | INIT. | | |
| IMATA, R. | INIT. | SUBIA, S. | INIT. | | |
| JINNAI, R. | INIT. | UYENO, D. | INIT. | | |
| KUNIMURA, I. | INIT. | YODA, K. | INIT. | | |

**WELL NUMBER:** 5530-05  
**WELL NAME:** Waihee Mauka 1

- [ ] WELL CONSTRUCTION
- [ ] PUMP INSTALLATION  
- [X] BOTH

**ATTACHMENTS FOR APPLICATION PROCESSING:** Both applicant & staff generated

1. TRANS. LETTER
2. CWRM MAP
3. APPL. FORM (3X)
4. USGS MAPS (3X)
5. TAX MAPS (3X)
6. PARCEL OWNER VERIF.  
7. CONTRACTOR VERIF.
8. ALL INFO FILLED IN
9. BACKGROUND CHECK

**FOLDER:**

- [ ] MADE NEW FILE FOLDER, ATTACHED
- [X] FILE FOLDER ALREADY MADE, IN FILE CABINET

**INCOMPLETE ACTION DATES:**

<table>
<thead>
<tr>
<th>DATE</th>
<th>ACTION</th>
</tr>
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<tbody>
<tr>
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<tr>
<td>F YR</td>
<td>APP</td>
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<tr>
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</tr>
<tr>
<td>03</td>
<td>326</td>
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</tr>
</tbody>
</table>

REMARKS: LINE (1) Well No. 5530-05
LINE (2)
LINE (3)
LINE (4)
Charley,

Enclosed are the following items:

- ✔ Application for Permit & $25.00 fee for Waihee Mauka Well #1
- ✔ Application for Permit & $25.00 fee for Waihee Rivermouth Well #2
- ✔ Application for Permit & $25.00 fee for Waihee-Laquidara
- ✔ Application for Permit & $25.00 fee for Waihee-Varel

Please confirm receipt by checking off the enclosed items and faxing a copy of this memo to me at 808/572-0925. Thank you.

Sincerely,

Mike Robertson
For Official Use Only: J23 3:20

APPLICANT INFORMATION: (Fill out all three, if applicable, and place a check mark next to the primary contact)
1. a) WELL OWNER: LIVING WATER LAND FOUNDATION
   Mailing Address: Box 267, Waikiki, HI 96793
   Phone: ___________________

   Fax: ___________________
   E-mail: ___________________

   b) LAND OWNER: Same as Above
   Mailing Address: ___________________
   Contact Person: ___________________
   Phone: ___________________

   Fax: ___________________
   E-mail: ___________________

   c) CONTRACTOR: Wailua Mulberry
   Mailing Address: 655 Kuilima Rd Haiku HI 96708
   Phone: 572-2673

   Fax: 572-2675
   E-mail: ___________________

WELL & PUMP INFORMATION: (Please fill in the diagram on the back of this form.)
2. WELL NAME: Wailua Mauka #1
   Island: Maui
   Address: Wailua Valley
   Tax Map Key: Zone: 3 Sec: 2 Plat: 13 Parcel: 15
   Attach: (a) portion of a 7.5-Minute Minutes USGS topographic map (scale 1:24,000) with well location labeled and
   (b) a property tax map, showing well location referenced to established property boundaries.

3. PROPOSED WORK: (check all that apply)
   □ Construct New Well
   □ Modify Existing Well*
   □ Abandon/Seal*
   □ Install New F
   □ Modify Pump
   
   *State Well No. ___________________
   (If unknown, please call DLNR)

4. CONSTRUCTION:
   □ Drilled □ Dug □ Shaft □ Tunnel
   Is this well part of a battery of wells? □ Yes □ No (Please describe)

5. PROPOSED PUMPING RATE: 60 gallons per minute

6. PROPOSED USE: (check all that apply)
   □ Municipal (including hotels, stores, etc.) □ Industrial
   □ Domestic (individual, noncommercial water system)
   □ Irrigation (crop) □ Other (explain):
   □ No. of Acres: 500

7. (a) PROPOSED AMOUNT OF WITHDRAWAL: 40,000 gallons per day
   (b) METHOD OF FLOW MEASUREMENT:
   □ Flowmeter □ Open-pipe □ Weir □ Orifice □ Other (explain):

OTHER LEGAL REQUIREMENTS:
8. LEGAL REQUIREMENTS: If required, these permits must be obtained before the Commission can legally issue a permit.
   Conservation District Use Permit (CDUP): To find out if a CDUP is necessary, call DLNR Land Division at 587-0414
   If Not Required, data approved.
   Environmental Impact Statement (EIS) or Environmental Assessment (EA): To determine if an EIS or EA is necessary, call OEQC at 586-4185
   If Not Required, data published in OEQC bulletin.
   Special Management Area Permit (SMAP): To determine if an SMAP is necessary: on Oahu, call 527-5374; on Hawaii, call 961-8288; for Maui county, call 270-7235; on Kauai, call 241-6877.
   If Not Required, data approved.

9. REMARKS, EXPLANATIONS:
   (If more space is needed, please attach additional sheet)

NOTE: Signing below indicates the signatories understand and swear that the information provided on this application is accurate and true to the best of their knowledge. Further, the signatories understand that approval of this application attaches the following standard conditions: 1) the proposed work is to be completed within two (2) years of the approval date; 2) the contractor shall submit to the Commission a well completion/abandonment report within 60 days after the completion date of the permitted work; 3) monthly water use data shall be submitted to the Commission; 4) such approval shall not constitute a determination of correlative water rights and shall not guarantee the pump capacity or future use up to the permitted pump capacity; 5) in the event the application is not completed correctly, any permit may be suspended until the item is brought into compliance, and any work done while the permit is in suspension may result in fines of up to $1000/day.

Well Owner: ___________________ (print legibly)
Signature: ___________________
Date: 12/02/02

Landowner: ___________________ (print legibly)
Signature: ___________________
Date: 12/02/02

Contractor: ___________________ (print legibly)
Signature: ___________________
Date: 12/02/02
10. PROPOSED WELL SECTION

(Please attach schematic if different from diagram provided below)

**Solid Casing Material:**
- Carbon Steel: compliant with (check one or more):
  - ANSI/AWWA C200
  - API Spec. 5L
  - ASTM A53
  - ASTM A129
- Stainless Steel: compliant with (check one or more):
  - ASTM A242
  - Type E
  - Type S
  - Grade B
  - Other
- ABS Plastic conforming to ASTM F480 and ASTM D1527: (check one)
  - Schedule 40
  - Schedule 80
- PVC Plastic conforming to ASTM F480 and (ASTM D1785 or ASTM D2241): (check one)
  - Schedule 40
  - Schedule 80
  - Schedule 120
- Thermoset Plastic: (check one)
  - Filament-Wound Resin Pipe conforming to ASTM D2996
  - Centrifugally Cast Resin Pipe conforming to ASTM D2997
  - Reinforced Plastic Mortar Pressure Pipe conforming to ASTM D3817
  - Glass Fiber Reinforced Resin Pressure Pipe conforming to AWWA C950
  - PTFE Fluorocarbon Tubing conforming to ASTM D3296
  - FEP Fluorocarbon Tubing conforming to ASTM D3296

**Open Casing Material:**
- Carbon Steel: compliant with (check one or more):
  - ANSI/AWWA C200
  - API Spec. 5L
  - ASTM A53
  - ASTM A129
- Stainless Steel: compliant with (check one or more):
  - ASTM A242
  - Type E
  - Type S
  - Grade B
  - Other
- ABS Plastic conforming to ASTM F480 and ASTM D1527: (check one)
  - Schedule 40
  - Schedule 80
- PVC Plastic conforming to ASTM F480 and (ASTM D1785 or ASTM D2241): (check one)
  - Schedule 40
  - Schedule 80
  - Schedule 120
- Thermoset Plastic: (check one)
  - Filament-Wound Resin Pipe conforming to ASTM D2996
  - Centrifugally Cast Resin Pipe conforming to ASTM D2997
  - Reinforced Plastic Mortar Pressure Pipe conforming to ASTM D3817
  - Glass Fiber Reinforced Resin Pressure Pipe conforming to AWWA C950
  - PTFE Fluorocarbon Tubing conforming to ASTM D3296
  - FEP Fluorocarbon Tubing conforming to ASTM D3296

*The approximate elevation must be referenced to mean sea level (msl) at the time of application filing. Final elevations of well components shall be submitted in the Well Completion/Well Abandonment reports and referenced to a benchmark which has been established by a surveyor licensed by the State.

For non-salt water basal wells - bottom elevation of well should not be deeper than 1/4 of equilizer thickness or,

Bottom Elevation of Well Limit = (Water Elevation - 41 x Water Level Elev.)

Example: Estimated = 2 ft. Water Level Elev. → Bottom Elevation of Well Limit = (2 - 41 x 2) = -18.5 ft.
QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That WAILUKU AGRIBUSINESS CO., INC., a Hawaii corporation, whose address is 255 East Waiko Road, Wailuku, Hawaii 96793, hereinafter called the "Grantor," for and in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration to Grantor paid by DON HARRIS and VALERIE DEVA, husband and wife, whose address is P. O. Box 331243, Kahului, Hawaii 96732, hereinafter called the "Grantee," the receipt whereof is hereby acknowledged, does hereby give,
KNOW ALL MEN BY THESE PRESENTS:

DON HARRIS and VALERIE DEVA, husband and wife, whose residence is in Kahului, Hawaii and whose post office address is P. O. Box 331243, Kahului, Hawaii 96732, hereinafter called the "Grantor", in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration to the Grantor paid by PATRICIA BRAGG, as Trustee of the Patricia Bragg Living Trust dated December 19, 1988, with powers to buy, sell, convey, mortgage, lease, etc. the property of said Trust, whose residence and post office address is 7340 Hollister Avenue, Santa Barbara, California 93117-2806, hereinafter called the "Grantee", the receipt of which is hereby acknowledged, does hereby remise, release and quitclaim unto the Grantee, as Tenant in Severalty (in Trust), all the property described in Exhibit "A" attached hereto and incorporated herein by reference.

AND the reversions, remainders, rents, issues and profits thereof, and all of the estate, right, title and interest of the Grantor, both at law and in equity, therein and thereto.