3.5 Hawaiian Home Land Water Rights

Hawaiian Home Lands have claims to use water under: 1) the Hawaiian Homes Commission Act, 1920, as amended; 2) Hawaii Revised Statutes Chapter 174, relating to the Molokai Irrigation System; 3) the State Water Code, H.R.S. §174C-101; 4) the common law as would apply to any landowner; and 5) Act 325, SLH 1991.

On July 2, 1991, Governor Waihee signed into law Act 325 which strengthens the ability of the Hawaiian Homes Commission to provide water on Hawaiian Home Lands by establishing affirmative duties of three state agencies including the Commission on Water Resource Management. Under Act 325, the State Water Code was amended by the addition of language to sections on: 1) the Hawaii water plan (§174C-31); 2) conditions for a water use permit (§174C-49); and 3) native Hawaiian water rights (§174C-101). In particular, §174C-101(a) was amended to include:

"Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act."

In May, 1990, oversight hearings on the Hawaiian Homes Commission Act of 1920 were held before the United States Senate Select Committee on Indian Affairs. The Attorney General's May 30, 1990, testimony at those hearings is reproduced in Appendix E to this report, and includes:

1) DHHL has water rights just like any other landowner.

2) Unlike other landowners, DHHL also has specially created statutory water rights, the most significant of which is a "first call" to water from lands owned by the State, for purposes of livestock, aquaculture, domestic, and agriculture.

3) Specifically relevant to Molokai is that DHHL has first preference to 2/3 of the water from the first phase of the Molokai Irrigation System.

5) Pursuant to Hawaii State Constitution Article XI, section 7 (1978), the State is required to assure appurtenant rights and existing correlative and riparian uses. The State has the flexibility to consider the needs of DHHL in a manner consistent with the rights of other public and private water users.

6) Hawaii's surface water is governed by appurtenant rights and by the doctrine of equitable riparian uses and rights.

   Appurtenant rights apply to kuleana lands in taro production at the time they were granted by the government (usually during the 1848-1856 Great
Mahele to the quantity of water necessary to grow taro in the same manner on the same land.

Equitable riparian uses and rights involve the rights of parcels of land adjacent to a stream to use flows of that stream consistent with the same rights of other parcels adjacent to the stream. The right to use water on land adjacent to a stream is shared with others and may not be quantifiable.

7) Hawaii's ground water is governed by the correlative rights doctrine which provides that landowners overlying a ground-water basin have a right to share in the use of the underground waters.

8) Hawaii's common law rights to use water are not based upon the western prior appropriation doctrine which imposes a "first in time, first in right" rule.

9) There is no prescription of water rights in Hawaii. Water rights cannot be lost by prior appropriation or "taken" by adverse possession.

The quantity of water needed to meet appurtenant requirements on Molokai has not been established. However, the first phase of a statewide inventory of lands with appurtenant water rights has been initiated.

Each future new diversion and use of surface water will require an amendment of the interim (or permanent) instream flow standards through a public hearing process.

The quantity of ground water to which DHHL (and other landowners) is entitled under the correlative rights doctrine has not been established.

Table 5 shows the ownership distribution of lands overlying the island's aquifer systems. Island-wide, the State owns approximately 30% of the land, including Hawaiian Home Land. Of the lands overlying the Kualapuu aquifer, approximately 22% is Hawaiian Home Land and 17% is other State land. Figure 3 shows these data for island and Kualapuu Aquifer land ownership.
Honorable Kali K. Watson, Chairman  
Department of Hawaiian Home Lands  
P.O. Box 1879  
Honolulu, HI 96805  

Dear Mr. Watson:

Petition to Amend Administrative Rule 13-171-62  
Petition for Additional Water Reservation, Waipahu-Waiawa Aquifer System

We acknowledge receipt, on December 9, 1996 and May 30, 1997, of your completed petitions to amend Administrative Rule 13-171-62 and to reserve additional ground water from the Waipahu-Waiawa Aquifer System, respectively.

We are planning to hold a joint public hearing on the petitions. However, we are in the process of re-evaluating the sustainable yield for the Waipahu-Waiawa Aquifer System, which is expected to be reduced due to the loss of return irrigation recharge from sugarcane agriculture. Commission on Water Resource Management (Commission) action on your petitions will be scheduled after the Commission has made a decision on the sustainable yield.

If you have any questions, please contact Lenore Nakama at 587-0218.

Sincerely,

RAE M. LOUI
Deputy Director

LN:ss
June 18, 1997

To: Rae Loui, Deputy Director
Commission on Water Resource Management

From: Kali Watson, Chairman
Hawaiian Homes Commission

Subject: PETITION TO AMEND HAR §13-171-62
WAIMANALO GROUNDWATER MANAGEMENT AREA, OAHU

We request to amend HAR §13-171-62 by reducing the current water reservation in the Waimanalo Aquifer System by 0.027 mgd, pursuant to the Commission's action at the June 5, 1996 meeting on our water use permit application. It is our understanding that the 0.027 mgd of potable water has been allocated to the Waipahu Well Nos. 2400-09 to 13 for use on our Waimanalo residence lots.

Thank you for your attention to this matter. If you have any questions, please call me at 586-3800 or have your staff contact Rebecca Alakai of our Planning Office at 586-3836.

Attachment
STATE OF HAWAII
COMMISSION ON WATER RESOURCE MANAGEMENT
DEPARTMENT OF LAND AND NATURAL RESOURCES

REQUEST FOR
WATER RESERVATION
for
Ground Water  □ Surface Water

Instructions: Please print in ink or type and send completed application with attachments to the Commission on Water Resource Management, P.O. Box 621, Honolulu, Hawaii 96809. For assistance, call the Regulation Branch at 587-0225.

1. APPLICANT

<table>
<thead>
<tr>
<th>Firm/Name</th>
<th>Department of Hawaiian Home Lands</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact Person</td>
<td>Rebecca Alakai</td>
</tr>
<tr>
<td>Ph.</td>
<td>586-3836</td>
</tr>
<tr>
<td>Fax.</td>
<td>586-3835</td>
</tr>
<tr>
<td>Address</td>
<td>PO Box 1879 Honolulu 96805</td>
</tr>
</tbody>
</table>

2. WATER MANAGEMENT AREA(S)

<table>
<thead>
<tr>
<th>Island:</th>
<th>Oahu</th>
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</thead>
<tbody>
<tr>
<td>Aquifer Sector(s):</td>
<td>Windward</td>
</tr>
<tr>
<td>Aquifer System(s):</td>
<td>Waimanalo</td>
</tr>
<tr>
<td>Stream(s):</td>
<td>n/a</td>
</tr>
</tbody>
</table>

3. QUANTITY OF WATER REQUESTED: 0.027 mgd gallons per day (averaged over 1 year)

4. JUSTIFICATION FOR PROPOSED RESERVATION: (Please complete Table 1 on back of application)

Is this proposed project(s) listed in the Hawaii Water Plan?  □ No  □ Yes

5. REMARKS, EXPLANATIONS:

To amend HAR 13-171-62 by reducing the current water reservation in the Waimanalo aquifer system by 0.027 mgd. This amount has been allocated to Waipahu Well Nos. 2400-09-13 for use on our Waimanalo residential lots.

Submitted by (print) Kali Watson  Title Chairman, Hawaiian Homes Comm.
Signature  Date JUN 19 1997
Honorable Kali K. Watson, Chairman  
Department of Hawaiian Home Lands  
P.O. Box 1879  
Honolulu, HI  96805  

Dear Mr. Watson:  

Petition to Amend Administrative Rule 13-171-62  
Waimanalo Ground Water Management Area, Oahu  

Thank you for submitting the subject petition in accordance with the Commission’s action on June 5, 1996, to establish WUP No. 434.  

We are planning to hold a joint public hearing on the subject petition and your petition filed on November 14, 1996, to reserve additional ground water from the Waipahu-Waiawa Aquifer System for Department of Hawaiian Home Lands’ foreseeable needs in the Waianae, Ewa, Honolulu, and Koolaupoko Districts. Our letter of December 9, 1996, outlined additional information needed to complete your petition for Waipahu-Waiawa ground water.  

If you have any questions, please contact Lenore Nakama at 587-0218.  

Sincerely,  

[Signature]  

for: RAE M. LOUI  
Deputy Director  

LN:ss
MEMORANDUM

TO: Honorable Michael D. Wilson, Chairperson
Commission on Water Resource Management
Department of Land and Natural Resources

FROM: Kali Watson, Chairman
Hawaiian Homes Commission

SUBJECT: Petition to Amend Administrative Rule 13-171-62,
Water Use Permit for Wells Nos. 2400-09 to 13,
Waipahu-Waiawa Ground Water Management Area, Oahu

November 29, 1996

In response to your letter dated October 31, 1996, (attached) we submit the following petition.

The Department of Hawaiian Home Lands (DHHL) is submitting this petition to amend Administrative Rule 13-171-62 to reduce the quantity of ground water reserved from state lands in the Waimanalo Aquifer System by 26,500 gallons per day, to offset the permitted amount.

After discussion with your staff Lenore, we request this petition be combined with our petition we filed on November 14, 1996, for Oahu islandwide reservations so public hearings can be held jointly.

Thank you for your attention to this matter.

/4209L

Attachment
Mr. Mike Crozier  
Department of Hawaiian Home Lands  
P.O. Box 1879  
Honolulu, HI 96805  

Dear Mr. Crozier:  

Approval of Water Use Permit for Well Nos. 2400-09 to 13  
Waipahu-Waiawa Ground Water Management Area, O'ahu  

In reviewing our records, we find that the captioned permit, approved June 5, 1996,  
required two actions on your part which remain undone.  

First, the Commission required the Department to submit a petition to amend  
Administrative Rule 13-171-62 to reduce the quantity of ground water reserved from state  
lands in the Waimanalo area by 0.027 mgd, to offset the permitted amount.  

Second, all permits require a water shortage plan to be submitted within 30 days.  

Please submit these two items within 30 days. If you have any questions, please call  
Charley Ice at 587-0251.  

Sincerely,  

RAE M. LOUI  
Deputy Director  

CI:fc