FIELD INSPECTION INFORMATION CHECKLIST  
(Ver 4/3/91)

PART I: USE OF WATER  
Declarant's File Reference: 608DAT KK

1. Tax Map Key where the water is used: 5 - 3 - 01 - 20. Does the declarant own this land? Yes If not, who does?

2. What is the water used for?  
   Well Not in Use
   If for irrigation, how many acres are being irrigated by crop type? N/A
   If for livestock, how many and what kind? N/A
   If for drinking, at how many houses? N/A by how many people?

3. Is the quantity of water use being measured? No  
   If yes, document the location of the measurement point and method of measurement; also get use records if these were not submitted previously.

4. If this person takes from a multi-user pipe or ditch system:
   How is the water taken from the system? N/A
   What is the capacity for taking (gpm)? N/A
   How often is it taken (used)? N/A

PART II: WATER SOURCE  
Source #: 24.53 - 02.5  
Name:  
LAT 21 34 47  LONG 157 53 49 14

1. Where does the water come from? What kind of source is this? 760' deep well

   Types of sources include:
   1) Wells (drilled, dug, tunnel)
   2) Diversions (ditch, pipe, pump, or livestock from a stream, spring, swamp, pond)
   3) Multi-source systems. (Declared use cannot be traced to a single well or diversion)

   NOTE: If a multi-user system: take from pipe or ditch (need to determine whether this is a multi-source or single-source system before the data can be input to the computer
   4) Instream (i.e., crops planted along water edge)

2. Show the source location on maps, determine latitude and longitude, and document the nature of source development by measurements, sketches, and photographs. How is the water taken? Not in Use
   What is the capacity for taking (gpm)? N/A
   How often is it taken (used)? N/A

3. Tax Map Key at the source: 5 - 3 - 01 - 20 Determine declarant's relation to source. Does the declarant:
   1) Operate and maintain the source? No  If not, who does?
   2) Own the land at the source? Yes If not, who does?
   3) Use the water from this source? No  If not, who does? Not in Use
   4) Own the land where the water is being used? No
   5) None of the above?  

4. Does any one else also use water from this source? No  
   If yes, is their use included in this user's declaration?  
   Who are the other users? Did they file?

   Note: Water sample taken from the well was tested for chloride on 7/8/93  
   7,300 ppm.

VERIFIED BY: Richard Julian Neal Path DATE: 7/16/93
Ms. Kapua Kaapu Sproat  
P.O. Box 413  
Hauula, HI 96717  

Dear Ms. Sproat:

Application for a Water Use Permit  
Kahana Ground Water Management Area, Oahu

We acknowledge receipt of your water use permit application for the Sproat Well (Well No. 3453-02), on July 14, 1993.

However, your application was not accompanied by the filing fee of $25.00. Please submit a check for $25.00 payable to the Department of Land and Natural Resources. Upon receipt of the filing fee, we will continue to process your application and will send you a copy of the public notice and any further information regarding your application status.

Regarding your conversation with Lenore Nakama on August 12, 1993, your application now requests an allocation of 10,400 gallons per day for your future irrigational needs. This estimate was based on Oahu guidelines for water requirements for selected crops and your irrigation specifications of 0.4 acres of taro (at 6,000 gallons per acre per day) and 2.0 acres of coconuts (estimated to be 4,000 gallons per acre per day - no guideline available for irrigation requirements of coconut). Please note that under §13-171-11, HAR you cannot withdraw water unless you have an approved permit from the Commission.

If you have any questions, please contact Roy Hardy at 587-0274 or Lenore Nakama at 587-0218.

Sincerely,

RAE M. LOUI  
Deputy Director

LN:fc
Schematic Plan

4'-0" Approx

Floor Line
2x6 Joist

6" Casing
WELL

W.L.
FIELD INSPECTION INFORMATION CHECKLIST

PART I: USE OF WATER

Declarant's File Reference: SPRDAT KK

1. Tax Map Key where the water is used: 5 - 3 - 02 - 20. Does the declarant own this land? YES If not, who does?

2. What is the water used for? WELL NOT IN USE
   If for irrigation, how many acres are being irrigated by crop type? N/A
   If for livestock, how many and what kind? N/A
   If for drinking, at how many houses? N/A by how many people?

3. Is the quantity of water use being measured? N/A If yes, document the location of the measurement point and method of measurement; also get use records if these were not submitted previously.

4. If this person takes from a multi-user pipe or ditch system:
   How is the water taken from the system? N/A
   What is the capacity for taking (gpm)? N/A
   How often is it taken (used)? N/A

PART II: WATER SOURCE

Source #: 2454-0705 Name: 14
Lat 21 34 41 Long 157 53 47

1. Where does the water come from / what kind of source is this? 700' DEEP WELL
   Types of sources include:
   1) Wells (drilled, dug, tunnel)
   2) Diversions (ditch, pipe, pump, or livestock from a stream, spring, swamp, pond)
   3) Multi-source systems. (Declared use cannot be traced to a single well or diversion)
   NOTE: If a multi-user system: take from pipe or ditch (need to determine whether this is a multi-source or single-source system before the data can be input to the computer
   4) Instream (i.e., crops planted along water edge)

2. Show the source location on maps, determine latitude and longitude, and document the nature of source development by measurements, sketches, and photographs. How is the water taken? N/A
   What is the capacity for taking (gpm)? N/A
   How often is it taken (used)? N/A

3. Tax Map Key at the source: 5 - 3 - 02 - 20. Determine declarant's relation to source. Does the declarant:
   1) Operate and maintain the source? N/A If not, who does?
   2) Own the land at the source? YES If not, who does?
   3) Use the water from this source? N/A If not, who does? N/A
   4) Own the land where the water is being used? N/A
   5) None of the above? If so, why did they file?

4. Does any one else also use water from this source? NO If yes, is their use included in this user's declaration? ______ Who are the other users? Did they file?

Note: Water sample taken from the well was tested for chlorine on 7/9/93
7,800 ppm!

VERIFIED BY: RICHARD JUNEAU LEON FURR DATE: 7/16/93
Y. SHIROMA
F. Ching
R. Jinnai
M. Ohye
I. Kunimura
S. Swanson

Please:
See Me
Call
Review & Comment
Take Action
Investigate & Report
Draft Reply
Acknowledge Receipt
Type Draft
Type Final
Xerox ___ copies

Remarks:
Note: The Sprout Well in
Punahou (TMK: 5-3-02:20) is
appears to fit the description
of Well #3453-02 which is
listed in the Well Registry
to KAAPU D. Mrs. Sprout is
the daughter of David Kapua the
original land owner.

Chlor. 7,800 ppm.

For your:
R. LOUI
S. Kokubun
G. MATSUMOTO
E. SAKODA

Approval
Signature
Information

Two other wells on the
property is lost and Mrs. Sprout
could not locate position as
per field inspection.
### FIELD INSPECTION INFORMATION CHECKLIST

**PART I: USE OF WATER**

#### Declarant’s File Reference:

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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</thead>
<tbody>
<tr>
<td>1. Tax Map Key where the water is used:</td>
<td>5 - 3 - 02 - 20. Does the declarant own this land? <strong>YES</strong> If not, who does?</td>
</tr>
<tr>
<td>2. What is the water used for?</td>
<td><strong>WELL NOT IN USE</strong></td>
</tr>
<tr>
<td>If for irrigation, how many acres are being irrigated by crop type?</td>
<td><strong>NA</strong></td>
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<tr>
<td>If for livestock, how many and what kind?</td>
<td><strong>NA</strong></td>
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<tr>
<td>If for drinking, at how many houses?</td>
<td><strong>NA</strong> by how many people?</td>
</tr>
<tr>
<td>3. Is the quantity of water use being measured?</td>
<td><strong>NA</strong> If yes, document the location of the measurement point and method of measurement; also get use records if these were not submitted previously.</td>
</tr>
<tr>
<td>4. If this person takes from a multi-user pipe or ditch system:</td>
<td></td>
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<tr>
<td>How is the water taken from the system?</td>
<td><strong>NA</strong></td>
</tr>
<tr>
<td>What is the capacity for taking (gpm)?</td>
<td><strong>NA</strong></td>
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<tr>
<td>How often is it taken (used)?</td>
<td><strong>NA</strong></td>
</tr>
</tbody>
</table>

**PART II: WATER SOURCE**

#### Source #: 2455-025

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>1. Where does the water come from / what kind of source is this?</td>
<td><strong>160' DEEP WELL</strong></td>
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<tr>
<td>Types of sources include:</td>
<td></td>
</tr>
<tr>
<td>1) Wells (drilled, dug, tunnel)</td>
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<tr>
<td>2) Diversions (ditch, pipe, pump, or livestock from a stream, spring, swamp, pond)</td>
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<tr>
<td>3) Multi-source systems. (Declared use cannot be traced to a single well or diversion)</td>
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<tr>
<td>NOTE: If a multi-user system: take from pipe or ditch (need to determine whether this is a multi-source or single-source system before the data can be input to the computer)</td>
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<tr>
<td>4) Instream (i.e., crops planted along water edge)</td>
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<tr>
<td>2. Show the source location on maps, determine latitude and longitude, and document the nature of source development by measurements, sketches, and photographs. How is the water taken?</td>
<td><strong>NA</strong></td>
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<tr>
<td>What is the capacity for taking (gpm)?</td>
<td><strong>NA</strong></td>
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<tr>
<td>How often is it taken (used)?</td>
<td><strong>NA</strong></td>
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<tr>
<td>3. Tax Map Key at the source:</td>
<td>5 - 3 - 02 - 20. Determine declarant’s relation to source. Does the declarant:</td>
</tr>
<tr>
<td>1) Operate and maintain the source?</td>
<td><strong>NA</strong> If not, who does?</td>
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<tr>
<td>2) Own the land at the source?</td>
<td><strong>YES</strong> If not, who does?</td>
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<tr>
<td>3) Use the water from this source?</td>
<td><strong>NA</strong> If not, who does?</td>
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<tr>
<td>4) Own the land where the water is being used?</td>
<td><strong>NA</strong></td>
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<tr>
<td>5) None of the above?</td>
<td>If so, why did they file?</td>
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<tr>
<td>4. Does any one else also use water from this source?</td>
<td><strong>NO</strong> If yes, is their use included in this user’s declaration?</td>
</tr>
<tr>
<td>Who are the other users? Did they file?</td>
<td></td>
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</tbody>
</table>

**Note:** Water sample taken from the well was tested for chloride on 7/6/93: **7,800 ppm**

**VERIFIED BY:** Richard J. Luna, Neal Pust | **DATE:** 7/16/93
4' ± C.C.

Floor

2x6 Joist

6 3/4" OP

21"

C.L. Coding

W.L

COORD 21 34 47

157 53 14
REGISTRATION OF STREAM DIVERSION WORKS
AND DECLARATION OF WATER USE

INSTRUCTIONS: Please type or print. If information is not available or not applicable, indicate as N/A. Fill out as completely as possible, sign, and mail form to the Division of Water Resource Management, P.O. Box 373, Honolulu, Hawaii 96809. Phone 548-3848 or 548-7543 for assistance.

MULTI-SOURCE SYSTEMS: For a system of two or more diversion structures, submit a single package to describe the complete system. Include a single location map (or a set of maps if required) showing all diversion structures and measurement points, and a separate copy of this form for each structure and measurement point. On forms describing diversion structures, complete parts A, B, D, and E. On forms describing measurement points, complete parts A, B, and F.

STREAM NAME: Wai'anae ISLAND: Oahu
DIVERSION STRUCTURE NAME: ________________
DIVERSION SYSTEM NAME: ____________________

A. DIVERSION WORKS OPERATOR
Firm name: Kamaka & Kapua Sprt
Contact person: ________________
Address: Box 473, Hamului Ht
Zip: 96717 Phone: ____________________

B. OWNER OF DIVERSION WORKS SITE
Firm name: ________________
Contact person: Same
Address: ____________________
Zip: ____________________ Phone: ____________________

C. STREAM DIVERSION LOCATION
Tax Map Key: 1-3-032-020 Town, Place, District: 1
Attach USGS "Quad" map (scale 1:24,000), tax map, or other map showing the diversion location.

D. STREAM DATA
Streamflow at diversion site is: ☐ Perennial (Water is always flowing) ☐ Intermittent (Channel is sometimes dry)
Is streamflow gaged? ☐ Yes ☐ No
If yes, provide gage name, and show location on map. Name: ____________________
Average flow before diversion: ___________ ☐ mgd ☐ gpm ☐ cfs

E. DIVERSION STRUCTURE DATA
Year constructed: ___________ Elevation (Above mean sea level): ___________
Diversion structure is: ☐ Concrete ☐ Wood ☐ Pipe ☐ Other (Describe): ____________________
Diverted flow is: ☐ Controlled ☐ Uncontrolled
Divertable capacity is: ___________ ☐ mgd ☐ gpm ☐ cfs
Submit an "as-built" drawing and dated photograph of the diversion works, if available.

... (continued over)

For Official Use Only:
Date received: ____________________ Date accepted: ____________________
Field checked by: ____________________ Date: 7/11/91 Latitude: 21°34'43" Hydrologic Unit: ____________________
Comments: ALEHISAN WELL Longitude: 156°53'17" State Diversion No.: ____________________

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

Location and name of measurement point (Show on location map): N/A

Water use data are recorded:  □ Continuously  □ Daily  □ Other: N/A

Method of measurement (Check box and describe below):  □ Weir  □ Rating Curve  □ Other

Description: ________________________________

Quantity of Use (Report gaged or estimated monthly water use from the diversion described on the reverse side of this form, for the calendar years 1983 through 1987):

WATER USE, IN N/A (unit of measurement)

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Typical times of usage: ________________________________

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

- □ Municipal (including resorts, hotels, businesses)
- □ Domestic (systems serving 25 people or less)
- □ Irrigation

<table>
<thead>
<tr>
<th>Category</th>
<th>Additional Information</th>
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<tbody>
<tr>
<td></td>
<td>Number of service connections: ______________</td>
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<tr>
<td>Acres Irrigated:</td>
<td>2.8 and 1/2 interest in 3.6 acres</td>
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<td>Crop(s):</td>
<td>□ Sugar □ Pineapple</td>
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<td>Other (specify): 400-pound fish, bananas</td>
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<td>Non-Crop:</td>
<td>□ Landscape □ Golf Course</td>
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<td>Method: □ Drip □ Furrow □ Sprinkler</td>
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<td>□ Cooling □ Manufacturing □ Mill</td>
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<td>Other (specify):</td>
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</table>

- □ Industrial
- □ Military
- □ Other

Location of Use (Describe the location of water use, relative to the diversion, and indicate on location map. If water is used by others, submit a list of their names and addresses):

Use at water is on my property at FK/5-3-022-020

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

Water User's Signature: Kagan B. Sprad Date: 5/8/89

Printed Name: Kagan B. Sprad Firm or Title (Division Operator etc.)
SUPPLEMENTAL DECLARATION
FOR ALL OWNERS OR USERS OF WATER

1. The following statement is in my own words and describes the basis of the evidence that allows me to lay claim to these water rights or uses: (identify type of evidence, witnesses, past use, projected use and any changes if applicable; when complete attach this form to the State of Hawaii Declaration of Water Use form that is applicable)

   My name is Kapua K. Sproat and have lived on the land described for 20 years and now the owner. I am claiming appurtenant rights & at least 100,000 gal/year/day of water. I declare that my property was used for two cultivations at a time dating back at least a hundred years that I know, whether to 1848 or later is not certain. I also claim correlative rights to the water from my well on my property. I further claim riparian rights and use of all streams and springs on my land, as well as available for use but is not currently

2. I did or √
   Commission on Water declaration of water
   from previous page

3. I declare that the Water Use are the tr
   Supplemental Declaration of
   knowledge.

Water User's Signature: Kapua K. Sproat
Printed Name: Kapua K. Sproat
Date: 6/25/89
REGISTRATION OF WELL AND DECLARATION OF WATER USE

STATE WELL NO.: __________
WELL NAME OR DESIGNATION: _______________________
SOURCE OR STATION NAME (For a battery of wells): _______________________

A. WELL OPERATOR
Firm name: _______________________
Contact person: _______________________
Address: P.O. Box 413
Hauula, HI
Zip: 96727 Phone: __________

B. OWNER OF WELL SITE
Firm name: _______________________
Contact person: _______________________
Address: P.O. Box 413
Hauula, HI
Zip: 96727 Phone: __________

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

D. WELL DATA
For Drilled Wells, submit "as-built" drawing, driller's log, and pump test results, and complete item below.
For Tunnel and Shaft, submit construction drawings, plot plan, or sketch map.

Ground elevation (mean sea level): __________ ft.
Reference point (Use to measure depth to water): _______________________
Year drilled or constructed: __________
Elevation: __________ ft.
Description: _______________________
Well contractor: _______________________
Depth to water (below reference point) __________ ft.
Casing diameter: __________ in.
Solid casing depth (below ground): __________ ft.
Perforated casing depth (below ground): __________ ft.
Total depth of well: __________ ft.
Minimum chloride in 1987: __________ ppm
Maximum recorded chloride: __________ ppm
Maximum chloride in 1987: __________ ppm

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

.... (continued over)

For Official Use Only:
Date received: __________ Date accepted: __________
Field checked by: __________ Date: __________ Latitude: __________ Hydrologic Unit: _______________________
Comments: _______________________
State Well No.: __________

References: Hawaii Revised Statutes, Chapter 174C.
Hawaii Administrative Rules, Chapters 13-167 to 13-171.
F. DECLARATION OF WATER USE

NOTE: The purpose of the Declaration of Water Use is to obtain information necessary for the management of the State's water resources. The Declaration does not confer a legal right to water or its use.

Water use data are recorded: □ Daily □ Weekly □ Monthly

Method of measurement: □ Flow Meter □ Orifice

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

WATER USE, IN GALLONS x 1000

<table>
<thead>
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</table>

Minimum day's use: ________ gallons Maximum day's use: ________ gallons

Typical times of usage: ____________________________

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

<table>
<thead>
<tr>
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<td>□ Irrigation</td>
<td>Number of service connections: ________</td>
</tr>
<tr>
<td>□ Industrial</td>
<td>Acres Irrigated: ________</td>
</tr>
<tr>
<td>□ Military</td>
<td>Crop(s): □ Sugar □ Pineapple</td>
</tr>
<tr>
<td>□ Other</td>
<td>□ Other (specify): ________</td>
</tr>
<tr>
<td></td>
<td>Non-Crop: □ Landscape □ Golf Course</td>
</tr>
<tr>
<td></td>
<td>Method: □ Drip □ Furrow □ Sprinkler</td>
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<tr>
<td></td>
<td>□ Cooling □ Manufacturing □ Mill</td>
</tr>
<tr>
<td></td>
<td>□ Other (specify): ________</td>
</tr>
<tr>
<td></td>
<td>Specify (livestock, aquaculture, etc.): ________</td>
</tr>
</tbody>
</table>

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

Water User's Signature: ____________
Printed Name: ____________
Firm or Title (Well Op.): ____________
Date: ____________
To: Richard

FROM: Yoshi Shiroma

SUBJECT: REQUEST FOR FIELD INSPECTION

RESPONSE DATE: 3/4/91

RESPONDER NAME: Kapua Spraat

TELEPHONE NO. 293-5860, km

PROPERTY ADDRESS OR TMK 5-3-02:2
5-3-03:5 Punalu'u, Oahu

FIELD INSPECTION APPT. DATE: Fri. 1:30 p.m. Mar. 22, 1991

MESSAGE: 3-declared water sources. Mrs. Spraat will meet you at 53-310 Kam Hwy. She lives across Punalu'u Beach Park. Kabuku Rd. Address is on mail box.

293-3750

Punalu'u # 2377373
ORDER:
Complete items 1 and/or 2 for additional services.
Complete items 3, and 4a & b.
Print your name and address on the reverse of this form so that we can return this card to you.
Attach this form to the front of the mailpiece, or on the back if space does not permit.
Write "Return Receipt Requested" on the mailpiece next to the article number.

1. Addresser's Address
2. Restricted Delivery
3. Article Addressed to:
   Mr. Kamaka Sproat
   P. O. Box 413
   Hauula, Hawaii 96717
4a. Article Number
   P 334 603 778
4b. Service Type
   □ Registered
   □ Certified
   □ Insured
   □ COD
   □ Express Mail
   □ Return Receipt for Merchandise
5. Signature (Addressee)
   Kapua Sproat
6. Signature (Agent)
7. Date of Delivery
   3/4/91
8. Addressee's Address (Only if requested and fee is paid)

I also wish to receive the following services (for an extra fee):
1. □ Addresser's Address
2. □ Restricted Delivery
   Consult postmaster for fee.

DOMESTIC RETURN RECEIPT

PS Form 3811, October 1990 ♦ U.S. GPO: 1990-273-861
Print your name, address and ZIP Code here

COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. Box 621
Honolulu, Hawaii 96809
February 27, 1991

Mr. Kamaka Sproat
P. O. Box 413
Hauula, Hawaii 96717

Dear Mr. Sproat:

Field Verification of Declared Water Use

This is a follow-up of the August 3, 1990 letter requesting verification of registered water sources and declared water uses filed for the parcel(s) of land located in Zone 5, Koolaupoko, Oahu.

The letter requested a contact person(s) name and telephone number to arrange an appointment with the Water Commission staff for a field inspection. Perhaps because of an oversight, to date we have not received a response from you.

Chapter 174C, Section 174C-27, Administrative Rules of the State Water Code requires that the Commission staff confirm the use declared is reasonable, beneficial use. Failure of the Commission staff to verify your registered water source and declared water use may result in the denial of your application for issuance of a certificate by the Commission.

Consequently it is important that you contact the Commission staff at 548-7543 for a field verification appointment by March 15, 1991. When calling us please identify yourself by referring to the FILE REFERENCE listed on the top right corner of the letter. Our office hours are 7:30 am to 4:30 pm, Monday through Friday.

Should you have any questions concerning the above matter, we will be happy to assist you.

Sincerely,

MANABU TAGOMORI
Deputy Director
COMMISSION ON WATER RESOURCES MANAGEMENT  
STATE OF HAWAII  

In the Matter of Petitioner)  

Petition requesting additional time to file declaration; (Pursuant to Rule 13-167-26) "Category two" or "Category Three" Declarant Now also Asserting a Consumptive Use, (Petitioner Unable to Measure Water Flow or Verify Point of Diversion or Withdrawal)  

Kapua K. Sproat  

COMES NOW ABOVE NAMED DECLARANT THROUGH HIS OR HER AUTHORIZED AGENT, NATIVE HAWAIIAN ADVISORY COUNCIL, INC., IN ORDER TO REQUEST ADDITIONAL TIME TO COMPLETE DECLARATION OF (CONSUMPTIVE) WATER USE.  

Native Hawaiian Advisory Council, Inc., agent of record for petitioner, asserts, either from the original declaration or based on new information elicited from the petitioner, that the petitioner has a valid "consumptive use" and therefore should be placed in the Commission's designated "category one." Petitioner seeks additional time to prove this use and asserts that any consumptive use should be deemed an "open" file until the process of verification is complete. Agent for petitioners also requests to be informed two weeks in advance if the Commission or its staff intends to inspect site of petitioner's declaration. Agent for petitioner will, in timely fashion, attempt to verify or measure the flow or consumption of water by petitioner. These statements are not, however, to be deemed a waiver of the position taken by petitioner that non-consumptive uses and inchoate rights (see attached blue and pink footnotes) are valid uses within the meaning of that term.  

Declarant further states that if the Petitioner is not placed in the category of "Category two or three but contacted and has consumptive use" (yellow)
COMMISSION ON WATER RESOURCES MANAGEMENT
STATE OF HAWAII

In Matter of Petitioner

KAPUA K. SPROAT

Petition Seeking Declaration of Petitioner's Use (Inchoate Riparian or Correlative Rights, Appurtenant Rights and Uses and Future Uses under Section 26 of the State Water Code and Certification under Section 27 of the State Water Code;

COMES NOW ABOVE NAMED DECLARANT THROUGH HIS OR HER AUTHORIZED AGENT, NATIVE HAWAIIAN ADVISORY COUNCIL, INC., IN ORDER TO REQUEST THAT PETITIONER'S USE BE DECLARED UNDER SECTION 26 AND CERTIFIED UNDER SECTION 27 OF THE STATE WATER CODE.

The agent for the declarant, Native Hawaiian Advisory Council, Inc., is authorized to represent the petitioner in these proceedings based on documents previously filed.

Petitioner and its agent requests that the rule requiring triplicate filings of documents with the chairperson (Rule 13-167-25(c)) be waived as to this petition. This is consistent with earlier determinations made by the Commission as to declarations.

DATED: OCTOBER 15, 1990, HONOLULU, HAWAII.

PETITIONER THROUGH HIS OR HER AUTHORIZED AGENT, NATIVE HAWAIIAN ADVISORY COUNCIL, INC.

BY AND FOR NATIVE HAWAIIAN ADVISORY COUNCIL, INC. BY WILLIAMSON B.C. CHANG, ESQUIRE, ITS LEGAL SERVICE DIRECTOR AND ELIZABETH MARTIN, ITS WATER CLAIMS MANAGER.

"CATEGORY THREE" (PINK)
NATIVE HAWAIIAN ADVISORY COUNCIL, INC., a non-profit corporation

TO: STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P. O. BOX 373
HONOLULU, HAWAII 96809

DATE: 10/07/90

RE: WC REF #: SPROAT K&K CATEGORIES: 3 NHAC FILE NO. 0125-1

ADDENDUM TO DECLARATION OF WATER USE FOR REGISTRATION OF: X STREAM WELL SPRING

DECLARANT: Sproat, Kapua K.
Cross Reference: CR File #:

WATER SOURCE: Wai Ono Stream SOURCE CODE:

SYSTEM #1: Stream DIVERSION TMK #1: 1-5-3-002-020
OWNER: Sproat, Kamaka & Kapua OPERATOR: Sproat, Kamaka & Kapua
SYSTEM #2: DIVERSION TMK #2: 1-5-3-003-005

USE LOCATION: Punaluu TMK#:
LANDOWNER:

USE #1: Irrigation ACRES IRRIGATED:
CROP #1:
USE #2: ACRES IRRIGATED:
CROP #2:
USE #3: ACRES IRRIGATED:
CROP #3:
USE #4: ACRES IRRIGATED:
CROP #4:
USE EXISTED IN 5/88: No USE TIMES: Future TOTAL ACREAGE:
DIVERTABLE/PUMP CAPACITY: USE QUANTITY: NUMBER DRINKING:
OTHER USERS:

MAILING Kapua K. Sproat PHONE:
INFO: P.O. Box 413
Hauula, Hawaii 96717

CONTACT: Sproat, Kamaka
NHAC CONTACT: NWH
DECLARATION NEEDS: #1: #2: #3: #4:

* * * * * * * * * * * * * * * * * * * * * * * * * * * * * *
This addendum also consists of:

----- Addendum Statement
----- Request to Certify Category 2 (Instream ) Uses
----- Request to Certify & Acknowledge Category 3 Inchoate Uses & Rights
----- Tax Maps
----- Topographical Maps
----- Other Maps or Sketches
----- State Water Use Declaration Form
----- Supplemental Declaration Form
----- Other Information

Executive Centre, Suite 1204, 1088 Bishop Street, Honolulu, Hawaii 96813, (808) 523-1445
TO: STATE OF HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P. O. BOX 373
HONOLULU, HAWAII 96809

DATE: 10/07/90

RE: WC REF #: SPROAT K&K CATEGORIES: 3 NHAC FILE NO. 0125-2

ADDENDUM TO DECLARATION OF WATER USE
FOR REGISTRATION OF: STREAM X WELL SPRING

DECLARANT: Sproat, Kapua K.

WATER SOURCE: Well

SYSTEM #1: Well
OWNER: Sproat, Kamaka & Kapua

SYSTEM #2:

USE LOCATION: Punaluu
LANDOWNER:

USE #1: Irrigation CROP #1: ACRES IRRIGATED:
USE #2: CROP #2: ACRES IRRIGATED:
USE #3: CROP #3: ACRES IRRIGATED:
USE #4: CROP #4: ACRES IRRIGATED:

USE EXISTED IN 5/88: No
USE TIMES: Future
DIVERTABLE/PUMP CAPACITY:
TOTAL ACREAGE:

OTHER USERS:

MAILING INFO: P.O. Box 413
Kapua K. Sproat
Hauula, Hawaii 96717

CONTACT: Sproat, Kamaka

NHAC CONTACT: NWH
DECLARATION NEEDS: #1: #2: #3: #4:

* * * * * * * * * * * * * * * * * * * * * * * * * *
This addendum also consists of:

Addendum Statement
Request to Certify Category 2 (Instream) Uses
Request to Certify & Acknowledge Category 3 Inchoate Uses & Rights
Tax Maps
Topographical Maps
Other Maps or Sketches
State Water Use Declaration Form
Supplemental Declaration Form
Other Information
THIS DECLARANT, THROUGH HIS OR HER AGENT, RESERVES THE RIGHT TO SUBMIT ADDITIONAL INFORMATION AFTER OCTOBER 9TH AND 15TH.

In light of procedural irregularities, misleading statements and the failure to apply the requirements of the rules promulgated under the state water code, this declarant asserts that the commission is estopped from denying verification or certification of these uses. First, the Commission, and/or its staff allegedly failed to comply with the requirements of public notice as set forth in Rule 13-168-5(b). Moreover, the state, while claiming to have notified more than 1000 water users by mail, failed to mail notice to clients represented by NHAC whose wells or other uses were known to state or county agencies.

Second, Native Hawaiians, whose rights are specifically preserved in the constitution and various provisions of the code,

1. That rule provides as follows:

"The commission shall cause notice of the rules to be published on three separate days in a newspaper of general circulation statewide and in a newspaper of areawide or countywide circulation."

The state has informally admitted the failure to comply with this requirement. See Honolulu Advertiser, "Water Users Must Report or Lose Rights," "State water official Dan Lum conceded that a newspaper campaign--consisting of obscure, small print legal notices, was not adequate."

2. Id. See Advertiser article.

3. NHAC has a record of declarants who did not receive mailed notice. Rule 13-168-5 requires mailed notice to persons the commissions should know needs to declare. The 1000 or so parties notified, undoubtedly were the "large" water users. During May of 1989, one person from Kona complained to NHAC that a meeting was held to inform large water users of the declaration requirement (with no similar meeting for smaller users) as early as one year prior to the May 1989 deadline. The fact that almost no NHAC declarants, many whose uses were known to the state, did not receive any of the 1000 mailed notices, seems to confirm this unequal treatment.

4. The water code protects Native Hawaiian rights by defining these rights as an "instream use" by definition (see paragraph nine of HRS 174C-3) and more directly in HRS 174C-101 "Native Hawaiian water rights." Moreover, the state constitution also requires particular protection for traditional Hawaiian rights. See Article XII, Section 7:
Addendum to declaration:  
Violations of Process

were led to believe that the declaration process was a "survey" not imposed by law.

Third, there was an aura of procedural confusion around the declaration process including uncertainty as to the date required for filing, the necessity of notarizing declarations, the number

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

5. A statement to this effect was distributed at a meeting of Native Hawaiians at a meeting on Molokai in April of 1989. Unlike a "survey," the consequences of failure to declare would, of course, have been severe to Native Hawaiians seeking to protect their rights. If no declaration is filed, the commission may "conclusively" determine the extent of uses... . See Rule 13-168-5 (d). These determinations would be the basis for resolving all rights and claims, including appurtenant rights, riparian and correlative uses. See Rule 13-168-6 (a). Thus, representations made to Hawaiians that Hawaiian rights would not be adjudicated or affected and thus were still reserved to them under Section 101, amounted to imprudent legal advice.

Although the advice was somewhat puzzling, state officials eventually urged both registration and non-action in reliance on the code. See "Hawaiians warned to file water-use claims," Becky Ashizawa, Honolulu Star Bulletin, May 10, 1989; "Tagamori said that the water code does assure those rights even for those who don't file but as a safeguard he advises Hawaiian farmers to do so."

Many Hawaiians refrained or resisted declaration based on these representations. See "Hawaiians warned to file water-use claims," Becky Ashizawa, Honolulu Star Bulletin, May 10, 1989 (describing Keoki Fukumitsu who refused to register his water used to irrigate a taro lo'i on grounds that he had 'well documented' kuleana rights)

6. The rules provide that the declarations must be filed one year from the "effective" date of the rules. See Rule 13-168-5 (a), that rule, Rule 13-168-5, was signed by the Governor on May 16, 1988 and received in the office of the Lieutenant Governor on May 17, 1988. The effective date of the particular chapter in question, 13-168 is deemed to be ten days after filing with the Lieutenant Governor. ("The adoption of chapter 13-168 shall take effect ten days after filing with the Office of the Lieutenant Governor.") However, May 27, 1989 fell on a Saturday. At
Addendum to declaration:
Violations of Process

of copies to be filed,\(^8\) and the necessity of the information requested,\(^9\) often irrelevant to the particular declarant, or beyond

different times during the spring of 1989, the staff used different dates for the deadline. The commission did not rule on this matter until the week before the deadline.

Oddly enough one public notice promulgated by the commission in March even stated that the deadline was May 28 (a Sunday) (See also the article in the Maui News, May 23, 1990 "Water Mahele: State Registering stream, well users" wherein the author states "The state Department of Land and Natural Resources (DLNR) also said the May 28 registration--..."

Newspaper articles and other documents generally referred to the 27th as the appropriate deadline even though state offices would clearly be closed that day. (see Advertiser Editorial of May 15, 1990 "Water Deadline") or the 28th (see Advertiser article, "Water Users Must Report or Lose Rights," by Andy Yamaguchi).

Finally, the commission determined, since Monday May 29th, the first weekday after the 27th, was Memorial Day, that the deadline would be May 30, 1990. See public notice promulgated by the commission: "Attention: Owners or Operators of Existing Wells and Existing Stream Diversions."

The title of one article was an apt depiction of the confusion: "Water rights registration is murky; if you're in doubt, file" -- Kimie Lane, Maui News May 23, 1990: "One source of confusion was eliminated last week when the Commission on Water Resources set a new filing deadline of May 30. Before that, the deadline was May 28, which was Sunday, in the middle of the long Memorial Day weekend."

7. See Rule 13-168-5 (c):

"Each declaration shall contain a statement, signed and sworn to by the person required to file the declaration,..."

8. Rule 13-167-25 (c) states:

"Unless otherwise specifically provided by a particular rule or order of the commission, an original and three copies of all papers shall be filed."

9. The forms required or suggested (without detailing the consequences of failure to comply) attaching a USGS map (one set costs approximately $400.00), naming the pump or stream diversion operator, and providing, on a monthly basis, measurements of flow for the five years prior to 1988.
Addendum to declaration:

Violations of Process

the means of the individual to determine. The forms prepared by the staff also limited the uses that may be declared. The forms provided only for registering wells, as groundwater uses and stream diversions for municipal, industrial, military irrigation, domestic or other (but not non-consumptive) purposes, as instream uses.

Fourth, the commission has not, and will not, until December of 1990, notify declarants of the consequences accorded the information declared. Generally, the staff has been unable, or reluctant, to assist declarants and their agents in the process of preparing the forms.

10. The forms suggested that stream diversion declarants report the "method" of measurement, including the use of "weir" gauges or "rating flumes". This equipment is far beyond the means of small farmers. It was not clear whether more unsophisticated methods, such as "floating orange" would be acceptable.

11. In one form, the state provided for both declaration and the "registration of wells," a requirement derived from a part of the code wholly unrelated to section 26 (declaration). In the other, the state provided a form for declaration and "stream diversion," another requirement wholly unrelated to declaration. In combining forms in this manner, the commission limited the rights of persons seeking to declare by requiring that uses also qualify for well registration or stream diversion permits. Absent any indication of this interpretation in the code, the limited interpretation given certification through the combination of forms constitutes rulemaking without the requisite public notice or public hearing.

12. For example, there is no indication that failure to provide the name of the "stream diversion operator" will not have adverse consequences to the declarant. It is inequitable and a violation of due process to require applicants to comply with rules wherein the declarant has no advance knowledge of the consequences of the failure to comply.

13. Declarants received one version of the deficiencies in their declaration, a more detailed description than the brief references in the "book" of all declarants made available to agents of record such as NHAC. Lacking such necessary details, NHAC has been severely hampered in assisting its declarants.

Moreover, the staff has forbidden the photocopying of the declarations of other parties (while allowing visual examination and note-taking of the same declarations) on the grounds of "confidentiality." Denying declarants and their agents the right to photocopy such other declarations, in the absence of a legal
Addendum to declaration:
Violations of Process

Finally, the rules and forms failed to require the declarants to provide an address or telephone number.\textsuperscript{14} Thus a number of declarations filed in timely fashion in May 1989 have been sequestered in a "dead letter" file. The staff has not provided ready access to this file. Thus, declarants who complied in every respect with the rules and the forms will not be certified through no fault of their own.\textsuperscript{15} Thus, the commission is estopped from adverse action on forms in this category.

HENCE THIS DECLARANT AND ITS AGENT IN FILING, NATIVE HAWAIIAN ADVISORY COUNCIL, INC., submits this declaration subject to the above claimed violations of due process, equity and compliance with the statutory requirements of the Hawaii Administrative Procedures Act.

\textsuperscript{14} The rule required the forms to request only the following information:

(c) Declarations by the user shall be made on forms provided by the commission and shall contain information including, but not limited to, the location of the water sources and all usage related facts, or information within his knowledge or possession. The user shall include a declaration of the manner, purposes, time in which the water source is being used and operated, the rate and volume of water being withdrawn or diverted therefrom, and the method or means of measuring and controlling the water taken or used. Each declaration shall contain a statement, signed and sworn to by the person required to file the declaration, or by some other person duly authorized in the other person's behalf, to the effect that the contents thereof are true to the best of the person's knowledge and belief.

\textsuperscript{15} As such, some declarants have not been contacted by the commission and their files will be deemed incomplete and denied. Thus, even though a declarant might have provided all information exactly as demanded by the forms, a declaration may be denied simply for failure to locate the declarant.
SUPPLEMENTAL STATEMENT SUPPORTING THE CERTIFICATION OF INCHOATE APPURTENANT, RIPARIAN AND CORRELATIVE RIGHTS

The commission's position is that non-existing riparian and correlative uses1 (wherein the declarant cannot prove use as of May 19882) and inchoate appurtenant rights are not appropriate for certification. These claims have been placed in category three. This statement presents evidence that the commission's position is in error.

First, the legislative intent is clear that non-existing claims of appurtenant rights, even if there is no existing use, must be certified.3 The commission's own rules,4 the state

1. See statement dated March 1st, titled AMENDED RECOMMENDATION PERTAINING TO DECLARATION OF WATER USE AS APPROVED BY THE COMMISSION ON WATER RESOURCE MANAGEMENT AT ITS MEETING OF FEBRUARY 28, 1990 (dated March 1, 1990) (see paragraph (A), page two under the heading "Action on Category 3 Declarations (820 Declarants)") stating:

"As to any declaration proposing a certification of legal rights as such, declarants are permitted 180 days from the date of notice of this action to amend their declarations to state and document any actual existing use they may have within the meaning of the statute and the commission."

2. See statement dated March 1st, titled AMENDED RECOMMENDATION PERTAINING TO DECLARATION OF WATER USE AS APPROVED BY THE COMMISSION ON WATER RESOURCE MANAGEMENT AT ITS MEETING OF FEBRUARY 28, 1990 (dated March 1, 1990) (see paragraph three, page two under the heading "Action on Category 3 Declarations (820 Declarants)") stating:

"The Commission also advises, however, that persons who declared that they are not presently using existing wells, stream diversions, and spring sources are to be notified that their sources will be registered under other sections of HRS 174C as unused existing sources."

3. Section 7 of Article XII of the State Constitution, requires that appurtenant rights (even if not in use) must be "assured."
"The legislature shall provide for a water resources agency which, as provided by law, shall set overall water conservation, quality and use policies;...while assuring appurtenant rights and existing correlative and riparian uses and establish procedures for regulating all uses of Hawaii's water resources." (emphasis added)

The choice of the term "right" was deliberate, since only riparian and correlative "uses" (indicating exercise of the right) are accorded such protection in the constitution.

4. See Rule 13-171-27:

"Appurtenant Rights. Appurtenant rights are preserved. Nothing in this part shall be construed to deny the exercise of an appurtenant right by the holder thereof at any time. A permit for water use based on an existing appurtenant shall be issued upon application. Such a permit shall be subject to sections 13-168-5 (declaration), 13-168-6 (certification) 13-171-12 (application for new and existing water use permits) 13-171-25 (transfer of water use permits) 13-171-26 (contested cases) and subchapters 4 (Principles of water shortage declaration) and 5 (Declaration of water emergency)" (parenthetical and emphasis added)

The language above, "Such a permit shall be subject to sections..." can have only one meaning. Since the constitution requires that appurtenant rights (whether or not presently put to use) must be assured, this language clearly intends that appurtenant rights are not to be diminished or distinguished by declaration or certification (the procedure at issue here) or even the most compelling of circumstances: the declaration of a water emergency and water shortage.

The commission and staff, by designating appurtenant rights within category three, arguably claim that such rights will be protected at some future date when they are asserted by the claimholder. However, unless the water duty is properly allocated to these rights at the present time, certification proceedings for neighboring rights will prejudice the future exercise of appurtenant rights.

5. See note 3, supra.

6. See HRS 174C-63 Appurtenant Rights:

"Appurtenant rights are preserved. Nothing in this part shall be construed to deny the exercise of an appurtenant right by the holder thereof at any time. A permit for water use based on an existing appurtenant right shall be
section 27 require that inchoate appurtenant rights be certified. Without such certification (preceded by the allocation of the proper measurement of water to the asserted acreage) such appurtenant rights cannot be protected as required by the state constitution, the water code and commission rule.

In light of testimony of this nature at its February 28, 1990 meeting, the commission deferred denying inchoate appurtenant rights certification until a staff inventory of statewide appurtenant rights has been completed. In light of this decision, issued upon application. Such permit shall be subject to sections 174C-27 and 174C-58 to -62." (emphasis added).

If "nothing" is to "deny" the exercise of an appurtenant right, at "any time" (including in the future) such rights must be certified, so that they are of record at the time any certification proceeding affecting such rights is commenced. Under the holding of the Hawaii Supreme Court in Reppun v. Board of Water Supply, 65 Hawaii 531 (1982), appurtenant rights "run" with the land and cannot be lost, even by successors in interest to such parcels, unless there is an intent to extinguish such right by deed. ("We agree that the rule posited in McBryde prevents the effective severance or transfer of appurtenant water rights [by sale]. This position is consistent with the general rule that appurtenant easements attach to the land and cannot exist or be utilized apart from the dominant estate" 65 Hawaii at 551-552 (1982)) (emphasis added).

7. HRS 174C-27 indicates the importance of declaring and certifying inchoate appurtenant rights since certification of neighboring uses will adversely affect such rights, effectively denying the protection promised by the state constitution. The procedure in section 27 indicates that this may occur:

"With respect to certificates for water use, the confirmed usage shall be recognized by the commission in resolving claims relating to existing water rights and uses, including appurtenant rights, riparian and correlative uses."

8. "... appurtenant rights are rights to the use of water utilized by parcels of land at the time of their original conversion into fee simple land." Reppun v. Board of Water Supply, 65 Hawaii 531, 551 (1982)

9. On March 1, the Commission issued the following decision regarding declaration of appurtenant rights:
Inchoate Appurtenant, Riparian and Correlative Rights
Supplemental Statement

It is clear that the commission must accept declarations based on appurtenant rights, whether or not presently in use.

Second, the commission has indicated it will certify only "existing" uses. The staff and the commission have taken the unwarranted position that "existing" is limited to uses that could be measured as of May 1988. However, there is no statutory support for this position. The water code does not specify any

"The question of whether appurtenant rights which are not currently being exercised shall be considered a use under this section [section 26] is reserved for further determination. The Commission staff is directed to initiate a survey of appurtenant rights. The staff shall prepare a proposal of how this survey should be conducted and present it to the Commission for its approval."

See statement dated March 1st, titled AMENDED RECOMMENDATION PERTAINING TO DECLARATION OF WATER USE AS APPROVED BY THE COMMISSION ON WATER RESOURCE MANAGEMENT AT ITS MEETING OF FEBRUARY 28, 1990 (dated March 1, 1990) (see paragraph (c), page two under the heading "Action on Category 3 Declarations (820 Declarants") stating:

10. The commission has indicated that it will act favorably only as to declarants who seek to declare existing uses which were actually in use as of May 1988. See statement of William W. Paty, Chairman, CWRM "AMENDED DECLARATION PERTAINING TO DECLARATION OF WATER USE AS APPROVED BY THE COMMISSION ON WATER RESOURCE MANAGEMENT AT ITS MEETING OF FEBRUARY 28, 1990":

"Declarations are incomplete if they do not provide the necessary information. Most declarations can be made complete by answering the following questions for each form which was submitted:

*Is the water actually being used (as of May 1988)?..."

11 Rather, the commission should consider the definition of "existing" a policy decision left to its wisdom. Since it is the statute itself which governs the obligations and scope of declaration, the commission must find within the four corners of the water code support for its position that May 1988 is the governing date. Nowhere does the commission point out the statutory basis for this conclusion.

Rather, section 26 (requiring declaration) simply states that declarations must be made one year after the regulations have
Inchoate Appurtenant, Riparian and Correlative Rights
Supplemental Statement

particular magic "date" on which a "snapshot" of the water uses in
the state will govern certification. 12

From a logical point of view, allowing a single twenty-four
hour period, two years in the past, to be determinative of use, is
absurd. All hydrologists recognize that measurements on any one
day have little logical relationship with the meaningful
quantification of flow. 13 The commission should propose a more
representative means of measuring use. Thus, administrative action
placing declarants in "category three" on the basis of the lack of
a use, as of May 1988 (particularly when there is an alleged
history of use—even intermittent use) is violative of due process
as arbitrary and capricious.

Finally, the commission has ruled that proposed riparian and
correlative rights, not in use as of May 1988, will not be
certified. The staff's characterization of these proposed uses as
non-certifiable "future" uses ignores the possibility that

become final. This language governs the date for filing
declarations, not the date on which a "use" must exist in order to
be certified.

Second, an "existing use" refers to a use that must currently
exist. It is contradictory, as of October 1990, to speak of
"existing uses" in terms referring to May 1988." These are "prior
uses." An existing use is one that is presently occurring.

12. Certainly this would not be considered the proper means of
measuring uses (or rights) for the purposes of drafting the water
plan. Neither is it sensible for certification. As argued infra,
since the water plan contains no mechanism for enforcement of its
objectives, certification should be viewed as the process for
implementing long range planning goals. Viewed in this light,
certification should encompass an inventory of likely, future uses.

13. Rainfall in May of 1988 may have been unusually low, due
to a severe drought. Or, on that date, pumps, valves or gates may
have been shut down for a variety of reason, wholly unrelated to
the objectives of declaration and certification. Moreover, if
there was a heavy storm during May 1988, flows would have been
abnormally high resulting in exaggerated uses leading to misleading
certification of use. During a non-storm period, the clash of
exaggerated claims would exhaust the waters available. As a random
and arbitrary choice, singling out a single date, instead of
averaging use over a more representative period of time, (including
dry as well as wet phases of the water cycle) is inconsistent with
modern hydrology.
Inchoate Appurtenant, Riparian and Correlative Rights
Supplemental Statement

Claimants may have been prevented from executing these uses at the appropriate date of measurement through no fault of their own. For example, one NHAC declarant stated that a stream no longer ran along her property subsequent to the state's construction of a dam upstream. Thus, although she has no existing riparian use, she had a valid riparian right that may have been unlawfully terminated. Unless allowed to declare, she will not be afforded the right to prove her case. Worse, she will not receive notice when upstream users, who may be violating her common law rights, petition for certification.

While the staff has indicated these "rights" claims are not appropriate for certification, to refuse certification of her riparian right effectively terminates her ability to protect the certification of a use that is properly hers. Since there are no commission rules requiring notification of affected landowners, denying the certification of these inchoate rights is, as mentioned

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14. See ADDITIONAL INFORMATION TO BE SUBMITTED TO AMEND DECLARATIONS OF WATER USE (dated March 21, 1990) (signed by William W. Paty, Chairperson) (paragraph one, under the heading "Additional Information from Category 3 Declarants"): "Category 3 declarations describe something other than an existing use as of May 1988. These include claims for water rights, proposed future developments, and registration of existing but unused wells and diversions. The State Water Codes's certificate of use process does not certify legal rights as such, proposed future uses or unused existing sources."

15. The very use of the terms, "correlative" and "riparian" in section 27 creates the obligation to apply those terms as understood under Hawaii common law. The common law, particularly Reppun v. Board of Water Supply, 65 Hawaii 531 (1982) and City Mill v. Board of Water Supply, 30 Hawaii 912 (1929) are the present law of the state. These cases firmly hold that unexercised riparian and correlative rights are not extinguished by failure of use. The specific choice of these terms in section 27 further strengthens the logic that a certification proceeding, which conceivably draws in many parties sharing a stream or an aquifer, would result in a meaningless exercise if these rights were not taken into account. If left unaccounted for in such a proceeding, any certification decree would be subject to later collateral attack on the basis of unexercised correlative or riparian rights.
Inchoate Appurtenant, Riparian and Correlative Rights
Supplemental Statement

earlier, to deny effective notice as to actions affecting a
property right."16

Furthermore, since the statutory requirements for notice
under section 26 were allegedly not met,17 the commission is
estopped from denying declaration and certification to those who
would have, had they been timely informed of the importance of
declaration, acquired the proper permits to put into use water on
their property.18

16 If certification is intended to determine the amounts that
will be conclusive in resolving claims, parties who do not receive
verified declarations will be denied their day in court. Particularly, they will be denied the right to challenge the
legality of "uses" asserted by neighbors with whom there may be
conflicting claims. By failing to verify these inchoate
declarations of rights, the Commission may be violating the
property rights of the parties.

17. State officials have admitted publicly that the
requirements of rule 13-168-5 "Declaration of Water Use" were not
met. That section requires: "...The commission shall cause notice
of the rules to be published on three separate days in a newspaper
of general circulation statewide and in a newspaper of areawide or
countywide circulation. The commission shall also cause notice of
the rules to be given by mail to any person required to file of
whom the commission has or could readily obtain knowledge or who
has requested mailed notice to be given when the commission adopts
rules requiring the filing of declarations." In an article in
the Honolulu Advertiser, "Water Users Must Report or Lose Rights,"
"State water official Dan Lum conceded that a newspaper campaign--
consisting of obscure, small print legal notices, was not
adequate."

Of the 800 declarants represented by Native Hawaiian Advisory
Council, Inc., only a handful reported that they received mailed
notice. Many of these declarants, particularly those with wells,
were already registered with the state. These were persons whom
the state could readily have obtained knowledge that these users
should have registered. Thus, noticed should have been mailed to
these parties.

18. There are difficult questions to resolve in determining what
constitutes an "existing use." Persons may have held valid permits
for well construction, but due to no fault of their own, been
unable to commence actual use of the water as of May 1988. Thus,
the issue of existing use must be taken on a case by case basis.
It is inequitable to deny certification to a farmer who would have
been withdrawing water, with the proper permits, had he or she
received timely notice.
Inchoate Appurtenant, Riparian and Correlative Rights
Supplemental Statement

There is no reason to assume that "use" refers to "prior" uses. The logic of certification -- the inventory of uses and rights in order to resolve water conflicts serves planning as well as adjudicatory objectives. The planning ramifications of certification are increasingly evident since the limitations set by the forthcoming state water plan have no "teeth." Although limits on withdrawal may be set for valid health or hydrologic reasons, the water plan cannot be enforced since the goals and limits of the plan are not legal restrictions on permitting.

Thus, certification of future uses, based on riparian and correlative rights, will be the only method by which the commission can "reserve" water for high-priority uses that are certain to occur in the future. For example, if water needs for the Ewa plain are foreseeaable in light of current general plans, the certification process, wherein claimants with no present uses are allowed to reserve water, is the only mechanism for effectively providing for known future needs.

The state water plan was originally intended to serve the function of "reserving" water for future needs. However, the connection between planning and permitting that existed in the earlier drafts, based on the Model Water Code, was eliminated when the code was passed.

In conclusion, the commission has bound itself to accept declarations of appurtenant rights, even if presently unexercised. The proper assessment of inchoate riparian and correlative rights are essential if the water commission is to truly "manage" water for future generations. Thus, these rights should be examined on a case by case basis. They should not be summarily denied as presently suggested by the staff.

FOR THE REASONS STATED ABOVE DECLARANT HEREFIN SUBMITS THE ASSERTED INCHOATE APPURTENANT, RIPARIAN OR CORRELATIVE RIGHT OR RIGHTS AS APPROPRIATE FOR CERTIFICATION.

Unfortunately, the large number of applications for well construction permits in the months before May 1989, corroborate community sentiment that large water users were given advance notice, while small users, on the other hand, were informed only a few weeks before the day of reckoning.
April 18, 1990

Mr. Kamaka Sproat
P.O. Box 413
Hauula, HI 96717

Dear Mr. Sproat:

Notice to Declarants of Water Use

Enclosed is a copy of amended recommendations regarding declarations of water use which were adopted by the Commission on Water Resource Management at its special meeting on February 28, 1990. These recommendations replace the earlier staff recommendations which were a part of the submittal mailed to all declarants last December.

There is now a 180 day deadline in effect to amend declarations which describe instream uses (Category 2), no existing use (Category 3), or which are incomplete (Category 4). This deadline does not affect declarations which have been accepted as being reasonably complete and describing an actual existing use (Category 1). The commission staff will verify the Category 1 uses and conduct other activities necessary to issue certificates of water use.

Our records currently show that your declaration(s) have been placed in Category 3. Category 3 refers to unused existing sources, proposed future uses, or claims for water rights. Your declaration(s) were summarized as containing the following:

Unused source; rights claim.

The deadline for you to amend your declaration(s) is October 15, 1990. You are required to do this only if you have an actual existing use (as of May 1988) which we placed in Category 3 because it was not properly declared. The enclosed sheet dated March 21 (Enclosure #2) describes the overall treatment for Category 3 declarants, some of which will affect you. If you write to us, clearly indicate that it is regard to file reference SPROAT K&K, Oahu, which has been assigned to you.
April 18, 1990

If you have questions regarding additional information to amend your declaration, please phone the commission staff in Honolulu at 548-2316 or 548-3948. Neighbor island residents can reach these and other state government numbers toll-free through the government switchboard at 1-800-468-4644.

Sincerely,

[Signature]

MANABU TAGOMORI
Deputy Director

Encls.:
(1) Amended Recommendations
(2) Additional Information Sheet
December 29, 1989

Mr. Kamaka Sproat
P.O. Box 413
Hauula, HI 96717

Dear Mr. Sproat:

Notice to Declarants of Water Use

The Commission on Water Resource Management held a special meeting on November 29, 1989, to act on 7,300 declarations of water use which had been filed by approximately 2,600 declarants. At the meeting, the Commission unanimously approved a proposal:

1) that the amended recommendations regarding declarations of water use under H.R.S. § 174C-26 be adopted at a special meeting of the Commission on February 28, 1990;

2) that all declarants be sent a copy of the amended recommendations; and,

3) that all declarants be sent a request to file additional information regarding their declarations of use.

Enclosed please find a copy of the submittal which will be formally brought before the Commission on February 28, 1990. It recommends four types of actions to be taken on four categories of declarations. The categories are based on the content and completeness of the declarations and are described on the second and third pages of the submittal. Recommended actions are described on the third and fourth pages of the submittal. Attachment "A" referred to by the submittal is a 300 page condensed summary of all 7,300 declarations, and is available for public inspection in Honolulu at room 227, 1151 Punchbowl, and at Department of Land and Natural Resources offices on the neighbor islands. The portion of Attachment "A" which refers to you is reproduced on the second page of this letter.

Based on an initial review, your declaration has been placed in Category 3, meaning that you submitted a declaration which does not reflect an actual existing use of water.
Your declaration was summarized as containing the following:

*Unused source; rights claim.*

Also enclosed with this letter is a sheet dated December 19, 1989, which describes additional information to be submitted for declarations of water use. Please read this sheet and provide any additional information which is applicable to your declaration, so that your existing use(s) of water can be accurately described. It is important that you advise us of any errors or omissions which need to be corrected. Changes from your additional information will not affect the submittal to the Commission on February 28, but will be added to your declaration file and changes will be shown in subsequent documents. When you respond, be sure to indicate that it is in regard to file reference *SPROAT K&K, Oahu,* which has been assigned to you.

The Commission has scheduled a special meeting for 2:00 p.m. Wednesday February 28, 1990, at Room 132, 1151 Punchbowl Street, Honolulu, Hawaii. The purpose of this meeting is to decide whether the recommendations of the enclosed submittal should be adopted. The public is invited to attend this meeting. If you disagree with the recommendations or would like to suggest alternatives, you should write to the Commission before February 14, 1990 so that your comments and suggestions can be considered and be put on record. If you plan to attend the meeting, please let us know.

If you have questions regarding additional information for your declaration or if you plan to attend the meeting on February 28, please phone the commission staff in Honolulu at 548-2316 or 548-3948. Neighbor island residents can reach these and other state government numbers toll-free through the government switchboard at 1-800-468-4644.

Sincerely,

[Signature]

MANABU TAGOMORI
Deputy Director

Encls.:
(1) Additional Information Sheet
(2) Submittal for Feb 28, 1990.
SUFFICIENCY OF INFORMATION

For each form, has sufficient information been submitted to determine:

(1) whether or not filer has an existing use of water?
If a existing use, has sufficient information been submitted to determine:
(2) the location of source (i.e., a suitably marked map or reference);
(3) the manner of taking (i.e., how water is removed from source);
(4) the type of use and some indication of the quantity of use?

If no to any of above, enter date of request for more information:

CONTENT OF INFORMATION

Does the filer declare an existing use of water from:

- Well(s) owned or operated by filer?
- Stream diversion(s) owned or operated by filer?
- End use from non-municipal, non-state system?
- Instream use or riparian use with no diversion?

If yes for any of the above, describe the use:

-...

Has the filer appeared to have existing use of stream (Pandua)?

- Unuse
- Appur

Has the filer submitted forms to declare:

- Proposed future developments and uses?
- Non-appurtenant claims for water rights?
- System end use from a municipal or state-run water system?
REGISTRATION & DECLARATION OF WATER USE
PROCESSING OF FORMS

INITIAL COUNT AND FILING

FILE REFERENCE: 
ISLAND: 

FILER'S NAME AND ADDRESS IS GIVEN BY:

   [ ] Operator
   [ ] Owner
   [ ] User's Signature
   [ ] Envelope
   [ ] Other
   [ ] Filer's address not given

FORMS RECEIVED:

   - Number of forms for existing wells:
   - Number of forms for existing stream diversions:
   - Number of other forms received:

   TOTAL NUMBER OF FORMS RECEIVED:

Notes and Comments

____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________
____________________________________________________________________

2
REGISTRATION OF STREAM DIVERSION WORKS
AND
DECLARATION OF WATER USE

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

MULTI-SOURCE SYSTEMS: For a system of two or more diversion structures, submit a single package to describe the complete system. Include a single location map (or a set of maps if required) showing all diversion structures and measurement points, and a separate copy of this form for each structure and measurement point. On forms describing diversion structures, complete parts A, B, D, and E. On forms describing measurement points, complete parts A, B, and F.

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<tr>
<th>A. DIVERSION WORKS OPERATOR</th>
<th>B. OWNER OF DIVERSION WORKS SITE</th>
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<td>Firm name: __________________</td>
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<td>Contact person: Kamaka Kana</td>
<td>Contact person: Same</td>
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<td>Address: Box 413 Hanula Hi</td>
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<td>Zip: 96712 Phone: __________</td>
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C. STREAM DIVERSION LOCATION

Tax Map Key: 5-3-02-02 Town, Place, District: [Space for Tax Map Key]

D. STREAM DATA

Streamflow at diversion site is: ☐ Perennial (Water is always flowing) ☐ Intermittent (Channel is sometimes dry)

Is streamflow gaged? ☐ Yes ☐ No

If yes, provide gage name, and show location on map. Name: ____________________________

Average flow before diversion: ________ ☐ mgd ☐ gpm ☐ cfs

E. DIVERSION STRUCTURE DATA

Year constructed: ________ Elevation (feet above mean sea level): ________

Diversion structure is: ☐ Concrete ☐ Wood ☐ Pipe ☐ Other (describe): ________________

Diverted flow is: ☐ Controlled ☐ Uncontrolled

Divertable capacity is: ________ ☐ mgd ☐ gpm ☐ cfs

Submit an "as-built" drawing and dated photograph of the diversion works, if available.

(...continued over)

For Official Use Only:

Date received: ______________ Date accepted: ______________

Field checked by: ______________ Date: ______________ Latitude: ______________ Hydrologic Unit: ______________

Comments: ______________ Longitude: ______________ State Diversion No.: ______________

References:

Hawaii Revised Statutes, Chapter 174C.

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

Location and name of measurement point (Show on location map): N/A

Water use data are recorded: □ Continuously □ Daily □ Other:

Method of measurement (Check box and describe below): □ Weir □ Rating Curve □ Other

Description:

Quantity of Use (Report gaged or estimated monthly water use from the diversion described on the reverse side of this form, for the calendar years 1983 through 1987):

WATER USE, IN N/A (unit of measurement)

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Typical times of usage:

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

- □ Municipal (including resorts, hotels, businesses)
- □ Domestic (systems serving 25 people or less)
- □ Irrigation
  - Acres Irrigated: 2/3 and 1/3 interest in 3/6 acres
  - Crop(s): □ Sugar □ Pineapple □ Other (specify): **trees, pond, fish, bananas**
  - Non-Crop: □ Landscape □ Golf Course
  - Other (specify):
  - Method: □ Drip □ Furrow □ Sprinkler
  - □ Industrial
  - □ Military
  - □ Other
  - □ Other (specify): **livestock, hydroelectric, aquaculture, etc.**

Location of Use (Describe the location of water use, relative to the diversion, and indicate on location map. If water is used by others, submit a list of their names and addresses):

**At Honokaa 5-3-002-028**

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

Water User's Signature: Kapune K. Sprad Date: 5/25/89
Printed Name: Kapune K. Sprad Firm or Title (Diversion Operator etc.):
REGISTRATION OF WELL AND DECLARATION OF WATER USE

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

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

STATE WELL NO.: ____________________
WELL NAME OR DESIGNATION: ____________________
SOURCE OR STATION NAME (For a battery of wells): ____________________

A. WELL OPERATOR
Firm name: ____________________
Contact person: ____________________
Address: P.O. Box 412, Hauula, HI 96717
Zip: 96717 Phone: ____________________

B. OWNER OF WELL SITE
Firm name: ____________________
Contact person: ____________________
Address: P.O. Box 412, Hauula, HI 96717
Zip: 96717 Phone: ____________________

C. WELL LOCATION
Tax Map Key: 5-13-20-020 Town, Place, District: ____________________
Attach USGS "Quad" map (scale 1:24,000), tax map, or other map showing the well location.

D. WELL DATA
For Drilled Wells, submit "as-built" drawing, driller's log, and pump test results, and complete items below.
For Tunnels and Shafts, submit construction drawings, plot plan, or sketch map.

Ground elevation (Mean sea level): ____________ ft.
Reference point (Used to measure depth to water):
Elevation: ____________ ft.
Description: ____________________
Depth to water (Below reference point): ____________ ft.
Maximum recorded chloride: ____________ ppm
Minimum recorded chloride: ____________ ppm
Maximum chloride in 1987: ____________ ppm

Year drilled or constructed: ____________
Well contractor: ____________________
Casing diameter: ____________ in.
Solid casing depth (Below ground): ____________ ft.
Perforated casing depth (Below ground): ____________ ft.
Total depth of well: ____________ ft.

Minimum chloride in 1987: ____________ ppm

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

... (continued over)

For Official Use Only:
Date received: ____________________
Date accepted: ____________________
Field checked by: ____________________
Date: ____________________
Latitude: 21° 34' 45" N
Longitude: 156° 53' 11" W
Hydrologic Unit: 05
State Well No.: 3452-1

References: Hawaii Revised Statutes, Chapter 174C.
Hawaii Administrative Rules, Chapters 13-167 to 13-171.
F. DECLARATION OF WATER USE

NOTE: The purpose of the Declaration of Water Use is to obtain information necessary for the management of the State's water resources. The Declaration does not confer a legal right to water or its use.

Water use data are recorded:  □ Daily  □ Weekly  □ Monthly

Method of measurement:  □ Flow Meter  □ Orifice

□ Other (Describe):

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

WATER USE, IN GALLONS x 1000

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Minimum day's use: _______ gallons  Maximum day's use: _______ gallons
Typical times of usage: ____________________________________________

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

Category  Additional Information

□ Municipal (including resorts, hotels, businesses)  

□ Domestic (systems serving 25 people or less)  

□ Irrigation

Number of service connections: __________________________

Acres Irrigated: __________________________

Crop(s):   □ Sugar  □ Pineapple

□ Other (specify): __________________________

Non-Crop:   □ Landscape  □ Golf Course

□ Other (specify): __________________________

Method:   □ Drip  □ Furrow  □ Sprinkler

□ Industrial

□ Cooling  □ Manufacturing  □ Mill

□ Other (specify): __________________________

□ Military

□ Other

Specify (livestock, aquaculture, etc.): __________________________

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

Water User's Signature: __________________________  Date: 5/26/89

Printed Name: __________________________

Firm or Title (Well Owner, etc.): __________________________

AUTHORIZATION FOR NATIVE HAWAIIAN ADVISORY COUNCIL, INC. TO FILE

May 26, 1989

To whom it may concern:

I hereby authorize the Native Hawaiian Advisory Council, Inc. and its agents to assist me in filing my water use declaration. If I complete my declaration by phone or am otherwise not able to sign my declaration form, I authorize the Native Hawaiian Advisory Council, Inc. and its agents to sign and submit my declaration form for me.

A dated and signed photocopy of this authorization will have the same force and effect as an original.

Kapua K. Sproat
(please sign your name)

Kapua K. Sproat
(please print your name)
P.O. Box 413
Hauula, Hi 96717
Address
Attention: Owners Or Operators Of Existing Wells And Existing Stream Diversions

NEW ADMINISTRATIVE RULES

The Department of Land and Natural Resources, Bureau of Water Resources Management, has adopted a set of administrative rules which become effective on May 30, 1989, and which implement the State Water Code, Chapter 13, HRS.

One of the rules, Chapter 13-170, entitled "Water Use, Wells, and Stream Diversions," sets forth the requirements for: (1) installing new wells and stream diversions; (2) divesting stream users; (3) permitting of any well construction; (4) installation or change of stream diversion works; and (5) installation of water use in a sanitary tank.

REQUIREMENTS OF ADMINISTRATIVE RULES

In accordance with Chapter 13-170, the owner or operator of an existing well or an existing stream diversion works is required to register each such facility with the Commissioner of Water Resources Management. Registration of facilities requires reporting information such as location, diversion, diversion reasons, usage, quantity, and other essential data. The deadline for registration is May 29, 1989 (or 30th in the last working day after May 29, which has been further extended by the deadline).

FORMS

Registration of a well or stream diversion works and declaration of a water use must be made on forms provided by the Commissioner. Forms may be obtained at the following offices of the Department of Land and Natural Resources:

1171 Punchbowl Street, Room 227, Honolulu, Hawaii
1171 Punchbowl Street, Room 400, Honolulu, Hawaii
1171 Punchbowl Street, Room 322, Honolulu, Hawaii
1171 Punchbowl Street, Room 322, Honolulu, Hawaii

For further information or assistance, write or call:

Division of Water Resources Management
Department of Land and Natural Resources
1171 Punchbowl Street, Room 322, Honolulu, Hawaii

Phone 548-2390 or 548-2390

Remember: May 30th is the deadline for filing your declaration.

It is important that declarations be filed. If you are unable to complete all portions of the forms, complete what you can, and submit it to one of the Department of Land and Natural Resources offices listed above before the end of work on Tuesday, May 30, 1989.
FROM: MUNK
DATE: ____________
FILE IN: ____________

TO: INIT: 

PLEASE: 

REMARKS: 

SPOAT WELL 3453-05

INSTR. TRANSMITTER IN WELL
PRESS. Probe # 34456 50121
LOWSL: 39966

START TIME: 1145 10 MIN. INT.
D1W: 6.23' (1115 HRS)
REF: TOP OF L" CAS.
TDL: 1.71' ABOVE GR.
SUBMERGENCE \ PRESS. Probe
= 8.33' BELOW TDL
2.1' BELOW WATER.